



September 3, 2021

Mandy Weeks-Green
Washington State Office of the Insurance Commissioner
P.O. Box 40260
Olympia, WA 98504
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 Cambia Health Solutions family of insurance companies (“Cambia”), including Regence BlueShield, Asuris Northwest Health, BridgeSpan Health Company, Regence BlueCross BlueShield of Oregon, and Regence BlueShield of Idaho, thank you for the opportunity to comment on the stakeholder draft for the health insurance discrimination and gender affirming treatment rule. Cambia believes everyone should have access to affordable, high-quality health care regardless of race, color, national origin, sex, gender identity, sexual orientation, age, or disability, and we support the Office of the Insurance Commissioner’s (OIC) efforts to ensure these protections for Washington consumers. Below, please find our comments on the stakeholder draft for your consideration.

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

Subsection (2)(f) requires a notification for an adverse benefit determination related to gender affirming treatment include confirmation that a health care provider experienced with prescribing or delivering gender affirming treatment has reviewed the determination and confirmed that the adverse benefit determination is appropriate. We believe some of the language drafted in this subsection may be redundant and suggest the following revisions for clarity and to better align with the underlying statutory language in RCW 48.43.01289(3)(c):

(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.~~

Subsection (2)(g) appears to add a new requirement to all adverse benefit determinations, not just gender affirming treatment related notifications. SSB 5313 was specific to gender affirming treatment and did not contemplate changes to the entire adverse benefit determination process. Additionally, there is an existing requirement in WAC 284-43-3070(7) that provides enrollees the right to request information regarding the qualifications of the individuals whose advise was obtained in connection with the adverse benefit determination. For these reasons, we respectfully ask that subsection (2)(g) be removed from the draft rule.

Additionally, we are concerned with the implementation time needed to add the proposed information in our adverse benefit determinations. We recommend the regulation allow 90 days after the effective date of the final rule for carriers to implement the new requirements for adverse benefit determination notifications.

WAC 284-170-260 Provider directories.

We are generally concerned with the new requirements proposed for carrier provider directories. Subsection(5)(g) states “If a provider offers gender affirming treatment, identify in the directory that the provider is contracted to deliver gender affirming treatment and what gender affirming health care services the provider offers...” It is important to understand that we do not contract with providers specifically for gender affirming services. Providers are contracted to provide services within the scope of their license, not at the specific service level. For example, we may contract with an orthopedic surgeon to provide services under their license, but we do not specifically contract with them to provide hand and wrist surgery versus hip or knee surgery. Consequently, our provider directories generally are not able to reflect that level of detail. The same concept applies to a provider who may offer gender affirming services; they may be licensed as surgeons, plastic surgeons, dermatologists, urologists, etc. and are contracted to perform services within the scope of those licenses. Because we do not contract with providers at the service-level, we do not have the data to indicate which of our contracted providers may offer gender affirming treatment or what gender affirming services they may perform. However, Cambia does give providers the opportunity to self-report a LGBTQ+ care area of interest or focus, and when it is provided, we include it in their provider directory listing.

Subsection(5)(g) also states “...In both printed and on-line directories, the carrier must indicate that, if an enrollee is unable to locate a gender affirming treatment provider, the carrier will provide assistance in locating a gender affirming treatment provider.” Cambia already works with members who need assistance locating a gender affirming treatment provider and would support this requirement remaining in Subsection (5)(g) to ensure anyone accessing our provider directories are aware additional support is available.

For the reasons stated above, we recommend the following revisions to Subsection (5)(g) to ensure carrier provider directory requirements are feasible for carriers to implement and comply with, while ensuring support is provided to individuals seeking gender affirming treatment:

~~(g) If a provider offers gender affirming treatment, identify in the directory that the provider is contracted to deliver gender affirming treatment and what gender affirming health care services the provider offers. In both printed and on-line directories, the carrier must indicate that, if an enrollee is unable to locate a gender affirming treatment provider, the carrier will provide assistance in locating a gender affirming treatment provider.~~

WAC 284-170-280 Network reports—Format.

We are significantly concerned with the new geographic network reports and access plan requirements for gender affirming treatment proposed in this section. For the same reasons provided above, we do not have complete data regarding which of our network providers may offer gender affirming treatment or specifically what types of gender affirming services they will provide. Additionally, carriers are already required to comply with robust network adequacy requirements and 2SSB 5313 did not mandate or contemplate new network access standards specific to gender affirming treatment.

For the geographic network reports, we would like to reiterate that “gender affirming treatment” is not a provider type, specialty, or license type, making it difficult to create map identifying providers who may offer gender affirming treatment. Alternatively, we may be able to create a map with the provider types that could offer gender affirming treatment within the scope of the license (surgeons, plastic surgeons, dermatologist, urologists, etc.) but we would not be able to create maps at the specific service-level (i.e., breast implant surgery, facial feminization surgery, hair electrolysis, etc.). This level of detail is not required for other services today and we urge the OIC not to require this level of specificity for one category of treatment. For those reasons, we recommend that Subsection (3)(f)(i)(J) be removed from the draft rule.

For the access plans, carriers are already required to address standards of accessibility, and monitoring policies and procedures in their access plans (WAC 284-170-280(3)(g)(i)(C) and WAC 284-170-280(3)(g)(i)(D)). Subsection (3)(g)(i)(J) is proposing the same access plan components but specific to gender affirming treatment. This would be the only component of the access plan that is specific to a service and we do not believe that is the intent of the document. Therefore, we recommend Subsection (3)(g)(i)(J) be removed from the draft rule.

We recognize that 2SSB 5313 requires the OIC to issue a report on geographic access to gender affirming treatment across the state, but we respectfully ask that the information not be obtained by creating new carrier network access and reporting standards in regulation. Alternatively, we are willing to partner with the OIC to provide the data we have regarding network providers who have performed gender affirming services for our members.

Finally, it is our understanding that the manner in which we contract with providers is consistent with industry standards. The requirements outlined in this draft rule would be a drastic shift in the expectations for how carriers contract with providers and gather provider data. We respectfully ask the OIC to consider the impact this rule will have on carriers and providers and ensure the industry has more time implement.

Thank you for considering our comments. Please feel free to contact me with any questions or to discuss our feedback. I can be reached at or (206) 332-5212.

Sincerely,

A handwritten signature in black ink that reads "Jane Douthit". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Jane Douthit
Cambia Health Solutions
Sr. Public & Regulatory Affairs Specialist