



January 31, 2024

Brooke Hall
Senior Policy Advisor
Department of Consumer and Business Services
Division of Financial Regulation
350 Winter St NE, # 410
Salem, OR 97309

Delivered via email: Brooke.M.Hall@dcbs.oregon.gov

Re: Comments on Draft Rules Implementing House Bill 2002 (2023)

Dear Ms. Hall:

The PacificSource companies are independent, not-for-profit health insurance providers based in Oregon. We serve over 600,000 commercial, Medicaid, and Medicare Advantage members in four states. PacificSource Community Solutions is the contracted coordinated care organization (CCO) in Central Oregon, the Columbia River Gorge, Marion & Polk Counties, and Lane County. Our mission is to provide better health, better care, and better value to the people and communities we serve.

Thank you for the opportunity to provide comment on the first draft of rules implementing House Bill 2002 (Act).¹ Section 20 of the Act requires carriers offering health benefit plans to cover gender-affirming treatment. From the January 25 rulemaking advisory committee meeting we understand the division plans to proffer a new draft rule for comment.

General

In general, the draft mixes statute and rule language that make parsing the language difficult. It is not always clear from the text whether the division is proposing to clarify or amplify a provision of the Act, or simply repeat the Act. We think for ease of use, including only what is necessary to amplify or clarify the underlying Act would help minimize confusion in application. We would also urge the division to focus on identifying and expounding on inexact or delegative terms, without interpreting the bill in a way that would enlarge the Act. Our understanding at the time the rulemaking requirement was added to the Act was to ensure that any necessary rulemaking was in place before the required market conduct examination.

Definitions

As far as definitions, clearly “accepted standards of care” needs defined by rule. PacificSource supported the adoption of the World Professional Association for Transgender Health’s Standards of Care for Transgender and Gender Diverse People, Version 8 in comments delivered to the Health Evidence Review Commission in 2023. In our letter to HERC, we

¹ 2023 Or Laws ch 228.

advocated that Guidance Note 127 should allude to gender-affirming treatments above or below the Prioritized List of Services are prescribed in accordance with WPATH standards. Setting the standard “in accordance” or “based on” allows some flexibility for health benefit plans to be compliant with rules and allows for evolution without constant re-adoption of the standard in rule. The division has adopted this approach in other contexts. For example, in behavioral health such language exists for instances when there are no generally accepted standards of care, and specifically calls out “advancements in technology of types of care.” See OAR 836-053-1405(10)(d).

Coverage

In terms of coverage, we must raise concern with how the division proposes to define “deny or limit” care by including “additional cost sharing.” First, coverage is not akin to cost sharing. The Act limits health benefit plans from denying or limiting coverage. Coverage, in its plain and ordinary meaning, is what is included within the scope of an insurance policy. By contrast, “cost sharing” means costs covered by insurance that a member pays out of your own pocket for coverage. Indeed, the only reference to cost sharing in the Act is a requirement that we essentially cover out of network care at the same cost share as we cover in-network care.

Second, from the meeting on January 25, we understood the inclusion to be added because the division previously alluded to cost sharing being a discriminatory practice under the still-in-existence bulletin, Bulletin No. 2016-1.² The 2016 bulletin concluded that “extra out-of-pocket costs, or...expenses related to additional surgical or medical consultations that are not imposed for other conditions are not allowed because these requirements discriminate based on the health condition, gender dysphoria, and would be considered differential treatment which on its face is discrimination.”

Since the division published the bulletin in 2016, the Oregon Legislative Assembly enacted SB 250 (2019), which incorporated Section 1557 of the Affordable Care Act into the Insurance Code. Section 2 of the SB 250, codified at ORS 746.021, already prohibits health benefit plans from discriminating in the manner the 2016 bulletin addressed. We think the inclusion of cost sharing in this bulletin is duplicative and unnecessary. As written in the draft rule, it also exceeds any previous warnings or prohibitions on cost sharing and is not supported by the text of the Act.

Finally, the Act also requires health benefit plans to cover “any combination of gender-affirming treatment procedures.” “Procedures,” in its plain and ordinary meaning, tends to refer to a surgical operation. We request clarity on how the division reads the term “procedure.”

Network Adequacy

The Act duplicates provisions found in the general network adequacy statute, ORS 743B.505. The Act requires health benefit plans to “satisfy any network adequacy requirements in ORS 743B.505 related to gender affirming treatment providers[.]” This provision likely would have been twinned with SB 1046 (2023), which did add a provision around standards for cultural and appropriate care for gender identity. Without any corresponding standard currently in law, we believe.

In terms of the Act’s requirement that we contract with gender-affirming providers in sufficient numbers and geographic regions to ensure that members receive care without unreasonable delay. The division spent about two years on the rules that implement HB 2468 (2017), the bill that was codified as ORS 743B.505. Given the careful negotiation that happened to implement the 2017 law, we would urge the division to extend the rules implemented to define what would be unreasonable delay to the gender-affirming care rule.

² Available at <https://dfr.oregon.gov/laws-rules/Documents/Bulletins/bulletin2016-01.pdf>

Thank you for your consideration. We look forward to working with the division and stakeholders on the next draft of rules.

Sincerely,

/s

Richard Blackwell
Director, Oregon Government Relations