

March 11, 2013

Submitted to [afonkert@nd.gov](mailto:afonkert@nd.gov)

Andrea Fonkert  
Public Information Officer  
North Dakota Insurance Department  
600 E. Boulevard Ave.  
Bismarck, ND 58505

Re: Request for comment on definition of habilitative services as Essential Health Benefit

Dear Ms. Fonkert:

I am an occupational therapist here in North Dakota. I would like to thank you for taking public comment regarding the definition of habilitative services as an Essential Health Benefit. As an occupational therapist, I have worked primarily in pediatric practice. Habilitation is concerned with the learning of skills that have not yet been developed even though they should have and that is the focus of pediatric occupational therapy

Have a clear definition is in the best interest of our pediatric clientele who have significant disabilities and need assistance in order to live a fulfilling life and be able to engage in meaningful life activities in preparation for meaningful adulthood. I strongly encourage you to select The National Association of Insurance Commissioner's definition of habilitation. This will place insurance policies on an even playing field, which is important to the Health Care Reform law. In addition, it will make it clear to purchasers of the policy and health care providers what services are covered.

I would also speak to determining the amount of benefits an individual might receive under habilitation. While I understand that it is important to control costs in healthcare, I would like to discourage selecting the rate at just parity to rehabilitation services. Keeping in mind that children have never learned the skill and typically do not advance at the rate of an adult who is relearning a skill (rehabilitation) establishing parity may not be best practice. Instead, it may be beneficial to look at those plans in ND who currently cover habilitation services to gauge some idea of coverage of habilitation services. Insurance companies would be encouraged to determine coverage based upon functional outcomes and progress. If neither are present, services should not be covered, however if a strong case is made for functional outcomes and progress therapy would be covered. If, however, the Insurance Commissioner believes a minimum must be established, I would then support parity to rehabilitation.

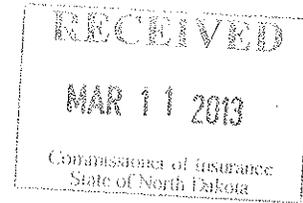
I understand the challenges the Department faces in implementing provisions of the ACA within a short time, and appreciate this opportunity to comment. Thank you for considering my comments. If you have further questions or need further clarification. Please contact me at [nielsen.sarah00@gmail.com](mailto:nielsen.sarah00@gmail.com).

Respectfully submitted,

*Sarah Nielsen PhD, OTR/L*

Sarah Nielsen, PhD, OTR/L

Date 3-8-13



Andrea Fonkert  
Public Information Officer  
North Dakota Insurance Department  
600 E. Boulevard Ave.  
Bismarck, ND 58505

Re: Request for comment on definition of habilitative services as Essential Health Benefit

Dear Ms. Fonkert:

As an occupational therapy student, I want to take the opportunity to comment regarding the definition of habilitative services as an Essential Health Benefit. Occupational therapists and occupational therapy assistants are licensed health professionals. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by promoting health and minimizing the functional effects of illness, injury, and disability.

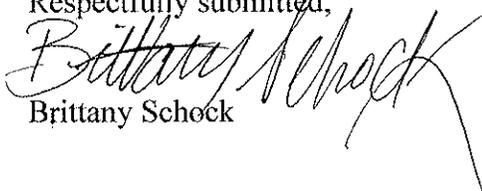
The decision made by the Insurance Department regarding the definition of habilitative services will have an impact on individuals served by occupational therapy, particularly children with developmental disabilities. I understand that Health and Human Services has empowered states to define the habilitative benefit to create a level playing field for health plans, so that adverse selection is avoided, while ensuring a minimum benefit is available to the vulnerable North Dakota citizens who need those services most. Therefore, I urge the Department to define the habilitative benefit.

It is my hope that you strongly consider using the definition of habilitation as set forth by the National Association of Insurance Commissioners. This definition clearly defines habilitation services so that consumers and providers can understand what is intended to be covered under this category.

I would also like to take this opportunity to ask you to consider the manner in which habilitative services are covered. While I support habilitative services with at least parity to rehabilitation services, I want to ask that you consider that clients needing habilitative services are very different and may require longer duration of services.

Thank you for considering my concerns regarding habilitation services and the impact the Insurance Department's decision will have regarding children with developmental disabilities.

Respectfully submitted,

  
Brittany Schock



**ASSURANT**  
Health

501 West Michigan  
P.O. Box 3050  
Milwaukee, WI 53201-3050  
T 800.800.1212

March 11, 2013

[www.assurant.com](http://www.assurant.com)

Andrea Fonkert  
Public Information Officer  
North Dakota

Re: Request for Comment on the Essential Health Benefits (EHB) final rule published February 25, 2013 and Health Insurance Market Rules; Rate Review final rule issued February 22, 2013

Dear Ms. Fonkert:

Thank you for the opportunity to provide comment on the Essential Health Benefits final rule, and health insurance market rules rate review final rule. Below please find our comments to each of the questions outlined in your February 28, 2013 E-MAIL.

1. "The EHB rule indicates "...states have the first opportunity to determine which habilitative benefits must be covered by their benchmark plan. States may choose to use the NAIC or Medicaid definition. If states have not chosen to define habilitative benefits, the issuers' choice remains." The ND selection of the Sanford HMO plan (benchmark plan) did not define habilitative services.
  - Should North Dakota define habilitative services?
  - If yes, what would the definition contain given the requirements in 45 CFR 156.115?"

**Response:**

Assurant Health's preference would be that habilitative services not be defined by North Dakota; however we are not opposed to a reasonable state definition.

2. "In the market final rule it states "a state may require the individual and small group insurance markets within a state to be merged into a single risk pool if the state determines appropriate."
  - Should North Dakota require carriers to merge their individual and small group non-grandfathered markets into one risk pool? "

**Response:** Assurant Health's preference would be that North Dakota not require carriers merge their individual and small group non-grandfathered markets into one risk pool. We believe requiring the merge of these markets will discourage carrier participation in the market (most likely the individual market) that becomes subsidized.

3. The final market rule allows states to establish geographic rating areas in one of the following boundaries:

- Counties
- Three-digit ZIP codes
- Metropolitan statistical areas (MSA) and non-metropolitan statistical (non-MSA) areas

Should a state not make a choice, the default will be one rating area for each MSA and one rating area for all non-MSAs in the state (no greater number than the number of MSAs in the state plus one), which is four for North Dakota.

- Should North Dakota establish its own geographic rating area?
- If yes, how should the state be divided?

**Response:** Assurant Health's preference would be that North Dakota establish its own geographic rating areas. We suggest Fargo/Grand Forks as one region and the remainder of the state as another region.

4. PHSA 2701(a)(1)(A)(iii) limits the use of age rating to 3:1. The final market rule requires the use of uniform age rating bands specified by HHS and a uniform age rating curve specified by HHS, unless the state specifies its own curve for the individual and small group markets. If the state does not establish a uniform age rating curve, a default will be specified by the Secretary of HHS.

- Should North Dakota establish its own age rating curve for either the individual or small group markets?
- If yes, please describe the suggested rating curve(s).

**Response:** Assurant Health's preference would be that North Dakota establish its own age rating curve. We believe the 0-20 age rate to be inadequate. In addition, when a dependent turns 21, it will result in large renewal rate increases for that policyholder. We suggest increasing the 0-20 age rate.

5. According to the final market rule, a state may elect to require that premiums for family coverage be determined by using uniform family tiers and the corresponding multipliers established by the state. If a state does not establish uniform family tiers and the corresponding multipliers, the per-member rating methodology mentioned in 45 CFR 147.102 (c)(1) applies.

- Should North Dakota elect uniform family tiers?

**Response:** Assurant Health's preference would be North Dakota not elect uniform family tiers.

6. The final market rule limits the use of tobacco use as a rating factor to a maximum of 1.5:1 applicable only to individuals in a family that smoke.

- Should North Dakota adopt a narrower ratio for tobacco use?
- If yes, what should it be?

**Response:** Assurant Health's preference would be North Dakota not adopt a narrower ration for tobacco use, 1.5 tobacco ratio is appropriate at older ages.

7. The final market rule states "We encourage states to consider approaches to discourage adverse selection while ensuring consumer's guaranteed availability rights are protected since state policies that limit guaranteed availability are preempted by this law." It goes on to

suggest future guidance will be issued on other permissible strategies to mitigate adverse selection.

- If allowed, what other strategies would you suggest North Dakota pursue to mitigate adverse selection?

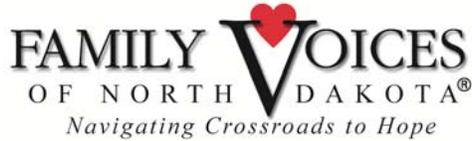
**Response:** Assurant Health has no comment for this item.

Should you have any questions, or require additional information, please contact me at any of the numbers listed below.

Best Regards,



Karen Griglak  
Contract Compliance Analyst  
Legal Department  
karen.griglak@assurant.com  
T 414.299.8687 or 800.800.1212 ext. 8687



Andrea Fonkert  
ND Department of Insurance  
[afonkert@nd.gov](mailto:afonkert@nd.gov)

Ms. Fonkert,  
In response to public comment on Essential Health Benefits (EHB) final rule published February 25, 2013 and Health Insurance Market Rules; Rate Review final rule issued February 22, 2013

I would like to offer comment regarding

1. The EHB rule indicates "...states have the first opportunity to determine which habilitative benefits must be covered by their benchmark plan. States may choose to use the NAIC or Medicaid definition. If states have not chosen to define habilitative benefits, the issuers' choice remains." The ND selection of the Sanford HMO plan (benchmark plan) did not define habilitative services.
  - Should North Dakota define habilitative services? Yes

Family Voices of North Dakota is the state health information and education center for families of children with special health care needs and disabilities. As such rehabilitation and habilitation services are especially vital for this population and should be clearly defined. State flexibility is important but insurer flexibility has the potential to limit crucial services for this vulnerable population. Additionally a transitional approach would allow insurers to provide the minimal benefit that does not fulfill the ACA requirement.

