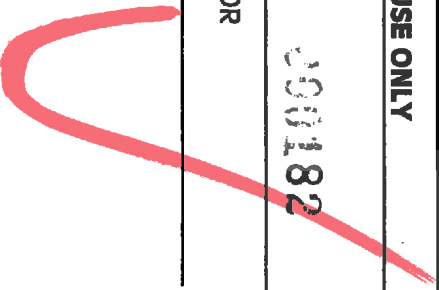


**DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF DIRECTOR**

ACTION REFERRAL

TO	DATE
<i>Single for</i>	<i>9-29-08</i>

DIRECTOR'S USE ONLY	ACTION REQUESTED
1. LOG NUMBER <i>000182</i>	<input type="checkbox"/> Prepare reply for the Director's signature DATE DUE _____
2. DATE SIGNED BY DIRECTOR 	<input checked="" type="checkbox"/> Prepare reply for appropriate signature DATE DUE <i>10-8-08</i>
	<input type="checkbox"/> FOIA DATE DUE _____
	<input type="checkbox"/> Necessary Action

APPROVALS (Only when prepared for director's signature)	APPROVE	* DISAPPROVE (Note reason for disapproval and return to preparer.)	COMMENT
1.			
2.			
3.			
4.			

PATRICIA L. HARRISON
ATTORNEY AT LAW
611 HOLLY STREET
COLUMBIA, SOUTH CAROLINA 29205

TELEPHONE (803) 256-2017

FAX (803) 256-2213

September 25, 2008

SEP 29 2008

RECEIVED

Department of Health & Human Services
OFFICE OF THE DIRECTOR

Ms. Emma Forkner
South Carolina Department of Health and Human Services
PO Box 8206
Columbia, South Carolina 29202

RE: PDD Waiver and HIPP

Dear Emma:

I was wondering if you had seen the letter Dr. Butkus recently sent to service coordinators and early interventionists regarding the PDD program. A copy is attached. In this letter, he advised that individuals who qualify for the PDD waiver will be taken off the waiting list once they reach the top of the list if they have health insurance at the time they would otherwise be offered a slot. It is also my understanding that DDSN plans to terminate PDD waiver services for those participants who have private health insurance. The information that the President of the S.C. Autism Society is sending families advising them of "major fines and long jail terms" if people who have health insurance receive PDD benefits is especially troubling.

This concerns me very much because this policy violates 42 U.S.C. 1396(e). That statute prohibits the States from changing an individual's Medicaid benefits based on eligibility for private health insurance. In fact, that section requires the State to pay for health insurance premiums for Medicaid participants where payment of these premiums is cost effective to the State. I cannot imagine it not being cost effective to the State to pay health insurance premiums for children with autism. Since the Medicaid Act requires HHS to advise Medicaid participants of all "feasible alternatives" under the Act, I am interested in how HHS plans to advise PDD waiver participants of the HIPP program to pay the cost of health insurance premiums through the HIPP program managed by your agency. I noted in reviewing 1396(e) that where the insurance company only provides for family coverage (rather than breaking out the cost for the Medicaid participant alone), the State must pay the full premium cost for the family coverage.

Since 42 C.F.R. 431.10(e) prohibits HHS from delegating administrative discretion or authority to issue policies, rules or regulations related to the Medicaid program, I would appreciate you advising me of what action HHS plans to take to advise families that HHS will be covering the cost of insurance premiums for PDD waiver participants. Will you be sending notices to every family and how do you plan to advise service coordinators and early

interventionists that the information contained in Dr. Butkus' September 23, 2008 letter contradicts the Medicaid Act?

I have heard that CMS has authorized 370 PDD slots. I would appreciate your providing me with your estimate of how many slots have been filled and the actual costs of those services which were provided to individuals receiving PDD services during FY 2008. How many new slots do you expect to fill with the money which will be saved once many of the current PDD waiver participants have a significant portion of their services provided through insurance companies?

I look forward to your response. I would also appreciate your providing me with copies of your policies for informing families of the MR/RD, HASCI and PDD waiver participants of the option of having HHS pay the cost of insurance premiums. Thank you very much for your prompt response.

Cordially,

A handwritten signature in dark ink, appearing to read 'PLH', with a long horizontal line extending to the right.

