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January 19th, 2024

The Honorable LeeAnne Cornyn
Director, Ohio Department of Behavior Health and Addiction Services
30 E. Broad St., 36th Floor
Columbus, Ohio 43215
Submitted via: MH-SOT-Rules@mha.ohio.gov

Re: Physician Organization Comments Draft Rule 5122-26-19 (Gender Transition Care)

Director Cornyn,

On behalf of the organizations listed above, which represent tens of thousands of Ohio physicians, we are writing today to share our thoughts on draft rules that have been proposed by the Ohio Department of Behavior Health and Addiction Services (ODMHAS) to regulate gender-affirming care in Ohio. We appreciate the opportunity to provide feedback on this important issue.

During debate around House Bill 68, the focus was solely on patients under age 18. Sponsors and supporters of HB 68 made several comments about how the bill should not impact services for adults as they are able to make their own decisions. While we disagree with much of what was said in support of HB 68 and the baseless allegations made against healthcare providers, we feel that developing rules for minor patients is appropriate. We are concerned that, taken together, these rules, as well as those under consideration by the Ohio Department of Health (ODH) and the emergency rules prohibiting surgeries for minors, create three different standards of care based upon age (under 18, 18-20, 21 and over); patients receiving treatment prior to the rule effective date also would fall under a different standard of care.

This not only creates confusion among providers, but inequitable treatment for patients. We feel that rules under consideration by ODMHAS and ODH should focus on care to minors since that is the main topic of consideration in HB 68. However, below we have offered comments that will address concerns that have been raised by Governor DeWine while ensuring patients receive the best care possible without obstruction.

5122-26-19(A)(3) *Definition of 'Gender-Related Condition'*
The definition of 'gender-related condition' found in 5122-26-19(A)(3) is inconsistent with current practice and could create confusion, especially given its use in other portions of the bill. Gender dysphoria is a recognized and diagnosable behavior health condition that is identified in the DSM-5. Only patients with gender dysphoria would be candidates for pharmaceutical treatment and, in the case of adults, potential surgical intervention. Not all patients who identify

with a gender other than what is assigned at birth would be diagnosed with gender dysphoria. Further, these patients may not have a formal diagnosis as they are being treated solely using behavioral health interventions. We suggest that the definition of 'gender-related condition' be removed and replaced with 'gender dysphoria' and that references to 'gender-related condition' in the rules be changed to 'gender dysphoria.' This would avoid confusion and align the bill's definitions with current practice.

5122-26-19 (B) ***Standards for Care of Patients***

This section sets requirements for providers diagnosing and treating a gender-related condition as well as providing gender transition services (other than surgical services). We understand the intent of this section; however, it sets requirements that will likely result in many behavioral health providers being unable to care for patients. Under 5122-26-19(B), all providers who are diagnosing and treating any gender-related condition would have to employ or maintain contractual relationships with a psychiatrist and an endocrinologist and have plans in place reviewed by a medical ethicist. Functionally, physicians working in private practice who are supporting these patients (without prescribing hormone therapy or puberty blockers) would be unable to continue given these significant hurdles. Further, most private practice behavior health providers, including psychologists, counselors, and social workers, would also be unable to provide support to these patients for the same reason.

The goal of this section appears to be setting a high standard of care for patients receiving pharmaceutical intervention as part of their care for gender dysphoria. Most minors will not receive this care during their course of treatment; however, there are some extreme cases when pharmaceutical intervention can be used to increase the efficacy of behavioral health interventions. In order to better align this section with how care is delivered, especially by behavior health providers, we recommend the following change to the first paragraph:

A provider may ~~diagnose and treat a gender-related condition or~~ provide gender transition services, other than surgical services, only after meeting all of the following standards:

This will allow behavior health providers serving this population with non-pharmaceutical therapies to continue to do so while setting requirements for providers who may utilize hormone therapy or puberty blockers in the provision of care. This would address concerns with providers who may offer hormone therapy to adult patients without utilizing a multi-disciplinary approach or providing appropriate resources to those patients.

5122-26-19(C) ***Six-Month Waiting Period for Patients Under 21***

This section seeks to place a six-month waiting period on any diagnosis and treatment for patients under age 21 who may be experiencing gender dysphoria. While it is very uncommon for minors to receive any kind of pharmaceutical intervention without robust and comprehensive behavior health therapy lasting often for longer than six months, this language is overly restrictive. For example, the language in section C does not allow even a diagnosis of gender dysphoria in a patient under age 21 for six months. Section C also prohibits and treatment, which would primarily consist of behavioral health services. This denies patients under 21 with necessary, non-pharmaceutical care to address any behavior health needs. Further, by placing restrictions on patients 21 and under, combined with other sections of this rule, we are creating different standards of care for patients under 18, ages 18-20, and then 21 and over. Below are changes we feel will address our concerns:

(C) In addition to the standards in paragraph (B), with respect to any minor patient ~~under twenty-one years of age~~, it is impermissible for a provider to ~~diagnose and treat a gender-related condition or~~ provide gender transition services as described in paragraph (B) of this rule for that patient unless that patient first receives a comprehensive behavior health evaluation and counseling over a period of not less than six months, documentation of which is obligated to be included in the patient's medical record.

This would allow for behavioral health care to be given to minors while also requiring a six-month waiting period before any pharmaceutical therapy can be considered. This strikes a balance that sets an appropriate standard of care for minors without restricting care for adult patients.

5122-26-19(D) ***Direct or Indirect Referrals for Surgery***
We are not opposed to this section; however, we do have a clarifying question that may require some additional language. Currently, none of our organizations recommend gender-affirming surgeries for minors; further, all of us are on record supporting a prohibition on these surgeries in Ohio. However, while we would not refer or provide information to a minor patient or their parents on where to obtain a surgery, we want to ensure this language does not prohibit a provider from discussing options that may be available to the patient as an adult. More importantly, we want to be sure that providers can discuss relevant guidance and standards of care, including informing patients that surgeries are not recommended for minors. We are happy to work on additional language that would ensure conversations around appropriateness of surgical interventions can continue.

5122-26-19(F) ***Compliance***
While we understand the need to ensure providers are following all appropriate standards of care and state laws and rules, this mandate could become overly broad. Further, draft rules proposed by ODH appear to create a duplicative reporting requirement. At a minimum, and in order to maintain consistency with other suggested changes, this section should be limited only to those providers rendering gender transition services as defined in the bill. Further, it may be better to have compliance monitored by ODH given their role in regulating hospitals.

Thank you for your time and consideration of these comments.

Submitted on behalf of—

Ohio Chapter of the American Academy of Pediatrics
Ohio Osteopathic Association
Ohio Academy of Family Physicians
Ohio State Medical Association
Academy of Medicine of Cleveland and Northern Ohio
American College of Obstetrics and Gynecology, Ohio Chapter
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