

review meets the requirements of the ESA.

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: November 28, 2007.

**Angela Somma,**

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

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## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Autism Services Demonstration Project for TRICARE Beneficiaries Under the Extended Care Health Option Program

**AGENCY:** Department of Defense.

**ACTION:** Notice of an autism services demonstration project for TRICARE beneficiaries under the Extended Care Health Option program.

**SUMMARY:** This notice is to advise interested parties of a Military Health System (MHS) demonstration project entitled Enhanced Access to Autism Services Demonstration Project.

The Department proposes a demonstration program under the Department's demonstration authority under 10 United States Code (U.S.C.) 1092 to expand the availability of Intensive Behavioral Intervention (IBI) services (defined as an intensive application of certain behavior modification interventions) to Extended Care Health Option (ECHO) program beneficiaries with autism. The demonstration program will permit TRICARE cost sharing of services by IBI tutors under a modified corporate services model. This demonstration will determine whether military families are able to make more effective use of the special education benefit in the ECHO program. Additionally, the demonstration will help determine the effectiveness of expanding the provider base in improving the access to services for TRICARE and attendant improvement in functional outcome for those military dependent children receiving services.

For purposes of this demonstration, provider qualifications will be established by the Department pending development of national standards by a nationally recognized certifying body for ABA providers, which standards the Department determines appropriate for acceptance in the delivery of quality care under the program. The Department intends to retain the ECHO benefit as currently outlined in 32 Code

of Federal Regulations (CFR) 199.5, except for the changes that will be implemented in the demonstration program noted above.

**DATES: Effective Date:** 60 days after publication in the **Federal Register**. This demonstration will remain in effect for two years from the start date of the demonstration.

**ADDRESSES:** TRICARE Management Activity, Office of the Chief Medical Officer, 5111 Leesburg Pike, Suite 810, Falls Church, VA 22041-3206.

**FOR FURTHER INFORMATION CONTACT:** Captain Robert DeMartino, Office of the Chief Medical Officer, TRICARE Management Activity, telephone (703) 681-0064.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The Military Health System (MHS) is a \$33 billion dollar enterprise, consisting of 76 military hospitals, over 500 military health clinics, and an extensive network of private sector health care partners, which provides medical care for over 9 million beneficiaries and Active Duty Service Members. While an accurate count of the number of military-dependent children with autism is not available, estimates based on prevalence rates in the general population suggest that among the more than 1.2 million children of Active Duty Military personnel, between 7,000-9,000 would carry one of the autism spectrum disorder diagnoses.

Autistic spectrum disorders affect essential human behaviors such as social interaction, the ability to communicate ideas and feelings, imagination, and the establishment of relationships with others. A number of treatments, therapies and interventions have been introduced to ameliorate the negative impact of autism on these areas of concern. Intensive Behavioral Intervention (IBI) services (defined as an intensive application of certain behavior modification interventions) have been shown to reduce or eliminate specific problem behaviors and teach new skills to individuals with autism. Applied behavior analysis (ABA), a systematized educational process of collecting data on a child's behaviors and using a variety of behavioral conditioning techniques to teach and reinforce desired behaviors while extinguishing harmful or undesired behaviors, is one of the best studied IBI interventions. Time-limited, focused ABA methods have been shown to reduce or eliminate specific problem behaviors and teach new skills to individuals with autism.

##### B. The Extended Care Health Option (ECHO) Program

ECHO replaced the Program for Persons with Disabilities (PFPWD) on September 1, 2005, as authorized by section 701(b) of the National Defense Authorization Act for Fiscal Year 2002, Public Law 107-107, which revised subsections (d), (e), and (f) of section 1079 of Title 10, United States Code, and is implemented under 32 CFR 199.5. Under ECHO, qualifying Active Duty family members may receive benefits not available under the basic program. For example, special education services are specifically excluded from the TRICARE basic program under 10 U.S.C. 1079(a)(9). Qualifying conditions under ECHO include moderate or severe mental retardation, a serious physical disability, or an extraordinary physical or psychological condition. Under 10 U.S.C. 1079(e), “\* \* \* Extended benefits for eligible dependents \* \* \* may include \* \* \* training, rehabilitation, special education, and assistive devices.” IBI, as a behavioral intervention that shapes behaviors and teaches skills, is a special education service that can be cost-shared under ECHO. The government cost-share for these extended benefits is limited under 10 U.S.C. 1079(f)(2)(A) to a maximum of \$2,500 per month.

