



Regulatory Affairs

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Reply to:

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Lisa Emerson

Brooke Hall

Senior Policy Analysts

Department of Consumer and Business Services, Division of Financial Regulation

P.O. Box 14480

Salem, OR 97309

SENT VIA EMAIL

RE: Comments on August 5, 2024 Gender Affirming Treatment Draft Rules
Implementing Section 20 of HB 2002 (2023)

Dear Ms. Emerson and Ms. Hall:

Thank you for the opportunity to provide comments on the August 5, 2024 version of the draft rules.

Our comments focus on two things. First, we confirm the DFR's response at the August 7, 2024 RAC regarding our question surrounding coverage of procedures that are experimental or investigational. Second, we request that DFR remove the requirement in (5)(b)(B) that a reviewing provider of an adverse benefit determination have "experience utilizing the WPATH-8", and (5)(b)(C) effective July 1, 2025, that the provider has completed the WPATH Global Initiative "Foundation in Transgender Health" training program or an equivalent training program listed on the division's web site.

Procedures that are Experimental or Investigational

Since the inception of the RAC meetings, we've been requesting that the DFR provide guidance whether insurers will be allowed to exclude procedures that are included in other sections of the WPATH guidelines but are considered experimental or are not widely agreed by medical professionals to be safe because the language in the draft rules is unclear.

In our previous comment letters, we've provided the example of uterine transplants. They are part of WPATH but are still deemed experimental by most medical



standards. Similarly, gluteal lipofilling is included in a WPATH appendix, but is not widely considered safe.

While (3) of the draft rule states that: *“Carriers may use utilization review practices to verify adherence to the accepted standards of care described in subsection (2)(b), provided that such practices are consistent with the requirements of this rule and all other applicable provisions of Oregon law. Utilization review practices shall be implemented in a manner that does not unreasonably limit or delay access to care”* carriers will still have to adhere to “accepted standards of care” which includes at a minimum, the WPATH 8.

Thanks for clarifying at the last RAC meeting that insurers can still use their medical policy on utilization review provided they also consider the prescribing provider’s determination. We appreciate the clarification, because it prioritizes the consumer’s safety first in determining coverage by allowing insurers the ability to rely on other standards of care which have deemed the procedure to be experimental or investigational and not safe.

Adverse Benefit Determination - Reviewing Provider’s Experience Utilizing the WPATH-8 and Completion of the WPATH Global Education Initiative “Foundations in Transgender Health” training program or Equivalent Training Program

Section (5)(b)(B) and (5)(b)(C) respectfully, requires a reviewing provider of an adverse benefit determination to have experience utilizing the WPATH 8, and effective July 1, 2025, they also must have completed the WPATH Global Education Initiative “Foundations in Transgender Health” training program or an equivalent training program listed on the DFR’S web site. We request that these two requirements be removed from the draft rules in its entirety for the following reasons:

1. The underlying legislation, HB 2002 (2023), which the rules implement, does not include these requirements. It only requires the Department of Consumer and Business Services “to adopt rules to implement the provisions of the section.” Nothing in the section includes a requirement for providers to have experience utilizing WPATH 8 or take the “Foundations in Transgender Health” training program.
2. WPATH-8 is a publicly accessible guideline that details recommendations for surgery, endocrinology treatments, and behavioral health strategies. Being familiar with the application of these guidelines does NOT require taking “The Foundations in Transgender Health” training program. The Foundations in Transgender Health training program is not widely offered throughout the year, and it’s an international course offered outside the United States with the next in-person program in Lisbon, Portugal in September 2024. The online option began June 20th through July 25, 2024 and has already passed. The next Foundations Course is in-person in Marbella,



Spain on February 18-20th. Here's a link to the WPATH Upcoming Course for your reference: <https://www.wpath.org/education/WPATH-Upcoming-Courses>. Having providers take the Foundations Course is not necessary as specified above and will be challenging given the limited availability of the offering and the expense associated with it including travel. Specialty providers such as plastic surgeons are already Board Certified in their specialty and come with the necessary experience to treat a patient or review a medical benefit determination. Also, the Foundations Course is not required to practice medicine. Imposing additional requirements on a provider reviewing a benefit determination would impose requirements beyond those required by treating providers and could ultimately slow down the review process.

3. Limits access to care

The additional layer of requirements on providers will limit access to care because rather than allow board certified providers to practice in their area of specialty, they would have to take courses which are not required to practice medicine. This will result in fewer providers available to review coverage determinations, and delays in patient access to care while waiting for coverage determinations to be completed. Providers should be left to focus on patient safety and rely upon their medical experience in making benefit determinations and providing medically necessary care. Rather, the draft rules put more emphasis on who is determining an adverse benefit determination and whether the provider has experience with WPATH-8 or has taken the Foundations Course.

While the intent of the additional requirements in Sections (5)(b)(B) and (5)(b)(C) are a good thought, they are not necessary, will limit access to care and impose a requirement that is not required to practice medicine.

For these reasons, we request that Sections (5)(b)(B) and (5)(b)(C) be removed.

Thank you.

Sincerely,

Antoinette Awuakye
Sr. Public and Regulatory Affairs Specialist