June 24, 2024

Oregon Division of Financial Regulation
350 Winter Street NE
Salem, OR 97301
Submitted via email

Re: Comments on HB 2002 Revised Rule dated 6-9-2024

Dear Ms. Hall and Ms. Emerson,

Kaiser Foundation Health Plan of the Northwest appreciates the opportunity to provide feedback to the Oregon Division of Financial Regulation (DFR) on the draft regulation for gender affirming treatment dated June 9, 2024. Kaiser Permanente Northwest is an integrated health care system that covers and cares for Oregonians. We are committed to delivering affordable, coordinated, and high-quality care and coverage that supports not only our members but also the communities we serve. We have a long history of providing culturally competent, population-based care and have a Gender Pathways program that has served our members seeking gender affirming treatment since 2016. The Gender Pathways program is an evidence-based program that utilizes the World Professional Association for Transgender Health's Standards of Care for the Health of Transgender and Gender Diverse People, Version 8 (WPATH-8), as well as internally developed criteria to provide high-quality, safe, and efficacious treatment for our members. Our team includes a multidisciplinary group of trained health care providers and physicians who work together to provide a wide array of services to our members who seek gender affirming treatment.

While the regulation impacts health plan coverage, we provide our comments within the broader context of our integrated health care system and providing appropriate care to members seeking gender affirming treatment. Our comments focus on health benefit plan requirements for utilization review, the timing of the continuing education requirement, and the draft definition of "unreasonable delay."

Clarify that a health benefit plan's requirements for utilization review apply

During the RAC meeting, there was a discussion about health benefit plan designs that require prior authorization and use of in-network providers or an authorized referral for out-of-network services and the need for members to contact their health carrier before obtaining services. The DFR provided feedback that the language in OAR 836-053-XXXX (3) permitted health carriers to apply the utilization management requirements of the health benefit plan to gender affirming treatment. We recommend adding the following language at the beginning of draft (3) to further clarify this concept: "The services provided under this section are subject to OAR 836-053-1200."

Allow sufficient time for reviewing physicians and health care providers to take continuing education

Thank you for including language in the draft regulation that allows reviewing physicians and health care providers to take the WPATH Global Education Institute Foundations Course or an equivalent course from a list on the DFR's website. This approach provides flexible options for people in meeting this continuing education requirement.

From a timing perspective, the rulemaking process is taking a little longer than expected. Based on the timeline shared at the RAC meeting on June 11th, the public hearing will not happen until November for a January 1, 2025, effective date. This would allow roughly a month to implement the requirements. Because this continuing education requirement is brand-new, we recommend establishing a comply by date that is at least six months later than the effective date of the regulation. For example, if the regulation goes into effect on January 1, 2025, the continuing education requirement could go into effect on July 1, 2025. This would allow adequate time for physicians and other health care providers to enroll in and attend the continuing education course, while still allowing utilization management to take place when the overall regulation goes into effect.

Defining "unreasonable delay"

We support patient-centered care that provides clinically appropriate care in a timely manner. The wait times for surgical procedures in Oregon are currently longer than we would like to see for our patients. In Oregon and the rest of the United States, workforce shortages contribute to longer wait times for surgical procedures. We look forward to the day when wait times for surgeries are shortened by having more qualified surgeons, anesthesiologists and certified registered nurse anesthetists, and other health care professionals that factor into operating room availability in Oregon. Timeliness requirements placed on health carriers do not result in an increase in the number of qualified surgeons and other health care professionals available to provide services. It is in this context that we provide the following comments on the draft definition of "unreasonable delay."

Federally facilitated exchange appointment wait time standards are not an appropriate proxy to define "unreasonable delay"

Subsection (8) provides a definition of "unreasonable delay" that is based on appointment wait time standards for plans on the Centers for Medicare & Medicaid Services (CMS) federally facilitated exchange. Appointment wait time standards are not an appropriate proxy to use to define "unreasonable delay". Instead, these standards are intended to be used to measure the time to appointments, not the timeframe for enrollees to access procedures, services, and surgeries. Further, the general network access regulations for all other medical and behavioral health services do not define "unreasonable delay." We encourage the DFR to pause on defining "unreasonable delay" until the DFR conducts rulemaking on the general network access standards. Doing so will allow the same definition to apply, regardless of the type of services being requested.

Surgeries and procedures are not specialty care "appointments"

If the appointment wait time standards are incorporated into this section, we recommend that the regulation clarify what constitutes an "appointment" and specifically exclude procedures and surgeries from the concept of "appointment." We heard at the RAC meeting that the DFR considers surgeons to be a type of "specialist", and therefore, a 30-business day standard would apply from the date of initial surgical consultation to the date of the actual surgery. If the course of treatment involves a procedure or surgery, 30 business days is not a reasonable standard and is significantly shorter than Oregon's current wait times. We note that many health care systems are still recovering from the backlog of surgeries created during the pandemic. Availability of operating rooms and the backlog of scheduled surgeries for all populations mean that a surgery is likely to be scheduled beyond 30 business days. In addition, there is not a common state resource that identifies surgical wait times across the state. Rather, this analysis is done within each health care system. We urge the DFR to continue to permit health carriers to work with their contracted provider networks to provide services without unreasonable delay and to determine when an out-of-network referral is appropriate to better serve the specific patient's clinical needs.

We understand that DFR views the timeliness language to as an indicator of when a health carrier must authorize out-of-network services for gender affirming treatment. However, the way the language is written, a health carrier would be found during a market examination to have an inadequate provider network if those time periods were not met. Because the time periods listed in the draft regulation do not consider the current state of procedure and surgery access in Oregon for all patients, the language sets health carriers up to be out of compliance.

We thank you for the opportunity to provide comments on this stakeholder draft. We look forward to our continued collaboration throughout this rulemaking process. Please do not hesitate to contact us with questions.

Sincerely,

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