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June 21, 2018

**Secretary Alexander Acosta**  
United States Department of Labor  
200 Constitution Ave NW  
Washington, DC 20210

**Secretary Alex M. Azar II**  
United States Department of Health and Human Services  
200 Independence Ave SW  
Washington, DC 20201

**Secretary Steven Mnuchin**  
United States Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

*Sent via e-mail to E-OHPSCA-FAQ39@dol.gov*

**Re: FAQs About Mental Health and Substance Use Disorder Parity  
Implementation and the 21<sup>st</sup> Century Cures Act Part XX – Comments and  
Recommendations**

Dear Secretaries Acosta, Azar, and Mnuchin,

Washington Autism Alliance & Advocacy (WAAA) is an advocacy organization that exists to remove barriers to evidence-based treatment, including Applied Behavior Analysis (ABA), for children and adults with autism spectrum disorders and other developmental disabilities. WAAA is a front-line advocacy organization whose advocates advise and assist individuals whose insurance benefits have been denied, terminated, or unreasonably delayed.

We appreciate the Departments' acknowledgement and clarification of the fact that ABA is supported by professionally recognized treatment guidelines and randomized trials for use in the treatment of Autism Spectrum Disorder (ASD).

We agree with the Departments' analysis that insurance plans that implement a medical management standard limiting or excluding benefits based on whether a treatment is experimental or investigative is a non-quantitative treatment limitation (NQTL) and must not be applied more stringently to mental health and substance use disorder benefits than it is to medical/surgical benefits. We are also in agreement with the Department's analysis that because ABA for the treatment of ASD is supported by professionally recognized treatment guidelines and the requisite number of randomized trials sufficient for coverage under a plan's medical/surgical benefit, an exclusion of ABA for the treatment of ASD under the rationale that is experimental or investigative is impermissible under the MHPAEA.

However, we would like to bring to the Departments' attention that ABA is supported for the treatment of not only ASD, but other mental health conditions, including developmental disabilities, as well.<sup>1</sup> Unfortunately, ABA for the treatment of any condition besides ASD is regularly excluded by plans, despite this support and regardless of medical necessity. As such, we ask you to please consider amending your guidance to incorporate other mental health conditions in your MHPAEA analysis.

Thank you for the opportunity to comment on the recently proposed FAQs regarding mental health and substance use disorder parity and the 21<sup>st</sup> Century Cures Act.

Sincerely,

Andrea Kelso  
Staff Attorney  
Washington Autism Alliance & Advocacy

David Roth  
Staff Attorney  
Washington Autism Alliance & Advocacy

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<sup>1</sup> See Brosnan, J. & Healy, O. (2011). A review of behavioral interventions for the treatment of aggression in individuals with developmental disabilities. *Research in Developmental Disabilities*, 32, 437-406.; Dixon, D.R., Bergstrom, R., Smith, M.N., & Tarbox, J. (2010). A review of research on procedures for teaching safety skills to persons with developmental disabilities. *Research in Developmental Disabilities*, 31, 985-994.; Hagopian, L.P., Rooker, G.W., & Rolider, N.U. (2011). Identifying empirically supported treatments for pica in individuals with intellectual disabilities. *Research in Developmental Disabilities*, 32, 2114-2120.; Jennett, H.K., & Hagopian, L.P. (2008). Identifying empirically supported treatments for phobic avoidance in individuals with intellectual disabilities. *Behavior Therapy*, 39, 151-161.; Kurtz, P.F., Boelter, E.W., Jarmolowicz, D.P., Chin, M.D., & Hagopian, L.P. (2011). An analysis of functional communication training as an empirically supported treatment for problem behavior displayed by individuals with intellectual disabilities. *Research in Developmental Disabilities*, 32, 2935-2942.; Lang, R., Didden R., Machalicek, W., Rispoli, M., Sigafoos, J., Lancioni, G., Mulloy, A., Regester, A., Pierce, N., & Kang, S. (2010). Behavioral treatment of chronic skin-picking in individuals with developmental disabilities: A systematic review. *Research in Developmental Disabilities*, 31, 304-315.; Lang, R., Rispoli, M., Machalicek, W., White, P.J., Kang, S., Pierce, N., Mulloy, A., Fragale, T., O'Reilly, M., Sigafoos, J., & Lancioni, G. (2009). Treatment of elopement in individuals with developmental disabilities: A systematic review.; *Research in Developmental Disabilities*, 30, 670-681.; Weiskop, S., Richdale, A., & Matthews, J. (2005); Behavioural treatment to reduce sleep problems in children with autism or fragile X syndrome. *Developmental Medicine & Child Neurology*, 47, 94-104.