



August 27, 2010

Submitted via the Federal eRulemaking Portal: <http://www.regulations.gov>

Department of Labor
Employee Benefits Security Administration
Office of Health Plan Standards and Compliance Assistance
Room N-5653
200 Constitution Avenue, NW
Washington, DC 20210
Attention: RIN 1210-AB43

Department of Health and Human Services
Office of Consumer Information and Insurance Oversight
Department of Health and Human Services
Room 445-G
Hubert H. Humphrey Building
200 Independence Avenue, SW
Washington, DC 20201
Attention: OCIO-9994-IFC

Department of the Treasury
Internal Revenue Service
Room 5205
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044
Attention: CC:PA:LPD:PR (REG-120399-10)

Re: Patient Protection and Affordable Care Act: Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, and Patient Protections

Dear Sir or Madam:

Autism Speaks is the nation's largest autism science and advocacy organization, dedicated to funding research, increasing awareness, and advocating on behalf of affected individuals and their families. We write to comment on the Patient Protection and Affordable Care Act: Preexisting Condition Exclusions, Lifetime and Annual Limits, Rescissions, and Patient Protections interim final rules, which were published on June 28, 2010, at volume 75, page 37,188 of the *Federal Register*.

Autism Speaks is a member organization of the Consortium for Citizens with Disabilities (CCD). CCD has commented on the interim final rules, applauding their issuance as an important step forward in protecting consumers against some of the most harmful practices within the private insurance market. We agree with CCD's comments, and write here separately to focus on a matter of special importance to the autism community, the status under the interim final regulations of applied behavior analysis, a common behavioral therapy for individuals with autism.

Section 2711 of the Public Health Service Act, as added by the Affordable Care Act, and the interim final rules generally prohibit group health plans and health insurance issuers offering group or individual health insurance coverage from imposing lifetime or annual limits on the dollar value of health benefits. The statute and the regulations, however, permit dollar limits on specific covered benefits that are not essential health benefits, but only to the extent that such limits are otherwise permitted under applicable federal or state law. The interim final regulations define "essential health benefits" by cross-reference to section 1302(b) of the Affordable Care Act and applicable regulations. Section 1302(b) defines essential health benefits to "include at least the following general categories and the items and services covered within the categories: ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance use disorder services, including behavioral health treatment; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services and chronic disease management; and pediatric services, including oral and vision care." For plan years (or policy years in the individual market) beginning before January 1, 2014, the statute and the regulations allow "restricted annual limits" on the dollar amount of essential health benefits. The interim final regulations establish that the limit can be no less than \$750,000 for a plan year beginning on or before September 23, 2010, but before September 23, 2011; subsequent plan years have higher limits.

Regulations under section 1302(b) of the Affordable Care Act have not yet been issued, so the status of particular benefits may at present be in some doubt. The interim final rules provide that until these regulations are issued, good faith efforts to comply with a reasonable interpretation of the term "essential health benefits" will be taken into account.

Autism Speaks believes that in the interim period before regulations under section 1302(b) of the Affordable Care Act are issued, a plan or issuer that covers applied behavior analysis, a treatment that "encourages positive behaviors and discourages negative behaviors in order to improve a variety of skills,"¹ must treat it as an essential health benefit. The legislative history of section 1302(b) dictates this result. On September 24, 2009, during the Senate Finance

¹ Centers for Disease Control and Prevention, Autism Spectrum Disorders (ASDs) Treatment, <http://www.cdc.gov/ncbddd/autism/treatment.html> (accessed Aug. 26, 2010).

Committee's Executive Session to Consider an Original Bill providing for Health Care Reform, Senator Robert Menendez proposed Amendment C-9 to the Chairman's Mark of America's Healthy Future Act. Senator Menendez made the following statement regarding his amendment:

Mr. Chairman, I'm offering a modified amendment that would clarify in the mark that behavioral health treatment is part of mental health and substance abuse services.

Behavioral health treatments help to reinforce wanted behaviors and reduce unwanted behaviors, and the treatments are critical for individuals affected by autism, Down Syndrome, and a variety of other disorders.

They can help a child to communicate and care for themselves; they can help that child from -- stop him from hitting himself and those around him; they can enable a child to attend regular education classes, rather than special education classes; they can enable a child to live at home, rather than an institution.

All of these alternatives save money in the long run, and this is an effort to decrease long-term health care costs.

As modified, the amendment requires no offset, according to CBO. Very similar language has already passed in the House Energy and Commerce Committee on a bipartisan basis by voice vote.

And let me be clear: This does not expand the minimum benefits package; it merely clarifies what is already in the chairman's mark -- clarifying that insurance plans must provide behavioral health treatment as part of mental health and substance abuse services will ensure better quality health care.

And, like all Americans, people with autism and other behavioral health conditions should be able to live healthy lives. And I urge the Committee's adoption.²

After debate, Senator Menendez's amendment passed by voice vote.³ As the senator noted, its language was virtually identical to language passed by the House Energy and Commerce Committee. On July 31, 2009, that committee approved an amendment by Representative Mike Doyle, Co-Chair of the Coalition for Autism Research and Education, Representative Nathan Deal, and Representative Eliot Engel to H.R. 3200, America's Affordable Health Choices Act of

² Senator Menendez's statement and the debate over the amendment appear at pages 353-59 of the Executive Session transcript for 9/24/09. The transcript is available at <http://finance.senate.gov/hearings/hearing/?id=d8083e61-f98b-0204-3389-428e5a1a78e7> (accessed 8/26/10).

³ The amendment as adopted appears at <http://finance.senate.gov/legislation/details/?id=61f4fb98-a3d0-d85c-d33f-f2c598e1d138> under the entry for 10/19/09 (accessed 8/26/10).

2009, to amend the minimum services to be covered in the essential benefits package by striking the words “Mental health and substance use disorder services” and replacing them with “Mental health and substance use disorder services, including behavioral health treatments.”⁴ The Senate and the Congress removed the “s” from “treatments” but otherwise approved the same language, which is now law.

The Menendez and Doyle amendments should be understood as a guarantee that behavioral treatment for autism will be covered under section 1302(b) of the Affordable Care Act. This is a vital promise, as more and more plans and issuers are covering applied behavior analysis, either voluntarily or as required by a state insurance mandate.⁵ The plans and issuers that are providing benefits for applied behavior analysis should not apply lifetime limits to these benefits, nor should they apply annual limits other than the restricted annual limits.

If you have questions about these comments, please contact Stuart Spielman, Senior Policy Advisor and Counsel, at sspielman@autismspeaks.org or (202) 955-3312.

Sincerely,

A handwritten signature in black ink that reads "Peter Bell". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Peter Bell
Executive Vice President
Programs and Services

⁴ The amendment appears at http://energycommerce.house.gov/index.php?option=com_content&view=article&id=1722&catid=141&Itemid=85 under the entry “Amendments en Bloc – Rep. Doyle” (accessed 8/26/10).

⁵ To date, twenty-three states have enacted autism-specific insurance mandates, which typically require coverage of applied behavior analysis as well as other autism interventions. Most of the mandates have annual limits on benefits, and some have both annual and lifetime limits. A complete list of state enactments with cross-links to legislation is available at http://www.autismvotes.org/site/c.frKNI3PCImE/b.3909861/k.B9DF/State_Initiatives.htm (accessed 8/26/10).