The proposed rule states that insurer must only supplement habilitative services when there are none offered. We feel this will result in lacking critical habilitative services.

- If yes, what would the definition contain given the requirements in 45 CFR 156.115?

At minimum we feel the definition should use the definition used by Medicaid that the extent of coverage of habilitation services used by Medicaid that the extent of coverage of the habilitation services and devices be at least in parity with rehabilitation coverage.

It is important that "maintenance of function" be included in the definition of habilitative services. Many times these services are needed in order to prevent a decline in function. Failure to cover these services under the essential health benefits

will result in many of our vulnerable population only to reach a level of function that they are unable to maintain because of a lack of access to continued services.

The Medicaid definition of habilitative services in section 1915(c)(5) of the Social Security Act is: “...services **designed to assist individuals in acquiring, retaining, and improving the self help, socialization, and adaptive skill necessary to reside successfully in home and community based settings; and ... includes prevocational, educational, and supported employment services...**” **The Medicaid law does not limit habilitative services to the learning of new skills.” The Medicaid law also does not limit services provided under the rehabilitation option to relearning lost skills. This is an important point for children who often require services to bring the child to a level of functioning that they had previously achieved or would have achieved if normal development had not been impaired by a condition or disorder.**

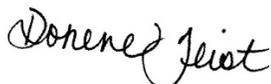
The Medicaid program defines habilitative services for the purpose of delineating those services that a State may choose to cover as part of a package of services that are designed to avoid institutionalization, or help people move from institutional settings to the community. For that reason, the Medicaid definition of habilitative services is broad and open ended, and includes services that are outside the scope of coverage provided through a typical employer plan.

The need to distinguish habilitation from rehabilitation in Medicaid occurs primarily due to the particular set of rules and financial limits that Title XIX puts on habilitative services, which is not relevant to the goals of the essential health benefits and may convey a broader array of services is included than what is intended in the context of a typical employer plan.

We encourage you to consider the Medicaid definition of habilitative and rehabilitative services. Our vulnerable populations are looking to you in providing access to necessary services.

Thank you Andrea for your time.

Donene Feist

A handwritten signature in cursive script that reads "Donene Feist".

Family Voices of North Dakota

## Fonkert, Andrea L.

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**From:** Heather Arnt <heatherarnt@reddoorpediatric.com>  
**Sent:** Friday, March 08, 2013 9:17 AM  
**To:** Fonkert, Andrea L.  
**Subject:** Re: habilitative therapy support

March 8, 2013

Andrea Fonkert

Public Information Officer

North Dakota Insurance Department

600 E. Boulevard Ave.

Bismarck, ND 58505

Re: Request for comment on definition of habilitative services as Essential Health Benefit

Dear Ms. Fonkert:

As an owner of a pediatric private practice providing occupational therapy, I want to take the opportunity to comment regarding the definition of habilitative services as an Essential Health Benefit. Occupational therapists and occupational therapy assistants are licensed health professionals. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by promoting health and minimizing the functional effects of illness, injury, and disability.

The decision made by the Insurance Department regarding the definition of habilitative services will have an impact on individuals served by occupational therapy, particularly children with developmental disabilities. I understand that Health and Human Services has empowered states to define the habilitative benefit to create a level playing field for health plans, so that adverse selection is avoided, while ensuring a minimum benefit is available to the vulnerable North Dakota citizens who need those services most. Therefore, I urge the Department to define the habilitative benefit.

It is my hope that you strongly consider using the definition of habilitation as set forth by the National Association of Insurance Commissioners. This definition clearly defines habilitation services so that consumers and providers can understand what is intended to be covered under this category.

I would also like to take this opportunity to ask you to consider the manner in which habilitative services are covered. While I support habilitative services with at least parity to rehabilitation services, I want to ask that you consider that clients needing habilitative services are very different and may require longer duration of services.

Thank you for considering my concerns regarding habilitation services and the impact the Insurance Department's decision will have regarding children with developmental disabilities.

Respectfully submitted,

Heather S. Arnt,

Red Door Pediatric Therapy

On Fri, Mar 8, 2013 at 9:11 AM, Fonkert, Andrea L. <[afonkert@nd.gov](mailto:afonkert@nd.gov)> wrote:

Heather,

Could you please resend your letter in Word, as a PDF or in the text of an email? I am unable to open the attachment.

Thank you.

Andrea Fonkert

Public information officer

North Dakota Insurance Department  
600 E. Boulevard Ave., Bismarck, ND 58505

[afonkert@nd.gov](mailto:afonkert@nd.gov) [701.328.2484](tel:701.328.2484) [@NDID](http://nd.gov/ndins)

**From:** Heather Arnt [mailto:[heatherarnt@reddoorpediatric.com](mailto:heatherarnt@reddoorpediatric.com)]

**Sent:** Friday, March 08, 2013 9:10 AM

**To:** Fonkert, Andrea L.

**Subject:** habilitative therapy support

Attached you will find a letter of support for coverage of habilitative OT services.

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Heather S. Arnt, M.S, CCC-SLP

Red Door Pediatric Therapy

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Heather S. Arnt, M.S, CCC-SLP

Red Door Pediatric Therapy

**Fonkert, Andrea L.**

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**From:** Kelli Atkinson <atkinson.kelli@gmail.com>  
**Sent:** Sunday, March 10, 2013 2:18 PM  
**To:** Fonkert, Andrea L.  
**Subject:** Comment regarding definition of habilitation services

March 10, 2013

Andrea Fonkert

Public Information Officer

North Dakota Insurance Department

600 E. Boulevard Ave.

Bismarck, ND 58505

Re: Request for comment on definition of habilitative services as Essential Health Benefit

Dear Ms. Fonkert:

As an occupational therapist, I want to take the opportunity to comment regarding the definition of habilitative services as an Essential Health Benefit. Occupational therapists and occupational therapy assistants are licensed health professionals. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by promoting health and minimizing the functional effects of illness, injury, and disability.

The decision made by the Insurance Department regarding the definition of habilitative services will have an impact on individuals served by occupational therapy, particularly children with developmental disabilities. I understand that Health and Human Services has empowered states to define the habilitative benefit to create a level playing field for health plans, so that adverse selection is avoided, while ensuring a minimum benefit is available to the vulnerable North Dakota citizens who need those services most. Therefore, I urge the Department to define the habilitative benefit.

It is my hope that you strongly consider using the definition of habilitation as set forth by the National Association of Insurance Commissioners. This definition clearly defines habilitation services so that consumers and providers can understand what is intended to be covered under this category.

I would also like to take this opportunity to ask you to consider the manner in which habilitative services are covered. While I support habilitative services with at least parity to rehabilitation services, I want to ask that

you consider that clients needing habilitative services are very different and may require longer duration of services.

As a pediatric occupational therapist, some of the children I serve require services for longer durations of time due to the nature of their disability. For example, a four year old child that I work with has been receiving occupational therapy since birth, as he was born prematurely which resulted in cerebral palsy. Due to the severity of his cerebral palsy, occupational therapy has been necessary to help him develop the ability to develop motor skills that allow him to reach and grasp toys. While this task may seem simple for a young child to accomplish, extended time in occupational therapy was what enabled my patient to participate in play. Being able to reach and grasp is a vital ability that will also assist him to one day activate a communication device or feed himself. The severity of his cerebral palsy did not allow him to gain this skill quickly, but through his hard work at therapy he was able to make this step towards independence.

Thank you for considering my concerns regarding habilitation services and the impact the Insurance Department's decision will have regarding children with developmental disabilities.

Respectfully submitted,

Kelli Erdmann, OTR/L

## Fonkert, Andrea L.

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**From:** Judy Bahe <jbahe@bis.midco.net>  
**Sent:** Monday, March 11, 2013 2:34 PM  
**To:** Fonkert, Andrea L.  
**Subject:** Request for comment on the EHB

To: Andrea Fonkert, ND Department of Insurance  
From: Judy Bahe, PT, MPT

Ms. Fonkert,

I am writing in response to the request for comment on the Essential Health Benefits (EHB) final rule published February 25, 2013 and Health Insurance Market Rules; Rate Review final rule issued February 22, 2013.

I am a physical therapist who has practiced in the state of ND for 30+ years, primarily in the area of pediatric physical therapy. I have provided these services in a variety of settings, including school-based, outpatients, inpatients and through community-based living centers. I am also an active member of the American Physical Therapy Association (APTA) and the ND Physical Therapy Association (NDPTA). I feel very strongly that I need to advocate for the interests of the pediatric patients/clients. I would like to offer comments related to:

1. The EHB rule indicates ".,.,states have the first opportunity to determine which habilitative benefits must be covered by their benchmark plan. States may choose to use the NAIC or Medicaid definition. If states have not chosen to define habilitative benefits, the issuers' choice remains." The ND selection of the Sanford HMO plan (benchmark plan) did not define habilitative services.

- Should North Dakota define habilitative services? **Yes.**

Over the years, I have seen changes in insurance coverage for pediatric patients. These patients typically have childhood onset conditions and are particularly vulnerable to accessing services, learning new skills and retaining those skills. Approximately 10 years ago there was a task force that was formed, consisting of therapists, parents of children with disabilities and insurance company administration and staff. It was agreed upon at that time that benefits/services for children with childhood onset conditions (habilitative) needed to be separately defined from rehabilitative benefits/services. One size does not fit all and that was exactly the case when differentiating between habilitative (chronic lifelong episodic periods of care/services needed to learn/retain skills) and rehabilitative (generally more acute shorter episode of care to restore or improve skills lost due to injury or illness). This approach has been very effective since that time and I believe should be continued when implementing this ESB.