While participation in ECHO is voluntary, registration is required, by law, for a TRICARE beneficiary to receive the ECHO benefit. The registration process includes providing the managed care support contractor (MCSC) with evidence that the beneficiary is enrolled in the Exceptional Family Member Program provided by the sponsor's branch of Service.

##### C. The ECHO Program and Providers of ABA

An authorized outpatient provider under the ECHO program must, under 32 CFR 199.6(e), be a provider otherwise authorized under the TRICARE basic program. Alternatively, if not recognized as such, if they provide services that are only authorized under the TRICARE ECHO program, such as special education services, the provider must meet all the applicable licensing and other regulatory requirements in that state, county, municipality or other governmental jurisdiction in which the ECHO service is rendered. In the absence of such licensing or regulatory requirements, the Director, TRICARE Management Activity, or designee determines the applicable requirements necessary to be an authorized provider.

At the present time, no state is known to license or have explicit regulatory oversight over providers of ABA services.

As a health plan, TRICARE is obligated to take reasonable steps to assure the safety, efficacy, and quality of care it provides. One of the most common ways that health plans can assure high quality care is to require that the providers they reimburse meet widely recognized and accepted minimum standards for knowledge, training and experience. The only available nationally recognized credential for IBI services is for ABA providers through the Behavior Analyst Certification Board (BACB) which certifies providers at the bachelor's degree level (Board Certified Associate Behavior Analyst—BCABA) and at the master's degree level (Board Certified Behavior Analyst—BCBA).

Absent state licensing or regulation of ABA providers, the Director, TRICARE Management Activity, established a requirement that ABA providers be certified by the BACB. It was expected that high demand for ABA services would provide incentive for large numbers of ABA providers to become certified BCBA's and BCABA's. The current TRICARE benefit allows cost sharing of BACB-certified ABA therapists when providing consultation to the beneficiary in the home or at school, designing and maintaining a behavioral treatment plan, providing hands-on IBI services, and training and supervising family members in delivery of IBI. TRICARE currently does not authorize the reimbursement of the "hands-on" provider of IBI services unless the provider is an authorized TRICARE provider as described above.

Though the number of BCBA's and BCABA's continues to increase, it is widely recognized that there is a relative paucity of board certified analysts. As a result, it is difficult in most areas, especially rural areas, for beneficiaries to find TRICARE authorized ABA providers.

The impact of the scarcity of certified providers is ameliorated by the commonly practiced business model in which a supervising or lead therapist develops the behavioral treatment plan for a child and then provides indirect supervision of the hands-on ABA tutors (also referred to as technicians or instructors) who engage in the one-on-one treatment with the child. In the best scenario, several tutors then provide each client with the recommended intensity of behavioral services (in the range of 8–40 hours a week). Unfortunately, such a provider type is not currently regulated by the states or

within the industry, nor is this provider type officially recognized by the BACB. In addition, there is no state or industry oversight of IBI or ABA business entities, no standardized education or training of tutors, and no verification of basic protections such as criminal background checks as a condition of employment. Therefore, none of the criteria exist for tutors that were applied by the Director, TRICARE Management Activity, when authorizing BCABA's and BCBA's as individual providers under the ECHO program.

#### **D. Congressional Directives to the Department of Defense on Autism Services**

The John Warner National Defense Authorization Act for Fiscal Year 2007, section 717, required the Department to develop a plan to provide services to military-dependent children with autism within the authority of the ECHO program. Part of the plan was to develop a demonstration project to expand the availability of IBI services. This demonstration implements the plan outlined in the July 2007 report to Congress that met the section 717 requirement.

