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February 5, 2024

Ohio Department of Health
246 North High Street
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Submitted via email: ODHrules@odh.ohio.gov

Re: Proposed Rules “Reporting Gender-Related Condition Diagnoses and Gender Transition Care” (3701-3-17), “Quality Standards for Gender Transition Treatment at Hospitals” (3701-59-07), and “Quality Standards for Gender Transition Treatment at Health Care Facilities” (3701-83-61)

The National Women’s Law Center (“the Law Center”) is writing to comment on the Ohio Department of Health’s (“ODH”) proposed rules “Reporting Gender-Related Condition Diagnoses and Gender Transition Care,” “Quality Standards for Gender Transition Treatment at Hospitals,” and “Quality Standards for Gender Transition Treatment at Health Care Facilities” (“the Proposed Rules”). Since 1972, the Law Center has worked to protect and advance the progress of women and their families in core aspects of their lives, including income security, employment, education, and reproductive rights and health, with an emphasis on the needs of low-income women and those who face multiple and intersecting forms of discrimination. To that end, the Law Center has long worked to end sex discrimination and to ensure all people have equal access to the full range of health care regardless of income, age, race, sex, sexual orientation, gender identity, ethnicity, geographic location, or type of insurance coverage. This includes the ability to access all forms of health care, including gender-affirming care, free from barriers and discrimination.

The Law Center strongly opposes the Proposed Rules because they place burdensome and unnecessary restrictions on those providing, and seeking, critical medical care and threaten the health of transgender individuals, including youth and adults. We urge you to rescind the Proposed Rules in their entirety.

I. Gender-affirming care has been proven to be medically necessary, effective, and essential for many people.

Gender-affirming care is necessary health care. Extensive clinical research¹ and experience by expert health care providers² show that transgender people who receive the care they need experience a positive impact on their mental³ and physical health, including the incidence of depression, anxiety, suicidal ideation,⁴ and other symptoms and conditions. Additionally, gender-affirming care is undertaken following the evaluation by medical professionals in line with well-established evidence-based guidelines.

¹ Ashli A. Owen-Smith et al., *Association Between Gender Confirmation Treatments and Perceived Gender Congruence, Body Image Satisfaction, and Mental Health in a Cohort of Transgender Individuals*, 15 J. SEXUAL MED. 591 (2018), <https://pubmed.ncbi.nlm.nih.gov/29463478/>.

² *Doctors Agree: Gender-Affirming Care is Life-Saving Care*, ACLU (Apr. 1, 2021), <https://www.aclu.org/news/lgbtq-rights/doctors-agree-gender-affirming-care-is-life-saving-care>.

³ Diana M. Tordoff et al., *Mental Health Outcomes in Transgender and Nonbinary Youths Receiving Gender-Affirming Care*, 5 JAMA NETWORK OPEN 1 (2022), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2789423>.

⁴ Jack L. Turban et al., *Pubertal Suppression for Transgender Youth and Risk of Suicidal Ideation*, 145 PEDIATRICS 1 (2020), <https://publications.aap.org/pediatrics/article/145/2/e20191725/68259/Pubertal-Suppression-for-Transgender-Youth-and?autologincheck=redirected>.

The Proposed Rules fail to consider these scientifically demonstrated benefits of gender-affirming health care. Instead, the Proposed Rules are based on a fundamental misunderstanding of both gender-affirming health care and transgender people. For example, the requirement that the care plan includes a plan for ceasing care or detransitioning is based on misguided assumptions and uses an inappropriate one-size-fits-all approach that fails to consider the highly individualized nature of gender-affirming care. Similarly, as discussed in more detail below, the harmful and unnecessarily long six-month evaluation period for patients under the age of 21 will delay patients' access to the medical care they need. The World Professional Association for Transgender Health ("WPATH") standards of care for the assessment of adults emphasize that "no single assessment process will fit every person or every situation" and that certain transgender people may require briefer assessments than others.⁵ The requirements imposed by the Proposed Rules conflict with those guidelines, and harm, rather than improve, the health and wellbeing of people seeking care.

II. The Proposed Rules go against the expertise of major medical organizations and interfere with the patient-doctor relationship.

All major medical groups—including the American Medical Association,⁶ the American Psychological Association,⁷ and the American Academy of Pediatrics⁸—recognize the necessity of gender-affirming health care for transgender people. Additionally, WPATH has already established standards of care⁹ regarding health care for transgender people, which are based on the extensive scientific research showing the benefits of gender-affirming health care.