- If yes, what would the definition contain given the requirements in 45 CFR 156.115?

I am in support of the definition proposed by the American Physical Therapy Association (a member of the Habilitation Benefits Coalition) which is in line with the NAIC definition. At a minimum, I could also be supportive of the Medicaid definition. The APTA definition is:

**Habilitation Services:** Health care services that help a person keep, learn or improve skills and functioning for daily living. Examples include therapy for a child who isn't walking or talking at the expected age. These services may include physical therapy, occupational therapy, and speech-language pathology and other services for people with disabilities in a variety of inpatient and/or outpatient settings.

**Rehabilitation Services:** Health care services that help a person keep, restore or improve skills and functioning for daily living that have been lost or impaired because a person was sick, hurt or disabled. These services may include physical therapy, occupational therapy, and speech-language pathology and psychiatric rehabilitation services in a variety of inpatient and/or outpatient settings.

Thank you for this opportunity to submit comments. I ask you to please seriously consider defining habilitative services and to define those services parallel to the NAIC definition. Thank you for your time and attention.

Sincerely,

Judy Bahe, PT, MPT  
536 Meadow Lane  
Bismarck, ND 58504

I have read/reviewed both the NAIC definitions and the Medicaid definitions for habilitative and rehabilitative services. Speaking as a professional therapist, I would prefer the NAIC definitions as it specifies the therapies. If I were to speak as a parent of a child with disabilities, I would probably lean more towards the Medicaid definition as that addresses more specifically the socialization and adaptive skills necessary to function as independently as possible in a variety of settings.

**Fonkert, Andrea L.**

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**From:** Brandi Breitbach <brandibreitbach@reddoorpediatric.com>  
**Sent:** Monday, March 11, 2013 9:35 AM  
**To:** Fonkert, Andrea L.  
**Subject:** Request for comment on definition of habilitative services as Essential Health Benefit

3/11/13

Andrea Fonkert

Public Information Officer

North Dakota Insurance Department

600 E. Boulevard Ave.

Bismarck, ND 58505

Re: Request for comment on definition of habilitative services as Essential Health Benefit

Dear Ms. Fonkert:

As an occupational therapist, I want to take the opportunity to comment regarding the definition of habilitative services as an Essential Health Benefit. Occupational therapists and occupational therapy assistants are licensed health professionals. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by promoting health and minimizing the functional effects of illness, injury, and disability.

The decision made by the Insurance Department regarding the definition of habilitative services will have an impact on individuals served by occupational therapy, particularly children with developmental disabilities. I understand that Health and Human Services has empowered states to define the habilitative benefit to create a level playing field for health plans, so that adverse selection is avoided, while ensuring a minimum benefit is available to the vulnerable North Dakota citizens who need those services most. Therefore, I urge the Department to define the habilitative benefit.

It is my hope that you strongly consider using the definition of habilitation as set forth by the National Association of Insurance Commissioners. This definition clearly defines habilitation services so that consumers and providers can understand what is intended to be covered under this category.

I would also like to take this opportunity to ask you to consider the manner in which habilitative services are covered. While I support habilitative services with at least parity to rehabilitation services, I want to ask that

you consider that clients needing habilitative services are very different and may require longer duration of services.

Thank you for considering my concerns regarding habilitation services and the impact the Insurance Department's decision will have regarding children with developmental disabilities.

Respectfully submitted,

**Brandi Breitbach, MOTR/L**

**Fonkert, Andrea L.**

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**From:** Bobbi Carrlson <Bobbi.Carrlson@annecenter.org>  
**Sent:** Friday, March 08, 2013 9:59 AM  
**To:** Fonkert, Andrea L.  
**Subject:** Habilitative Services

March 8, 2013

Andrea Fonkert  
Public Information Officer  
North Dakota Insurance Department  
600 E. Boulevard Ave.  
Bismarck, ND 58505

Re: Request for comment on definition of habilitative services as Essential Health Benefit

Dear Ms. Fonkert:

As an occupational therapist, I want to take the opportunity to comment regarding the definition of habilitative services as an Essential Health Benefit. Occupational therapists and occupational therapy assistants are licensed health professionals. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by promoting health and minimizing the functional effects of illness, injury, and disability.

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I would also like to take this opportunity to ask you to consider the manner in which habilitative services are covered. While I support habilitative services with at least parity to rehabilitation services, I want to ask that you consider that clients needing habilitative services are very different and may require longer duration of services.

Thank you for considering my concerns regarding habilitation services and the impact the Insurance Department's decision will have regarding children with developmental disabilities.

Respectfully submitted,

Roberta Carrlson MOTR/L  
NE KIDS Infant Development

1826 S Washington St. Unit 33B  
Grand Forks, ND 58201  
701-775-8934 ext 24

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March 11, 2013

Andrea Fonkert  
ND Department of Insurance  
[afonkert@nd.gov](mailto:afonkert@nd.gov)

Dear Andrea:

In response to public comment on Essential Health Benefits (EHB) final rule published February 25, 2013 and Health Insurance Market Rules; Rate Review final rule issued February 22, 2013

Designer Genes of North Dakota would like to offer comment in response to the following:

1. The EHB rule indicates “...states have the first opportunity to determine which habilitative benefits must be covered by their benchmark plan. States may choose to use the NAIC or Medicaid definition. If states have not chosen to define habilitative benefits, the issuers’ choice remains.” The ND selection of the Sanford HMO plan (benchmark plan) did not define habilitative services.

- Should North Dakota define habilitative services?

**Yes**

Designer Genes of North Dakota is a non-profit organization located in Bismarck that provides support to a large network of families of children with Down syndrome as well as adults with Down syndrome themselves. Supports are provided in a variety of ways including information, education, and advocacy. In line with our organization’s mission we must advocate on behalf of individuals with Down syndrome and insist that rehabilitation and habilitation services be clearly defined. Individuals with Down syndrome often times rely on a variety of services that are deemed habilitative and not rehabilitative episodically throughout their lifespan in order to reach their full potential and live as thriving community members. Furthermore, individuals with Down syndrome are in a particularly vulnerable position when it comes to accessing services and therefore require that these essential habilitative services be clearly defined as to not impede their access to achieving their full potential. We understand that state flexibility is important when implementing this EHB, but unfortunately non-standard insurer flexibility has the potential to limit crucial services for this vulnerable population. Additionally, the proposed rule states that insurer must only supplement habilitative services when there are none offered which is the case in the defined bench mark plan. We feel this may

potentially result in lacking critical habilitative services for the individuals that we support.

- If yes, what would the definition contain given the requirements in 45 CFR 156.115?

At minimum we feel the definition should use the definition used by Medicaid.

The Medicaid definition of habilitative services in section 1915(c)(5) of the Social Security Act is: **"...services designed to assist individuals in acquiring, retaining, and improving the self help, socialization, and adaptive skill necessary to reside successfully in home and community based settings; and ... includes prevocational, educational, and supported employment services..."** The Medicaid law does not limit habilitative services to the learning of new skills." The Medicaid law also does not limit services provided under the rehabilitation option to relearning lost skills. This is an important point for children who often require services to bring the child to a level of functioning that they had previously achieved or would have achieved if normal development had not been impaired by a condition or disorder.

It is important that "maintenance of function" be included in the definition of habilitative services. Many times these services are needed in order to prevent a decline in function.

We encourage you to please consider our request to clearly define habilitative services and to define those services parallel to the current definition set forth by Medicaid. The individuals that our organization represents find this essential in order to access services which will allow them to live as prosperous ND citizens.

Thank you for your time and attention to this matter and our request.

Sincerely,  
Roxane Romanick, President  
Designer Genes of North Dakota  
701-391-7421  
romanick@bis.midco.net

March 8, 2013

Andrea Fonkert  
Public Information Officer  
North Dakota Insurance Department  
600 E. Boulevard Ave.  
Bismarck, ND 58505

Re: Request for comment on definition of habilitative services as Essential Health Benefit

Dear Ms. Fonkert:

As a ND state board licensed occupational therapist, I want to take the opportunity to comment regarding the definition of habilitative services as an Essential Health Benefit. Occupational therapists and occupational therapy assistants are licensed health professionals. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by promoting health and minimizing the functional effects of illness, injury, and disability.

The decision made by the Insurance Department regarding the definition of habilitative services will have an impact on individuals served by occupational therapy, particularly children with developmental disabilities. I understand that Health and Human Services has empowered states to define the habilitative benefit to create a level playing field for health plans, so that adverse selection is avoided, while ensuring a minimum benefit is available to the vulnerable North Dakota citizens who need those services most. Therefore, I urge the Department to define the habilitative benefit.

It is my hope that you strongly consider using the definition of habilitation as set forth by the National Association of Insurance Commissioners. This definition clearly defines habilitation services so that consumers and providers can understand what is intended to be covered under this category.

I would also like to take this opportunity to ask you to consider the manner in which habilitative services are covered. While I support habilitative services with at least parity to rehabilitation services, I want to ask that you consider that clients needing habilitative services are very different and may require longer duration of services.

Thank you for considering my concerns regarding habilitation services and the impact the Insurance Department's decision will have ND citizens that may be able to live life to its fullest by receiving these services.

