NATIONAL WOMEN'S LAW CENTER
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Ohio Department of Mental Health and Addiction Services
30 East Broad Street, 36th Floor
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Submitted via email: MH-SOT-GTC1-rules@mha.ohio.gov; CSIPublicComments@governor.ohio.gov.

Re: Revised Proposed Rule "Gender Transition Care" (5122-26-19) and Proposed Supplemental Rule "Gender Transition Care" (5122-14-12.1)

The National Women's Law Center ("the Law Center") is writing to comment on the Ohio Department of Mental Health and Addiction Services' ("OMHAS") revised proposed rule "Gender Transition Care" (5122-26-19) and proposed supplemental rule "Gender Transition Care" (5122-14-12.1) ("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.

On January 19, 2024, the Law Center submitted comments to OMHAS strongly opposing the agency's original proposed rule "Gender Transition Care" (5122-26-19) and proposed amendment to "Private Psychiatric Hospital: Program, Specialty Services, and Discharge Planning" (5122-14-12). Despite revisions, the new Proposed Rules fail to address significant concerns that were expressed in our previous comments. These regulations restricting access to essential gender-affirming care are unnecessary and baseless, and we continue to urge you to rescind these proposals in their entirety.

I. The Proposed Rules fail to address the Law Center's previous concerns and remain a significant threat to the health and well-being of transgender youth in Ohio.

As demonstrated in our previous comments, gender-affirming care is necessary health care and its benefits are supported by extensive clinical research and experience by expert health care providers.[1] Even as revised, the

[1] *See* 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/; *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; 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; 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.

Proposed Rules continue to include requirements that would be incredibly burdensome for providers to meet and that would exacerbate barriers transgender youth already face to necessary health care.[2]

As previously stated, the Proposed Rules would put unnecessary strain on already overwhelmed health care systems. The Proposed Rules now require providers to employ or have "available for referral" specialists like mental health professionals and board-certified endocrinologists. While slightly broadened from the original proposal's requirement to employ or have a "contractual relationship" with these specialists, this requirement would still be overly burdensome given the limited number of specialists who have both the required expertise and the capacity to provide "in-person" and "direct" services. For example, workforce data from OMHAS show a 353% increase in demand for behavioral health treatment in Ohio between 2013 and 2019, and demand is expected to continue to rise over the next decade.[3] Increased demand and significant behavioral health workforce shortages[4] will significantly limit the number of mental health professionals with sufficient "experience treating minor patients in the applicable age group" and who can provide "in-person" and "direct" services. Additionally, even requiring "in-person" and "direct" services is an unnecessary barrier to care—providing mental health services via telehealth can be effective and expands health care access to under resourced populations, such as rural communities.[5]

The Proposed Rules also fail to address our previously expressed concerns regarding compliance-related submissions, including ensuring that there are robust privacy and data security protections in place to protect patients and their sensitive health care data. We also remain concerned that the one-size-fits-all six-month minimum evaluation period for patients under the age of 18 conflicts with established standards of care[6] regarding health care for transgender people, emphasizing the need for individualized treatment plans.

Finally, the Proposed Rules also continue to implicitly sanction surgeries on intersex children, which are typically non-consensual, based on sex stereotypes, and can have life-long harms.[7] For example, many of these surgeries—especially gonadectomies—can result in permanent sterilization. In addition to gonadectomies, surgeries to change intersex children's genital variations—such as clitoral reductions, vaginoplasties, and surgeries to reroute the urethra or modify penile shape—are often performed in the first two years of life when a child is too young to object, or provide meaningful consent or assent, to the procedure.[8] We are concerned that the Proposed Rules

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[2] *See e.g.,* 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; 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/.

[3] *See* The Ohio Council of Behavioral Health & Family Services, *Breaking Point: Ohio's Behavioral Health Workforce Crisis* 5 (Dec. 20, 2021), https://www.theohiocouncil.org/assets/WhitePaper/TheOhioCouncil_Whitepaper_BreakingPoint.pdf.

[4] *See Id.* at 6.

[5] *See e.g., Mental Health Services for Children Policy Brief*, CDC, https://www.cdc.gov/ruralhealth/child-health/policybrief.html (last visited Feb. 14, 2024); *Child & Adolescent Telepsychiatry Supporting Evidence Base*, APA, https://www.psychiatry.org/psychiatrists/practice/telepsychiatry/toolkit/child-adolescent/evidence-base (last visited Feb. 14, 2024).

[6] *See* 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 (2022), https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644.

[7] *See e.g., "I Want to be Like Nature Made Me": Medically Unnecessary Surgeries on Intersex Children in the US* (July 25, 2017), HUM. RTS. WATCH, https://www.hrw.org/report/2017/07/25/i-want-be-nature-made-me/medically-unnecessary-surgeries-intersex-children-us; Chase Strangio, *Stop Performing Nonconsensual, Medically Unnecessary Surgeries on Young Intersex Children*, ACLU (Oct. 26, 2017), https://www.aclu.org/news/lgbtq-rights/stop-performing-nonconsensual-medically-unnecessary-surgeries-young-intersex.

[8] National Academies of Sciences, Engineering, and Medicine, *Understanding the Well-Being of LGBTQI+ Populations*, 379 (2020), WASH., DC: THE NAT'L ACADEMIES PRESS., https://doi.org/10.17226/25877 ("Factoring in the human rights of children and evidence that individuals with diverse sexualities, bodies, and genders can and do thrive with affirmation and support from parents, peers, and communities, there is insufficient evidence of benefit

suggest that providers have license to subject intersex children to non-consensual surgeries that have significant risks and adverse consequences, including depriving individuals of their autonomy to make reproductive decisions for themselves.

II. 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).

to justify early genital surgery. Therefore, the deferral of surgery until a child can participate in the decision, except in scenarios with urgent medical need, such as urinary obstruction or immediate cancer risk, may optimize the benefits of informed consent, autonomy, and patients' physical, social, and emotional well-being."); *Genital Surgeries in Intersex Children*, AAFP (July 2018), https://www.aafp.org/about/policies/all/genital-surgeries.html (explaining that decisions regarding elective genital surgeries "should be delayed until intersex children are able to actively participate in the informed consent process.").