



[Submitted Via E-mail]

April 6, 2017

Re: Access to Habilitation Services and Devices under the American Health Care Act

Dear Member of Congress:

The undersigned organizations are writing as members of the Habilitation Benefits (HAB) Coalition to continue to express our deep concern about repealing key provisions of the Affordable Care Act (ACA) that would limit access to habilitation services and devices for children and adults under Medicaid expansion and, as proposed in more recent discussions, in ACA insurance plans. The HAB Coalition is a group of national nonprofit consumer and clinical organizations focused on securing appropriate access to, and coverage of, habilitation benefits within the statutory Essential Health Benefits (EHB) category known as “rehabilitative and habilitative services and devices” under Section 1302 of the ACA.

We last wrote to you on March 3, 2017 expressing the importance of maintaining access to habilitation services and devices in any ACA repeal and replace bill that advanced in the House and Senate. Soon thereafter, the American Health Care Act (AHCA) (which would later become H.R. 1628) was released and included a provision that repealed the EHB package for Medicaid expansion enrollees. The bill also modified the actuarial value requirements of the EHB package under ACA private plans. The HAB Coalition was alarmed by these proposals because they undercut the federal coverage standard for habilitation benefits responsible for a dramatic increase in access to these benefits for beneficiaries and enrollees across the country.

The HAB Coalition continues to have significant concerns with the most recent proposals to amend the AHCA. We understand that House Republicans are considering waiving federal EHB requirements entirely and delegating to states the determination of the scope of essential health benefits. There is little doubt under this scenario that access to habilitation services and devices will suffer in many areas of the country. Americans needing habilitation services and devices rely on their health care coverage to acquire skills and functions never developed due to disability. Habilitation assists these individuals in maintaining their health and function, and living as independently as possible. Often skills acquired through habilitation services and devices lead to breakthroughs in functional ability that would not have been possible without access to timely and appropriate habilitation benefits. This reduces long-term disability and dependency costs to society.

For these reasons, the HAB Coalition strongly urges Congress to maintain the federal standard for EHB coverage, specifically, coverage of rehabilitative and habilitative services and devices, in any ACA repeal and replace legislation that is advanced in the future.

Definition of Habilitation Services and Devices

The ACA created in statute the EHB category of “rehabilitative and habilitative services and devices.” ACA, Section 1302 (b). In the February 2015 Benefit and Payment Parameters Final Rule, the Centers for Medicare and Medicaid Services (CMS) defined “habilitation services and devices” using the definition of “habilitation services” from the National Association of Insurance Commissioners’ *Glossary of Health Coverage and Medical Terms*¹ plus explicitly adding habilitation devices, as follows:

“Habilitation services and devices— Cover health care services and devices that help a person keep, learn, or improve skills and functioning for daily living. Examples include therapy for a child who is not walking or talking at the expected age. These services may include physical and occupational therapy, speech-language pathology, and other services for people with disabilities in a variety of inpatient and/or outpatient settings.”²

This definition is a floor for individual insurance plans sold under the ACA exchanges. It was also adopted by states that chose to expand their Medicaid programs. For the first time, this definition established a uniform, understandable federal definition of habilitation services and devices that became a standard for national insurance coverage. We stress that this definition is a floor for coverage and includes both habilitative *services* and habilitative *devices*. The services and devices covered by the habilitation benefit should not be limited to the therapies enumerated in the federal regulation which are listed as *examples* of covered benefits.

In addition to the regulatory definition cited above, examples of these types of services typically provided under this benefit include rehabilitation medicine, behavioral health services, recreational therapy, developmental pediatrics, psychiatric rehabilitation, and psycho-social services provided in a variety of inpatient and/or outpatient settings. These services should be provided based on the individual’s needs, prescribed in consultation with a clinician, and based on the assessment of an interdisciplinary team and resulting care plan.

The HAB Coalition supports the preservation of the EHB category of “rehabilitative and habilitative services and devices,” and the subsequent regulatory definition and related interpretations duly promulgated, as a federal standard of coverage for habilitation under any version of ACA replacement legislation. The HAB Coalition believes that adopting the uniform federal definition of habilitation services and devices minimizes the variability in benefits across states and uncertainty in coverage for children and adults in need of habilitation.

Conclusion

Habilitation services and devices maximizes the health, function, and independence of children and adults with disabilities. The undersigned members of the HAB Coalition firmly believe that failing to replace the Affordable Care Act in a manner that would preserve access to habilitative services and devices would turn back the clock on children and adults with disabilities and chronic, progressive conditions.

¹ <https://www.cms.gov/CCIIO/resources/files/downloads/uniform-glossary-final.pdf>.

² <http://www.gpo.gov/fdsys/pkg/FR-2015-02-27/pdf/2015-03751.pdf>, at 10871.

Thank you for your willingness to consider our views. Should you have further questions regarding this information, please contact Peter Thomas or Steve Postal, HAB Coalition coordinators, by emailing Peter.Thomas@powerslaw.com or Steve.Postal@powerslaw.com, or by calling 202-466-6550.

Sincerely,

ACCSES

American Academy of Pediatrics

American Academy of Physical Medicine and Rehabilitation

American Association on Health and Disability

American Cochlear Implant Alliance

American Occupational Therapy Association

American Music Therapy Association

American Network of Community Options and Resources

American Physical Therapy Association

American Speech-Language-Hearing Association

American Therapeutic Recreation Association

The Arc of the United States

Beckett Family Consulting

Brain Injury Association of America

Christopher & Dana Reeve Foundation

Easterseals

Family Voices

Hearing Loss Association of America

Lakeshore Foundation

Legal Action Center

National Association for the Advancement of Orthotics and Prosthetics

National Association for Rural Mental Health

National Association of County Behavioral Health & Developmental Disability Directors

National Stroke Association

Paralyzed Veterans of America

TASH

United Cerebral Palsy

United Spinal Association