



April 15, 2024

Submitted via email to JCARR1@jcarr.state.oh.us

Joint Committee on Agency Rule Review (JCARR)
Ohio General Assembly
ATTN: Comments on Gender Transition Care Rules
77 S High Street, Concourse Level
Columbus, OH 43215

Re: Rule 5122-14-12.1 [Gender Transition Care] & Rule 5122-26-19 [Gender Transition Care]

I am writing on behalf of Equitas Health, which is headquartered in Columbus, Ohio, to provide information related to you all's review of revisions to administrative rules – Rule 5122-14-12.1: Gender Transition Care and Rule 5122-26-19: Gender Transition Care – as proposed by Governor Mike DeWine and the Ohio Dept. of Mental Health and Addiction Services (MHAS). As noted in this cover letter and in the attached document, Equitas Health is in strong opposition to all portions of this proposed revision to existing administrative rules, and we encourage the Joint Committee on Agency Rule Review (JCARR) to recommend that all of these proposed administrative rules be invalidated.

As you may be aware, Equitas Health is a non-profit community health center and one of the largest LGBTQ+ and HIV/AIDS serving healthcare organizations in the country. Each year, we serve tens of thousands of patients in Ohio, Texas, Kentucky, and West Virginia, and since 1984, we have been working to advance “care for all.” Our mission is to be the gateway to good health for those at risk of or affected by HIV; for the lesbian, gay, bisexual, transgender, and queer/questioning (LGBTQ+) community; and for those seeking a welcoming healthcare home. In doing so, we offer primary and specialized medical care, pharmacy services, dentistry, mental health and recovery services, HIV/STI prevention and treatment services, Ryan White HIV case management, overall care navigation, and a number of community health initiatives.

In the past three months, Equitas Health has filed three separate public comments related to Rule 5122-14-12.1: Gender Transition Care and Rule 5122-26-19: Gender Transition Care. To assist the committee in the review of these proposed administrative rules, we have attached our most recent public comment from the Ohio Dept. of Mental Health and Addiction Services' (MHAS') March 18 public hearing. Our agency remains deeply concerned about the impact that these proposed administrative rules will have on access to care for patients across Ohio. Additionally, our agency is also concerned that these proposed administrative rules may conflict with several of the JCARR prongs, as described in Ohio Revised Code Section 106.021. Specifically, we are concerned that these proposed administrative rules 1) exceed the statutory authority of Governor Mike DeWine and MHAS; 2) conflict

with the legislative intent under which these rules are being proposed; and 3) pose an adverse threat both to healthcare access and healthcare-related businesses throughout the state.

Given this and the concerns noted in the attached public comment, Equitas Health remains in strong opposition to all portions of this proposed revision to existing administrative rule. As such, we encourage the Joint Committee on Agency Rule Review (JCARR) to recommend that all of these proposed administrative rules be invalidated. If you have any comments or further questions, please feel free to reach out to us directly.

Sincerely,

Dr. Rhea Debussy (she/her)
Director of External Affairs
Equitas Health



March 18, 2024

Submitted via email to MH-SOT-GTC2-rules@mha.ohio.gov¹

Ohio Dept. of Mental Health and Addiction Services (MHAS)
ATTN: Comments on Gender Transition Care Rules
30 East Broad Street, 36th floor
Columbus, OH 43215

Re: Rule 5122-14-12.1 [Gender Transition Care] & Rule 5122-26-19 [Gender Transition Care]

We are writing on behalf of Equitas Health, which is headquartered in Columbus, Ohio, to express comments and concerns related to additional revisions to administrative rules – Rule 5122-14-12.1: Gender Transition Care and Rule 5122-26-19 [Gender Transition Care] – as proposed by Governor Mike DeWine and the Ohio Dept. of Mental Health and Addiction Services (MHAS). As noted throughout this cover letter and public comment, Equitas Health is in strong opposition to all portions of this proposed revision to existing administrative rule.

