



June 27, 2017

Via U.S. Mail and Electronic Mail

Board President
Pullman Regional Hospital
835 SE Bishop Blvd
Pullman, WA. 99163

Mr. Scott Adams
Chief Executive Officer
Pullman Regional Hospital
835 SE Bishop Blvd
Pullman, WA. 99163

Re: Pullman Regional Hospital – Discrimination Against Transgender People

AMERICAN CIVIL
LIBERTIES UNION
OF WASHINGTON
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SEATTLE, WA 98164
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JEAN ROBINSON
BOARD PRESIDENT

KATHLEEN TAYLOR
EXECUTIVE DIRECTOR

Dear Commissioners and Mr. Adams:

The ACLU of Washington writes to express our concern that Whitman County Public Hospital District #1-A (d/b/a Pullman Regional Hospital (hereinafter “PRH”), is discriminating against transgender individuals in violation of both state and federal law.

On June 9, 2017 PRH announced it was accepting public comment “regarding the performance of gender reassignment surgery at PRH.”¹ The assumed purpose of the request for comments is for PRH to determine whether or not it should provide gender reassignment surgeries (hereinafter referred to as “gender confirming surgeries”). It is our understanding that it is not the public hospital district’s general practice to solicit public comment when a new service is added at the hospital.²

PRH’s request for public comment itself constitutes discrimination, as PRH is treating transgender patients and their health care differently than it treats other patients and their health care. We strongly recommend that PRH retracts its request for public comment.

Further, if PRH adopts a policy or practice of refusing to provide gender confirming surgeries, PRH will be discriminating on the basis of sex and sexual orientation. To

¹‘Gender reassignment’ or ‘gender confirming’ surgeries, encompass a wide range of surgeries including but not limiting to: mastectomies, vaginoplasty, chest reconstructive surgery, body contouring, and rhinoplasty (to name just a few). It is our understanding that in the past PRH allowed some gender confirming surgeries to be provided at the hospital and that the only brand new service to be performed at PRH would be vaginoplasty. As requested by PRH, our comments address gender confirming surgery as a whole but it is noteworthy that the same arguments apply if the hospital is only considering gender confirming vaginoplasty procedures.

² We have spoken with multiple providers at PRH who confirmed that it is not common practice for the hospital to solicit public comment prior to offering a new service.

comply with the law and fulfill its duty to provide access to health care, we urge PRH to allow its providers to provide (and to be trained to provide) safe, effective, medically necessary health care.

PRH is currently discriminating against and contemplating further discrimination against transgender people

The Washington Law Against Discrimination (“WLAD”) enshrines the right of transgender people to be free from discrimination.³ The WLAD explicitly prohibits discrimination in places of public accommodation such as hospitals.⁴ Acts “which directly or indirectly result[] in any distinction, restriction, or discrimination” of transgender people constitute an unfair practice in violation of the WLAD.⁵ As a public hospital district, PRH is also bound by the Washington State Constitution which, under the Equal Rights Amendment, bars discrimination on the basis of sex.

Federal law also prohibits PRH’s actions. Under Section 1557 of the Affordable Care Act, any entity that receives federal funds is barred from discriminating based on sex.⁶ Sex discrimination includes discrimination based on a person’s gender identity or transgender status.⁷ Further, the United States Constitution’s guarantee of equal protection prohibits government actors, such as PRH, from discriminating against people based on their transgender status or gender transition.⁸

Thus, in singling out for public comment the decision to provide gender confirming surgeries, PRH is violating both state and federal law. Further, if PRH decides to adopt a policy or practice of not providing gender confirming surgeries – medically necessary health care for many transgender people – it will again be discriminating on the basis of sex and sexual orientation.

Moreover, many of the surgeries that fall under the category of gender confirming surgeries are also surgeries that cisgender (non-transgender) people may seek.⁹ To the extent that PRH provides surgical procedures to cisgender people but refuses to provide similar surgical procedures to transgender people PRH will be further discriminating under the law.

³ See RCW 49.60.030(1)(establishing the right to be free from discrimination because of sexual orientation); see also RCW 49.60.040(26) (defining ‘sexual orientation’ to include “gender expression or identity”).

⁴ See RCW 49.60.215.

⁵ *Id.*

⁶ See 42 U.S.C. § 18116.

⁷ See *Rumble v. Fairview Health Servs.*, 14-CV-2037 SRN/FLN, 2015 WL 1197415, at *10 (D. Minn. Mar. 16, 2015).

