TITLE 181 SPECIAL HEALTH PROGRAMS

CHAPTER 8 NONSURGICAL PHARMACEUTICAL GENDER ALTERING TREATMENTS

001. SCOPE AND AUTHORITY. These regulations govern the use of nonsurgical pharmaceutical gender altering treatments under the Let Them Grow Act, Nebraska Revised Statutes (Neb. Rev. Stat.) §§ 71-7301 to 71-7307.

002. DEFINITIONS. Definitions are set out in the Let Them Grow Act, and this chapter.

002.01 GENDER DYSPHORIA. A marked incongruence between a person's experienced or expressed gender and the biological sex at birth for at least six months as manifested by the criteria set out in in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text-Revisions as published in March 2022.

002.02 GENDER NONCONFORMITY. For purposes of this chapter, gender nonconformity is a pattern of sexual identity different from the biological sex at birth expressed through observable behaviors as determined by a credentialed health care practitioner or mental health care practitioner.

002.03 LONG-LASTING AND INTENSE PATTERN OF GENDER NONCONFORMITY OR GENDER DYSPHORIA. A pattern of gender nonconformity being observed or treated for more than six continuous months or a diagnosis of gender dysphoria.

002.04 PRESCRIBED MEDICATIONS. For the purposes of this chapter, prescribed medications mean puberty blocking drugs or cross-sex hormones for the treatment of gender nonconformity or gender dysphoria.

002.05 TANNER SCALE OF PUBERTY. Also known as Sexual Maturity Rating is an objective classification system used to determine the development and sequence of secondary sex characteristics of children during puberty.

003. PUBERTY BLOCKING DRUGS. Prior to prescribing, dispensing, or administering puberty blocking drugs for the treatment of gender nonconformity or gender dysphoria to a patient who has not reached the age of majority, the prescribing practitioner must meet the following:

(A) Obtain three hours of Category 1 Continuing Competency Education for prescribing drugs for the purpose of treating gender nonconformity or gender dysphoria within the most recent biennial renewal period;

(B) Determine or document:

(i) That gender nonconformity or gender dysphoria is driving the patient's distress and not other mental or physical health conditions, that there is no reasonable expectation of natural resolution of gender nonconformity, and that there has been a long-lasting and intense pattern of gender nonconformity or gender dysphoria which began or worsened at the start of puberty;
(ii) The severity of other mental or physical health conditions is being properly addressed and treated, and will not negatively impact treatment;
(iii) Puberty blocking treatment is not likely to negatively impact, or exacerbate other mental or physical health conditions;
(iv) The patient has received at least 40 contact hours of therapeutic treatment as required by this chapter;
(v) The patient has at least six consecutive months of living primarily as the preferred gender;
(vi) For individuals not suffering from gender dysphoria or for whom a clinical diagnosis of gender dysphoria is not available, that without puberty blocking treatment the patient will experience harm;
(vii) Tanner stage of puberty development and if puberty blockers would be effective; and
(viii) The appropriate supports are in place for the patient including appropriate social, and familial supports prior to initiating puberty blocking treatment;

(C) Discuss the following with the patient and parent or legal guardian or the patient, if the patient is an emancipated minor:
(i) The recommended dosage and route of treatment for the puberty blockers; and
(ii) The minimum waiting period of seven calendar days as required by this chapter;

(D) Obtain signed informed consent and patient assent as required by this chapter; and
(E) Document all the foregoing in the patient's medical record.

004. CONTACT HOURS OF THERAPEUTIC TREATMENT. A patient who has not reached the age of majority must receive a minimum of 40 gender-identity-focused contact hours of therapeutic treatment prior to receiving prescribed medications subject to the following restrictions:

(A) The following may count toward the contact hours:
(i) An initial assessment of up to four consecutive hours; and
(ii) Following an initial assessment, up to two hours per week;

(B) The therapeutic hours must be clinically neutral and not in a gender affirming or conversion context; and
(C) For an unemancipated minor, the therapeutic hours must include sufficient parental or legal guardian involvement to ensure adequate familial support during and post treatment.

005. ONGOING CONTACT HOURS OF THERAPEUTIC TREATMENT. A patient who has not reached the age of majority must receive at least one therapeutic contact hour every 90 days while puberty blocking drugs or cross-sex hormones are being administered to evaluate ongoing effects on the patient's mental health.