As you may be aware, Equitas Health is a non-profit community health center and one of the largest LGBTQ+ and HIV/AIDS serving healthcare organizations in the country. Each year, we serve tens of thousands of patients in Ohio, Texas, Kentucky, and West Virginia, and since 1984, we have been working to advance “care for all.” Our mission is to be the gateway to good health for those at risk of or affected by HIV; for the lesbian, gay, bisexual, transgender, and queer/questioning (LGBTQ+) community; and for those seeking a welcoming healthcare home. In doing so, we offer primary and specialized medical care, pharmacy services, dentistry, mental health and recovery services, HIV/STI prevention and treatment services, Ryan White HIV case management, overall care navigation, and a number of community health initiatives.²

As we have noted in the previous two rounds of revisions to these proposed administrative rules, our agency, our patients, and our broader community are deeply concerned about this and the impacts that it will have on access to care. Following the public comment period that ended on February 14, the Ohio Dept. of Mental Health and Addiction Services (MHAS) released a revised version of these proposed administrative rules, and in that revision, the agency only slightly changed the verbiage in

¹ Document prepared by Rhea Debussy, Ph.D. (she/her), Director of External and Oliver Licking (he/him), Gender Equity Policy Manager. Document reviewed by Adrianna Udinwe (she/her), Associate General Counsel and Sarah Green (they/she), Administrative Assistant – Advancement. Attachment prepared by Rhea Debussy, Ph.D. (she/her), Director of External. Document reviewed by Adrianna Udinwe (she/her), Associate General Counsel and Sarah Green (they/she), Administrative Assistant – Advancement.

² <https://equitashealth.com/about-us/>

Section (C)(3)(b) for Rule 5122-14-12.1 and Section (B)(3)(b) for Rule 5122-26-19. These inconsequential and negligible changes do not even begin to address the concerns that we have continued to highlight in our previous sets of public comments. For that reason, we are submitting this cover letter with our previous public comment attached.

We strongly recommend that the Ohio Dept. of Mental Health and Addiction Services (MHAS) carefully reviews this attached document, as it notes several issues of concern for patients, medical providers, the state government, and Ohio more broadly. As one of the largest providers of gender affirming care in the Midwest, we continue to strongly urge the Ohio Dept. of Mental Health and Addiction Services (MHAS) to fully and completely rescind all portions of these proposed administrative rules.

Sincerely,

Dr. Rhea Debussy (she/her)
Director of External Affairs
Equitas Health

Oliver Licking(he/him)
Gender Equity Policy Manager
Equitas Health



February 14, 2024

Submitted via email to CSIPublicComments@governor.ohio.gov & MH-SOT-rules@mha.ohio.gov

Ohio Dept. of Mental Health and Addiction Services (MHAS)

CC: Office of Governor Mike DeWine

ATTN: Comments on Gender Transition Care Rules

30 East Broad Street, 36th floor

Columbus, OH 43215

Re: Rule 5122-14-12.1 [Gender Transition Care] & Rule 5122-26-19 [Gender Transition Care]

I am writing on behalf of Equitas Health, which is headquartered in Columbus, Ohio, to express comments and concerns related to revisions to administrative rules – Rule 5122-14-12.1: Gender Transition Care and Rule 5122-26-19 [Gender Transition Care] – as proposed by Governor Mike DeWine and the Ohio Dept. of Mental Health and Addiction Services (MHAS). As noted throughout this public comment, Equitas Health is in strong opposition to all portions of this proposed revision to existing administrative rule.

As you may be aware, Equitas Health is a non-profit community health center and one of the largest LGBTQ+ and HIV/AIDS serving healthcare organizations in the country. Each year, we serve tens of thousands of patients in Ohio, Texas, Kentucky, and West Virginia, and since 1984, we have been working to advance “care for all.” Our mission is to be the gateway to good health for those at risk of or affected by HIV; for the lesbian, gay, bisexual, transgender, and queer/questioning (LGBTQ+) community; and for those seeking a welcoming healthcare home. In doing so, we offer primary and specialized medical care, pharmacy services, dentistry, mental health and recovery services, HIV/STI prevention and treatment services, Ryan White HIV case management, overall care navigation, and a number of community health initiatives. Regarding this public comment, our agency, our patients, and our broader community are concerned about this proposed rule. As one of the largest providers of gender affirming care in the Midwest, we strongly urge the Ohio Dept. of Mental Health and Addiction Services (MHAS) to fully and completely rescind all portions of these proposed administrative rules.