Respectfully submitted,

Lisa Burke, OTR/L  
Occupational Therapy Coordinator  
Trinity Health

## Fonkert, Andrea L.

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**From:** Dosland,Kiley <Kiley.Dosland@SanfordHealth.org>  
**Sent:** Monday, March 11, 2013 4:33 PM  
**To:** Fonkert, Andrea L.  
**Subject:** Essential Health Benefits- Habilitative care comments

**Categories:** Red Category

To Whom it May Concern:

Yes, North Dakota should define habilitative services. The habilitative definition should include healthcare services that allow an individual to learn, gain, or improve skills and functioning for daily living including physical therapy, occupational therapy, and speech therapy services. Please also refer to the American Physical Therapy Association's (APTA) Public Policy and Advocacy Committee Essential Health Benefits Recommendations which provides definitions for rehabilitation services as well as habilitation services and guiding principles.

Thank you for your consideration,  
Kiley Dosland, PT, DPT

Kiley Dosland, PT, DPT  
Physical Therapist  
Sanford Children's Therapy  
300 N 7<sup>th</sup> Street Bismarck, ND 58501  
701-323-8393 (voicemail)  
[kdosland@mohs.org](mailto:kdosland@mohs.org)



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**Fonkert, Andrea L.**

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**From:** Kelli Ellenbaum <kelliellenbaum@reddoorpediatric.com>  
**Sent:** Monday, March 11, 2013 9:21 AM  
**To:** Fonkert, Andrea L.  
**Subject:** Habilitative therapy coverage

March 11, 2014

Andrea Fonkert

Public Information Officer

North Dakota Insurance Department

600 E. Boulevard Ave.

Bismarck, ND 58505

Re: Request for comment on definition of habilitative services as Essential Health Benefit

Dear Ms. Fonkert:

As an Speech Language Pathologist I want to take the opportunity to comment regarding the definition of habilitative services as an Essential Health Benefit. Speech Language Pathologists are licensed health professionals. The practice of speech pathology is science-driven, evidence-based, and enables people of all ages to live life to its fullest by promoting health and minimizing the functional effects of illness, injury, and disability.

The decision made by the Insurance Department regarding the definition of habilitative services will have an impact on individuals served by speech therapy, particularly children with developmental disabilities. I understand that Health and Human Services has empowered states to define the habilitative benefit to create a level playing field for health plans, so that adverse selection is avoided, while ensuring a minimum benefit is available to the vulnerable North Dakota citizens who need those services most. Therefore, I urge the Department to define the habilitative benefit.

It is my hope that you strongly consider using the definition of habilitation as set forth by the National Association of Insurance Commissioners. This definition clearly defines habilitation services so that consumers and providers can understand what is intended to be covered under this category.

I would also like to take this opportunity to ask you to consider the manner in which habilitative services are covered. While I support habilitative services with at least parity to rehabilitation services, I want to ask that you consider that clients needing habilitative services are very different and may require longer duration of services.

**Without pediatric habilitative speech therapy, my nonverbal 8 year old patient would not have been able to access the augmentation alternative communication device that allows her to state her basic needs and requests. Without habilitative speech therapy, my 3 year old patient with autism would not have learned how to follow multi-step directions using a visual schedule strategy because his parents would not have had access to highly trained health professionals. Without habilitative speech therapy, my 2 year old patient with newly activated cochlear implants would not learn verbal vocabulary at an outstanding rate. Without habilitative therapy, my 4 year old patient with a profound phonological disorder (major sound errors) would not have been able to be understood by his peers. These are only just a few examples of medically based disorders that habilitative speech therapy addresses in the medical field. Insurance should cover habilitative therapy.**

Thank you for considering my concerns regarding habilitation services and the impact the Insurance Department's decision will have regarding children with developmental disabilities.

Respectfully submitted,

**Kelli Ellenbaum, Speech Language Pathologist**

--  
Kelli Ellenbaum, MS CCC-SLP  
Speech Language Pathologist  
Autism Certified

Red Door Pediatric Therapy  
1303 East Central Avenue  
Bismarck, ND 58501

phone: (701) 222-3175  
website: [www.reddoorpediatric.com](http://www.reddoorpediatric.com)

**Fonkert, Andrea L.**

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**From:** Erikson,Kori <Kori.Erikson@SanfordHealth.org>  
**Sent:** Friday, March 08, 2013 2:23 PM  
**To:** Fonkert, Andrea L.  
**Subject:** Habilitative definition

Dear Ms. Fonkert:

As an occupational therapist, I want to take the opportunity to comment regarding the definition of habilitative services as an Essential Health Benefit. Occupational therapists and occupational therapy assistants are licensed health professionals. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by promoting health and minimizing the functional effects of illness, injury, and disability.

The decision made by the Insurance Department regarding the definition of habilitative services will have an impact on individuals served by occupational therapy, particularly children with developmental disabilities. I understand that Health and Human Services has empowered states to define the habilitative benefit to create a level playing field for health plans, so that adverse selection is avoided, while ensuring a minimum benefit is available to the vulnerable North Dakota citizens who need those services most. Therefore, I urge the Department to define the habilitative benefit.

It is my hope that you strongly consider using the definition of habilitation as set forth by the National Association of Insurance Commissioners. This definition clearly defines habilitation services so that consumers and providers can understand what is intended to be covered under this category.

I would also like to take this opportunity to ask you to consider the manner in which habilitative services are covered. While I support habilitative services with at least parity to rehabilitation services, I want to ask that you consider that clients needing habilitative services are very different and may require longer duration of services.

Thank you for considering my concerns regarding habilitation services and the impact the Insurance Department's decision will have regarding children with developmental disabilities.

Respectfully submitted,

Kori Erikson, OTR/L, CDRS

Kori Erikson, OTR/L, CDRS  
Manager of Occupational Therapy  
Sanford Medical Center  
300 N. Seventh Street

Bismarck, ND 58501  
(701) 323-6544 office  
(701) 323-6189 fax  
[kori.erikson@sanfordhealth.org](mailto:kori.erikson@sanfordhealth.org)



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**Fonkert, Andrea L.**

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**From:** jan gabriel <jangabriel@hotmail.com>  
**Sent:** Friday, March 08, 2013 9:53 PM  
**To:** Fonkert, Andrea L.  
**Subject:** Essential Health Benefits in North Dakota

March 8, 2013

Andrea Fonkert

Public Information Officer

North Dakota Insurance Department

600 E. Boulevard Ave.

Bismarck, ND 58505

Re: Request for comment on definition of habilitative services as Essential Health Benefit

Dear Ms. Fonkert:

As an Occupational Therapist, I want to take the opportunity to comment regarding the definition of habilitative services as an Essential Health Benefit. Occupational therapists and occupational therapy assistants are licensed health professionals. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by promoting health and minimizing the functional effects of illness, injury, and disability.

The decision made by the Insurance Department regarding the definition of habilitative services will have an impact on individuals served by occupational therapy, particularly children with developmental disabilities. I understand that Health and Human Services has empowered states to define the habilitative benefit to create a level playing field for health plans, so that adverse selection is avoided, while ensuring a minimum benefit is available to the vulnerable North Dakota citizens who need those services most. Therefore, I urge the Department to define the habilitative benefit.

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I would also like to take this opportunity to ask you to consider the manner in which habilitative services are covered. While I support habilitative services with at least parity to rehabilitation services, I want to ask that you consider that clients needing habilitative services are very different and may require longer duration of services.

Thank you for considering my concerns regarding habilitation services and the impact the Insurance Department's decision will have regarding children with developmental disabilities.

Respectfully submitted,

**Jan Gabriel-Johnson OTR/L**

Valley City, ND

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**Fonkert, Andrea L.**

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**From:** Grabanski, Julie <julie.grabanski@med.und.edu>  
**Sent:** Friday, March 08, 2013 10:23 AM  
**To:** Fonkert, Andrea L.  
**Subject:** Comment on habilitative services

March 8, 2013

Andrea Fonkert  
Public Information Officer  
North Dakota Insurance Department  
600 E. Boulevard Ave  
Bismarck, ND 58505

Re: Request for comment on definition of habilitative services as Essential Health Benefit

Dear Ms. Fonkert:

As an occupational therapist, I want to take the opportunity to comment regarding the definition of habilitative services as an Essential Health Benefit. Occupational therapists and occupational therapy assistants are licensed health professionals. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by promoting health and minimizing the functional effects of illness, injury, and disability.

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I would also like to take this opportunity to ask you to consider the manner in which habilitative services are covered. While I support habilitative services with at least parity to rehabilitation services, I want to ask that you consider that clients needing habilitative services are very different and may require longer duration of services.

Thank you for considering my concerns regarding habilitation services and the impact the Insurance Department's decision will have regarding children with developmental disabilities.

Respectfully submitted,

*Julie Grabanski, MSA, OTR/L*

Andrea Fonkert

Public Information Officer

North Dakota Insurance Department

600 E. Boulevard Ave.

Bismarck, ND 58505

Re: Request for comment on definition of habilitative services as Essential Health Benefit

Dear Ms. Fonkert:

As an **occupational therapy assistant**, I want to take the opportunity to comment regarding the definition of habilitative services as an Essential Health Benefit. Occupational therapists and occupational therapy assistants are licensed health professionals. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by promoting health and minimizing the functional effects of illness, injury, and disability.

The decision made by the Insurance Department regarding the definition of habilitative services will have an impact on individuals served by occupational therapy, particularly children with developmental disabilities. I understand that Health and Human Services has empowered states to define the habilitative benefit to create a level playing field for health plans, so that adverse selection is avoided, while ensuring a minimum benefit is available to the vulnerable North Dakota citizens who need those services most. Therefore, I urge the Department to define the habilitative benefit.

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I would also like to take this opportunity to ask you to consider the manner in which habilitative services are covered. While I support habilitative services with at least parity to rehabilitation services, I want to ask that you consider that clients needing habilitative services are very different and may require longer duration of services.

