ASHA
American
Speech-Language-Hearing
Association

Submitted to https://www.regulations.gov/

July 1, 2019

Seema Verma, MPH
Administrator
Centers for Medicare & Medicaid Services
U.S. Department of Health and Human Services
Attention: CMS-9936-NC2
P.O. Box 8013
Baltimore, MD 21244-1850

RE: Request for Information Regarding State Relief and Empowerment Waivers (CMS-9936-NC2)

Dear Administrator Verma:

On behalf of the American Speech-Language-Hearing Association, I write to respond to the Request for Information (RFI) Regarding State Relief and Empowerment Waivers.

The American Speech-Language-Hearing Association (ASHA) is the national professional, scientific, and credentialing association for 204,000 members and affiliates who are audiologists; speech-language pathologists; speech, language, and hearing scientists; audiology and speech-language pathology support personnel; and students.

ASHA urges the Centers for Medicare & Medicaid Services (CMS) to approach state waiver requests under section 1332 of the Patient Protection and Affordable Care Act (PPACA) in a manner consistent with the congressional intention of the section. ASHA supports CMS' goal of empowering states to adopt innovative strategies to reduce health care costs through this RFI. However, the harmful impact of certain proposals on consumers' access to medically necessary rehabilitative and habilitative services and devices, especially those with pre-existing conditions, is of significant concern. Essential health benefits (EHBs) and pre-existing condition requirements protect consumers with specific health needs who require audiology and/or speech-language pathology services. In some cases, the health plan beneficiary has a pre-existing condition that triggers the need for rehabilitative care.

ASHA appreciates the opportunity to provide comments on the following topics:

- Comprehensiveness and Affordability Statutory Guardrail; and
- Value of Rehabilitative and Habilitative Services and Devices.

Comprehensiveness and Affordability Statutory Guardrail

CMS will evaluate ***comprehensiveness*** by comparing access to coverage under the waiver to the state's EHB benchmark. CMS will consider the ***affordability*** requirement to be met in a state waiver that provides consumers access to coverage options that are at least as affordable and comprehensive as the coverage options provided without the waiver to at least a comparable number of people who would have access to such coverage absent the waiver.

ASHA acknowledges that the RFI does not explicitly permit state 1332 waivers that eliminate protections for individuals with pre-existing conditions. It does, however, present a considerable expansion of state authority under Section 1332 in that "[a] section 1332 state plan should foster

health coverage through competitive private coverage, including Association Health Plans [AHP] and short-term limited-duration insurance [STLDI] plans, over public programs."

ASHA is concerned that the RFI contemplates approval of waivers with other coverage types (e.g., AHPs, STLDI) that are deemed affordable as long as comprehensive coverage, at greater expense than STLDI, remains available. ASHA urges CMS not to approve state waiver requests unless they provide affordable comprehensive coverage to those who need it, including individuals with pre-existing conditions.

The non-PPACA compliant coverage options encouraged within the RFI may accommodate relatively healthy individuals but not consumers with chronic conditions and disabilities. Most importantly, they will not meet the needs of those who have an unexpected illness or injury. Insurance, at its core, provides for shared risk to address both expected and unexpected health care needs that may be outside an individual's control. For example, consumers who are healthy when they opt for STLDI may become ill or injured (e.g., traumatic brain injury) and need rehabilitative therapy to help regain skills and functioning from their unexpected circumstance. However, if the STLDI plan chosen does not provide rehabilitation, the consumer will face unexpected out-of-pocket costs for medically necessary health care services that could not only threaten access to care but also impact their recovery, quality of life, and their ability to return to a reasonable level of independence. When denied adequate access to rehabilitation, individuals that could otherwise return to independence and the workplace may be forced to rely unnecessarily on public support.