Overall Recommendation: We strongly urge the Ohio Dept. of Mental Health and Addiction Services (MHAS) to fully and completely rescind the proposed administrative rules, given their numerous contradictions to evidence-based and medically recommended standards of transition-related medical care.

In their current form, the proposed administrative rules would create a situation in which in-patient psychiatric providers will fail the standard outlined in sub-section (H) of other areas of administrative

code – i.e. “to promote recovery and meet the comprehensive needs of each patient” – for many of their transgender, non-binary, gender expansive, and intersex patients.³ The proposed revisions outlined below fail to meet the standards of care, as outlined by leading medical associations like the World Professional Association of Transgender Health (WPATH).⁴

As noted above, we strongly recommend that all portions of these proposed administrative rules be fully and completely rescinded. Below, we have provided additional details about our concerns related to each sub-section of these proposed administrative rules.

1. Rule 5122-14-12.1 [Gender Transition Care]:

- A. Regarding sub-section (A) of Rule 5122-14-12.1: We strongly recommend that all portions of sub-section (A) of the proposed administrative rule be fully and completely rescinded.** In addition to the concerns noted above, sub-section (A) relies upon a number of outdated terms (i.e. ‘biological sex,’ and ‘birth sex’).⁵ Further, the language in (A) unfairly targets evidence-based healthcare services for transgender, non-binary, and gender expansive people, while also containing provisions that will indirectly impact access to care for intersex people among others. As such, we remain deeply concerned with how this language specifically targets patients receiving gender affirming care services, while also placing an undue burden upon those associated with said services. Given all of this, this portion of the proposed administrative rule may directly conflict with several areas of existing federal and state law, such as the Equal Protection Clause of the 14th Amendment of the U.S. Constitution,⁶ Section 1557 of the Affordable Care Act (ACA),⁷ and Section 22 of the Bill of Rights of the Ohio Constitution (i.e. “The Right to Reproductive Freedom with Protections for Health and Safety”).⁸
- B. Regarding sub-section (B) of Rule 5122-14-12.1: We strongly recommend that all portions of sub-section (B) of the proposed administrative rule be fully and completely rescinded.** More specifically, sub-section (B) would prohibit in-patient psychiatric providers from administering or furnishing medications that are necessary for transition-related care (i.e. hormone replacement therapy or HRT) in many circumstances. If implemented as currently written, this proposed revision will prohibit numerous in-patient psychiatric patients from accessing life-saving and medically recommended medications, such as testosterone, estrogen, progesterone, etc. Expecting in-patient psychiatric patients to simply stop said

³ See page 4: https://mha.ohio.gov/static/AboutUs/RulesandRegulations/DraftRules/5122-14-12-Final_01052024.pdf

⁴ See WPATH’s *Standards of Care for the Health of Transgender and Gender Diverse People*, version 8. 2022. Taylor and Francis Group. Available at: <https://www.tandfonline.com/doi/pdf/10.1080/26895269.2022.2100644>

⁵ See GLAAD’s *GLAAD Media Reference Guide*, 11th edition. Available at: <https://glaad.org/reference/trans-terms>

⁶ See 14th Amendment to the U.S. Constitution. National Archives and Records Administration (NARA). Available at: <https://www.archives.gov/milestone-documents/14th-amendment>

⁷ See Section 1557 of the Patient Protection and Affordable Care Act. U.S. Dept. of Health and Human Services (HHS). Available at: <https://www.hhs.gov/civil-rights/for-individuals/section-1557/index.html>

