

September 7, 2021

Ms. Mandy Weeks-Green
Senior Health Policy Advisor
Office of the Insurance Commissioner

Delivered electronically to rulescoordinator@oicwa.gov

Re: R2021-14 Gender Affirming Treatment stakeholder draft 1 comments

Dear Mandy:

PacificSource Health Plans appreciates the Office of the Insurance Commissioner's practice of providing draft language for comment for substantive rules. Our comments are provided below regarding the proposed sections for which we have suggestions.

WAC 284-43-3070 (amended section) amendment (2)(f): The new subsection requires a carrier to include very specific information about the reviewer's credentials on the adverse benefit determination, using the phrase "sufficient experience" as the compliance requirement. The requirement creates significant implementation difficulties, as it does not identify from whose perspective the determination of whether the experience is sufficient should be assessed. Nor does the requirement explain what is insufficient. Additionally, the statutory requires carriers to staff an adverse review determination with specific expertise but does not establish a new notice requirement:

RCW 48.43.0128 (3)(c) A health carrier may not issue an adverse benefit determination denying or limiting access to gender affirming services, unless a health care provider with experience prescribing or delivering gender affirming treatment has reviewed and confirmed the appropriateness of the adverse benefit determination. (emphasis added)

Nor does the statute establish a requirement of "sufficient" experience – the requirement is that the provider have experience either prescribing or delivering gender affirming treatment.

We suggest eliminating the notice requirements in (2) (f) as they are outside the scope of the authorizing legislation. The Commissioner can exercise oversight to confirm compliance without the requirements set forth in (2) (f).

WAC 284-43-3070 (amended section) (2) (g): The statement in (2) (g) to be added to the adverse benefit determination notice is already part of WAC 284-43-3070 (7). Is there a reason it needs to be stated again as part of (2) of the same regulation?

WAC 284-43-5151 (new section) and WAC 284-43-7080 (amended section): these sections restate the statute but do not provide any implementation direction. We

suggest deleting these changes unnecessarily duplicative of the existing requirement set forth in RCW 48.43.0128.

WAC 284-43-5940 (amended section): the amendment references RCW 49.60.040 for the definition of “gender expression or identify.” However, that statute does not define gender expression or identify, but instead provides a description of it as part of the definition of sexual orientation. For clarity, we suggest the Commissioner add (27) after the reference to RCW 49.60.040 or, in the alternative, use the language from RCW 49.60.040 (27) itself in the WAC and delete the non-specific reference to RCW 49.60.040.

WAC 284-170-260 (5) (g) (amended section): the requirement obligates carriers to contract for specific services, which is a departure from the way provider contracts are developed. Provider contracts require a provider to perform services within the scope of their license. Because the range of services that may be part of gender affirming treatment is broad, carriers would need to ask providers whether they offer gender affirming treatment or services and if so, which ones. For our members, we assume that if a service is within the scope of a provider’s license, the provider will deliver it in a non-discriminatory manner. This requirement undermines that approach.

From an implementation standpoint, the requirement also raises questions. If a provider declines to answer or states they will not provide those services, is a carrier to note that in the directory? Or is the carrier then obligated to refuse to contract with the provider?

There is a difference between those programs or providers providing a holistic, broad based plan of gender affirming treatment that may include referrals to specialists, and care management / coordination for surgical, hormone replacement and counseling services related to gender affirmation, and a provider by provider determination of whether they have expertise in or would perform services that could be part of a gender affirming treatment program. We suggest that the requirement as expressed in the proposed regulation be eliminated or refined for clarity.

WAC 284-170-280 (amended section): Section 3 of the law being implemented authorizes the Commissioner’s rulemaking to implement sections (3), (4) and (5) of (3) of the bill, but those sections do not authorize a new geographic mapping requirement specifically for gender affirming treatment. Sec. (4) requires carriers to comply with network access requirements in general but does not state the Commissioner must develop new network reporting or access standards for gender affirming treatment and services. Without a specific definition of the provider types or programs to map, this requirement is difficult to implement and at the very least will result in wildly differing submissions as each carrier interprets this differently without more specific guidance. For example, the University of Washington posts one explanation of gender affirming care on its website: <https://wellbeing.uw.edu/gender-affirming-care/> while the American Psychiatry Association takes a different approach focusing on philosophy underlying services: <https://www.psychiatry.org/psychiatrists/cultural-competency/education/transgender-and-gender-nonconforming-patients/gender-affirming-therapy> .



PacificSource supports access to gender affirming treatment and services, and will continue to work with the Commissioner and his staff as you develop rules to implement 2ESSB5313. Please don't hesitate to reach out with any questions you may have based on this comment letter.

Sincerely,
PacificSource Health Plans

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