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 21st 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.¹ 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 21st Century Cures Act.

Sincerely,

Andrea Kelso
Staff Attorney
Washington Autism Alliance & Advocacy

David Roth
Staff Attorney
Washington Autism Alliance & Advocacy