



September 7, 2021

Mandy Weeks-Green
Washington Office of the Insurance Commissioner
P.O. Box 40258
Olympia, WA 98504-0258
Submitted via email to: rulescoordinator@oic.wa.gov

Re: R 2021-14 Health Insurance Discrimination and Gender Affirming Treatment
Stakeholder Draft

Dear Ms. Weeks-Green,

On behalf of the Association of Washington Healthcare Plans (AWHP), we would like to offer the following comments on the Office of the Insurance Commissioner's (OIC) stakeholder draft for the health insurance discrimination and gender affirming treatment rule. We appreciate the opportunity to comment on the OIC's rulemaking and participate in a stakeholder call in advance of a proposed rule (CR-102).

**WAC 284-43-3070 Notice and explanation of adverse benefit determination—
General requirements.**

Subsection (2)(f) states "...and provide information to confirm that the reviewing provider has sufficient experience prescribing or delivering gender affirming treatment." We are concerned with the use of the word "sufficient" in the draft language; it could be interpreted to go beyond the mandatory experience prescribing or delivering gender affirming treatment that 2SSB 5313 requires for a provider reviewing the adverse benefit determination. We recommend the following revisions to subsection (2)(f) to better align with the intent of the statute:

(f) When the adverse benefit determination concerns gender affirming treatment or services, the adverse benefit determination must include a confirmation that a health care provider experienced with prescribing or delivering gender affirming treatment has reviewed the determination and confirmed that an adverse benefit determination denying or limiting the service is appropriate. ~~and provide information to confirm that the reviewing provider has sufficient experience prescribing or delivering gender affirming treatment.~~

In addition to the new requirements proposed for gender affirming treatment adverse benefit determinations in subsection (2)(f), subsection (2)(g) places new language requirements on all adverse benefit determinations. Carriers will need additional time to program updates to adverse benefit determination notifications and request at least 90 days following the rule's effective date to make these changes.

WAC 284-43-5940 Nondiscrimination in health plans, short-term limited duration medical plans and student-only health plans.

2SSB 5313 Sec.3(3), now codified as RCW 48.43.0128(3) places gender affirming treatment nondiscrimination requirements on any health plan issued or renewed on or after January 1, 2022. In this section of the stakeholder draft, the OIC is proposing to place gender affirming treatment nondiscrimination requirements under WAC 284-43-5940 which applies to health plans, short-term limited duration medical plans and student-only health plans. The definition of health plan in RCW 48.43.005 specifically excludes short-term limited duration medical plans and student-only health plans. As currently drafted, this section may unintentionally expand the types of insurance plans 2SSB 5313 is intended to apply to. We recommend clarifying the language in this section or placing the requirements in a different section to avoid broadening the applicability of 2SSB 5313.

WAC 284-170-260 Provider directories.

WAC 284-170-260(5)(g) will require carriers to indicate in provider directories which providers are contracted to deliver gender affirming treatment and what gender affirming health care services the providers offer. We are very concerned with the ability of carriers to comply with these requirements. Carriers generally do not contract with health care providers at the service-level and do not specifically contract with providers to perform gender affirming services. Furthermore, there isn't an equivalent requirement for providers to notify carriers that they perform gender affirming treatment. Without access to this information, carriers are concerned about accurately reflecting provider data regarding gender affirming treatment. For these reasons, we strongly urge the OIC to remove the language in subsection (5)(g).

Alternatively, we recommend the OIC require carriers to provide assistance to any enrollee who is unable to locate a gender affirming treatment provider. AWHP supports sharing as much information as possible with our enrollees about accessing in-network care and many of our member plans offer this level of support already.

WAC 284-170-280 Network reports—Format.

AWHP is extremely concerned with creating new network access requirements related to gender affirming treatment at this time. 2SSB 5313 did not contemplate network access standards and significant barriers exist that will prevent carriers from complying with the proposed geographic network report and access plan requirements in the stakeholder draft. During the legislative session it was widely recognized that there is a lack of providers who offer gender affirming treatment in Washington. We believe it is important to recognize that neither the underlying legislation nor this draft regulation address the provider shortages and placing network access requirements on carriers will not create new providers who are willing to perform these services.

Additionally, the geographic network report and access plan requirements proposed in the stakeholder draft require a level of specificity that is not feasible for gender affirming treatment. "Gender affirming treatment" is not a provider type, specialty type or license. Typically, a provider who may perform gender affirming treatment services is acting within the scope of their license as a plastic surgeon, surgeon, MD, etc. Furthermore, because carriers do not contract with providers at this service-level, we would not be

able to provide the details surrounding what types of gender affirming treatment services each provider may offer.

We recognize that 2SSB 5313 requires the OIC, in partnership with the Health Care Authority and the Department of Health, to issue a report on geographic access to gender affirming treatment, but we strongly disagree with using the network access reports to obtain this information. Alternatively, we suggest the OIC work with carriers to obtain the information through a data call. Carriers should be able to use their claims history to provide the OIC information regarding which contract providers have performed gender affirming health care services.

We appreciate your consideration of our comments and our continued collaboration as the OIC works on this rulemaking project. Please don't hesitate to contact me with any questions or to discuss.

Sincerely,

A handwritten signature in blue ink that reads "Chris Bandeli". The signature is written in a cursive, flowing style.

Executive Director