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July 8, 2022

Simone Marstiller, Secretary  
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Tallahassee, Florida 32308

VIA ELECTRONIC SUBMISSION at [MedicaidRuleComments@ahca.myflorida.com](mailto:MedicaidRuleComments@ahca.myflorida.com)

**Re: Proposed Rule, 59G-1.050(7), Banning Coverage of Gender-Affirming Care for All Transgender Medicaid Recipients in Florida**

Dear Secretary Marstiller and General Counsel Tamayo,

Southern Legal Counsel, Inc. (SLC) submits the following comments in response to the amendment to Fla. Admin. Code R. 59G-1.050(7) proposed by the Agency for Health Care Administration (AHCA), which bans all gender affirming care for Florida Medicaid beneficiaries. SLC vehemently opposes the Proposed Rule based on both the science and evidence supporting the medical necessity of treatment for gender dysphoria and our own extensive experience working with transgender individuals and witnessing the tremendous benefits that access to such care provides.

Founded in 1977, SLC is a Florida statewide not-for-profit public interest law firm committed to equal justice for all and the attainment of basic human and civil rights. SLC assists individuals and groups with public interest issues who would not otherwise

have access to the justice system. SLC concentrates on people and issues in the most need of civil legal assistance, including LGBTQ+ individuals, individuals experiencing homelessness, individuals with disabilities, and other low income marginalized populations.

Since SLC began its Transgender Rights Initiative in 2016, we have been a statewide leader in protecting the rights of transgender individuals in Florida, particularly those experiencing poverty. We have assisted thousands of transgender individuals in obtaining access to justice through: legal name and gender marker changes on government-issued identification documents; fighting for safe and affirming school environments; dismantling policies and practices that discriminate on the basis of sex; and accessing equal non-discriminatory health insurance benefits. Further, we have utilized federal impact litigation to challenge the state of Florida's discriminatory exclusion of gender-affirming care in state employee health plans. Due to SLC's wealth of experience working with this community, we can speak directly to the significant harms the Proposed Rule will cause those it targets.

The Proposed Rule states, in relevant part:

(7) Gender Dysphoria

(a) Florida Medicaid does not cover the following services for the treatment of gender dysphoria:

1. Puberty blockers;
2. Hormones and hormone antagonists;
3. Sex reassignment surgeries; and
4. Any other procedures that alter primary or secondary sexual characteristics.

(b) For the purpose of determining medical necessity, including Early and Periodic Screening, Diagnosis, and Treatment (EPSDT), the services listed in subparagraph (7)(a) do not meet the definition of medical necessity in accordance with Rule 59G-1.010, F.A.C.

In effect, the Proposed Rule creates a blanket exclusion for coverage of medically necessary healthcare for one of the most vulnerable populations in our state, eliminating the right of all transgender Floridians with Medicaid to even have their healthcare needs subjected to a medical necessity analysis. The insidiousness of the Proposed Rule is exacerbated by the fact that it places in its crosshairs the individuals in our state who are already disproportionately likely to experience poverty, homelessness, unemployment, poor mental and physical health outcomes, and to have the least access to resources and healthcare as it is.

**SLC urges AHCA to reject the proposed changes to Rule 59G-1.050 because the blanket exclusion of coverage for all medically necessary gender-affirming healthcare: (1) directly contravenes the widely accepted, authoritative standards of care and the consensus of every major medical and mental health association; (2) will cause significant harm to the individuals we serve by depriving them of critical medical care; (3) interferes with, and substitutes the state's judgment in place of, the**

doctor/patient relationship, the rights of the individual, and the fundamental rights of a parent to determine appropriate medical treatment for their child; and (4) is a shameful waste of resources, as similar exclusions have been enjoined and/or struck down by courts across the country, and the litigation that the state will certainly find itself embroiled in will waste valuable state resources that could be better utilized enhancing the lives of Floridians rather than attacking them.

Through a Medical Legal Partnership (MLP) with a pediatric endocrinology clinic that specializes in transgender care, SLC has had the opportunity to work with over 100 transgender children and families. Through our transgender rights initiative, we have worked with dozens of transgender adults, those with and without access to gender-affirming healthcare, and over the years of engaging in this work, we have witnessed the profound and unmistakable benefits that access to gender-affirming care can have on individuals who experience gender dysphoria.

“Gender dysphoria” is a formal diagnosis under The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) in which there is a pronounced incongruence between someone’s gender identity or expression and sex assigned at birth. While not all transgender individuals experience gender dysphoria, for those who do, the clinically significant distress resulting from gender dysphoria is serious and requires treatment. Left untreated, gender dysphoria can result in serious mental distress, depression, anxiety, self-harm, and suicidality. We have seen first-hand how gender dysphoria negatively impacts our clients in myriad facets of their lives, including mental health and wellbeing, academic achievement, social and emotional growth, access to employment and housing, and more. However, we have also witnessed first-hand how access to gender-affirming care has ameliorated and mitigated the negative impacts of gender dysphoria on the clients we serve.