The Proposed Rules conflict with established best practices for gender-affirming health care. At the heart of these practices is the recognition that decisions about gender-affirming health care must be made between a provider and patient, without politically motivated interference. Instead, these rules interfere with the highly individualized relationship patients maintain with their health care providers. For example, the overbroad and vague prohibition on "direct or indirect referrals" to other facilities or resources relating to gender-affirming health care will have a chilling effect on providers' ability to discuss basic care options with their patients. This prohibition directly contradicts WPATH recommendations for providers to connect transgender patients with other specialists and providers.

III. The Proposed Rules impose burdensome standards on providers that will impact care for all Ohioans.

If adopted, the proposed standards will exacerbate barriers transgender people already face to medical care,¹⁰ such as harassment and discrimination by health care providers, and high rates of poverty and housing instability. Transgender people who experience multiple and intersecting forms of discrimination, such as transgender people of color¹¹ or those who are disabled, experience particularly severe barriers to care that will be exacerbated by

⁵ E. Coleman et al., *Standards of Care for the Health of Transgender and Gender Diverse People, Version 8*, 23 INT'L J. TRANSGENDER HEALTH S1, S31 (2022), <https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644>.

⁶ *AMA fights to protect health care for transgender patients*, AMA (Mar. 26, 2021), <https://www.ama-assn.org/health-care-advocacy/advocacy-update/march-26-2021-state-advocacy-update>.

⁷ *Criminalizing Gender Affirmative Care with Minors: Suggested Discussion Points With Resources to Oppose Transgender Exclusion Bills*, APA, <https://www.apa.org/topics/lgbtq/gender-affirmative-care> (last visited Feb. 5, 2024).

⁸ Jason Rafferty et al., *Ensuring Comprehensive Care and Support for Transgender and Gender-Diverse Children and Adolescents*, 142 PEDIATRICS 1 (2018), <https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for?autologincheck=redirected>.

⁹ Coleman, *supra* note 5.

¹⁰ Caroline Medina et al., *Protecting and Advancing Health Care for Transgender Adult Communities*, CTR. FOR AM. PROGRESS (Aug. 2021), <https://www.americanprogress.org/wp-content/uploads/sites/2/2021/08/Advancing-Health-Care-For-Transgender-Adults.pdf>.

¹¹ Nicole F. Kahn et al., *Demographic Differences in Gender Dysphoria Diagnosis and Access to Gender-Affirming Care Among Adolescents*, (online ahead of print) LGBT HEALTH (2024), <https://pubmed.ncbi.nlm.nih.gov/38190267/>.

these rules. These under-resourced communities will likely be disproportionately impacted by the Proposed Rules, despite ODH's public health responsibility to "[a]ddress health inequities and disparities, and support access to comprehensive, integrated healthcare for all to achieve the best possible outcomes."¹²

For example, requiring that providers have a contractual relationship with or employ specialists like psychiatrists and endocrinologists is an unnecessary and prohibitive barrier. Vague proposed administrative requirements, such as burdensome reporting obligations and medical ethicists' review of in-depth care plans, will also be burdensome for providers to comply with. Additionally, requiring the six-month long evaluation for patients under 21 to occur at the same hospital or health care facility where the individual is receiving gender-affirming health care will be incredibly difficult or impossible to comply with for health care settings that do not provide in-house mental health services or that do not have the capacity to provide these services for a six-month period.

These requirements are not targeted to improve the health of transgender patients, but rather to disincentivize providers from offering gender-affirming care and to create serious difficulties for those who do offer it, making it much harder for transgender people to receive the care they need. Additionally, the Proposed Rules are drafted in such an overly broad manner to encompass all settings where gender-affirming care might possibly be provided as part of a patient's comprehensive care plan, demonstrating ODH's clear intention to deny—not improve—access to necessary health care.

IV. The Proposed Rules threaten to erode patient trust in health care.

If adopted, the proposed reporting requirements will create a chilling effect on those seeking essential health care. We are concerned about the lack of clarity regarding requirements for the submission of care plans for "compliance" purposes, including whether providers need to submit each individual care plan in its entirety. Additionally, the Proposed Rules are silent as to what, if any, patient confidentiality protections will be in place surrounding these compliance submissions. Regarding the sharing of data relating to gender-affirming care with the public and General Assembly, more robust privacy and data security protections are necessary to protect patients and their sensitive health care data. These vague and unclear requirements will erode patients' trust in the health care system and hinder them from confidently accessing all forms of care.

V. Conclusion

We appreciate the opportunity to comment on the Proposed Rules. We request that the supporting documentation that we have made available through direct links in our citations be considered part of the formal administrative record. For further information, please contact Lexi Rummel, Counsel for Health Equity and Justice at the National Women's Law Center (lrummel@nwlc.org).

¹² *Welcome to the Ohio Department of Health*, OHIO DEPT. OF HEALTH, <https://odh.ohio.gov/about-us> (last visited Feb. 5, 2024).