⁸ See Article I, Section 22 (The Right to Reproductive Freedom with Protections for Health and Safety) of the Ohio Constitution. Ohio Legislative Service Commission. Available at: <https://codes.ohio.gov/ohio-constitution/section-1.22#:~:text=Article%20I%2C%20Section%2022%20%7C%20The,Protections%20for%20Health%20and%20Safety>

medications ‘cold turkey’ places medical providers in an unethical situation, and alarmingly, it also facilitates active harm against patients, given that this practice would go against the medical recommendations that are referenced above. As such, this entire section should be rescinded from consideration. Given all of this, this portion of the proposed administrative rule may directly conflict with several areas of existing federal and state law, such as the Equal Protection Clause of the 14th Amendment of the U.S. Constitution,⁹ Section 1557 of the Affordable Care Act (ACA),¹⁰ and Section 22 of the Bill of Rights of the Ohio Constitution (i.e. “The Right to Reproductive Freedom with Protections for Health and Safety”).¹¹

- C. Regarding sub-section (C) of Rule 5122-14-12.1: We strongly recommend that all portions of sub-section (C) of the proposed administrative rule be fully and completely rescinded.** As noted above in our discussion of sub-section (B), sub-section (C) also directly targets gender affirming care services by placing an undue burden on medical providers and patients, while also directly conflicting with existing standards of care. As such, it should be completely rescinded. Similar to sub-section (B), this portion of the proposed administrative rule may directly conflict with several areas of existing federal and state law, such as the Equal Protection Clause of the 14th Amendment of the U.S. Constitution,¹² Section 1557 of the Affordable Care Act (ACA),¹³ and Section 22 of the Bill of Rights of the Ohio Constitution (i.e. “The Right to Reproductive Freedom with Protections for Health and Safety”).¹⁴
- D. Regarding sub-section (D) of Rule 5122-14-12.1: We strongly recommend that all portions of sub-section (D) of the proposed administrative rule be fully and completely rescinded.** The entirety of sub-section (D) – in addition to much of the language used within the sub-section – would facilitate the creation of medical policies and practices that rely upon outdated information about medical care for intersex patients.¹⁵ If implemented as written, the language used in (D) would allow intersex minors to access some forms of medical care; however, the language in (H) may disallow intersex adults to access such forms of medical care, pending additional revisions to administrative rules. Additionally, (D)(1) has an unusually narrow understanding of intersex identities and variations, and the language in (D)(1) would unfairly restrict access to many intersex patients, so (D)(1) should be completely struck.¹⁶ Similarly, (D)(2) should also be completely struck for the same reasons. Finally, the language used in (D), as currently written, would also protect medical providers

⁹ See *supra* note 6.

¹⁰ See *supra* note 7.

¹¹ See *supra* note 8.

¹² See *supra* note 6.

¹³ See *supra* note 7.

¹⁴ See *supra* note 8.

¹⁵ See interAct and Lamda Legal’s *Providing Ethical and Compassionate Health Care to Intersex Patients: Intersex-Affirming Hospital Policies*. 2018. Available at:

https://legacy.lambdalegal.org/sites/default/files/publications/downloads/resource_20180731_hospital-policies-intersex.pdf

¹⁶ See the Intersex Society of North America’s (ISNA’s) “What is Intersex?” Available at:

https://isna.org/faq/what_is_intersex/; see also interAct’s “Intersex Variations Glossary.” 2022. Available at: <https://interactadvocates.org/wp-content/uploads/2022/10/Intersex-Variations-Glossary.pdf>

and surgeons, who perform medically unnecessary and often non-consensual surgeries on intersex newborns and children.¹⁷ Given all of this, this portion of the proposed administrative rule may directly conflict with several areas of existing federal and state law, such as the Equal Protection Clause of the 14th Amendment of the U.S. Constitution,¹⁸ Section 1557 of the Affordable Care Act (ACA),¹⁹ Section 22 of the Bill of Rights of the Ohio Constitution (i.e. “The Right to Reproductive Freedom with Protections for Health and Safety”),²⁰ and state malpractice law.²¹