Patricia L. Harrison

cc: Gayle Arden, CMS Baltimore
CMS Atlanta
Gloria Prevost
Jane Thesing
Rep. Jim Harrison
Rep. James Smith
Sen. Glenn McConnell
Sen. Joel Lourie
Rep. Dan Cooper
Speaker Robert Harrell
Sen. Lindsey Graham
Sen. Charles Grassley
Walter Oehinko
PUNCH

Patricia L Harrison

From: "Patricia L Harrison" <plh.cola@worldnet.att.net>
To: <plh.cola@att.net>
Sent: Thursday, September 25, 2008 11:10 PM
Subject: Fw: [scautismforum] Ryan's Law and the PDD Waiver



Stanley J. Butkus, Ph.D.
 State Director
 Robert W. Harfield
 Deputy State Director
 Administration
 David A. Goodell
 Assistant State Director
 Operations
 Kathi K. Lacey, Ph.D.
 Assistant State Director
 Policy

3440 Haulon Street Ext (29203)
 PO Box 4706, Columbia, South Carolina 29240
 V/T/TX: 803/898-9600
 Toll Free 1-888/4DSN-INFO
 Home Page: www.state.sc.us/dlsn/

CC
 W. Red
 John C.Y.
 One D. Speight, MI
 Edy

MEMORANDUM

TO: Provider Executive Directors of Service Coordination and Early Intervention Service Coordinators or Early Interventionists Supporting Children in DDSN's Pervasive Developmental Disorder Program (PDD waiver and PDD state program) or supporting the children on the waiting list for the PDD program

FROM: Stan Butkus, Ph.D. *JB*
 State Director

SUBJECT: Ryan's Law (An Act to Amend the Code of Laws of South Carolina, 1976 by adding Section 38-71-280

DATE: September 23, 2008

As many of you know, the General Assembly of the State of South Carolina amended the law to require health insurance coverage, including coverage under the State Health Plan for autism spectrum disorder Autism Spectrum Disorder is defined as Autistic Disorder (i.e. Autism), Asperger's Syndrome, and Not Otherwise Specified Pervasive Developmental Disorder (PDD-NOS).

The law took effect July 1, 2008, but only applies to health insurance plans issued, renewed, delivered, entered into on or after July 1, 2008. One way to interpret this is that the State Health Plan renews its coverage for all active and retired subscribers in January, so Ryan's Law would take effect January 1, 2009 for current and retired subscribers insured on or before July 1, 2008.

There are likely many children served by DDSN's PDD Program or who are on the waiting list who are a will be covered by Ryan's Law. Here is how you can help them and what we would like you to do in the next two months. ~~Your efforts~~ *Your efforts* will free up resources for children and families not covered by insurance who are on the PDD waiting list.

Page 2

Ryan's Law (An Act to Amend the Code of Laws of South Carolina, 1976 by adding Section 38-71-280) September 23, 2008

2. Go to The South Carolina Autism Society's web site at www.scautism.org and scroll down to Ryan's Law flowchart OR use the copy attached to this memo (Attachment 2).
3. Check the family's insurance company against the listing of Accident and Health Insurers licensed in South Carolina by the Department of Insurance (Attachment 3).
4. Ask the family to write their insurance company to verify their health insurance plan covers behavior therapy to children with Autism Spectrum Disorders. They must get their response in writing. If it have already heard from their insurance company in a more general way, that announcement should suffice.
5. Send a copy of the letter/announcement to Donna Fletcher, PDD Program District Coordinator as soon as is possible, but no later than November 21, 2008.

For those families with private insurance not covered under Ryan's Law, we will verify such and their services under DDSN's PDD Program will continue. For those families with private insurance covered by Ryan's Law, we will work with you on a smooth transition from the state or waiver-funded program to their new program. For those on the DDSN PDD Program waiting list now covered by Ryan's Law, DDS will maintain their name on the waiting list. Should a child covered by insurance be at the top of the waiting list, DDSN will not offer that child a waiver slot and will remove them from the DDSN waiting list.

Please be advised that children covered under Ryan's Law must receive their services through their private insurance and not through DDSN's PDD Program. Medicaid and state-only funds are considered payers of last resort.

Thank you for your help and efforts on behalf of all families with children diagnosed with a PDD. Show you have any questions, please contact your district office, Donna Fletcher or Jennifer Buster.

SB/sd

Attachment (3)

Attachment 1

Ryan's Law

Ryan's Law Amended The Code Of Laws Of South Carolina, 1976, By Adding Section 38-71-289 To Require Health Insurance Coverage, Including Coverage Under The State Health Plan, For Autism Spectrum Disorder And To Define "Autism Spectrum Disorder" As Autistic Disorder, Asperger's Syndrome, And Not Otherwise Specified Pervasive Developmental Disorder.

Coverage Required For Autism Spectrum Disorder

(1) 'Autism spectrum disorder' means one of the three following disorders as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association:

(a) Autistic Disorder;

(b) Asperger's Syndrome;

(c) Pervasive Developmental Disorder – Not Otherwise Specified.

(2) 'Insurer' means an insurance company, a health maintenance organization, and any other entity providing health insurance coverage, as defined in Section 38-71-670(6), which is licensed and engaged in the business of insurance in this State and which is subject to state insurance regulation.