#### **E. Description of Demonstration Project**

The proposed demonstration project will modify the corporate services provider requirements of 32 CFR 199.6(f) as they apply to hands-on IBI tutors who engage in the one-on-one treatment with the child, while employed and supervised by an authorized IBI supervisor (requirements for TRICARE authorized IBI Tutors and IBI Supervisors will be detailed prior to the start of the demonstration project in the TRICARE Operations Manual, available at (<http://manuals.tricare.osd.mil>). Under 32 CFR 199.6(e)(2)(ii)(B), an ECHO outpatient care provider includes an individual, corporation, foundation, or public entity that predominantly renders services of a type uniquely allowable as an ECHO benefit. The TRICARE corporate service provider class under 32 CFR 199.6(f) is established to accommodate individuals who would meet the criteria for status as a TRICARE authorized individual professional provider as established by paragraph (c) of section 199.6, but for the fact that they are employed directly or contractually by a corporation or foundation that provides principally professional services which are within the scope of the TRICARE basic program benefit.

Currently, TRICARE authorizes IBI services only by ABA trained outpatient care providers who are generally individual practitioners, and many

practices are not incorporated. As a result, they do not meet most of the requirements under 32 CFR 199.6(f) to qualify as a corporate service provider. This demonstration project will expand who is eligible to provide IBI supervisory services and require IBI Supervisors to meet the following criteria to qualify as a "corporate service" provider under this demonstration, and receive reimbursement for services provided by tutors implementing their treatment plan.

(1) IBI Tutors must be individuals who are employed directly or contractually by a TRICARE authorized IBI Supervisor.

(2) Payment for otherwise allowable services by tutors under this demonstration project may be made to a TRICARE-authorized IBI Supervisor subject to the applicable requirements, exclusions and limitations of this demonstration.

(3) The Director, TRICARE, Management Activity, or designee, may create discrete types within the allowable tutor category of provider established by this demonstration to improve the efficiency of TRICARE management.

(4) The Director, TRICARE Management Activity, or designee, may require, as a condition of authorization, that the IBI Supervisor, or the IBI Tutor established by this demonstration project:

(A) Maintain all applicable business license requirements of state or local jurisdictions.

(B) Cooperate fully with a designated utilization and clinical quality management organization which has a contract with the Department of Defense for the geographic area in which the provider does business;

(C) Render services for which direct or indirect payment is expected to be made by TRICARE only after obtaining TRICARE written authorization.

(5) Otherwise allowable services may be rendered at the authorized supervising IBI provider's place of business, or in the beneficiary's home under such circumstances as the Director, TRICARE Management Activity, or designee, determines to be necessary for the efficient delivery of such services.

(6) The Director, TRICARE Management Activity, or designee, may limit the term of a participation agreement for any category or type of provider established by this demonstration project.

(7) The Director, TRICARE Management Activity, or designee, shall determine whether the appropriate

employment or contractual relationship exists between the IBI Supervisor and IBI Tutor. Such determination is conclusive and may not be appealed.

(8) Conditions of authorization.

An applicant must also meet the following conditions to be eligible for authorization as a TRICARE corporate services provider under this demonstration project:

(A) Meet the qualifications and requirements for IBI Supervisors established by the Director, TRICARE Management Activity or designee; and

(B) Ensure that IBI Tutors meet the requirements for TRICARE authorization specified by The Director, TRICARE Management Activity or designee; and

(C) Comply with all applicable organizational and individual licensing or certification requirements that are extant in the state, county, municipality, or other political jurisdiction in which the provider renders services; and

(D) Has entered into a participation agreement approved by the Director, TRICARE Management Activity, or designee, which complies with the participation agreement requirements established by the Director; and

(E) Pricing and payment methodology: The pricing and payment of procedures rendered by a provider authorized under this demonstration project shall be limited to those methods for pricing and payment allowed by 32 CFR part 199 which the Director, TRICARE Management Activity, or designee, determines contribute to the efficient management of this demonstration project.