- E. Regarding sub-section (E) of Rule 5122-14-12.1: We strongly recommend that all portions of sub-section (E) of the proposed administrative rule be fully and completely rescinded.** The provisions for the grandparent clause in sub-section (E) are unnecessarily narrow, and we would recommend rescinding this portion of the administrative rule, along with the rest of the proposed administrative rule. If other portions of the proposed administrative rule are kept intact, then we would strongly recommend extending the grandparent clause to a timeframe of 15 years after the effective date of the rule, which would ensure that existing patients can age into adult medical care services without interruption.
- F. Regarding sub-section (F) of Rule 5122-14-12.1: We strongly recommend that all portions of sub-section (F) of the proposed administrative rule be fully and completely rescinded.** In addition to the concerns noted throughout this comment, the practices described in this portion of the proposed administrative rule raise a number of ethical questions and patient privacy concerns, while also creating an undue reporting burden with an overly cumbersome amount of patient and treatment information. We strongly hold the position that such data should not be collected by the government and/or shared with the General Assembly, given numerous ethical and patient privacy concerns. As such, this portion of the proposed administrative rule may directly conflict with areas of federal law, such as 1st Amendment of the U.S. Constitution (i.e. implicit protections related to the right to privacy)²² and the Health Insurance Portability and Accountability Act (HIPPA).²³
- G. Regarding sub-section (G) of Rule 5122-14-12.1: We strongly recommend that all portions of sub-section (G) of the proposed administrative rule be fully and completely rescinded.**

¹⁷ See Human Rights Watch’s “Intersex Children.” Available at: <https://www.hrw.org/topic/childrens-rights/intersex-children>

¹⁸ See *supra* note 6.

¹⁹ See *supra* note 7.

²⁰ See *supra* note 8.

²¹ See Ohio Revised Code Section 2305.113: Medical Malpractice Actions. Available at: <https://codes.ohio.gov/ohio-revised-code/section-2305.113>

²² See 1st Amendment to the Bill of Rights of the U.S. Constitution. National Archives and Records Administration (NARA). Available at: <https://www.archives.gov/founding-docs/bill-of-rights-transcript>

²³ See Health Information Privacy. U.S. Dept. of Health and Human Services (HHS). Available at: <https://www.hhs.gov/hipaa/index.html>

We recommend rescinding sub-section (G) along with all other portions of the proposed administrative rule, as it would be rendered moot.

2. Rule 5122-26-19 [Gender Transition Care]:

- A. Regarding sub-section (A) of Rule 5122-26-19: We strongly recommend that all portions of sub-section (A) of the proposed administrative rule be fully and completely rescinded.** In addition to the concerns noted above, sub-section (A) relies upon a number of outdated terms (i.e. ‘biological sex,’ and ‘birth sex’).²⁴ Further, the language in (A) unfairly targets evidence-based healthcare services for transgender, non-binary, and gender expansive people, while also containing provisions that will indirectly impact access to care for intersex people among others. As such, we remain deeply concerned with how this language specifically targets patients receiving gender affirming care services, while also placing an undue burden upon those associated with said services. Given all of this, this portion of the proposed administrative rule may directly conflict with several areas of existing federal and state law, such as the Equal Protection Clause of the 14th Amendment of the U.S. Constitution,²⁵ Section 1557 of the Affordable Care Act (ACA),²⁶ and Section 22 of the Bill of Rights of the Ohio Constitution (i.e. “The Right to Reproductive Freedom with Protections for Health and Safety”).²⁷
- B. Regarding sub-section (B) of Rule 5122-26-19: We strongly recommend that all portions of sub-section (B) of the proposed administrative rule be fully and completely rescinded.** More specifically, the requirements outlined in sub-section (B) would severely limit access to medications that are necessary for transition-related care (i.e. hormone replacement therapy or HRT). If implemented as currently written, this proposed revision will restrict access to life-saving and medically recommended medications, such as testosterone, estrogen, progesterone, etc. Further, the requirements in this section directly conflict with existing standards of care. As such, this entire section should be rescinded from consideration. Given all of this, this portion of the proposed administrative rule may directly conflict with several areas of existing federal and state law, such as the Equal Protection Clause of the 14th Amendment of the U.S. Constitution,²⁸ Section 1557 of the Affordable Care Act (ACA),²⁹ and Section 22 of the Bill of Rights of the Ohio Constitution (i.e. “The Right to Reproductive Freedom with Protections for Health and Safety”).³⁰
- C. Regarding sub-section (C) of Rule 5122-26-19: We strongly recommend that all portions of sub-section (C) of the proposed administrative rule be fully and completely rescinded.** The entirety of sub-section (C) – in addition to much of the language used within the sub-section

²⁴ See *supra* note 5.