⁸ See *Glenn v. Brumby*, 663 F.3d 1312 (11th Cir, 2011) (“discrimination against a transgender individual because of her gender nonconformity is sex discrimination, whether it’s described as being on the basis of sex or gender.”).

⁹ *E.g.* a ciswoman (a non-transgender woman) with breast cancer may seek a mastectomy followed by breast augmentation, a cismale may seek a rhinoplasty for aesthetic purposes. Vaginoplasty procedures may be performed to repair a vagina or correct genital defects.

PRH is perpetuating stigma and discrimination against transgender people

It is well documented that transgender people experience widespread prejudice and discrimination. A comprehensive survey of over 27 000 transgender individuals found that in the year prior to completing the survey, 46% of respondents were verbally harassed and 9% were physically attacked because of being transgender.¹⁰

PRH, by treating transgender people and their health care differently than it treats other people and their health care perpetuates existing stigma and discrimination. PRH is essentially labeling transgender people as “others” who do not deserve to receive medically necessary health care unless the community is “comfortable” with it. Such policies convey the hospital’s judgment that transgender people are different and deserve inferior treatment.

Treating transgender individuals differently than other people can cause significant harm. The same survey found that 40% of respondents reported a suicide attempt – a rate nine times that of the general population.¹¹ Indeed, the American Psychological Association has concluded, “the notable burden of stigma and discrimination affects minority persons’ health and well-being and generates health disparities.”¹²

PRH is soliciting public comment on and considering refusing to provide a medically necessary health care service that is difficult, if not impossible, to access in Washington state

Gender dysphoria is the medical diagnosis for a person whose gender identity is not aligned with the sex they were assigned at birth.¹³ Many transgender people experience gender dysphoria which can cause profound and clinically significant distress. According to the American Medical Association (“AMA”), if gender dysphoria is left untreated, it can lead to serious medical problems including “clinically significant psychological distress, dysfunction, debilitating depression and, for some people without access to appropriate medical care and treatment, suicidality and death.”¹⁴

¹⁰ James et al., Nat’l Center for Transgender Equality, Report of the 2015 U.S. Transgender Survey, p. 3,13 *available at* <http://www.transequality.org/sites/default/files/docs/usts/USTS%20Full%20Report%20-%20FINAL%201.6.17.pdf>.

¹¹ *Id.* at 114.

¹² APA/NASP Resolution on Gender and Sexual Orientation Diversity in Children and Adolescents in Schools, *available at* <http://www.apa.org/about/policy/orientation-diversity.aspx>.

¹³ *See, e.g.*, Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition; *see also* American Psychiatric Association, “Gender Dysphoria,” *available at* https://www.psychiatry.org/File%20Library/Psychiatrists/Practice/DSM/APA_DSM-5-Gender-Dysphoria.pdf.

¹⁴ American Medical Association House of Delegates, “Removing Financial Barriers to Care for Transgender Patients,” Resolution 122, A-08 (2008), *available at* http://www.tgender.net/taw/ama_resolutions.pdf.

The widely accepted standards of care for treating gender dysphoria are published by the World Professional Association for Transgender Health.¹⁵ These treatment protocols include gender-confirming surgery that aligns a person's body to their gender identity. Medical professional organizations including the AMA have concluded that such procedures are medically necessary and effective treatments of gender dysphoria for some individuals.¹⁶

While gender confirming surgeries are recognized as medically necessary care, it is still difficult for transgender people to obtain these surgeries in Washington state and across the country. Discriminatory health insurance policies and a lack of surgeons in Washington state results in many transgender patients being required to leave the state, travel long distances, and wait years before obtaining medically necessary care. Indeed, the provider at PRH who is being trained to provide gender confirming vaginoplasty procedures will be the first surgeon in Washington state to provide this needed surgical service.

The ACLU of Washington regularly receives complaints from transgender individuals who have been denied health care services or health care coverage. Specifically in Pullman, health care providers have advised that patients have had to travel to Oregon, Idaho, Colorado, and even Thailand to obtain care, and that wait times for surgeries can be up to two years.

A hospital's provision of a medically necessary health care service for an underserved population should not be contingent upon public opinion. As a public hospital district serving the residents of Washington state it is critical that PRH retract its request for comments and provides accessible health care services in a nondiscriminatory manner.

Sincerely,



Leah Rutman
Policy Counsel

¹⁵ Coleman, et al., *WPATH Standards of Care for the Health of Transsexual, Transgender, and Gender-Nonconforming People* (7th ed. 2011), available at http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1347&pk_association_webpage=4233.

¹⁶ *Supra* note 14.