



July 30, 2021

The Honorable Patty Murray
Chair
Senate Committee on Health, Education, Labor
and Pensions
United States Senate
Washington, DC 20510

The Honorable Frank Pallone, Jr.
Chairman
House Committee on Energy and Commerce
United States House
Washington, DC 20515

VIA ELECTRONIC SUBMISSION

**RE: Public Comments on Design Considerations for Legislation to Develop
a Public Health Insurance Option**

Dear Chair Murray and Chairman Pallone:

The undersigned members of the Habilitation Benefits (HAB) Coalition write to offer our assistance and expertise as you embark upon legislative efforts to establish a federally administered public health insurance option.

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 essential health benefits (EHB) package under existing federal law. The HAB Coalition has worked consistently over the past several years to promote 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/>.

As you consider key components of possible legislation to create a public option we believe it is critically important that you ensure that all essential health benefits (EHBs), and in particular habilitation services and devices are included.

Habilitation Services and Devices and their History as Essential Health Benefits

Habilitation services and devices 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.

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 for 2016 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.

Essential Health Benefits and Structuring the Public Health Insurance Option

As you develop and outline the structure for possible legislation establishing a public health insurance option, the HAB Coalition encourages you to include coverage of EHBs, in particular habilitation benefits, in any final proposal. Through the ACA, individuals and families have come to rely on coverage of habilitation services and devices by their plans. Enactment of the EHB package dramatically impacted access to habilitation for children and adults in need of these services and devices. Coverage gains for habilitation services and devices were hard fought but necessary to meet the needs of a wide variety of children and adults with autism, cerebral palsy, congenital deficits, disabilities, and other chronic and progressive conditions. It is important that these habilitation services and devices are covered through any new healthcare option.

While essential to supporting individuals with disabilities and other chronic and progressive conditions, rehabilitative and habilitative care also accounts for a small fraction of overall health care spending. A study of “silver” marketplace plans³³ found that these services represent only one percent of an average premium cost (approximately \$84 annually) but provide return to function, productivity, and health. Habilitation benefits will also help to achieve cost savings in the long term as they often prevent further complications and avoidable hospital admissions and readmissions.

Habilitation services and devices are highly cost-effective and decrease downstream costs to the health care system and society at large for unnecessary disability and dependency. For these reasons, it is essential that any public option maintain access to the full continuum of habilitation care through access to and coverage of essential health benefits.

Furthermore, any possible legislation establishing a public option should also include the same nondiscrimination provisions as outlined in Section 1557 of the ACA. These provisions should ensure parity across the categories of EHBs and prevent the Secretary of the Department of Health and Human Services (HHS) from making coverage decisions, determining reimbursement rates, establishing incentive programs, or designing benefits in ways that discriminate against individuals because of disability. Given historic patterns of discriminatory benefit plan design in the area of habilitative services and devices, we encourage any public option to also require key antidiscrimination provisions.

Conclusion

³³ https://www.rwjf.org/en/library/research/2020/11/the-implications-of-eliminating-essential-health-benefits--an-update.html?cid=xem_other_unpd_ini:quickstrike_dte:20201116_des:ehb.

The undersigned members of the HAB Coalition firmly believe that any legislative effort to introduce a public health insurance option should ensure full coverage of habilitation services and devices without arbitrary limits, as defined by the 2016 Notice of Benefits and Payment Parameters Final Rule and subsequent rulemaking. Habilitation services and devices maximize the health, function, and independence of children and adults with disabilities, and prevents expensive downstream healthcare costs. Ensuring coverage of habilitation services will ensure access to coverage of these crucial services and devices for individuals who need it and limit healthcare costs, both core components for measuring the strength of any public health insurance option.

Thank you for this opportunity to provide input as you consider possible legislation on a public option. 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 Music Therapy Association

American Occupational Therapy Association

American Speech-Language-Hearing Association

American Therapeutic Recreation Association

Brain Injury Association of America

Children's Hospital Association

Christopher & Dana Reeve Foundation

Lakeshore Foundation

National Association for the Advancement of Orthotics & Prosthetics