(F) Termination of participation agreement. A provider may terminate a participation agreement upon 45 days written notice to the Director, TRICARE Management Activity.

This demonstration will test the advisability and feasibility of permitting TRICARE reimbursement for IBI services delivered by non-professional providers, under a modified corporate services model, in the absence of state or industry oversight. Neither the TRICARE Basic Program nor the ECHO program currently authorizes reimbursement for providers working within this type of unregulated corporate structure. Should the demonstration result in a determination to make a permanent change to the TRICARE benefit to permit reimbursement of services provided by IBI tutors under a corporate services model, such decision would require a change to the Code of Federal Regulations.

In addition to provider qualifications, the demonstration project may outline

criteria and requirements for covered services, limitations to the benefit, beneficiary eligibility, data gathering and use requirements and documentation of treatment effectiveness that are specific to services delivered under the demonstration project.

#### F. Evaluation

An evaluation of the demonstration will be conducted. The evaluation will be designed to use a combination of administrative and survey measures of health care outcomes (clinical, utilization, financial, and humanistic measures) to provide analyses and comment on the effectiveness of the demonstration in meeting its goal of providing increased access to safe, efficacious, and quality behavioral services for military children with autism.

Dated: November 28, 2007.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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## ELECTION ASSISTANCE COMMISSION

### Sunshine Act Notice

**AGENCY:** United States Election Assistance Commission (EAC).

**ACTION:** Notice of Public Meeting.

**DATE AND TIME:** Tuesday, December 11, 2007, 9 a.m.–12 Noon (CST).

**PLACE:** Omni Hotel Downtown, 700 San Jacinto Boulevard at 8th Street, Austin, TX 78701, Phone number (512) 476-3700.

**AGENDA:** The Commission will consider the following items: Adoption of the 2006 Election Day Survey Report; an amendment to EAC policy on the voting system reports clearinghouse; whether to transfer National Voter Registration Act (NVRA) regulations originally promulgated by the Federal Election Commission to a new Code of Federal Regulations (CFR) site for EAC; individual State requests to change State-specific instructions to the national voter registration form. The Commission will receive end of year report presentations: From the EAC Testing and Certification; Election Administration Support; and Research Divisions and the EAC Executive Director. The Commission will elect officers and consider other administrative matters.

This meeting will be open to the public.

**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener, Telephone: (202) 566-3100.

**Thomas R. Wilkey,**

*Executive Director, U.S. Election Assistance Commission.*

[FR Doc. 07-5938 Filed 11-30-07; 1:41 pm]

**BILLING CODE 6820-KF-M**

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## ELECTION ASSISTANCE COMMISSION

### Sunshine Act Notice

**AGENCY:** United States Election Assistance Commission (EAC).

**ACTION:** Notice of Public Meeting Roundtable Discussion.

**DATE AND TIME:** Tuesday, December 11, 2007, 1-6 p.m. (CST).

**PLACE:** Omni Hotel Downtown, 700 San Jacinto Boulevard at 8th Street, Austin, TX 78701, Phone number (512) 476-3700.

**AGENDA:** The Commission will host an academic roundtable discussion regarding the Technical Guidelines Development Committee (TGDC) recommended voluntary voting system guidelines (VVSG). The discussion will be focused upon the following topics: (1) How to develop a risk assessment framework to provide context for evaluating the security implications of using various technologies in voting systems; (2) Whether the recommended TGDC standards create appropriate functional standards that promote innovation; (3) Are existing methodologies sufficient to test voting system software; (4) Merits of the various types of Direct (by the voter) and Indirect (by automation) Independent Verification techniques; (5) How to evaluate innovative systems, for which there are no standards for purposes of certification.

This meeting will be open to the public.

**PERSON TO CONTACT FOR INFORMATION:** Matthew Masterson, Telephone: (202) 566-3100.

**Thomas R. Wilkey,**

*Executive Director, U.S. Election Assistance Commission.*

[FR Doc. 07-5939 Filed 11-30-07; 1:41 pm]

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