(3) 'Health maintenance organization' means an organization as defined in Section 38-33-20(8).

(4) 'Health insurance plan' means a group health insurance policy or group health benefit plan issued by an insurer. It includes the State Health Plan, but does not otherwise include any health insurance plan offered in the individual market as defined in Section 38-71-670(11), any health insurance plan that is individually underwritten, or any health insurance plan provided to a self-employed employer, as defined by Section 38-71-1330 (17) of the 1976 Code. NOTE: Any self-insured employer beside the State Health Plan, and any company employees fewer than 50 employees is exempt from this requirement).

(5) 'State Health Plan' means the employee and retiree insurance program

(6) Health Insurance Plan Coverage

A) A health insurance plan described above must provide coverage for the treatment of autism spectrum disorder. Coverage provided is limited to treatment that is prescribed by the insured's treating medical doctor in accordance with a treatment plan. With regards to health insurance plan an insurer may not deny or refuse to issue coverage on, refuse to contract with, or refuse to renew or refuse to reinstate or otherwise terminate or restrict

coverage on an individual solely because the individual is diagnosed with autism spectrum disorder.

- (B) The coverage required must not be subject to dollar limits, deductibles, or coinsurance provisions that are less favorable to an insured than the dollar limits, deductibles, or coinsurance provisions that apply to physical illness generally under the health insurance plan. However, the coverage required pursuant to (B) may be subject to other general exclusions and limitations of the health insurance plan, including, but not limited to, coordination of benefits, participating provider requirements, restrictions on services provided by family or household members, utilization review of health care services including review of medical necessity, case management, and other managed care provisions.

- (C) The treatment plan required pursuant to (B) must include all elements necessary for health insurance plan to appropriately pay claims. These elements include, but are not limited to, a diagnosis, proposed treatment by type, frequency, and duration of treatment, the anticipated outcomes stated as goals, the frequency by which the treatment plan is updated, and the treating medical doctor's signature. The health insurance plan may request an updated treatment plan once every six months from the treating medical doctor to review medical necessity, unless the health insurance plan and the treating medical doctor agree that a more frequent review is necessary due to emerging clinical circumstances.

- (D) **To be eligible for benefits and coverage under Ryan's Law, an individual must** diagnosed with autistic spectrum disorder at age eight or younger. The benefits and coverage provided pursuant to this section must be provided to any eligible person under sixteen years of age. Coverage for behavioral therapy is subject to a fifty thousand dollar maximum benefit per year. Beginning one year after the effective date of this act, the maximum benefit shall be adjusted annually on January 1 of each calendar year to reflect any change from the previous year in the current Consumer Price Index, All Urban Consumers, as published by the United States Department of Labor's Bureau of Labor Statistics."

Please note: Children covered under Ryan's Law must receive their behavioral therapy services through their private insurance company. Medicaid and state-only funds are reserved for those who are not covered under Ryan's Law. This means that a child currently receiving ABA (i.e., behavioral therapy) through DDSN's PDD Program (waiver or state-funded) will be required to receive services through his/her private insurance.

ATTACHMENT 2 - E mail from Craig Stoxen (Chairman of the Babcock Center Board and Director of SC Autism Society)

----- Forwarded Message

From: Craig Stoxen <craig@scautism.org>

Reply-To: "scautismforum@yahoogroups.com"

<scautismforum@yahoogroups.com>

Date: Wed, 24 Sep 2008 20:00:54 -0400

To: "scautismforum@yahoogroups.com"

<scautismforum@yahoogroups.com> ,

<LUCAStonetwork@yahoogroups.com> ,

<charlestonmomscautismsupport@yahoogroups.com>

Subject: RE: [scautismforum] Ryan's Law and the PDD Waiver

Just to clarify a bit, under Federal Law, Medicaid has to be the payer of last resort and if there is another third party payer who could be paying but not, it is considered Medicaid Fraud – which can come with major fines and long jail terms.

Additionally, as a State, we must show CMS (Centers for Medicare and Medicaid – the Federal agency who oversees Medicaid) that we have verified that those receiving Medicaid services that Medicaid is the payer of last resort. It's the same thing when looking to place someone residentially, service coordinators have to ask if the individual has any kind of long term care insurance or trust that could pay for it privately.

DDSN in cooperation with HHS is just making sure they are in compliance with Medicaid rules.

Thanks

Craig

Craig C. Stoxen

President and CEO

South Carolina Autism Society

806 12th Street

West Columbia, SC 29169

803-750-6988

craig@scautism.org <<mailto:craig@scautism.org>>

www.scautism.org <<http://www.scautism.org>>