



June 26, 2015

SUBMITTED VIA E-MAIL

Yeraldin Deavila
Public Information Officer
Nevada Division of Insurance
1818 E. College Pkwy., Suite 103
Carson City, NV 89706

RE: 2017 Benchmark Health Plan

Dear Ms. Deavila:

Thank you for the opportunity to comment on Nevada's 2017 benchmark benefits plan under the Affordable Care Act. The undersigned members of the HAB Coalition would like to focus on comments on the definitional and coverage issues involving the benefit category of "rehabilitative and habilitative services and devices."

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 category known as "rehabilitative and habilitative services and devices" in the EHB package under the Patient Protection and Affordable Care Act (ACA), Section 1302.

We request that the Nevada Division of Insurance, in establishing Nevada's 2017 benchmark health plan, explicitly adopt a habilitative and rehabilitative benefit that complies with the newly-issued federal regulations for this benefit category under the Affordable Care Act. By recognizing these regulations, Nevada will be clarifying coverage of this benefit category consistent with the Centers for Medicare and Medicaid Services' (CMS') February 27 final rule, titled *Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2016 – Final Rule* ([The Rule](#)).

Specifically, we request that the Nevada Division of Insurance:

- **Adopt the Rule's definition of habilitation services and devices¹ as the floor in determining coverage for habilitation services and devices for individual and small employer health insurance plans beginning in 2016.** We believe that adopting a uniform definition minimizes the variability in benefits and uncertainty involving the habilitation benefit. We urge the Nevada Division of Insurance to review each of the

¹ See §156.115(a)(5), page 10871 of [The Rule](#): "Habilitation services and devices— Cover health care services and devices that help a person keep, learn, or improve skills and functioning for daily living (habilitative services). 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."

proposed benchmark plans' habilitation benefit against the newly adopted federal definition. We stress that this definition is a floor for coverage and that the services and devices covered by the habilitation benefit should not be limited to the therapies enumerated in the federal regulation as *examples* of covered benefits.

- **Not impose limits on coverage of habilitative services that are less favorable than any such limits imposed on coverage of rehabilitative services.** This will ensure separate and distinct habilitative and rehabilitative services limits, if any, are applied to these different sets of services based on the needs of individuals receiving them.
- **Do not impose combined limits on habilitative and rehabilitative services and devices. If states choose to impose limits on these benefits, the federal regulations require separate limits for rehabilitation and habilitation benefits after January 1, 2017.** While we appreciate that Nevada does not allow visit limits for medically necessary rehabilitation or habilitation services, we are concerned that the rehabilitation and habilitation benefit are not separate from one another.
- **Provide coverage for devices for both habilitative and rehabilitative services as required by §1302 of the Affordable Care Act.** Such coverage should include prosthetics, orthotics, durable medical equipment, low-vision aids, augmentative and alternative communication devices (AACs), hearing aids and assistive listening devices, and other assistive devices. For example, New York's benchmark plan will be modified starting on January 1, 2016 to include coverage of prosthetic limbs, as well as the cost of repair and replacement of these prosthetic devices, for both adults and children, to be compliant with the Notice of Benefit and Payment Parameters for 2016.² The NY State of Health 2016 Health Plan Invitation will be amended to include this coverage requirement for the individual and small group marketplaces starting with benefit year 2016.
- **For plan years beginning on or after January 1, 2016, for pediatric services that are required under §156.110(a)(10), provide coverage for enrollees until at least the end of the month in which the enrollee turns 19 years of age.**
- **Does not discriminate based on an individual's age, expected length of life, present or predicted disability, degree of medical dependency, quality of life, or other health conditions.** These nondiscrimination protections are included in the ACA statute at Section 1302 and form the basis for plan benefit design that is equitable and meets the needs of diverse populations. We recommend that the Nevada Division of Insurance further consider these nondiscrimination issues by examining the document found at: http://www.insurance.ohio.gov/Company/Documents/2015_Non-Discriminatory_Benefit_Design_QHP_Standards.pdf.

² Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2016, Centers for Medicare & Medicaid Services (CMS), HHS Final Rule. February 27, 2015. Available at: <http://www.gpo.gov/fdsys/pkg/FR-2015-02-27/pdf/2015-03751.pdf>.

We would also like to mention that HHS clarified in the most recent regulation that state benefit mandates enacted to define habilitative services are part of the essential health benefit—states *do not* defray the cost.³ This clarification allows states to address coverage gaps in their state. State mandates would not only enhance benefits, but would also improve access to habilitation services—**Qualified Health Plans would need to cover these enhanced services according to the revised benchmark plan.**

We appreciate the opportunity to provide comments on this important topic. Should you have further questions regarding this information, please contact Peter Thomas or Steven Postal, HAB Coalition staff, by emailing them at Peter.Thomas@ppsv.com or Steven.Postal@ppsv.com, respectively, or by calling 202-466-6550.

Sincerely,

American Academy of Physical Medicine and Rehabilitation
American Association of People with Disabilities
American Association on Health and Disability
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 University Centers on Disabilities
ACCSES
Brain Injury Association of America
Children's Defense Fund
Christopher & Dana Reeve Foundation
Easter Seals
Family Voices
Hearing Loss Association of America
Lakeshore Foundation
Legal Action Center
Lutheran Services of America
Disability Network
March of Dimes
National Association for the Advancement of Orthotics and Prosthetics
National Association of Councils on Developmental Disabilities
National Association of County Behavioral Health and Development Disability Directors
National Association of Social Workers
National Down Syndrome Society
Paralyzed Veterans of America
TASH
United Cerebral Palsy
United Spinal Association

³ *Id.* at Page 10811-10812.