006. ATTESTATION REQUIREMENTS FOR PRACTITIONERS.

006.01 PRESCRIBING PRACTITIONER. If the prescribing practitioner provided all or some of the contact hours of therapeutic treatment required by this chapter, the prescribing practitioner must sign an attestation as part of the documentation required by this chapter.

006.02 NON-PRESCRIBING PRACTITIONER. For contact hours of therapeutic treatment required by this chapter not provided by the prescribing practitioner, the prescribing practitioner must obtain an attestation from the other practitioner or practitioners as part of the documentation required by this chapter.

006.03 INITIAL 40 HOUR ATTESTATION REQUIREMENTS. The initial 40 gender-identity-focused contact hours attestation must include at least the following:

(A) Name of patient;
(B) Patient date of birth;
(C) Statement from the practitioner providing therapy detailing their training and experience with gender-identify-focused issues;
(D) Number of all contact hours of therapeutic treatment spent with the patient;
(E) Detailing the duration and frequency of those contact hours of therapeutic treatment;
(F) The duration and frequency of gender nonconformity;
(G) Any diagnosis of gender dysphoria;
(H) Any other co-occurring psychiatric diagnosis as required in this chapter;
(I) Appropriate support or referrals for the patient;
(J) Patient level of engagement in the therapy;
(K) Parental or legal guardian consent to therapy and their level of engagement in the therapy, or the consent of the patient, if the patient is an emancipated minor;
(L) Any other relevant information regarding the patient; and
(M) When the patient is an unemancipated minor, the ability of the patient to assent to therapy.

007. PATIENT INFORMED CONSENT FOR PUBERTY BLOCKING TREATMENT. A patient consent form must be obtained by the prescribing practitioner and include the following, in addition to information otherwise required in a consent form:

(A) Discussion of appropriateness of care has taken place;
(B) All the known side effects of puberty blockers, the risks associated with taking them and the risks associated with discontinuing the treatment including, but not limited to, long-term effects on bone density, brain development, impact on fertility, sexual side effects including, but not limited to, loss of sexual gratification, and effects upon physical growth and development;
(C) List of alternatives to treatment including, but not limited to, social, behavioral, and physical alternatives, and that these alternatives have been discussed with the patient and parent or legal guardian or the patient, if the patient is an emancipated minor;
(D) Signed consent of a parent or legal guardian or the signed consent of the patient, if the patient is an emancipated minor;
(E) When the patient is an unemancipated minor, patient assent to treatment; and
(F) Whether the medication is being prescribed for off-label use or otherwise not approved by the Food and Drug Administration.

008. PUBERTY BLOCKING DRUG PRESCRIPTIONS. The following restrictions apply for a patient who has not reached the age of majority in addition to all other applicable laws relating to the administration, prescribing, delivery, sale, or use of puberty blocking drugs:

(A) Prescriptions must identify the drugs being prescribed are for the treatment of gender nonconformity or gender dysphoria;

(B) Prescribed medications picked up from a pharmacy are required to be picked up by the patient's parent, legal guardian, or the patient if the patient is an emancipated minor;

(C) Injectable prescribed medications must be administered in the prescribing practitioner's office by staff who are properly credentialed to administer drugs by injection;

(D) The prescribing practitioner must document no adverse effects on the patient's mental health during the course of treatment and that continued treatment is still medically appropriate as required by the chapter; and

(E) The prescribing practitioner must document the ongoing contact hours of therapeutic treatment as required by this chapter.

009. PUBERTY BLOCKING DRUGS WAITING PERIOD. A minimum waiting period of seven calendar days is required between the time the prescribing practitioner obtains informed patient consent and the time the puberty-blocking drugs are prescribed, administered, or delivered to a patient who has not reached the age of majority.

