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The proposed draft rules published by the Ohio Department of Health (ODH) 3701-3-17¹ outline extreme reporting requirements for physicians providing gender affirming care that will make data misreporting likely and overcomplicate providing safe, best practice medical care for adults². Most importantly, the data tracking requirements presented are purposefully malicious and built to create a narrative surrounding de-transition/re-transition that is not supported by other evidence³. The proposed rule mandates the reporting of private, *protected health information* and *medical records* of Ohioans to the public, violating both State and Federal law.

The data reporting requirements outlined in the rule require ODH to report any diagnosis or treatment of transgender adults in Ohio within 30 days, including any prescription, visit with a provider, or maintenance of regular medical care. The department also requires any treatment cessation be reported during the same period, the reason for the change, and a plan of de-transition.

However, this data collection is flawed in several ways. First, the department's proposed definition of sex within the rule will limit the department's ability to accurately collect data, since the definition explicitly excludes gender diversity, transgender individuals, non-binary individuals, and intersex people. This will lead to misclassification of individuals in the population, particularly those whose medical and legal records have already been updated to match their gender identity. Second, ceasing treatment or changing treatment is **not** an indicator of a person's gender identity. Pausing treatment, changing providers, and adjusting a person's dosage is common for a multitude of reasons, including insurance changes, relocation, changes in a person's medical history outside of their transition, side effects, and other natural changes over the course of a person's treatment.

A study from 2021⁴ showed that people who do cease treatment typically have an external reason for doing so, such as family pressure, securing employment, or societal reasons. Most people who meet the definition of 'de-transitioning' - or

¹ Proposed Rule 3701-3-17, Ohio Department of Health 2024. Can be found at:

https://odh.ohio.gov/wps/wcm/connect/gov/9b217d95-bcc9-483f-8771-f4786bb93b56/Post+for+Public+Comment+3%2C+59%2C+83.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=RO_OTWORKSPACE.Z18_M1HGGIK0N0JO00QO9DDDDM3000-9b217d95-bcc9-483f-8771-f4786bb93b56-oPs34Gv

² Matouk and Wald (2022). Gender Affirming Care Saves Lives. Columbia University. Can be found at:

<https://www.columbiapsychiatry.org/news/gender-affirming-care-saves-lives>

³ James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). The Report of the 2015 U.S. Transgender Survey. Washington, DC: National Center for Transgender Equality. Can be found at:

<https://transequality.org/sites/default/files/docs/usts/USTS-Full-Report-Dec17.pdf>

⁴ Turban, J. L., Loo, S. S., Almazan, A. N., & Keuroghlian, A. S. (2021). Factors leading to "detransition" among transgender and gender diverse people in the United States: a mixed-methods analysis. *LGBT health*, 8(4), 273-280. Can be found at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8213007/>

pausing or stopping medical treatment related to gender affirming care – still identify as transgender⁵ or continue to seek medical care later. Simply, being transgender is a diverse experience that includes both binary (Male to Female) and Non-Binary (gender diverse) experiences that often requires exploration with the help of a medical provider over time. But the proposed rules would count all of these situations as signs of detransition in their data collection, possibly creating trends where there are none. In **no other situation** would we use a change in someone's dosage or trying a different medication as an indication that someone is no longer receiving treatment for a diagnosis.

De-transition remains rare overall. One study from 2022 published by the American Academy of Pediatrics found that the vast majority of youth in the study (94%) who transitioned still identified as transgender 5 years later, with only 1.3% of patients in study returning to their assigned sex at birth and others settling on a non-binary identity⁶. This doesn't mean that de-transition doesn't take place or that people who de-transition shouldn't be provided support services, but it does mean that it shouldn't be the centerpiece of the department's data collection efforts.

The medical information being requested by the department is also troubling. Asking medical providers to share information like the medication a patient is taking, their diagnosis, their provider, and other personal health information with health departments and the legislature is a violation of individual medical privacy that goes well beyond what's typically aggregated for the department of health, especially in terms of what's considered *protected health information*⁷.

*Protected health information*⁸ is defined as "information, in any form, including oral, written, electronic, visual, pictorial, or physical that describes an individual's *past, present, or future physical or mental health status or condition*, receipt of treatment or care, or purchase of health products." While there is an exemption⁹ for information that "the (health) director determines...is necessary, based on an evaluation of relevant information, to avert or mitigate a clear threat to an individual or to the public health." The section states that the medical information may then "be released...only to those persons or entities necessary to control, prevent, or mitigate disease." However, *gender dysphoria* or a *gender-related condition* does not meet these criteria, because being transgender is not a disease nor a clear threat to public health. Given the detail of the data being provided to the health department, including intimate details like age, medications, providers,

⁵ Alfonseca, K. (2022). Former Detransitioner Fights Anti-Transgender Movement. ABC News. Can be found at: <https://abcnews.go.com/US/former-detransitioner-fights-anti-transgender-movement-backed/story?id=92597182>

⁶ Olson, K. R., Durwood, L., Horton, R., Gallagher, N. M., & Devor, A. (2022). Gender identity 5 years after social transition. *Pediatrics*, 150(2). Can be found at: <https://publications.aap.org/pediatrics/article/150/2/e2021056082/186992/Gender-Identity-5-Years-After-Social-Transition?autologincheck=redirected>

⁷ ORC Sec. 3701.17 (A)(2)

⁸ **Ibid.**

⁹ ORC Sec. 3701.17 (B)(4)

and other information, it's likely the data being provided falls under the definition of protected health information.

In relation to *public records*¹⁰, the current definition of public records as outlined in the ORC exempts medical records. *Medical record*¹¹ is defined to mean any document or combination of documents...that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment. Additionally, *protected health information (PHI)*¹², as also defined in Federal Law¹³, defines PHI as “a claim for payment for a health care product, service, or procedure, as well as any other health claims data in another document that reveals the identity of an individual who is the subject of the data or *could be used to reveal that individual's identity.*” Once again, due to the specificity of the data, such as age, a person's individual care plan, medication dosage, sex, and other characteristics being reported, the risk of *data triangulation*, or matching multiple sources of data together to identify someone, is extremely high given the small population size, especially in rural regions of the state.

Given these existing State and Federal laws, the extensive nature of the records being reported should be called into question. The proposed rule specifically states that the records being reported will be released to the general assembly and the public twice a year. While the following line in the proposed rule specifies that the information shared must adhere to the already existing statute about *protected health information*, given the nature and specificity of that data, it will be impossible to comply. The government interest in collecting the medical information of transgender people in Ohio to this level of detail is zero, and it should not supersede Ohioans medical privacy.

¹⁰ ORC Sec. 149.43 (A)(1)(a) “Medical Records”

¹¹ ORC Sec. 5120.21 (C)(1), ORC Sec. 3701.74 (A)(8)

¹² ORC Sec. 149.43 (A)(1)(hh)

¹³ 45 C.F.R. 160.103