



May 6, 2019

SUBMITTED ELECTRONICALLY VIA www.regulations.gov

Seema Verma
Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
7500 Security Boulevard
Baltimore, MD 21244

Re: **Patient Protection and Affordable Care Act; Increasing Consumer Choice Through the Sale of Individual Health Insurance Coverage Across State Lines Through Health Care Choice Compacts**

Dear Administrator Verma:

The undersigned members of the Habilitation Benefits (“HAB”) Coalition appreciate the opportunity to comment on the Centers for Medicare and Medicaid Services (“CMS”) request for information (“RFI”) regarding the sale of individual health insurance across state lines.¹ The HAB Coalition is a group of 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 benefit (“EHB”) package under the Patient Protection and Affordable Care Act (“ACA”), Section 1302.

The HAB Coalition shares CMS’s goal of increasing access to affordable health care, but we are concerned that CMS’s proposal to expand the sale of health insurance across state lines would leave adults and children, particularly those with disabilities and chronic health conditions, with less comprehensive coverage and higher out-of-pocket costs. We are grateful to CMS for recognizing that this RFI could disproportionately impact people with disabilities and chronic conditions and seeks comments from this community.

It is critically important that qualified health plans (“QHPs”) do not lull enrollees into a false sense of security with the breadth of their health insurance coverage by offering minimal benefit packages in exchange for lower premiums. This comment letter will focus largely on access to habilitation services and devices for both children and adults, as well as provider network adequacy requirements and other provisions that impact individuals with disabilities.

¹ Patient Protection and Affordable Care Act; Increasing Consumer Choice Through the Sale of Individual Health Insurance Coverage Across State Lines Through Health Care Choice Compacts, 84 Fed. Reg. 8,657 (Mar. 11, 2019).

I. Sale of Insurance Through Health Care Choice Compacts (Section 1333 of the ACA)

In the RFI, Health Care Choice Compacts (“HCCC’s”) implemented under Section 1333 of the ACA are the primary mechanism through which CMS seeks to expand the ability of issuers to sell insurance across state lines. Section 1333 of the ACA authorizes CMS to implement a regulatory framework that allows two or more states to enter into a HCCC.² Under a HCCC, a health insurance issuer can offer one or more QHPs in the individual health insurance market in any state included in the HCCC. In order to enter into a HCCC, a state must pass legislation specifically authorizing it to do so and the HCCC must be approved by CMS.

The fact that no state has entered into a HCCC in the ten years since this provision became law—as the RFI notes—is a telling indicator that HCCC’s are not viewed as desirable options to address the cost and accessibility of health insurance. In addition, despite the fact that four states (Georgia, Maine, Oklahoma, and Wyoming) have passed laws authorizing the sale of health insurance coverage across state lines in certain circumstances, no health insurance issuers appear to be selling health insurance coverage across state lines under these laws. The lack of engagement in the cross-state sale of insurance under these existing laws is further evidence that CMS’s pursuit of this policy proposal is not a practical approach to increasing access to affordable health care coverage.

II. Importance of Access to Habilitation Services and Devices

If CMS decides to pursue the sale of insurance across state lines through HCCC’s, the HAB Coalition has significant concerns about the impact this proposal may have on access to habilitation services and devices under the EHB category of rehabilitative and habilitative services and devices, as well as network adequacy, transparency, and dispute resolution with out-of-state issuers. These concerns are described in detail below.

a. Habilitation Services and Devices Defined

Habilitation services and devices are necessary for individuals with many types of developmental, cognitive, physical and mental conditions that, in the absence of such services, prevent individuals from acquiring certain skills and functions over the course of their lives, particularly in childhood. Habilitation services and devices are closely related to rehabilitation services and devices, although there are key differences between the two.

Whereas *rehabilitation services and devices* 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 and devices* help a person to attain, maintain, or prevent deterioration of a skill or function never learned or acquired due to a disabling condition. The major difference between habilitation and rehabilitation is the reason for the need for the service: whether a person needs to attain a function from the outset that was not acquired due to a disabling condition, or regain a function once attained but then lost to illness or injury.

