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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 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

¹ 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.