

September 7, 2021

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

Re: Comments on health insurance discrimination and gender affirming treatment rulemaking (R 2021-14)

Dear Ms. Weeks-Green:

Kaiser Foundation Health Plan of the Northwest, Kaiser Foundation Health Plan of Washington, and Kaiser Foundation Health Plan of Washington Options, Inc. (collectively “Kaiser Permanente”), appreciate the opportunity to provide feedback to the Office of the Insurance Commissioner (“OIC”) on the stakeholder draft for the health insurance discrimination and gender affirming treatment rulemaking (R 2021-14). Kaiser Permanente is an integrated health care system that covers and cares for more than 760,000 members in Washington State. We are committed to delivering affordable, coordinated, and high-quality care and coverage that supports not only our members but also the communities we serve.

Thank you for sharing a stakeholder draft and holding a stakeholder meeting on September 3, 2021. As a follow-up to that meeting, we provide the following comments for the rulemaking team’s consideration. Our comments focus on ensuring that the regulation is clear and concise; that time is allotted for carriers to make provider directory changes; and that network reporting for gender affirming treatment is held to the same standard as for other medical services. We also note our support for the letter submitted by the Association of Washington Healthcare Plans.

Reduce duplicative language to make the regulation clear and concise

The statutory framework provided by SB 5313 is clear and detailed on its own. The draft regulation incorporates and restates many portions of the underlying law rather than stating a simple requirement that carriers must comply with the provisions of RCW 48.XX. As the rulemaking team continues to work on this draft regulation, please reconsider how much of the statute needs to be restated in the regulation. By using the citation approach, the regulation is simplified and provides an additional layer of detail about how carriers comply with the requirement. This approach also reduces the need for rulemaking if the statute changes in the future.

The stakeholder draft adds a new (f) to WAC 284-43-3070 (2) concerning the content of notices for adverse benefit determinations. We recommend edits to (f) to remove duplicative content that introduces ambiguity about what information is required in the first part of the sentence vs. the second part of the sentence. If the regulation deletes the redlined text below, the regulation still conveys the statutory requirement that a health care provider experienced with gender affirming treatment makes the decision.

(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.~~

We recommend striking “sufficient experience,” which is a subjective term that introduces ambiguity into the regulation and could lead to inconsistent enforcement. It is unclear what additional information the OIC is looking for carriers to provide about the qualifications of reviewers. We note that (8) already provides a mechanism for carriers to provide information about the professional qualifications of reviewers for any medical service. Gender affirming treatment should follow the same standard as any other medical service in providing information about professional qualifications.

Reconsider the level of information in the provider directory and build in time for carriers to implement any new provider directory requirements

WAC 284-170-260 (5)(g) requires new information to be added to the online and paper provider directories. It is important to note that gender affirming treatment spans a variety of medical specialties and that carriers contract with physicians and health care providers to provide services within their licensed scope of practice. It would be unusual to contract with a provider for a specific medical service at the level that stated in the draft regulation, and this would make it difficult to add these new labels to a provider directory. Once the level of detail is clarified in the regulation, we also note that adding any new fields of information will require physicians and health care providers to report new data elements and carriers to make provider directory programming changes, both of which will take time. We ask the OIC to add language to this section that provides a comply by date that is at least one year from the effective date of the adopted regulation to allow time for the data collection and programming work to be completed.

Information about gender affirming treatment in geonetwork reports and access plans should be held to the same standards as other medical services

WAC 284-170-280 (3)(f)(i)(J) adds a complex new map for gender affirming treatment and services. Rather than heading down the road of adding a new map to collect data for the OIC’s report to the legislature, we recommend that the OIC to pursue another mechanism to collect this data. However, if the OIC determines that the map is required, we point out that the list of map criteria contain more points of information than can be displayed on a single map. During the stakeholder meeting, the OIC clarified that this map is intended to work similar to the specialty care map. Given this clarification, we recommend the following revisions to (J).

(J) Gender Affirming Treatment and Services. An issuer must provide one map that identifies each provider or facility to which an enrollee has access in the service area for gender affirming treatment, ~~including what gender affirming treatment services are provided by each provider and facility.~~ The map must demonstrate that enrollees in the service area have access to an adequate number of providers and facilities for all gender affirming treatment services.

WAC 284-170-280 (3)(g)(i)(J) adds a new requirement specific to gender affirming services but otherwise duplicates the requirement in (3)(g)(i)(D) to monitor policies and procedures and (3)(g)(i)(C) to explain standards of accessibility. No other subset of medical services is currently required to have separate network access standards described in the access plan. We recommend that the OIC remove the unique language for gender affirming treatment so that these services are subject to the same level of detail in the access plan as any other medical service. If carriers determine that a gap exists for any medical service (including gender affirming treatment), the Form C requirements for an alternate access delivery request will apply.

General technical comment

While this section of regulation is open, we wanted to point out a grammatical issue in WAC 284-170-260 (3). Both uses of the word “enrollee’s” are not be possessive and should not have an apostrophe.

We thank you for the opportunity to provide comments on this stakeholder draft and for the OIC’s willingness to consider our feedback. We look forward to our continued collaboration throughout this rulemaking process. Please do not hesitate to contact us with questions.

Sincerely,



Merlene Converse

Senior Regulatory Consultant

Kaiser Foundation Health Plan of the Northwest

Government Relations

500 NE Multnomah Street, Suite 100 (8th Floor)

Portland, OR 97232

Cell: 503-936-3580

E-mail: Merlene.S.Converse@kp.org



Frankie Kaiser

Regulatory Affairs Consultant

Kaiser Foundation Health Plan of Washington

Government Relations

1300 SW 27th St

Renton, WA 98057-2435

Cell: 206-635-5974

E-mail: Frankie.E.Kaiser@kp.org