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Ohio Department of Mental Health and Addiction Services
30 East Broad Street, 36th Floor
Columbus, Ohio 43215-3430

Submitted via email: MH-SOT-rules@mha.ohio.gov

Re: Proposed Rule “Gender Transition Care” (5122-26-19) and Proposed Amendment to “Private Psychiatric Hospital: Program, Specialty Services, and Discharge Planning” (5122-14-12)

The National Women’s Law Center (“the Law Center”) is writing to comment on the Ohio Department of Mental Health and Addiction Services’ (“OMHAS”) proposed rule “Gender Transition Care” and proposed amendment to “Private Psychiatric Hospital: Program, Specialty Services, and Discharge Planning” (“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 threaten the health of transgender individuals, including youth and adults, by placing burdensome and unnecessary restrictions on those providing, and seeking, critical medical care. 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 research and experience by expert health care providers show that transgender people who receive the care they need experience a positive impact on their mental and physical health, including the incidence of depression, anxiety, suicidal ideation, and other symptoms and conditions.

The Proposed Rules fail to consider these scientifically proven benefits of gender-affirming health care. Instead, they are based on a fundamental misunderstanding of 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. Gender-affirming care is undertaken following the evaluation by medical professionals in line with well-established evidence-based guidelines. 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, the American Psychological Association, and the American Academy of Pediatrics—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 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 do not align 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 all 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 peer support networks, or 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, 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 color or those who are disabled, experience compounding and disproportionate health disparities. These under-resourced communities will likely be disproportionately impacted by the Proposed Rules—community health settings typically serve people of color and individuals with fewer financial resources, and OMHAS psychiatric hospitals serve patients who are uninsured or indigent, as well as those involved with the criminal court system.

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 tedious reporting obligations and needing medical ethicists to review in-depth care plans, will also be burdensome for providers to comply with. Additionally, 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.

These requirements are not targeted to improve the health of transgender patients, but rather to disincentivize providers from offering gender-affirming care and create serious difficulties for those who offer it, making it much harder for transgender people to receive the care they need.

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 submissions. 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 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@nwl.org).