Thank you for considering my concerns regarding habilitation services and the impact the Insurance Department's decision will have regarding children with developmental disabilities.

Respectfully submitted,

Shirley Kulla, COTA/L

March 11, 2013

Andrea Fonkert  
Public Information Officer  
North Dakota Insurance Department  
600 E. Boulevard Ave.  
Bismarck, ND 58505

Re: Request for comment on definition of habilitative services as Essential Health Benefit

Dear Ms. Fonkert:

As an occupational therapy student, I want to take the opportunity to comment regarding the definition of habilitative services as an Essential Health Benefit. Occupational therapists and occupational therapy assistants are licensed health professionals. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by promoting health and minimizing the functional effects of illness, injury, and disability.

The decision made by the Insurance Department regarding the definition of habilitative services will have an impact on individuals served by occupational therapy, particularly children with developmental disabilities. I understand that Health and Human Services has empowered states to define the habilitative benefit to create a level playing field for health plans, so that adverse selection is avoided, while ensuring a minimum benefit is available to the vulnerable North Dakota citizens who need those services most. Therefore, I urge the Department to define the habilitative benefit.

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Thank you for considering my concerns regarding habilitation services and the impact the Insurance Department's decision will have regarding children with developmental disabilities.

Respectfully submitted,

Lindsey Hamilton

March 7, 2013

Andrea Fonkert  
Public Information Officer  
North Dakota Insurance Department  
600 E. Boulevard Ave.  
Bismarck, ND 58505

Re: Request for comment on definition of habilitative services as Essential Health Benefit

Dear Ms. Fonkert:

As an occupational therapist I want to take the opportunity to comment regarding the definition of habilitative services as an Essential Health Benefit. Occupational therapists and occupational therapy assistants are licensed health professionals. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by promoting health and minimizing the functional effects of illness, injury, and disability.

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I would also like to take this opportunity to ask you to consider the manner in which habilitative services are covered. While I support habilitative services with at least parity to rehabilitation services, I want to ask that you consider that clients needing habilitative services are very different and may require longer duration of services.

Your thoughtful consideration regarding habilitation services and the impact the Insurance Department's decision will have regarding children with developmental disabilities is greatly appreciated.

Respectfully submitted,

Michelle Enockson, OTR/L

3/10/2013

Andrea Fonkert  
Public Information Officer  
North Dakota Insurance Department  
600 E. Boulevard Ave.  
Bismarck, ND 58505

Re: Request for comment on definition of habilitative services as Essential Health Benefit

Dear Ms. Fonkert:

As an occupational therapy student, I want to take the opportunity to comment regarding the definition of habilitative services as an Essential Health Benefit. Occupational therapists and occupational therapy assistants are licensed health professionals. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by promoting health and minimizing the functional effects of illness, injury, and disability.

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Thank you for considering my concerns regarding habilitation services and the impact the Insurance Department's decision will have regarding children with developmental disabilities.

Respectfully submitted,

Brianna Snider

March 7, 2013

Andrea Fonkert  
Public Information Officer  
North Dakota Insurance Department  
600 E. Boulevard Ave.  
Bismarck, ND 58505

Re: Request for comment on definition of habilitative services as Essential Health Benefit

Dear Ms. Fonkert:

As an occupational therapist, I want to take the opportunity to comment regarding the definition of habilitative services as an Essential Health Benefit. Occupational therapists and occupational therapy assistants are licensed health professionals. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by promoting health and minimizing the functional effects of illness, injury, and disability.

The decision made by the Insurance Department regarding the definition of habilitative services will have an impact on individuals served by occupational therapy, particularly children with developmental disabilities. I understand that Health and Human Services has empowered states to define the habilitative benefit to create a level playing field for health plans, so that adverse selection is avoided, while ensuring a minimum benefit is available to the vulnerable North Dakota citizens who need those services most. Therefore, I urge the Department to define the habilitative benefit.

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I would also like to take this opportunity to ask you to consider the manner in which habilitative services are covered. While I support habilitative services with at least parity to rehabilitation services, I want to ask that you consider that clients needing habilitative services are very different and may require longer duration of services.

Thank you for considering my concerns regarding habilitation services and the impact the Insurance Department's decision will have regarding children with developmental disabilities.

Respectfully submitted,

Dr. Wanda Berg PhD, OTR/L

March 8, 2013

Andrea Fonkert  
Public Information Officer  
North Dakota Insurance Department  
600 E. Boulevard Ave.  
Bismarck, ND 58505

Re: Request for comment on definition of habilitative services as Essential Health Benefit

Dear Ms. Fonkert:

As an occupational therapist I want to take the opportunity to comment regarding the definition of habilitative services as an Essential Health Benefit. Occupational therapists and occupational therapy assistants are licensed health professionals. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by promoting health and minimizing the functional effects of illness, injury, and disability.

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It is my hope that you strongly consider using the definition of habilitation as set forth by the National Association of Insurance Commissioners. This definition clearly defines habilitation services so that consumers and providers can understand what is intended to be covered under this category.

I would also like to take this opportunity to ask you to consider the manner in which habilitative services are covered. While I support habilitative services with at least parity to rehabilitation services, I want to ask that you consider that clients needing habilitative services are very different and may require longer duration of services.

Your thoughtful consideration regarding habilitation services and the impact the Insurance Department's decision will have regarding children with developmental disabilities is greatly appreciated.

Respectfully submitted,

Megan M. Kiefer, MS, OTR/L

3/11/13

Andrea Fonkert  
Public Information Officer  
North Dakota Insurance Department  
600 E. Boulevard Ave.  
Bismarck, ND 58505

Re: Request for comment on definition of habilitative services as Essential Health Benefit

Dear Ms. Fonkert:

As an occupational therapist and educator of future OTs I want to take the opportunity to comment regarding the definition of habilitative services as an Essential Health Benefit. Occupational therapists and occupational therapy assistants are licensed health professionals. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by promoting health and minimizing the functional effects of illness, injury, and disability.

The decision made by the Insurance Department regarding the definition of habilitative services will have an impact on individuals served by occupational therapy, particularly children with developmental disabilities. I understand that Health and Human Services has empowered states to define the habilitative benefit to create a level playing field for health plans, so that adverse selection is avoided, while ensuring a minimum benefit is available to the vulnerable North Dakota citizens who need those services most. Therefore, I urge the Department to define the habilitative benefit.

It is my hope that you strongly consider using the definition of habilitation as set forth by the National Association of Insurance Commissioners. This definition clearly defines habilitation services so that consumers and providers can understand what is intended to be covered under this category.

I would also like to take this opportunity to ask you to consider the manner in which habilitative services are covered. While I support habilitative services with at least parity to rehabilitation services, I want to ask that you consider that clients needing habilitative services are very different and may require longer duration of services, since the children being served under this category have not yet developed the skills necessary to complete functional tasks independently and need the therapy to learn the new skills.

Many of the children impacted are those with Autism Spectrum Disorders, Cerebral Palsy, Spina Bifida, or other disorders of early childhood. Occupational and physical therapists and speech and language clinicians work with these children and their families to develop the skills needed for activities of daily living, such as feeding and dressing, hygiene, toileting; mobility (i.e. walking or using a wheelchair or walker), community and social participation, and communication.

Thank you for considering my concerns regarding habilitation services and the impact the Insurance Department's decision will have regarding children with developmental disabilities.

Respectfully submitted,  
Carol H. Olson, PhD, OTR/L  
University of Mary, Dept. of Occupational Therapy  
Bismarck, ND 58504

Date 3/10/2013

Andrea Fonkert  
Public Information Officer  
North Dakota Insurance Department  
600 E. Boulevard Ave.  
Bismarck, ND 58505

Re: Request for comment on definition of habilitative services as Essential Health Benefit

Dear Ms. Fonkert:

As an occupational therapy student, I want to take the opportunity to comment regarding the definition of habilitative services as an Essential Health Benefit. Occupational therapists and occupational therapy assistants are licensed health professionals. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by promoting health and minimizing the functional effects of illness, injury, and disability.

The decision made by the Insurance Department regarding the definition of habilitative services will have an impact on individuals served by occupational therapy, particularly children with developmental disabilities. I understand that Health and Human Services has empowered states to define the habilitative benefit to create a level playing field for health plans, so that adverse selection is avoided, while ensuring a minimum benefit is available to the vulnerable North Dakota citizens who need those services most. Therefore, I urge the Department to define the habilitative benefit.

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I would also like to take this opportunity to ask you to consider the manner in which habilitative services are covered. While I support habilitative services with at least parity to rehabilitation services, I want to ask that you consider that clients needing habilitative services are very different and may require longer duration of services.

Thank you for considering my concerns regarding habilitation services and the impact the Insurance Department's decision will have regarding children with developmental disabilities.

Respectfully submitted,

Chelsey Meier, OTS

Date 3/8/13

Andrea Fonkert  
Public Information Officer  
North Dakota Insurance Department  
600 E. Boulevard Ave.  
Bismarck, ND 58505

Re: Request for comment on definition of habilitative services as Essential Health Benefit

Dear Ms. Fonkert:

As an occupational therapy student, I want to take the opportunity to comment regarding the definition of habilitative services as an Essential Health Benefit. Occupational therapists and occupational therapy assistants are licensed health professionals. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by promoting health and minimizing the functional effects of illness, injury, and disability.

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I would also like to take this opportunity to ask you to consider the manner in which habilitative services are covered. While I support habilitative services with at least parity to rehabilitation services, I want to ask that you consider that clients needing habilitative services are very different and may require longer duration of services.

As a student interested in working with the pediatric population, I would be devastated to learn that some of my future clients won't be receiving the OT services they could so highly benefit from.

