



Hearing Officer's Report to Agency on Rulemaking Hearing

Date: 12/18/2024

To: Department of Consumer and Business Services

From: Lisa Emerson, Hearing Officer

Subject: Gender Affirming Treatment Rulemaking
Hearing Date/Time: November 19, 2024
Hearing Location: Hybrid meeting conducted in person at Labor and Industries Building and virtually on Microsoft Teams
Comment Period End: November 26, 2024

Background

House Bill 2002, enacted by the Oregon Legislature in 2023, and codified in ORS 743A.325, expands access to gender-affirming treatment through health benefit plans across the state. This legislation mandates that health insurers cover medically necessary gender-affirming treatments when prescribed by physical or behavioral health care providers.

The proposed rule implements coverage requirements for gender-affirming treatment, including the following key provisions:

- Coverage Mandates: Health benefit plans may not deny or limit medically necessary gender-affirming treatment as determined by the prescribing provider and in accordance with accepted standards of care. Accepted standards of care is defined to include The World Professional Association for Transgender Health Standard of Care 8 (WPATH-SOC-8).
- Network Adequacy Requirements: Health benefit plans must ensure that enrollees have adequate access to gender-affirming treatment providers without unreasonable delay. In accordance with HB 2002 and the rule, insurers are required to either:
 - Contract with a network of providers who offer gender-affirming treatments and are sufficient in number and geographic location to provide accessible services; or

- Ensure that enrollees who must access out-of-network providers for gender-affirming treatments face no greater cost-sharing or out-of-pocket costs than they would with in-network providers.
- **Provider Training Requirement:** Providers reviewing adverse benefit determinations for gender affirming treatment services on behalf of an insurer must complete the "WPATH SOC-8 Health Plan Providers Training" or an equivalent training program.

Hearing

A public hearing to receive testimony was held on November 19, 2024. Notice for the hearing was published in the Oregon Bulletin on November 1, 2024. Public testimony was accepted until 5:00 p.m. on November 26, 2024. Representing DCBS at the public hearing were Lisa Emerson, Jesse O'Brien, and Karen Winkel.

37 members of the public attended the hearing in person or remotely, and 17 provided verbal testimony.

688 public comments were received in writing after the hearing and before the comment deadline.

Summary of Testimony

The testimony presented covered a wide range of perspectives regarding the adoption of the proposed rule. Main themes included:

- 1. Inclusion of WPATH standards as an accepted standard of care:**
 - Comments in support highlighted WPATH-SOC-8's value in ensuring evidence-based, inclusive care and transparency in adverse benefit determinations.
 - Comments in opposition included concerns about the scientific rigor and legitimacy of WPATH as an organization, its adoption leading to discrimination against the LGBTQ+ community, and inadequate support for detransition treatment.
- 2. Reviewing provider training requirements:**
 - Comments in support endorsed the inclusion of training requirements to ensure providers are well-equipped to provide appropriate review of adverse benefit determinations for gender-affirming care.
 - Comments in opposition contended that these requirements exceed the mandates of HB 2002, asserting that experience—not additional training—should suffice. Some comments requested more clarity on acceptable training and extended timelines for compliance.
- 3. Network Adequacy, cost-sharing and detransition services:**
 - Some commenters expressed concerns about ambiguities in network adequacy standards, especially regarding delays in accessing care.

- Some commenters criticized the proposed rule for not specifically addressing coverage of detransition treatments.
- One commenter criticized the rule’s approach to limiting cost-sharing obligations for gender-affirming treatment as beyond the scope of the statute.

4. **Requests for Clarity and Flexibility:**

- Suggestions provided in comments included creating a publicly accessible list of approved equivalent training programs, providing direct URLs to resources, and allowing health carriers sufficient time (6–18 months) to implement training requirements.

Discussion

- **WPATH-8:** The inclusion of WPATH-SOC-8 in the rule is intended solely to provide a minimum standard for what gender-affirming treatment services must be covered by a health benefit plan. Issuers may and should continue to consult all applicable clinical guidelines and evidence in making coverage decisions, but may not deny coverage for a service recommended by WPATH-SOC-8 if it is prescribed appropriately by a health care provider. Having a clear and comprehensive minimum coverage standard is essential for ensuring that these benefits are provided in a consistent and equitable way across the health insurance market.

The rule applies solely to health insurers issuing health benefit plans and does not affect the activities of health care providers.