Habilitation services and devices include, but are not limited to, behavioral health services, recreational therapy, occupational therapy, physical therapy and speech-language pathology services,

² 42 U.S.C. § 18053(a). As CMS notes in the RFI, the statute requires CMS, in consultation with the National Association of Insurance Commissioners, to issue regulations implementing this provision no later than July 1, 2013; however, CMS has not yet promulgated any regulations implementing Section 1333 of the ACA.

developmental pediatrics, psychiatric services, and psycho-social services provided in a variety of inpatient and/or outpatient settings. Habilitation services:

- Develop age-appropriate skills and functions in children that have been delayed or not acquired due to the illness, injury or disability, and build on these skills to return the person to age-appropriate development;
- Improve long-term function and health status, and improve the likelihood of independent living and a high quality of life;
- Halt or slow the progression of primary and secondary disabilities by maintaining function and preventing further deterioration of function; and,
- Enable persons with developmental, intellectual, physical or cognitive impairments to improve cognition and functioning through appropriate therapies and assistive devices.

The ACA includes statutory language that requires coverage of EHBs, including one of ten categories of benefits known as “rehabilitative and habilitative services and devices.” Inclusion of this language in the statute was a major milestone in that Congress recognized the important role the benefit plays in helping ensure that adults and children maximize their health, function, and become productive members of society. In the February 2015 Notice of Benefit and Payment Parameters Final Rule,³ CMS defined “habilitation services and 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.”

For the first time, this regulation established a uniform definition of habilitation services and devices that states could understand and consistently implement. This definition became a standard for private insurance coverage, a floor of coverage for individual insurance plans sold on the exchanges. Importantly, the definition includes both habilitative *services* and habilitative *devices*. The adoption of a federal definition of habilitation services and devices minimized the uncertainty in coverage for children and adults in need of habilitation.

There is a compelling case for coverage of both rehabilitation and habilitation services and devices for persons in need of functional improvement due to disabling conditions. These services and devices are designed to maximize the functional capacity of the individual, which has a profound impact on the ability to perform activities of daily living in the most independent manner possible. Habilitation services and devices are highly cost-effective and decrease downstream costs to the health care system for unnecessary disability and dependency. Considering the fact that many habilitation services and devices are provided to children with disabilities, the costs of *not* covering these services can accumulate across the lifespan.

b. Impact of the Sale of Insurance Across State Lines on Access to Habilitation Services and Devices

³ Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2016, 80 Fed. Reg. 10,750, 10,811 (Feb. 27, 2015).

As already noted, we are grateful to CMS for recognizing in the RFI the fact that the sale of insurance across state lines may have a disproportionate impact on people with disabilities. The RFI requests comments as follows:

To what extent, if any, would the sale of individual health insurance coverage across state lines pursuant to a Health Care Choice Compact positively or negatively impact the following populations: persons with pre-existing conditions; persons with disabilities; persons with chronic physical health conditions; expectant mothers; newborns; American Indians and Alaska Natives and tribal entities; veterans; and persons with behavioral health conditions, including both mental health and substance use disorder conditions?⁴

The HAB Coalition has significant concerns that the sale of insurance across state lines is simply a method of reducing the cost of insurance by allowing the sale of minimal coverage that prevents unsuspecting enrollees from accessing benefits when they need them most. As explained above, habilitation services and devices are critically important for individuals with disabilities and chronic conditions, especially children. Any reduction in coverage of this benefit category due to a reduction in overall benefit coverage resulting from the sale of insurance across state lines would have a serious negative impact on children and adults with disabilities and chronic conditions.

While the statute requires that issuers still be subject to certain laws and regulations of the state in which an enrollee resides (such as network adequacy and consumer protection standards),⁵ issuers would *not* be required to comply with the benefit coverage requirements of the enrollee's state. As a result, the HAB Coalition has significant concerns that issuers and consumers would gravitate toward the least comprehensive and least expensive benefit packages, thereby creating a "race to the bottom" in terms of benefit coverage, particularly in the area of habilitation.