Thank you for considering my concerns regarding habilitation services and the impact the Insurance Department's decision will have regarding children with developmental disabilities.

Respectfully submitted,

Katie Huffman, MSOTS

## Fonkert, Andrea L.

---

**From:** Andrea M Hensrud <Andrea.Hensrud@sendit.nodak.edu>  
**Sent:** Monday, March 11, 2013 10:58 AM  
**To:** Fonkert, Andrea L.  
**Subject:** Re: Request for comment on definition of habilitative services as Essential Health Benefit

Also, See attached.

March 8, 2013

Andrea Fonkert  
Public Information Officer  
North Dakota Insurance Department  
600 E. Boulevard Ave.  
Bismarck, ND 58505

Re: Request for comment on definition of habilitative services as Essential Health Benefit

Dear Ms. Fonkert:

As an Occupational Therapist, I want to take the opportunity to comment regarding the definition of habilitative services as an Essential Health Benefit. Occupational therapists and occupational therapy assistants are licensed health professionals. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by promoting health and minimizing the functional effects of illness, injury, and disability.

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As a pediatric therapist, I work with children to help them acquire new skills. These skills are used to help children have a voice for themselves, advocate for their needs and become more independent. I have helped children with autism gain the skills to tolerate their environment, allowing them to attend live in their home with siblings or attend school for a full day. I have watched a child with Down syndrome button her pants for the first time, allowing her to dress independently. I have also seen the impact a child has had on his family when he learned to feed himself.

Habilitative services have not only played a role in my profession, but also in the development of my brother, Charlie. Charlie was born with Down syndrome. As a child, Charlie struggled to keep up with his peers, often falling behind. With

the help of occupational therapy and the use of habilitative services, Charlie was given the support he needed to function and a more independent level alongside his peers and within his family. This participation was not only important to Charlie, but to our family as a whole.

Thank you for considering my concerns regarding habilitation services and the impact the Insurance Department's decision will have regarding children with developmental disabilities.

Respectfully submitted,

Andrea Hensrud, MOT, OTR/L

Andrea Hensrud, MOT, OTR/L  
Occupational Therapist  
Upper Valley Special Education

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March 8, 2013

Andrea Fonkert

Public Information Center

North Dakota Insurance Department

600 E. Boulevard Ave.

Bismarck, ND 58505

Re: Request for comment on definition of habilitative services as Essential Health Benefit

Dear Ms. Fonkert:

As an occupational therapist, I want to take the opportunity to comment regarding the definition of habilitative services as an Essential Health Benefit. Occupational therapists and occupational therapy assistants are licensed health professionals. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by promoting health and minimizing the functional effects of illness, injury, and disability.

The decision made by the Insurance Department regarding the definition of habilitative services will have an impact on individuals served by occupational therapy, particularly children with developmental disabilities. I understand that Health and Human Services has empowered states to define the habilitative benefit to create a level playing field for health plans, so that adverse selection is avoided, while ensuring a minimum benefit is available to the vulnerable North Dakota citizens who need those services most. Therefore, I urge the Department to define the habilitative benefit.

It is my hope that you strongly consider using the definition of habilitation as set forth by the National Association of Insurance Commissioners. This definition clearly defines habilitation services so that consumers and providers can understand what is intended to be covered under this category.

I would also like to take this opportunity to ask you to consider the manner in which habilitative services are covered. While I support habilitative services with at least parity to rehabilitation services, I want to ask that you consider that clients needing habilitative services are very different and may request longer duration of services.

Thank you for considering my concerns regarding habilitation services and the impact the Insurance Department's decision will have regarding children with developmental disabilities.

Sincerely,

Judy Godfread, OTR/L

**Fonkert, Andrea L.**

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**From:** Joersz, Sara <sara.e.joersz@my.und.edu>  
**Sent:** Friday, March 08, 2013 1:27 PM  
**To:** Fonkert, Andrea L.  
**Subject:** Request for comment on definition of habilitative services as Essential Health Benefit

03/08/2013

Andrea Fonkert

Public Information Officer

North Dakota Insurance Department

600 E. Boulevard Ave.

Bismarck, ND 58505

Dear Ms. Fonkert:

As an occupational therapy student, I want to take the opportunity to comment regarding the definition of habilitative services as an Essential Health Benefit. Occupational therapists and occupational therapy assistants are licensed health professionals. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by promoting health and minimizing the functional effects of illness, injury, and disability.

The decision made by the Insurance Department regarding the definition of habilitative services will have an impact on individuals served by occupational therapy, particularly children with developmental disabilities. I understand that Health and Human Services has empowered states to define the habilitative benefit to create a level playing field for health plans, so that adverse selection is avoided, while ensuring a minimum benefit is available to the vulnerable North Dakota citizens who need those services most. Therefore, I urge the Department to define the habilitative benefit.

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Thank you for considering my concerns regarding habilitation services and the impact the Insurance Department's decision will have regarding children with developmental disabilities.

Respectfully submitted,

Sara Joersz, MOTS



# Developmental Center

*A Division of the Department of Human Services*  
701 West 6<sup>th</sup> Street  
Grafton, North Dakota 58237  
701.352.4551

March 11, 2013

Dear Ms. Fonkert,

As an Occupational Therapist in the business of serving children with Developmental Disabilities, I would like to thank you for allowing this opportunity to comment regarding the definition of habilitative services as an Essential Health Benefit.

I am in agreement with other therapy service providers in that it is not only “best practice” but also has long term cost effective benefits for habilitative services to be clearly defined in order to promote service delivery to individuals in need of the services.

The National Association of Insurance Commissioners has defined habilitation as services that help a person gain, keep or improve skills to promote function of DLS. This differs from rehabilitation in that in rehabilitation the individual is regaining a lost skill. Habilitation is developing a delayed skill or skills for the first time. Habilitation is a broad definition that reflects a wide range of services depending on the level of the disability. Habilitative therapy services not only improve function but also prevent deformities or severe/ life threatening conditions such as skin ulcers, joint dislocations, limited joint motion, unsafe transfers, unsafe swallow, etc. Habilitative therapy services also provide a vital team membership role in disability management by enhancing coordination between the family, child pediatricians, orthopaedists, and other specialists not only providing valuable information on function to the specialists but also relaying information that can be used in the home to promote health and independence. This again can be a cost effective strategy that long term can prevent unnecessary surgeries, office visits, etc.

Individuals requiring habilitative therapy services require longer term service in order to maximize health benefits and independence. Several studies have been recorded that document the benefits of habilitative therapy over the course of time. In the North Dakota Insurance Commissioner’s Office, please consider refining the definition to habilitative service in order to ensure the provision/payment of these therapy services that have been proven to be effective.

Thank you for considering,

Mary Dusek, OTR/L

**Fonkert, Andrea L.**

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**From:** Livesay,Lisa <Lisa.Livesay@SanfordHealth.org>  
**Sent:** Friday, March 08, 2013 3:39 PM  
**To:** Fonkert, Andrea L.  
**Subject:** Habilitative OT services as Essential Health Benefit

March 8, 2013

Andrea Fonkert

Public Information Officer

North Dakota Insurance Department

600 E. Boulevard Ave.

Bismarck, ND 58505

Re: Request for comment on definition of habilitative services as Essential Health Benefit

Dear Ms. Fonkert:

As an occupational therapist I want to take the opportunity to comment regarding the definition of habilitative services as an Essential Health Benefit. Occupational therapists and occupational therapy assistants are licensed health professionals. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by promoting health and minimizing the functional effects of illness, injury, and disability.

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I would also like to take this opportunity to ask you to consider the manner in which habilitative services are covered. While I support habilitative services with at least parity to rehabilitation services, I want to ask that you consider that clients needing habilitative services are very different and may require longer duration of services.

Thank you for considering my concerns regarding habilitation services and the impact the Insurance Department's decision will have regarding children with developmental disabilities.

Respectfully submitted,

Lisa Livesay, MS OTR/L  
Sanford Medical Center  
300 N. Seventh St.  
Bismarck, N.D. 58501  
701-323-6153  
pager (2529)  
[lisa.livesay@SanfordHealth.org](mailto:lisa.livesay@SanfordHealth.org)



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**Fonkert, Andrea L.**

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**From:** Lockrem,Tracey <Tracey.Lockrem@SanfordHealth.org>  
**Sent:** Monday, March 11, 2013 4:33 PM  
**To:** Fonkert, Andrea L.  
**Subject:** habilitative care

**Categories:** Red Category

Hi Andrea!! Hope you are doing well and know you are missed here at the hospital!!!

A quick response to your request as I just received your email regarding this very concerning issue!

1. Yes EHB should be defined for habilitative services in ND.

We have worked very hard in the past with insurance providers to gain a reasonable and specific definition of habilitative services. BC/BS has the most reasonable and educated definition. Utilizing Sanford's plan excludes all services to children in need of therapeutic intervention. I strongly disagree with not defining this service as (as is the case with Sanford) as its absence discriminates against children, those with disabilities, and quality of life services for children in need in our state. Please consider ND BC/BS as a model for an effective and appropriate habilitative definition and model for acquiring approval for services.

Please contact me with questions if necessary and thanks for your attention to this very concerning matter.

Tracey M.E. Lockrem, M.S., CCC  
Speech-Language Pathologist

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Beyond Boundaries Therapy Services  
3001 11<sup>th</sup> St. So. • Fargo, ND 58103

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3-8-13

Andrea Fonkert  
Public Information Officer  
North Dakota Insurance Department  
600 E. Boulevard Ave.  
Bismarck, ND 58505

Re: Request for comment on definition of habilitative services as Essential Health Benefit

Dear Ms. Fonkert:

As an occupational therapist, I want to take the opportunity to comment regarding the definition of habilitative services as an Essential Health Benefit. Occupational therapists and occupational therapy assistants are licensed health professionals. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by promoting health and minimizing the functional effects of illness, injury, and disability.

