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To:
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Thank you for giving Oregon Consumer Justice (OCJ) the opportunity to provide feedback on the draft rule related to the gender-affirming treatment provisions of HB 2002 (2023) that was discussed at the March 21 RAC meeting.

1. In section 1(b) of the revised rule, OCJ continues to have concerns, as was discussed at the March 21 RAC meeting, about the edits to this section. In particular,
    a. Depending on *the statements of recommendation* in the revised rule removes all of the contextual language and cited supporting evidence for why the statement of recommendation is in place and how it can be utilized. Statements of recommendation are merely a bolded sentence in the whole standard of care.
    b. The revised rule states that "Other evidence-based guidelines and recommendations set forth by professional, non-profit organizations with recognized expertise in gender-affirming healthcare may be used, but only in conjunction with, and not as a substitute for, the WPATH-8." As discussed at the March 21 RAC meeting, this revision seems to raise lots of questions and doesn't provide any additional clarity for implementation. Some of the questions include:
        i. Who verifies "recognized expertise"?
        ii. If you use a different guideline "in conjunction with and not as a substitute for the WPATH-8" but the guideline you are using differs from WPATH and that's why you are considering using it, then how does that contradiction get resolved?

    OCJ appreciated the questions at the March 21 RAC about whether there are currently any other standards of care that are "evidence-based and set forth by professional, non-profit organizations with recognized experience in gender-affirming care." Without any current standards of care that meet the criteria being identified, OCJ believes that the addition of any new standards of care would require updated rules when those new standards exist and would need to be reviewed by a future RAC.

2. In section 5(b), OCJ is concerned that there aren't sufficient consumer protections in the revised rule. In particular,
    a. In Section 5(b)(ii), the criteria "practices within the scope of practices as defined by their licensing board" are not sufficient. There should be a closer connection between the reviewer provider with experience in Gender-Affirming Care (GAC) and the specific field of care that is being reviewed. For example, a behavioral health provider should not review cases of phalloplasty surgery.
    b. In Section 5 (b)(iv), as discussed during the March 21 RAC meeting, there seemed to have been some confusion between general gender equity and inclusivity trainings (GEI) and the specific educational offerings through WPATH Global Education Institute (GEI). OCJ continues to support the use of the WPATH Certification Program through the WPATH Global Education Institute a requirement for reviewing providers. This would help identify clear standards and credentials for GAC providers.

3. As OCJ previously suggested, OCJ asks that DCBS consider including language similar to rulemaking in Washington that provides more specific language around patients being able to request information on denials, providers having to provide their credentials as part of the denial, and an explanation of the rule when a denial takes place so that there is more transparency for consumers in the process. This would also ensure that consumers have adequate information to reach out to the Division of Financial Regulation or for legal support if that is necessary. Examples from the Washington law that OCJ suggests including are:
    a. WA rulemaking around SB5313: "An enrollee or covered person may request that a carrier identify the medical, vocational, or other experts whose advice was obtained in connection with the adverse benefit determination, even if the advice was not relied on in making the determination. The carrier may satisfy this requirement by providing the job title, a statement as to whether the expert is affiliated with the carrier as an employee, and the expert's specialty, board certification status, or other criteria related to the expert's qualification without providing the expert's name or address. The carrier must be able to identify for the commissioner upon request the name of each expert whose advice was obtained in connection with the adverse benefit determination."
    b. WA example rule: (5) If an internal rule, guideline, protocol, or other similar criterion was relied on in making the adverse benefit determination, the notice must contain either the specific rule, guideline, protocol, or other similar criterion; or a statement that a copy of the rule, guideline, protocol, or other criterion will be provided free of charge to the appellant on request. (((5))) (6) The notice of an adverse benefit determination must include an explanation of

the right to review the records of relevant information, including evidence used by the carrier or the carrier's representative that influenced or supported the decision to make the adverse benefit determination. (a) For purposes of this subsection, "relevant information" means information relied on in making the determination, or that was submitted, considered, or generated in the course of making the determination, regardless of whether the document, record, or information was relied on in making the determination. (b) Relevant information includes any statement of policy, procedure, or administrative process concerning the denied treatment or benefit, regardless of whether it was relied on in making the determination. (((6))) (7) If the carrier and health plan determine that additional information is necessary to perfect the denied claim, the carrier and health plan must provide a description of the additional material or information that they require, with an explanation of why it is necessary, as soon as the need is identified.

Thank you for your consideration of these comments.

Regards,

Chris Coughlin
Policy Director