A reduction in coverage of habilitation services would not significantly decrease the cost of insurance packages overall, but would lead to very high increases in out-of-pocket costs for children, families, and adults who need this type of care. Pursuing policies that may reduce coverage of these services for people with disabilities or chronic conditions is also not cost-effective in the long term as the lack of habilitation coverage leads to costs of unnecessary life-long disability and dependency.

In addition, despite the fact that the statute requires issuers to comply with the network adequacy laws and regulations of the state in which an enrollee resides, the HAB Coalition still has significant concerns regarding the ability of out-of-state issuers to adhere to patient-friendly network adequacy standards. Such networks must provide ample access to the full complement of habilitation service and device providers, professionals, and facilities that provide both primary and specialty care. Services should be provided based on the individual's needs, prescribed in consultation with an appropriately credentialed clinician, and based on the assessment of an interdisciplinary habilitation team and resulting habilitation plan of care.

Presently, our members know of many issuers that offer limited provider networks that have the effect of restricting access to these necessary types of providers. We believe that the adequacy of a plan's provider network largely determines the level of access to benefits otherwise covered under the health

⁴ Patient Protection and Affordable Care Act; Increasing Consumer Choice Through the Sale of Individual Health Insurance Coverage Across State Lines Through Health Care Choice Compacts, 84 Fed. Reg. 8,657, 8,660 (Mar. 11, 2019).

⁵ 42 U.S.C. § 18053(a)(1).

plan. If a plan covers a benefit but limits the number of providers or specialists under that plan, coverage will be curtailed through a lack of access to providers with sufficient expertise to treat the child or adult. Additionally, network adequacy standards should ensure that persons with disabilities are not burdened by significant traveling distances in order to receive covered services under a plan. The HAB Coalition is concerned that out-of-state issuers would face significant challenges in establishing provider networks that meet these standards, thus exacerbating the problem of lack of access to habilitation services and devices.

While the statute requires that issuers notify policyholders that their coverage may not otherwise be subject to the laws of the state in which the policyholder resides,⁶ the HAB Coalition has serious concerns that a purchaser may not be aware that an out-of-state plan does not cover benefits mandated by their state. This would potentially leave policy holders unaware that they have inadequate coverage when they need it most, resulting not only in reduced access to care, but also higher out of pocket costs.

Finally, the HAB Coalition is concerned that consumers dealing with out-of-state insurance companies may have difficulty resolving disputes under their insurance contracts. As discussed in this comment letter, 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 regulatory framework for the sale of insurance across state lines be transparent about access to the full continuum of habilitation care, and that disputes and complaints are addressed expeditiously and equitably.

The HAB Coalition shares CMS's goal of reducing the costs of health insurance and promoting competition in the marketplace. However, the HAB Coalition has significant concerns that CMS's proposals in this RFI would reduce meaningful access to certain EHBs, such as rehabilitative and habilitative services and devices. Access to habilitative services and devices is essential for the health and livelihood of children and adults with disabilities and chronic conditions. The HAB Coalition urges CMS to pursue policies that preserve access to a meaningful benefit for habilitation services and devices in order to reduce costs to the health care system and ensure that children and adults can maximize their health, function, and independence through access to these services.

⁶ 42 U.S.C. § 18053(a)(1)(B)(iii).

We greatly appreciate your attention to our comments on the proposals in this RFI. Should you have further questions regarding this information, please contact Peter Thomas, coordinator of the HAB Coalition by e-mailing Peter.Thomas@PowersLaw.com or by calling 202-466-6550.

Sincerely,

Members of the Habilitation Benefits Coalition

ACCSES

Allies for Independence

Allies for Independence

American Academy of Physical Medicine and Rehabilitation

American Association of People with Disabilities

American Association on Health & Disability

American Cochlear Implant Alliance

American Occupational Therapy Association

American Physical Therapy Association

American Speech-Language-Hearing Association

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

NARMH – The National Association for Rural Mental Health

The Arc of the United States

The National Association of County Behavioral Health and Developmental Disability Directors

United Spinal Association