Gender-affirming care is medical care provided to transgender people to treat gender dysphoria, and can include psychotherapy, social transition, puberty blockers, hormone therapy, and various surgeries. Gender-affirming care is the widely accepted standard of care for treating transgender individuals with gender dysphoria, and is endorsed and recommended by the American Academy of Pediatrics, the Florida Chapter of the American Academy of Pediatrics, the American Medical Association, the Endocrine Society, the Pediatric Endocrine Society, the American Psychological Association, the American Academy of Child and Adolescent Psychiatry, the American College of Obstetricians and Gynecologists, the American College of Physicians, the American Psychiatric Association, the American Academy of Family Physicians, the Society for Adolescent Health and Medicine, the World Professional Association for Transgender Health (WPATH), and additional major medical organizations. Gender-affirming care is not, as claimed by the GAPMS memo, experimental; it is the prevailing standard of care accepted by medical experts and healthcare providers.

The World Professional Association for Transgender Health (WPATH) is “an international, multidisciplinary, professional association whose mission is to promote evidence-based care, education, research, advocacy, public policy, and respect for transgender health.” WPATH Standards of Care are clinical guidelines to treat gender

dysphoria accepted by major medical and mental health associations and have been accepted as authoritative by federal courts in this state and many others.

In addition to the overwhelming consensus of the medical experts and scientific community, our clients lived experiences have made clear that access to gender-affirming care can be life saving. Access to puberty blocking hormones like Lupron, for example, have resulted in profound transformations in transgender youth we serve, including marked decreases in depression, anxiety, suicidal ideation, and psychological distress, and significant improvements in academic achievement and positive school experience. For countless youth we have represented, being able to live authentically as themselves at school, including accessing the bathroom aligned with their gender identity and having their affirmed names and pronouns respected by teachers and peers, has had a truly life-changing impact on their educational experience and wellbeing. Living authentically as oneself becomes increasingly difficult as one begins to develop secondary sex characteristics, and without access to medically necessary gender-affirming healthcare, these changes can have a devastating impact on the individual's ability to navigate life in accordance with their gender identity.

Ultimately, like with all medical care, these healthcare decisions should be made between the individual and their doctor and should be based on individual needs, not blanket exclusions.

Other states' implementation of rules and regulations that deny medically necessary gender affirming care similar to ACHA's proposed rule have led to litigation. These cases have raised challenges under the Equal Protection Clause of the Fourteenth Amendment, Section 1557 of the Affordable Care Act, 42 U.S.C. § 18116; and the Medicaid Act requirements, 42 U.S.C. § 1396a. Some of these cases have resulted in preliminary or permanent injunctions enjoining state Medicaid programs from enforcing exclusions for medically necessary gender affirming care.<sup>1</sup> Some of these cases have settled only after the state agreed to reverse coverage exclusions for treatment for gender dysphoria.<sup>2</sup> Some of the cases are still being litigated.<sup>3</sup>

The Proposed Rule is a cruel and discriminatory measure that is inconsistent with the rights guaranteed to Medicaid recipients under the Medicaid Act, the Equal Protection Clause of the Fourteenth Amendment, and the Affordable Care Act. It is a shameful waste of resources that will likely embroil the state in protracted litigation. Implementation of this Rule will leave transgender individuals in limbo while its constitutionality is litigated, depriving an already marginalized population of medically necessary—and often life-saving—healthcare. AHCA must protect the individuals it

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<sup>1</sup> *Flack v. Wis. Dept. of Health Servs.*, 328 F.Supp.3d 931 (W.D. Wisc. 2018); *Cruz v. Zucker*, 218 F. Supp. 3d 246 (S.D.N.Y. 2016); *Eknes-Tucker v. Marshall*, No. 2:22-CV-184-LCB, 2022 WL 1521889, at \*8 (M.D. Ala. May 13, 2022).

<sup>2</sup> *Being v. Crum*, Case No. 3:19-cv-00060-HRH (D. Alaska) (settlement filed Dec. 22, 2020).

<sup>3</sup> *Hennessy-Waller v. Snyder*, Case No. CV-20-00335-TUC-SHR (D. Ariz.) (complaint filed Aug. 6, 2020); *Fain v. Crouch*, Case No. 3:20-CV-00740 (S.D. W.Va) (complaint filed Nov. 12, 2020); *Thomas v. Ga. Dep't of Comm. Health*, No. 1:21-CV-02558 (N.D. Ga.) (complaint filed June 24, 2021).

serves from the immeasurable harm that will come from losing access to medically necessary healthcare.

Thank you for the opportunity to submit this comment. Please do not hesitate to contact the undersigned at [simone.chriss@southernlegal.org](mailto:simone.chriss@southernlegal.org) or (352) 271-8890 with any questions or for further information.

Respectfully submitted,

*SOUTHERN LEGAL COUNSEL*

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