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To:

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Thank you for giving Basic Rights Oregon the opportunity to provide feedback on the draft rule related to the gender-affirming treatment provisions of HB 2002 (2023).

1. Long wait times adversely impact the health of those seeking gender-affirming care. The range of possible consequences of prolonged suffering from gender dysphoria have been cited in various studies. One example is a study from the Netherlands that examined 975 patients waiting for gender affirming care.

[https://www.thelancet.com/journals/eclinm/article/PIIS2589-5370\(24\)00236-0/fulltext](https://www.thelancet.com/journals/eclinm/article/PIIS2589-5370(24)00236-0/fulltext)

This study demonstrates the types of consequences of waiting for care and included:

- Increased or prolonged gender-related distress (e.g., gender dysphoria, body dissatisfaction and disgust)
- Problems with oneself (e.g., confusion about self, suppressing oneself, low self-esteem, and feeling unauthentic)
- Emotional problems (e.g., stress, restlessness, frustration, worries, feeling unimportant, a lack of self-determination or perspective, loneliness, hopelessness and shame)
- Poorer school/work functioning
- Deferring initiating new contacts, jobs until medical transition would start
- Due to deferral of medical treatments, participants reported continuation of problems in social encounters, such as being misgendered, unwanted social self-disclosure, not being accepted by others without proper diagnosis/care, or even physical aggression.
- Negative view on healthcare, including feeling distrust towards healthcare professionals
- Negative physical symptoms that impact health from body modifying behavior to alter characteristics of their body that would change with gender affirming surgery (e.g., chest binding, tucking, and more)
- Some developed eating problems or obesity known to complicate eligibility for (surgical) gender-affirming treatments that can require body mass indexes within set margins.
- For elders, the fear of being too old or in poorer health to undergo surgery if forced to wait multiple years was also a factor

Given the importance of sufficient access to gender-affirming care, Basic Rights Oregon supports the efforts of section (8) in addressing this ambiguity of

unreasonable delay and suggests adding the following language modeled after California and Washington's existing network-adequacy rules to prevent detrimental waits for gender-affirming treatment.

We agree with the unreasonable definition provided last RAC meeting in the current revised rule and find that it matches other states existing network adequacy rules.

- I. Health insurers shall ensure that their contracted provider network has adequate capacity and availability of licensed gender-affirming healthcare providers to offer insureds appointments that meet the following timeframes:
  - A. Appointments for primary care: within 15 business days of the request for appointment, except as provided in subparagraph (c).
  - B. Appointments with specialist physicians: within 30 business days of the request for appointment except as provided in subparagraph (c).
  - C. Appointments for behavioral health care: within 10 business days of the request for appointment except as provided in subparagraph (c).
  - D. Consultations for gender-affirming surgery: within 9 months of the request for appointment.
  - E. The applicable waiting time for a particular appointment may be extended if the referring or treating licensed health care provider, or the health professional providing triage or screening services, as applicable, acting within the scope of their practice and consistent with professionally recognized standards of practice, has determined and noted in the relevant record that a longer waiting time will not have a detrimental impact on the health of the insured.

In Oregon, the existing network-adequacy requirements for CCOs (see section 14) don't sufficiently define wait times for *surgery* specifically so the suggestion was added above in D because that is a component of Gender affirming treatment.

After reviewing international studies on the mental health impacts of these wait times for surgery consults or appointments, it is clear that decreased access to gender-affirming care has a range of negative effects on transgender and gender diverse individuals. Qualitative data showed how waiting can result in increased healthcare consumption due to worsened (mental) health, unwanted pubertal developments, poor lifestyle and self-medicating.

The proposed wait times above are derived from a review of state network adequacy standards. The network adequacy standards of California, New Jersey, Vermont, and Washington support a fifteen-day or less wait for primary care appointments. Washington and California also support a fifteen-day wait for specialty care appointments. California, Colorado, Illinois, Maine, New Hampshire, and Oregon support a ten-day or shorter wait for behavior care appointments.

The legislation and rules of 21 states with time or distance network adequacy standards were reviewed in preparing this comment on the revised rule. With them, 9 states (HI, CO, CT, DE, IL,

MO, NH, VT, WA ) prohibit unreasonable delay of appointments and medical services. Thirteen states (WA, CA, CO, FL, IL, ME, MO, MT, NJ, NM, TX, VT, WA) have network adequacy requirements which include limits on wait times for appointments. Oregon wasn't the first to pass a gender affirming treatment act banning insurance exclusions for medically necessary gender affirming treatment and healthcare and we hope to assure that our patients in the state can see an increase in access to care as HB2002 intended.

2. The text of HB2002 states that carriers regulated by the state must:
  - Satisfy any network adequacy standards under ORS 743B.505 related to gender affirming treatment providers; and (b)(A) Contract with a network of gender-affirming treatment providers that is sufficient in numbers and geographic locations to ensure that gender-affirming treatment services are accessible to all enrollees without unreasonable delay; or (B) Ensure that all enrollees have geographical access without unreasonable delay to out-of-network gender-affirming treatment services with cost-sharing or other out-of-pocket costs for the services no greater than the cost-sharing or other out-of-pocket costs for the services when furnished by an in-network provider.

Basic Rights Oregon supports the intent of HB2002 and encourages DFR to uphold the federal No Surprises Act to prevent balance billing when patients must seek out-of-network care, especially where long unreasonable wait times would allow a patient to be able to go out-of-network. We would like to address the request from insurance carrier representatives at the last RAC meeting for DFR to allow balance billing. Balance billing would continue to put the burden of cost due to a lack of an adequate number of in-network providers on the patients by allowing carriers to send bills to patients and charge the difference or more than in-network costs to patients. We do not approve of adding this exception for balance billing in the rulemaking process or to the revised rule. Out of network costs have been affecting rural and many other transgender and non-binary Oregonians for a long time who have to go out of network to access care when there aren't providers in their area and in-network. Over the last decade, the Oregon Trans Health Coalition and Basic Rights Oregon have fielded requests from patients for relief from the lack of insurance coverage available for medically necessary gender affirming treatment and assistance with the costs of having to go out of network for care.

Thank you for your consideration of these comments.