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Ohio Department of Mental Health and Addiction Services
Division of Legal Services
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Testimony of the National Women's Law Center

In OPPOSITION to "Gender Transition Care" (5122-26-19) and "Gender Transition Care" (5122-14-12.1)

Before the Ohio Department of Mental Health and Addiction Services

March 18, 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.

On January 19, 2024, the Law Center submitted comments to the Ohio Department of Mental Health and Addiction Services ("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 agency's revised proposed rule "Gender Transition Care" (5122-26-19) and proposed supplemental rule "Gender Transition Care" (5122-14-12.1) failed to address significant concerns that were expressed in our previous comments, and the Law Center submitted additional comments to OMHAS on February 14, 2024.

We submit this testimony in strong opposition to "Gender Transition Care" (5122-26-19) and "Gender Transition Care" (5122-14-12.1) ("the Proposed Rules"). These 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 has been proven to be 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.[1] Transgender people who receive the care they need experience a

[1] *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.

positive impact on their mental[2] and physical health, including the incidence of depression, anxiety, suicidal ideation,[3] and other symptoms and conditions. All major medical groups—including the American Medical Association,[4] the American Psychological Association,[5] and the American Academy of Pediatrics[6]—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[7] regarding health care for transgender people, which are based on the extensive 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 patients under the age of 18 conflicts with established WPATH standards of care, which emphasize the need for individualized treatment plans. It will delay patients' access to the medical care they need.

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,[8] 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 transgender people of color[9] or those who are disabled, experience particularly severe barriers to care that will be exacerbated by these rules. The Proposed Rules also 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

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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.

[2] 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.

[3] 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.

[4] *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.

[5] *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.

[6] 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.

[7] 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.

[8] 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.

[9] 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/.

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.[10] Increased demand and significant behavioral health workforce shortages[11] will significantly limit the number of mental health professionals with sufficient "experience treating minor[s]…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, since providing mental health services via telehealth can be effective and expands health care access to under-resourced populations, such as rural communities.[12]

We are also concerned that the proposed reporting requirements will create a chilling effect on those seeking essential health care. The Proposed Rules are unclear regarding requirements for the submission of care plans for "compliance" purposes, including whether providers need to submit each individual care plan in its entirety. The Proposed Rules also fail to ensure that there are robust privacy and data security protections in place to protect patients and their sensitive health care data. These vague requirements will exacerbate mistrust in the health care system experienced by many transgender patients, especially Black and disabled transgender people.[13]

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.[14] 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.[15] We are concerned that the Proposed Rules 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.

III. Conclusion

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[10] *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.

[11] *See Id.* at 6.

[12] *See e.g., Mental Health Services for Children Policy Brief*, CDC, https://www.cdc.gov/ruralhealth/child-health/policybrief.html (last visited Mar. 18, 2024); *Child & Adolescent Telepsychiatry Supporting Evidence Base*, APA, https://www.psychiatry.org/psychiatrists/practice/telepsychiatry/toolkit/child-adolescent/evidence-base (last visited Mar. 18, 2024).

[13] *See e.g.,* Medina, *supra* note 8, at 15.

[14] *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.

[15] 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 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.").

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), and Lexi Rummel, Counsel for Health Equity and Justice (lrummel@nwlc.org) at the National Women's Law Center.