The decision made by the Insurance Department regarding the definition of habilitative services will have an impact on individuals served by occupational therapy, particularly children with developmental disabilities. I understand that Health and Human Services has empowered states to define the habilitative benefit to create a level playing field for health plans, so that adverse selection is avoided, while ensuring a minimum benefit is available to the vulnerable North Dakota citizens who need those services most. Therefore, I urge the Department to define the habilitative benefit.

It is my hope that you strongly consider using the definition of habilitation as set forth by the National Association of Insurance Commissioners. This definition clearly defines habilitation services so that consumers and providers can understand what is intended to be covered under this category.

I would also like to take this opportunity to ask you to consider the manner in which habilitative services are covered. While I support habilitative services with at least parity to rehabilitation services, I want to ask that you consider that clients needing habilitative services are very different and may require longer duration of services.

As a pediatric occupational therapist, I work with children with a wide spectrum of needs. Habilitative services allow these children to learn the functional skills that are necessary for life-long learning as a part of society. The duration of the habilitative service is individualized, with some children requiring a minimal length of care, where as the needs for others may require a much different plan of care. It is vital that this opportunity be available for children with needs. Without a habilitative benefit, the cost to care for the child's physical, mental, and social needs will certainly outweigh the cost of early habilitative care to help the child learn these skills.

Thank you for considering my concerns regarding habilitation services and the impact the Insurance Department's decision will have regarding children with developmental disabilities.

Respectfully submitted,

LaDonna Bannach, OTR/L  
Beyond Boundaries Therapy  
701-356-5410

Andrea Fonkert  
ND Department of Insurance  
[afonkert@nd.gov](mailto:afonkert@nd.gov)

Ms. Fonkert,

In response to public comment on Essential Health Benefits (EHB) final rule published February 25, 2013 and Health Insurance Market Rules; Rate Review final rule issued February 22, 2013

I, Heather Lundeen, would like to offer personal comment in response to EHB rule tenet #1 (habilitative benefits) based on my professional role as a pediatric physical therapist. I have been working as a pediatric physical therapist for the past 14 years in the state of North Dakota and am also an assistant professor in the University of Mary Physical Therapy Department. I have served the physical therapy needs of children with special needs in a variety of settings including early intervention, public schools, outpatient clinic, and in the hospital. I have also been a highly engaged professional member of the American and North Dakota Physical Therapy Association for the past 19 years. I have held leadership positions locally and nationally within these organizations.

1. The EHB rule indicates "...states have the first opportunity to determine which habilitative benefits must be covered by their benchmark plan. States may choose to use the NAIC or Medicaid definition. If states have not chosen to define habilitative benefits, the issuers' choice remains." The ND selection of the Sanford HMO plan (benchmark plan) did not define habilitative services.

- Should North Dakota define habilitative services?

**Yes**

As I indicated previously, my experience as a pediatric physical therapist is vast and has been in a variety of settings which has allowed me to evaluate and treat children and young adults with special needs across the life span. However, most of my experience has been in an outpatient setting in which these benefits will be applied. I have worked with numerous third party payers, public and private, and have been faced with a variety of reimbursement issues specific to the issue of habilitative versus rehabilitative benefits. I was practicing when this particular issue came to a head ~10 years ago where medical necessity for therapy services for children with childhood onset conditions (which would be defined as habilitative) was not adequately defined and interpretation by the third party payer as generally not necessary was challenged at a legislative level. Fortunately, the issue did not need to be brought to the legislative floor, but was rather ultimately solved (with the urging of numerous ND legislators) through the work of a statewide task force made up of experts in the field as well as private and public third party payer interests. The solution, which was agreeable by all parties involved, was that the rehabilitative and habilitative benefits were separately defined and the coverage for each needed to be different. The group recognized that the therapy needs of individuals with childhood onset conditions were definitely unique to that population and couldn't be defined by the rehabilitative benefits that already existed. This concept has proven effective in our state since its inception.

As you can see based on my historical perspective and current practice it is absolutely essential that rehabilitation and habilitation services be clearly defined. I also have recognized that unfortunately individuals with childhood onset conditions are in a particularly vulnerable position when it comes to accessing services and therefore it is imperative that these essential

habilitative services be clearly defined as to not impede their access to achieving their full potential. In researching this issue further I do not disagree that state flexibility is important when implementing this EHB, however, lack of standardized insurer interpretation and implementation has the potential to limit crucial services for this population of children/young adults. This is the exact scenario that resulted in near legislation ~10 years ago. One additional concern that I have with the proposed rule is that it states that insurers must only supplement habilitative services when there are none offered, which is the case in the defined bench mark plan. I feel this may definitely result in non-optimal, difficult to access critical habilitative services for the public consumer of these services.

- If yes, what would the definition contain given the requirements in 45 CFR 156.115?

I am in support of the definition that the American Physical Therapy Association (a member of the Habilitation Benefits Coalition) is advocating the adoption of and is listed below.

**Rehabilitation Services:** Health care services that help a person keep, restore or improve skills and functioning for daily living that have been lost or impaired because a person was sick, hurt or disabled. These services may include physical therapy, occupational therapy, and speech-language pathology and psychiatric rehabilitation services in a variety of inpatient and/or outpatient settings.

**Habilitation Services:** Health care services that help a person **keep, learn or improve** skills and functioning for daily living. Examples include therapy for a child who isn't walking or talking at the expected age. These services may include physical therapy, occupational therapy, and speech-language pathology and other services for people with disabilities in a variety of inpatient and/or outpatient settings.

This definition is in line with the NAIC definition. I have also included the definition of rehabilitation as to delineate the difference between the two. Please note that "keep skills" is an essential component to the habilitative services and should be interpreted at times as maintaining skills, which most often in cases of habilitation is stopping the loss/deterioration of skills.

I ask you to please consider my request to clearly define habilitative services and to define those services parallel to the NAIC definition. I have based these comments on my professional education and experience. The individuals that I have served and will continue to serve with unique physical therapy needs will ultimately rely on this benefit to reach their full functional potential and live as ND citizens.

Thank you for your time and attention to this matter and my request.

Sincerely,



Dr. Heather Lundeen PT, DPT, PCS

Pediatric Certified Specialist Physical Therapist

## Fonkert, Andrea L.

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**From:** Keatha McLeod <keatha@prairieyarns.com>  
**Sent:** Monday, March 11, 2013 2:49 PM  
**To:** Fonkert, Andrea L.  
**Subject:** Essential Health Benefits

**Categories:** Red Category

Andrea Fonkert  
ND Department of Insurance  
[afonkert@nd.gov](mailto:afonkert@nd.gov)

Ms. Fonkert,

In response to public comment on Essential Health Benefits (EHB) final rule published February 25, 2013 and Health Insurance Market Rules; Rate Review final rule issued February 22, 2013

I would like to offer comment regarding

1. The EHB rule indicates "...states have the first opportunity to determine which habilitative benefits must be covered by their benchmark plan. States may choose to use the NAIC or Medicaid definition. If states have not chosen to define habilitative benefits, the issuers' choice remains." The ND selection of the Sanford HMO plan (benchmark plan) did not define habilitative services.
  - Should North Dakota define habilitative services? Yes

As a parent of a medically fragile child with multiple disabilities I can personally attest to the importance of a clear definition of rehabilitative and habilitative services. When my son was preschool age his progress for any gross motor skills was VERY slow, but there was progress. He was denied services based on "his diagnosis" as he would never progress past where he was. I was fortunate that I found an OT that was willing to pursue reimbursement for habilitative care and when it was denied would do therapy with him at a cost we could afford because she cared. Due to her persistence he was able to stand!! Something his previous therapist said would never happen. Because he was denied services and not provided the care he needed to promote long bone growth and bone development he subsequently ended up with 5 long bone fractures as a pre-teen. Needless to say the cost of the fractures and subsequent medical care was far more costly than if he had been provided the needed therapy early in life. Not to mention the pain and suffering he went through as a result of the fractures. Rehabilitation and habilitation services are critically important for this population and should be clearly defined. State flexibility is important but insurer flexibility has the potential to limit crucial services for this vulnerable population. Additionally a transitional approach would allow insurers to provide the minimal benefit that does not fulfill the ACA requirement.

The proposed rule states that insurer must only provide habilitative services when there are none offered. I feel this will result in lacking critical habilitative services.

- If yes, what would the definition contain given the requirements in 45 CFR 156.115?

At minimum I feel the definition should use the definition used by Medicaid that the extent of coverage of habilitation services used by Medicaid that the extent of coverage of the habilitation services and devices be at least in parity with rehabilitation coverage.

It is important that “maintenance of function” be included in the definition of habilitative services. Many times these services are needed in order to prevent a decline in function. Failure to cover these services under the essential health benefits will result in many of our vulnerable children being able to reach a level of function that they are unable to maintain because of a lack of access to continued services.

The Medicaid definition of habilitative services in section 1915(c)(5) of the Social Security Act is: **“...services designed to assist individuals in acquiring, retaining, and improving the self-help, socialization, and adaptive skill necessary to reside successfully in home and community based settings; and ... includes prevocational, educational, and supported employment services...”** **The Medicaid law does not limit habilitative services to the learning of new skills.”** **The Medicaid law also does not limit services provided under the rehabilitation option to relearning lost skills. This is an important point for children who often require services to bring the child to a level of functioning that they had previously achieved or would have achieved if normal development had not been impaired by a condition or disorder.**

The Medicaid program defines habilitative services for the purpose of delineating those services that a State may choose to cover as part of a package of services that are designed to avoid institutionalization, or help people move from institutional settings to the community. For that reason, the Medicaid definition of habilitative services is broad and open ended, and includes services that are outside the scope of coverage provided through a typical employer plan.