010. USE OF CROSS-SEX HORMONES. Prior to prescribing, dispensing, or administering cross-sex hormones for the treatment of gender nonconformity or gender dysphoria, prescribing practitioners must meet the following:

(A) Obtain three hours of Category 1 Continuing Competency Education for prescribing drugs for the purpose of treating gender nonconformity or gender dysphoria within the most recent biennial renewal period;

(B) Determine or document:

(i) Puberty blocking treatment, if occurring, has been successful at reducing patient distress and discomfort;

(ii) That gender nonconformity or gender dysphoria is driving the patient's distress and not other mental or physical health conditions, that there is no reasonable expectation of natural resolution of gender nonconformity, and that there has been a long-lasting and intense pattern of gender nonconformity or gender dysphoria which began or worsened at the start of puberty;

(iii) There is an expectation of increased distress if puberty blocking treatment is terminated or cross-sex hormone treatment is not initiated;

(iv) Cross-sex hormones would be effective and are not likely to negatively impact, or exacerbate other mental or physical health conditions;

(v) The patient has received at least 40 contact hours of therapeutic treatment as required by this chapter;

(vi) The patient has at least six consecutive months of living primarily as the preferred gender and has continued living primarily as the preferred gender;

(vii) For individuals not suffering from gender dysphoria or for whom a clinical diagnosis of gender dysphoria is not available, documentation that without cross-sex hormone treatment the patient will experience harm; and

(viii) The appropriate supports are in place for the patient including appropriate social, and familial support prior to initiating cross-sex hormone treatment;

(C) Discuss the following with the patient and parent or legal guardian or the patient, if the patient is an emancipated minor:
  (i) The recommended dosage and route of treatment for the cross-sex hormones; and
  (ii) The minimum waiting period of seven calendar days as required by this chapter;
(D) Obtain signed informed consent and patient assent as required by this chapter; and
(E) Document all the foregoing in the patient's medical record.

011. PATIENT INFORMED CONSENT FOR CROSS-SEX HORMONE TREATMENT. A patient consent form must be obtained by the prescribing practitioner and include the following, in addition to information otherwise required in a consent form:
(A) Discussion of appropriateness of care has taken place;
(B) All the known side effects of cross-sex hormone, the risks associated with taking them and the risks associated with discontinuing the treatment including, but not limited to, long-term effects on cardiovascular and cerebrovascular systems, metabolic disorders, increased risk of cancer, bone density, brain development, impact on fertility, sexual side effects including, but not limited to, loss of sexual gratification, and effects upon physical growth and development;
(C) List of alternatives to treatment including, but not limited to, social, behavioral, and physical alternatives, and that these alternatives have been discussed with the patient and parent or legal guardian or the patient, if the patient is an emancipated minor;
(D) Signed consent of a parent or legal guardian or the signed consent of the patient, if the patient is an emancipated minor;
(E) When the patient is an unemancipated minor, patient assent to treatment; and
(F) Whether the medication is being prescribed for off-label use or otherwise not approved by the Food and Drug Administration.

012. CROSS-SEX HORMONE PRESCRIPTIONS. The following restrictions apply for a patient who has not reached the age of majority in addition to all other applicable laws relating to the administration, prescribing, delivery, sale, or use of cross-sex hormones:
(A) Prescriptions must identify the drugs being prescribed are for the treatment of gender nonconformity or gender dysphoria
(B) Prescribed medications picked up from a pharmacy are required to be picked up by the patient's parent, legal guardian, or the patient if the patient is an emancipated minor; and
(C) Injectable prescribed medications must be administered in the prescriber's office by staff who are properly credentialed to administer drugs by injection;
(D) The prescribing practitioner must document no adverse effects on the patient's mental health during the course of treatment and that continued treatment is still medically appropriate as required by the chapter; and
(E) The prescribing practitioner must document the ongoing contact hours of therapeutic treatment as required by this chapter.

013. CROSS-SEX HORMONES WAITING PERIOD. A minimum waiting period of seven calendar days is required between the time the prescribing practitioner obtains informed patient consent and the time the cross-sex hormones are prescribed, administered, or delivered to a patient who has not reached the age of majority.

014. EXEMPTIONS. This chapter does not apply to the use of approved treatments for precocious puberty, or for treatments exempted in the Let Them Grow Act. A patient who has not reached the age of majority who began using puberty blocking drugs prior to October 1, 2023, but did not begin using cross-sex hormones prior to October 1, 2023, must comply with the requirements of this chapter prior to receiving cross-sex hormones.

015. COMPLIANCE. A prescriber who complies with this chapter satisfies the requirements of Neb. Rev. Stat. § 71-7304(4).