



April 6, 2021

The Honorable Xavier Becerra
Secretary
U.S. Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201

RE: Introduction to the Habilitation Benefits Coalition (HAB)

Dear Secretary Becerra:

On behalf of the Habilitation Benefits Coalition (HAB), we write to congratulate you on the new role, and to introduce ourselves as a resource for matters involving essential health benefits (EHB) under the Affordable Care Act (ACA), particularly regarding habilitative services and devices.

The HAB Coalition membership, listed below, includes national nonprofit consumer and clinical organizations focused on securing and maintaining appropriate access to, and coverage of, habilitation benefits within the category known as “rehabilitative and habilitative services and devices” in the EHB package under existing federal law. The HAB Coalition has worked hard over the past several years to ensure full and appropriate implementation of the ACA’s reforms at the federal and state levels with the ultimate goal of eliminating decision-making based on health status in the individual and small group markets, which disproportionately impacts people with disabilities and chronic conditions. For additional information about the HAB Coalition, please visit our website at: <https://habcoalition.wordpress.com/>.

We look forward to working with your Department and the Biden-Harris Administration to ensure that habilitative benefits remain covered under the EHB package, and to maintain access to EHBs for all Americans.

What is Habilitation?

Habilitation services are provided by appropriately credentialed (licensed, accredited, and certified) providers to individuals with many types of developmental, cognitive, physical, and mental conditions that, in the absence of such services, prevent those individuals from acquiring certain skills and functions over the course of their lives. Habilitation services are closely related to rehabilitation services, although there are key differences between the two. Whereas



rehabilitation services are provided to help a person regain, maintain, or prevent deterioration of a skill that has been acquired but then lost or impaired due to illness, injury, or disabling condition, *habilitation services* are provided in order for a person to attain, maintain, or prevent deterioration of a skill or function never learned or acquired due to a disabling condition.

The types of habilitation services and devices include, but are not limited to, physician services; physical therapy; occupational therapy; speech, language and hearing therapies; recreational therapy; music therapy and cognitive therapy for people with brain injuries and other conditions; psychiatric, behavioral and other developmental services and supports; durable medical equipment (DME), including complex rehabilitation technologies; orthotics and prosthetics; low vision aids; hearing aids, cochlear implants, and augmentative communication devices; and other assistive technologies and supplies. Habilitation services:

- Improve long-term function and health status and improve the likelihood of independent living and quality of life;
- Halt or slow the progression of primary disabilities by maintaining function and preventing further deterioration of function;
- Enable persons with developmental, intellectual, physical or cognitive impairments to improve cognition and functioning through appropriate therapies and assistive devices.

Definition of Habilitative Services and Devices

The ACA created in statute the EHB category of “rehabilitative and habilitative services and devices.” In the February 2015 Notice of Benefits 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 and explicitly added 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

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.

Prior to the ACA, coverage of habilitative services and devices was not mandated in federal law as medically necessary and most health plans did not cover habilitation services and devices. In fact, only a few states had adopted a habilitative services mandate in the individual market. This

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.



lack of coverage contributed to significant downstream costs to the health care system for unnecessary disability and dependency. Enactment of the EHB package dramatically impacted access to habilitation for children and adults in need of these services and devices. Since the enactment of the EHBs, the clinical, as well as the economic value of habilitative and rehabilitative services has been widely acknowledged.

Need for a Strong Federal Coverage Standard

The HAB coalition strongly 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. 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.

Furthermore, the HAB coalition is supportive of regulatory efforts that have a positive impact on habilitation coverage, including rolling back federal rules and guidance that allow cheaper, lower quality insurance such as short-term, limited-duration and employer association health plans that do not guarantee coverage of the EHB package. In particular, we request that CMS:

- Rescind the codification of the 2018 Section 1332 State Relief and Empowerment Waiver Concepts Guidance, which changed statutory guardrails so that waivers will now be evaluated based on whether state residents have *access* to comprehensive coverage, not by the coverage that plans actually provide. Relaxation allows states to implement less comprehensive plan offerings, including short-term limited-duration insurance (STLDI) and association health plans (AHPs), which ultimately will have significant and negative implications for some consumers, mainly individuals who have pre-existing conditions, chronic conditions, or disabilities.
- Remove benchmark plan selection flexibilities, including those laid out in the 2019 Notice of Benefit and Payment Parameters Regulation that allow states to select another state’s EHB plan or replace one or more EHB categories. These changes will allow states to select a more limited benefit package, rather than the current benefit standard in their state’s benchmark plan. These decisions may be made without sufficient regard to those in need of habilitative services and devices in their state.

We encourage the review of administrative actions to date that may have the potential to reduce access to, and coverage of habilitative services and devices and to consider modifications to existing regulations to ensure a strong coverage standard.



The HAB coalition looks forward to working with you and your staff in the coming years. If we can be of any assistance, please do not hesitate to contact the HAB coordinators, Peter Thomas, and Taryn Couture, at 202-466-6550 or by email at Peter.Thomas@PowersLaw.com and Taryn.Couture@PowersLaw.com.

Sincerely,

The Undersigned Members of the HAB Coalition

ACCSES

American Academy of Physical Medicine and Rehabilitation

American Association on Health and Disability

American Cochlear Implant Alliance

American Heart Association

American Music Therapy Association

American Network of Community Options and Resources

American Occupational Therapy Association

American Physical Therapy Association

American Speech-Language-Hearing Association

American Therapeutic Recreation Association

Association of Maternal and Child Health Programs

Association of University Centers on Disabilities

Brain Injury Association of America

Children's Hospital Association

Christopher & Dana Reeve Foundation

Clinician Task Force

Family Voices

Hearing Loss Association of America

Lakeshore Foundation

National Association for the Advancement of Orthotics & Prosthetics

National Association of Social Workers

National Down Syndrome Society

The Arc of the United States

United Cerebral Palsy