

April 5, 2024

Division of Financial Regulation  
Department of Consumer and Business Services  
350 Winter St NE  
Fourth Floor  
Salem, OR 97301

Subject: PHP's Second Comment on the HB 2002, Gender-Affirming Treatment, Rulemaking

Providence Health Plan (PHP) offers this comment to support the Department of Consumer and Business Services' (DCBS) Division of Financial Regulation (DFR) efforts to adopt rules to implement HB 2002 (2023), Gender-Affirming Treatment. PHP supports this legislation and the Department's endeavor to ensure that all Oregonians have access to gender-affirming treatment.

As a health plan, PHP has been an early leader in supporting access to gender-affirming treatment. Recognizing that the care needed is unique to everyone, we have made a medical policy to defer to our members' treating providers' recommendations for treatment, rather than undergoing a prior authorization medical necessity review for an extensive list of procedures.<sup>1</sup> Moreover, our health plan contracts with providers and organizations to establish a sufficient network to satisfy network adequacy standards under ORS 743B.505.<sup>2</sup> Currently, PHP follows these standards for its network of gender-affirming treatment providers.

### **Provider Scarcity**

Providence Health Plan supports the DFR's draft exemption of carriers from proposed network adequacy standards in certain circumstances in section 7 but requests that the DFR expand those circumstances. The current language specifically cites the situation in which carriers are unable to contract with sufficient gender-affirming treatment providers due to provider scarcity. This is an important protection for carriers. In addition, PHP anticipates that there may be additional, unforeseeable circumstances where good faith efforts would be insufficient. To address this possibility, PHP recommends the following revision to the current draft language:

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<sup>1</sup> Providence Health Plan, Medical Policy, *Gender Affirming Surgical Interventions*, pg. 18-23, <https://www.providencehealthplan.com/-/media/providence/website/pdfs/providers/medical-policy-and-provider-information/medical-policies/mp32.pdf> .

<sup>2</sup> ORS 743B.505, [https://www.oregonlegislature.gov/bills\\_laws/ors/ors743b.html](https://www.oregonlegislature.gov/bills_laws/ors/ors743b.html) .

*“(7) If a carrier can demonstrate due diligence in attempting to contract, without success, with an adequate number of providers for gender-affirming treatment ~~due to provider scarcity~~, the carrier will not be found in violation of network adequacy standards...”*

Editing the rule language in this way will ensure that carriers will not face penalties in all situations where they fail to meet network adequacy requirements despite attempting good faith efforts to contract with providers.

### **Balance Billing**

PHP supports the draft rule and legislation that protects members from out-of-network cost-sharing for gender-affirming treatment. However, PHP is concerned that when such protection is not partnered with payment caps, then providers are not only de-incentivized from negotiating to join carrier networks but are also empowered to potentially raise rates above what the market should bear. To address this risk, we ask the DFR to consider mechanisms to cap provider reimbursement such that providers are compensated fairly but that charges above a fair rate do not unnecessarily raise premiums and out-of-network costs across the commercial market.

We appreciate the DFR’s review and consideration of PHP’s comments. Please reach out with questions.

Kind regards,

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