²⁵ See *supra* note 6.

²⁶ See *supra* note 7.

²⁷ See *supra* note 8.

²⁸ See *supra* note 6.

²⁹ See *supra* note 7.

³⁰ See *supra* note 8.

– would facilitate the creation of medical policies and practices that rely upon outdated information about medical care for intersex patients.³¹ If implemented as written, the language used in (C) would allow intersex minors to access some forms of medical care; however, the language in (C) may disallow intersex adults to access such forms of medical care, pending additional revisions to administrative rules. Additionally, (C)(1) has an unusually narrow understanding of intersex identities and variations, and the language in (C)(1) would unfairly restrict access to many intersex patients, so (C)(1) should be completely struck.³² Similarly, (C)(2) should also be completely struck for the same reasons. Finally, the language used in (C), as currently written, would also protect medical providers and surgeons, who perform medically unnecessary and often non-consensual surgeries on intersex newborns and children.³³ Given all of this, this portion of the proposed administrative rule may directly conflict with several areas of existing federal and state law, such as the Equal Protection Clause of the 14th Amendment of the U.S. Constitution,³⁴ Section 1557 of the Affordable Care Act (ACA),³⁵ Section 22 of the Bill of Rights of the Ohio Constitution (i.e. “The Right to Reproductive Freedom with Protections for Health and Safety”),³⁶ and state malpractice law.³⁷

D. Regarding sub-section (D) of Rule 5122-26-19: We strongly recommend that all portions of sub-section (D) of the proposed administrative rule be fully and completely rescinded. The provisions for the grandparent clause in sub-section (D) are unnecessarily narrow, and we would recommend rescinding this portion of the administrative rule, along with the rest of the proposed administrative rule. If other portions of the proposed administrative rule are kept intact, then we would strongly recommend extending the grandparent clause to a timeframe of 15 years after the effective date of the rule, which would ensure that existing patients can age into adult medical care services without interruption.

E. Regarding sub-section (E) of Rule 5122-26-19 We strongly recommend that all portions of sub-section (E) of the proposed administrative rule be fully and completely rescinded. In addition to the concerns noted throughout this comment, the practices described in this portion of the proposed administrative rule raise a number of ethical questions and patient privacy concerns, while also creating an undue reporting burden with an overly cumbersome amount of patient and treatment information. We strongly hold the position that such data should not be collected by the government and/or shared with the General Assembly, given numerous ethical and patient privacy concerns. As such, this portion of the proposed administrative rule may directly conflict with areas of federal law, such as 1st

³¹ See *supra* note 15.

³² See *supra* note 16.

³³ See *supra* note 17.

³⁴ See *supra* note 6.

³⁵ See *supra* note 7.

³⁶ See *supra* note 8.

³⁷ See *supra* note 21.

Amendment of the U.S. Constitution (i.e. implicit protections related to the right to privacy)³⁸ and the Health Insurance Portability and Accountability Act (HIPPA).³⁹

- F. Regarding sub-section (F) of Rule 5122-26-19: We strongly recommend that all portions of sub-section (F) of the proposed administrative rule be fully and completely rescinded. We recommend rescinding sub-section (F) along with all other portions of the proposed administrative rule, as it would be rendered moot.**

Concluding Remarks: To conclude, we strongly urge the Ohio Dept. of Mental Health and Addiction Services (MHAS) to do the following:

- 1) Fully and completely rescind all portions of these proposed administrative rules, given their numerous contradictions to evidence-based and medically recommended standards of transition-related medical care.**

Equitas Health would like to thank you for this opportunity to present comments and concerns on the proposed administrative rules. Should you have any questions about our comments, please feel free to contact Dr. Rhea Debussy (she/her), Director of External Affairs at Equitas Health.

³⁸ See *supra* note 22.

³⁹ See *supra* note 23.