The department convened a Rulemaking Advisory Committee (RAC), which included health care providers, health insurance carrier representatives, consumer advocates. The RAC identified the WPATH-SOC-8 as the best available, evidence-based, accepted standard of care for gender-affirming treatment. A majority of public comments support recognizing the WPATH-SOC-8 in rule as an accepted standard of care. The HB 2002 legislative record documents the legislature’s intent that the WPATH-SOC-8 is recognized as a standard of care for gender-affirming treatment.

- **Reviewing providers training and education requirement, including timeline to complete:** HB 2002 establishes that an insurer may not “issue an adverse benefit determination denying or limiting access to gender-affirming treatment unless a physical or behavioral health care provider with experience prescribing or delivering gender-affirming treatment has first reviewed and approved the denial of or the limitation on access to the treatment.”

Based on feedback from the RAC and public comment, DCBS has determined that requiring reviewing providers to demonstrate that they have received appropriate training in gender-affirming treatment is the most straightforward and cost-effective way to ensure that providers have the experience and expertise required by the statute. Alternative approaches would likely either fail to achieve the intent of the

statute or impose extensive additional burdens on industry to demonstrate the credentials of reviewing providers.

The WPATH Global Education Institute developed a comprehensive “WPATH SOC-8 Health Plan Providers’ Training” in 2021 in response to California’s SB855, which includes a requirement that health plans sponsor formal education programs by the nonprofit clinical specialty associations for the relevant clinical specialty. More information on CA SB855’s training requirements is available at link:

<https://www.wpath.org/resources/SB855WPATHMaterials>

- The timeline for Oregon health plans to implement the “WPATH Health Plan Providers’ Training” or an equivalent training is expected to be within 6-months of the rule effective date. The division will exercise its discretion with enforcement of health plans implementing the training requirement on a case-by-case basis. Additional information about the WPATH training or equivalent training will be provided in a gender-affirming treatment bulletin. When the division approves equivalent training programs the information will be made available to health plans.
- **Network Adequacy:** Based on the information and feedback available to DCBS, the department has determined that network adequacy for access to gender-affirming care would be most effectively addressed as part of a broader conversation about Oregon’s network adequacy standards for health benefit plans. DCBS has proposed a network adequacy legislative concept, with support from the Governor’s office, that will be deliberated on during the 2025 Legislative Session. Pending passage, network adequacy requirements, including addressing unreasonable delays in care delivery, will be part of a separate rulemaking process anticipated to take place during the late summer/early fall of 2025.

The DFR will review and respond to consumer complaints from health plan members that are experiencing what they believe is a network adequacy issue including, but not limited to an unreasonable delay accessing care.

- **Coverage of detransition services:** “Detransition services” typically refers to clinical treatments intended to reverse the effect of prior gender-affirming treatments. To the extent that these services are intended to bring an individual’s gender presentation in line with their sex assigned at birth, they constitute gender-affirming treatment under the statute and proposed rule.

Gender-affirming treatment for detransition is addressed in the WPATH-8 standard of care and is required to be covered under the proposed rule when medically necessary and prescribed by a health care provider according to accepted standards of care. Medical necessity for detransition services and other gender-affirming treatments is determined by health care providers. DCBS does not make medical necessity determinations or adjudicate their clinical appropriateness. Health benefit plan enrollees may appeal adverse benefit determinations based on medical

necessity through an external review process conducted by independent review organizations under ORS 743B.250 through 743B.258.

- **Cost-sharing:** The proposed rule prohibits additional cost-sharing for gender-affirming treatment services and does not prohibit the application of cost-sharing. The rule is solely intended to ensure that cost-sharing is comparable for items and services whether they are provided in the context of gender-affirming treatment or other clinical contexts. Prohibiting additional cost-sharing for gender-affirming treatment is consistent with the intent of HB 2002 and aligned with the division’s prior guidance on the issue in Bulletin 2016-1. Imposing additional cost-sharing for these services would also likely constitute impermissible discrimination on the basis of gender identify under ORS 746.021.

Recommendation

Having considered fully the testimony presented at the hearing and the written comments, I recommend that the division adopt the proposed rule as proposed.

Lisa Emerson
Hearing Officer
Division of Financial Regulation

This Summary and Recommendation are reviewed and adopted.

Signed this _____ day of December, 2024.

Andrew R. Stolfi
Insurance Commissioner and Director
Department of Consumer and Business Services