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Ohio Department of Health  
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### Testimony of the National Women's Law Center

**In OPPOSITION to "Reporting Gender-Related Condition Diagnoses and Gender Transition Care" (3701-3-17), "Hospital Quality Standards for Gender Reassignment Surgery and Genital Gender Reassignment Surgery for Minors" (3701-59-06), "Quality Standards for Gender Transition Treatment at Hospitals" (3701-59-07), "Health Care Facility Quality Standards for Gender Reassignment Surgery and Genital Gender Reassignment Surgery for Minors" (3701-83-60), and "Quality Standards for Gender Transition Treatment at Health Care Facilities" (3701-83-61)**

**Before the Ohio Department of Health**

**March 21, 2024**

Thank you for the opportunity to submit testimony on the aforementioned proposed rules. Since 1972, the National Women's Law Center ("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.

We submit this testimony in strong opposition to "Reporting Gender-Related Condition Diagnoses and Gender Transition Care" (3701-3-17), "Hospital Quality Standards for Gender Reassignment Surgery and Genital Gender Reassignment Surgery for Minors" (3701-59-06), "Quality Standards for Gender Transition Treatment at Hospitals" (3701-59-07), "Health Care Facility Quality Standards for Gender Reassignment Surgery and Genital Gender Reassignment Surgery for Minors" (3701-83-60), and "Quality Standards for Gender Transition Treatment at Health Care Facilities" (3701-83-61) ("the Proposed Rules"). This testimony reiterates and builds on comments the Law Center submitted on February 5, 2024, to the Ohio Department of Health ("ODH") strongly opposing the agency's 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). Despite revisions, the agency failed to address significant concerns that were expressed in our previous comments. The proposed 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. **Gender-affirming care is medically necessary, effective, and essential for many people, and is supported by all major medical organizations.**

Gender-affirming care is necessary health care and its benefits are supported by extensive clinical research and experience by expert health care providers.<sup>1</sup> Transgender people who receive the care they need experience a positive impact on their mental<sup>2</sup> and physical health, including the incidence of depression, anxiety, suicidal ideation,<sup>3</sup> and other symptoms and conditions. All major medical groups—including the American Medical Association,<sup>4</sup> the American Psychological Association,<sup>5</sup> and the American Academy of Pediatrics<sup>6</sup>—recognize the necessity of gender-affirming health care for transgender people.

Additionally, the World Professional Association for Transgender Health (“WPATH”) has already established standards of care<sup>7</sup> regarding transgender people’s health care, which are based on the extensive peer reviewed, scientific research showing the benefits of gender-affirming health care. Gender-affirming care is undertaken following an evaluation by medical professionals in line with these well-established evidence-based guidelines.

The Proposed Rules fail to consider the scientifically demonstrated benefits of gender-affirming health care and interfere with the highly individualized relationship patients maintain with their health care providers. For example, the one-size-fits-all six-month minimum evaluation period for minor patients conflicts with established WPATH standards of care, which emphasize the need for individualized treatment plans. This requirement will delay patients’ access to the medical care they need. Additionally, 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 health care professionals to connect transgender patients with other specialists and providers.

## II. The Proposed Rules significantly threaten the health and well-being of transgender youth in Ohio.

If adopted, the proposed standards will exacerbate barriers transgender youth already face to necessary health care,<sup>8</sup> such as inadequate access to providers who offer this care, unaffordability, and a range of procedural hurdles. Transgender people who experience multiple and intersecting forms of discrimination, such as

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<sup>1</sup> See e.g., 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>.

<sup>2</sup> 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>.

<sup>3</sup> 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>.

<sup>4</sup> *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>.

<sup>5</sup> *APA Policy Statement on Affirming Evidence-Based Inclusive Care for Transgender, Gender Diverse, and Nonbinary Individuals, Addressing Misinformation, and the Role of Psychological Practice and Science*, APA (Feb. 2024), <https://www.apa.org/about/policy/transgender-nonbinary-inclusive-care.pdf>.

<sup>6</sup> 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>.

<sup>7</sup> 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>.

<sup>8</sup> 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>.

transgender people of color<sup>9</sup> or those who are disabled, experience particularly severe barriers to care that will be exacerbated by these rules. The Proposed Rules are also drafted in such an overly broad manner to encompass all settings where gender-affirming care might possibly be provided as one component in a patient's comprehensive care plan, further threatening transgender people's already limited access to a range of health care services. Additionally, the Proposed Rules include requirements that would be incredibly burdensome for providers to meet, putting unnecessary strain on already overwhelmed health care systems.

The Proposed Rules 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 the required 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.<sup>10</sup> Increased demand and substantial behavioral health workforce shortages<sup>11</sup> will significantly limit the number of mental health professionals with sufficient "experience treating minor individuals." Additionally, even the vague requirement that these specialists must be available for "in-person" services "when necessary" is an unnecessary barrier to care, since providing mental health services via telehealth can be effective and expands health care access to under-resourced populations, such as rural communities.<sup>12</sup>

We are also concerned that the proposed reporting requirements will create a chilling effect for patients seeking essential health care. Despite revisions, the Proposed Rules do not include sufficiently clear and specific guardrails such that they would ensure that information included in reports submitted to the director of health will not "lead to the disclosure of individual identities." The lack of adequate protections against violations of privacy will exacerbate mistrust in the health care system experienced by many transgender patients, especially Black and disabled transgender people.<sup>13</sup>

Finally, the Proposed Rules implicitly sanction surgeries on intersex children, which are typically non-consensual, based on sex stereotypes, and can have life-long harms.<sup>14</sup> 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.<sup>15</sup> We are concerned that the Proposed Rules suggest that

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<sup>9</sup> 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/>.

<sup>10</sup> 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](https://www.theohiocouncil.org/assets/WhitePaper/TheOhioCouncil_Whitepaper_BreakingPoint.pdf).

<sup>11</sup> See *Id.* at 6.

<sup>12</sup> See e.g., *Mental Health Services for Children Policy Brief*, CDC, <https://www.cdc.gov/ruralhealth/child-health/policybrief.html> (last visited Mar. 21, 2024); *Child & Adolescent Telepsychiatry Supporting Evidence Base*, APA, <https://www.psychiatry.org/psychiatrists/practice/telepsychiatry/toolkit/child-adolescent/evidence-base> (last visited Mar. 21, 2024).

<sup>13</sup> See e.g., Medina, *supra* note 8, at 15.

<sup>14</sup> 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>.

<sup>15</sup> National Academies of Sciences, Engineering, and Medicine, *Understanding the Well-Being of LGBTQ+ 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

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.

### III. Conclusion

The requirements under the Proposed Rules will deny—not improve—Ohioans’ access to necessary health care. All individuals, including transgender youth, deserve the basic right to access health care uninhibited by politically motivated interference. We strongly urge the agency to rescind these proposals in their entirety.

For further information, please contact Anya Marino, Director of LGBTQI+ Equality ([Amarino@nwlc.org](mailto:Amarino@nwlc.org)), and Lexi Rummel, Counsel for Health Equity and Justice ([lrummel@nwlc.org](mailto:lrummel@nwlc.org)) at the National Women’s Law Center.

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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.”).