Value of Rehabilitative and Habilitative Services and Devices

Approximately 130 million nonelderly Americans, including one in four children, live with a pre-existing condition and would be at risk if pre-existing condition coverage protections were removed from federal law.[1] The removal of this protection would allow insurance companies to deny coverage or charge significantly higher premiums to people with pre-existing conditions. Seventy-five percent of Americans say it is "very important" to retain the Affordable Care Act provision to prevent insurance companies from denying coverage based on a person's medical history and 72% say it is "very important" to prohibit insurance companies from charging sick people more.[2]

Beyond pre-existing condition protections, there is significant value in having insurance coverage that includes rehabilitative and habilitative services and devices.[3,4] Rehabilitative services and devices help individuals retain, improve, or regain skills and functions that may have been lost or diminished due to an injury, illness, or disability. Rehabilitation addresses the functional needs of individuals with neurological and medical conditions such as acquired brain injury or disease, stroke, and head and neck cancers. For example, an individual with Parkinson's disease who has difficulty with speech and swallowing requires rehabilitative speech-language pathology services to treat those deficits.

Individuals who need habilitative services and devices rely on their health care coverage to (a) acquire skills and functions that were never learned due to a disability, and (b) retain skills so they can live as independently as possible. Habilitation is appropriate for individuals with many types of neurological and developmental conditions that—in the absence of such services—prevent them from acquiring and retaining certain skills and functions over the course of their lives, particularly in childhood. For example, a 3-year-old child with severe congenital hearing loss requires the fitting of hearing aids and related habilitative treatment from audiologists and

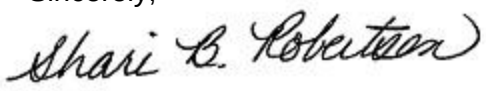
speech-language pathologists to develop auditory and speech-language skills in order to improve functional performance to keep pace at school and later in the workplace.

Often, skills acquired through rehabilitative and habilitative services and devices lead to breakthroughs in functional ability that would not have been possible without access to timely and appropriate rehabilitation and habilitation benefits. This reduces long-term disability and dependency costs to society.

Criticisms of the EHB requirement include concerns regarding increased premiums; however, evidence suggests that other factors, such as community rating, may have more of an impact on premiums. In fact, coverage of audiology and speech-language pathology services do not significantly increase premiums. Milliman provides an estimate of the total cost of providing selected hearing services, speech-language therapy, hearing supplies, devices, and related professional services in a commercial employer group population, noting a utilization rate of approximately one per thousand, with per member per month (PMPM) claim costs of approximately $1.48 according to 2014 data.[5] These estimates are based on current and commonly available levels of coverage, eligibility, and benefit design. At such low costs, it is clear that rehabilitative and habilitative coverage is a good investment.

Thank you for the opportunity to provide comments on the Request for Information Regarding State Relief and Empowerment Waivers. If you or your staff have any questions, please contact Daneen Sekoni, MHSA, ASHA's director for health care policy, health care reform, at dsekoni@asha.org.

Sincerely,



Shari B. Robertson, PhD, CCC-SLP
2019 ASHA President

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[1] Center for American Progress (2017). *Number of Americans with Pre-Existing Conditions by Congressional District*. Retrieved from https://www.americanprogress.org/issues/healthcare/news/2017/04/05/430059/number-americans-pre-existing-conditions-congressional-district/.

[2] Henry J Kaiser Family Foundation. (2018). *Poll: The ACA's Pre-Existing Condition Protections Remain Popular with the Public, including Republicans, As Legal Challenge Looms This Week*. Retrieved from https://www.kff.org/health-costs/press-release/poll-acas-pre-existing-condition-protections-remain-popular-with-public/.

[3] The American Speech-Language-Hearing Association. (n.d.). *National Outcomes Measurement System (NOMS).* Retrieved from https://www.asha.org/noms/

[4] Yoshinaga-Itano, C. (2003). *From Screening to Early Identification and Intervention: Discovering Predictors to Successful Outcomes for Children with Significant Hearing Loss. The Journal of Deaf Studies and Deaf Education. 8(1), 11–30.* Retrieved from https://doi.org/10.1093/deafed/8.1.11.

[5] Milliman is an actuarial consulting firm with offices worldwide.