

May 9, 2024

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

Subject: PHP's Third 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. In this comment letter, we provide feedback regarding the physician education requirement and we reiterate comments previously provided by not yet incorporated into the proposed rules.

Physician Education and Training

Providence Health Plan supports the DFR's efforts in ensuring that physicians reviewing relevant adverse benefit determinations receive adequate education and training. We acknowledge that the World Professional Association for Transgender Health's (WPATH) Global Education Initiative (GEI) Foundations in Transgender Health training program provides physicians with foundations on the context and principles of gender-affirming treatment. We have no concerns with the WPATH training program, nevertheless, rule language requiring WPATH's GEI Foundations in Transgender Health training program as the exclusive program for physicians to receive such training raises concerns regarding feasibility and propriety. WPATH has yet to determine the date of the online foundations course and the next in-person course will be in Lisbon, Portugal in September. As such, a requirement for this specific course, especially one that would go into effect in the near future, would create a scenario where carriers not only lack the capacity to comply, but are also captive to a private, for-profit company in order to comply with state regulation. We caution the DFR against naming any particular training provider in rule, but rather provide a description of the type of training that the DFR would like to ensure carriers complete. Doing so supports a competitive marketplace where new vendors may emerge with improved quality and/or price.

Provider Scarcity

Providence Health Plan supports the DFR's draft exemption of carriers from proposed network adequacy standards due to provider scarcity in Section 7. However, PHP anticipates that there

may be additional circumstances where good faith efforts would be insufficient to achieve network adequacy, such as provider willingness. It is not uncommon for providers to choose to stay out-of-network rather than contract when marketplace drivers outside of a health plan's control make it more advantageous for providers to choose to stay out-of-network rather than contract. Circumstances where there is a small group of providers who can offer in-demand, specialty care are such where contracting can be difficult, if not impossible. To address this issue, PHP offers the following recommended language.

“(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 as such will ensure that carriers will not face penalties in situations where they fail to meet network adequacy requirements despite engaging good faith efforts to contract with providers.

Balance Billing

Providence Health Plan 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 prevent price gauging and/or 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,

Tara Harrison
Government Affairs Director
Providence Health Plan
Tara.Harrison@Providence.org