The need to distinguish habilitation from rehabilitation in Medicaid occurs primarily due to the particular set of rules and financial limits that Title XIX puts on habilitative services, which is not relevant to the goals of the essential health benefits and may convey a broader array of services is included than what is intended in the context of a typical employer plan.

I encourage you to consider the Medicaid definition of habilitative and rehabilitative services. North Dakota’s vulnerable populations are looking to you in providing access to necessary services.

Thank you Andrea for your time.

Keatha McLeod  
7316 Ellis Lane  
Horace, ND 58047  
701-238-5737

**Fonkert, Andrea L.**

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**From:** Meyer, Megan <megan.a.meyer@my.und.edu>  
**Sent:** Saturday, March 09, 2013 8:33 AM  
**To:** Fonkert, Andrea L.  
**Subject:** Habilitative Services

March 9<sup>th</sup>, 2013

Andrea Fonkert

Public Information Officer

North Dakota Insurance Department

600 E. Boulevard Ave.

Bismarck, ND 58505

Re: Request for comment on definition of habilitative services as Essential Health Benefit

Dear Ms. Fonkert:

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It is my hope that you strongly consider using the definition of habilitation as set forth by the National Association of Insurance Commissioners. This definition clearly defines habilitation services so that consumers and providers can understand what is intended to be covered under this category.

I would also like to take this opportunity to ask you to consider the manner in which habilitative services are covered. While I support habilitative services with at least parity to rehabilitation services, I want to ask that you consider that clients needing habilitative services are very different and may require longer duration of services.

Thank you for considering my concerns regarding habilitation services and the impact the Insurance Department's decision will have regarding children with developmental disabilities.

Respectfully submitted,

Megan Meyer, OTS at The University of North Dakota

## Fonkert, Andrea L.

---

**From:** Gwendalyn Mollerud <gwendalynmollerud@gmail.com>  
**Sent:** Monday, March 11, 2013 11:56 AM  
**To:** Fonkert, Andrea L.  
**Subject:** Habilitative Services

3/11/2013

Andrea Fonkert

Public Information Officer

North Dakota Insurance Department

600 E. Boulevard Ave.

Bismarck, ND 58505

Re: Request for comment on definition of habilitative services as  
Essential Health Benefit

Dear Ms. Fonkert:

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I would also like to take this opportunity to ask you to consider the

manner in which habilitative services are covered. While I support habilitative services with at least parity to rehabilitation services, I want to ask that you consider that clients needing habilitative services are very different and may require longer duration of services. This includes pediatric clients with diagnoses such as cerebral palsy, autism spectrum disorders, developmental delay, seizure disorders, and sensory integrative dysfunction.

Thank you for considering my concerns regarding habilitation services and the impact the Insurance Department's decision will have regarding children with developmental disabilities.

Respectfully submitted,

Gwendalyn Mollerud, MOT OTR/L

March 10, 2013

Andrea Fonkert  
Public Information Officer  
North Dakota Department of Insurance  
[afonkert@nd.gov](mailto:afonkert@nd.gov)

Thank you for the opportunity to provide comments to the Department on the Essential Health Benefits (EHB) final rule published February 25, 2013 and Health Insurance Market Rules; Rate Review final rule issued February 22, 2013. Medica respectfully submits the following responses to the questions posed by the Department.

1. The EHB rule indicates "...states have the first opportunity to determine which habilitative benefits must be covered by their benchmark plan. States may choose to use the NAIC or Medicaid definition. If states have not chosen to define habilitative benefits, the issuers' choice remains." The ND selection of the Sanford HMO plan (benchmark plan) did not define habilitative services.

- Should North Dakota define habilitative services?
- If yes, what would the definition contain given the requirements in 45 CFR 156.115?

**Medica believes it is preferable to allow carriers to continue to define habilitative services within the guidelines in the federal rule.**

2. In the market final rule it states "a state may require the individual and small group insurance markets within a state to be merged into a single risk pool if the state determines appropriate."

- Should North Dakota require carriers to merge their individual and small group non-grandfathered markets into one risk pool?

**Medica believes that the small group and individual risk pools should remain separate. This is consistent with our statements regarding risk pools since passage of the Affordable Care Act. We believe the requirement in the final rule that requires a carrier to have a single risk pool for each separate line of business provides the necessary stability for markets.**

3. The final market rule allows states to establish geographic rating areas in one of the following boundaries:

- Counties
- Three-digit ZIP codes
- Metropolitan statistical areas (MSA) and non-metropolitan statistical (non-MSA) areas

Should a state not make a choice, the default will be one rating area for each MSA and one rating area for all non-MSAs in the state (no greater number than the number of MSAs in the state plus one), which is four for North Dakota.

- Should North Dakota establish its own geographic rating area? Yes
- If yes, how should the state be divided?

**Medica believes using the default method of determining geographic areas (four total areas distinguished by each MSA and a non MSA area) is an appropriate method.**

4. PHSA 2701(a)(1)(A)(iii) limits the use of age rating to 3:1. The final market rule requires the use of uniform age rating bands specified by HHS and a uniform age rating curve specified by HHS, unless the state specifies its own curve for the individual and small group markets. If the state does not establish a uniform age rating curve, a default will be specified by the Secretary of HHS.

- Should North Dakota establish its own age rating curve for either the individual or small group markets? No
- If yes, please describe the suggested rating curve(s).

**Medica prefers using the HHS specified age rating curve. Consistency and simplicity in applying the uniform age rating bands will help carriers operating in multiple states produce products in a timely manner for consumers. This is especially important for plans being developed for 2014.**

5. According to the final market rule, a state may elect to require that premiums for family coverage be determined by using uniform family tiers and the corresponding multipliers established by the state. If a state does not establish uniform family tiers and the corresponding multipliers, the per-member rating methodology mentioned in 45 CFR 147.102 (c)(1) applies.

- Should North Dakota elect uniform family tiers?

**Medica prefers using the per-member rating methodology described in federal rules. Consistency and simplicity in applying rating rules will help carriers**

**operating in multiple states produce products in a timely manner for consumers. This is especially important for plans being developed for 2014.**

6. The final market rule limits the use of tobacco use as a rating factor to a maximum of 1.5:1 applicable only to individuals in a family that smoke.

- Should North Dakota adopt a narrower ratio for tobacco use?
- If yes, what should it be?

**Medica believes North Dakota should not adopt a narrower ratio for tobacco use. Carriers have been developing products under the assumption that the 1.5:1 ratio would apply and believe it is appropriate ratio. Consistency and simplicity in applying rating rules will help carriers operating in multiple states produce products in a timely manner for consumers. This is especially important for plans being developed for 2014.**

7. The final market rule states “We encourage states to consider approaches to discourage adverse selection while ensuring consumer’s guaranteed availability rights are protected since state policies that limit guaranteed availability are preempted by this law.” It goes on to suggest future guidance will be issued on other permissible strategies to mitigate adverse selection.

- If allowed, what other strategies would you suggest North Dakota pursue to mitigate adverse selection?

**Medica supported the passage of HR 1168 which creates a common open enrollment period inside and outside of a Health Insurance Exchange and grants the Commissioner the ability to draft rules to prevent adverse selection.**

Thank you again for the opportunity to comment.

Sincerely,

Geoff Bartsh  
Vice President of Public Policy and Government Relations

March 11, 2013

To: Healthcare Reform Stakeholders

Submitted Via Email To: [afonkert@nd.gov](mailto:afonkert@nd.gov)

Re: Defining Habilitative Services

Dear Healthcare Reform Stakeholders:

The North Dakota Autism Center was opened in 2008 to help children affected by autism spectrum disorders reach their full potential through excellence in instruction, treatment, and supports. We are submitting the following comments for your consideration with the recommendation North Dakota define habilitative services under its benchmark plan to include behavioral health treatments.

Autism is a complex developmental disorder, which affects a person's behavior, social functioning, and ability to communicate. For many individuals, autism is pervasive, chronic, and severely disabling. Autism is the fastest growing developmental disability in the United States, affecting 1 in 88 children including 1 in 54 boys. This year alone, approximately 46,000 children will be diagnosed with an autism spectrum disorder in the United States which is more than pediatric AIDS, juvenile diabetes, and childhood cancer combined. Applying the Center for Disease Controls' autism prevalence statistic of 1 in every 88 children in the U.S. to the 9,234 children born in North Dakota in 2011, approximately 105 of these children will be diagnosed with autism. At this rate the state of North Dakota will see an additional 525 children every five years. This is in addition to the hundreds of children of children in North Dakota who have already received the diagnosis of autism.

There are effective treatments for autism that can change a person's course and outcome. Behavioral health treatments, including applied behavior analysis (ABA), have been shown to improve communication and language abilities, social skills, functions of daily living, and ameliorate harmful behaviors. ABA is widely accepted by the medical community as an effective treatment for autism and is endorsed by the American Academy of Pediatrics.

Treatments based on behavior analysis use a scientifically validated approach to understanding behavior and how it is affected by the environment. Through decades of research, the field of behavior analysis has developed many techniques for increasing useful behaviors and reducing those that may cause harm or interfere with learning. These techniques bring about meaningful and positive changes in behavior. Success in an ABA program is measured by direct observation and data collection and analysis. Early behavioral treatment based on ABA is provided by highly trained licensed/certified professionals with expertise in ABA and involves one-on-one treatment with the child typically for 25-40 hours per week for at least two years. This early intensive investment in treatment results in significant cost savings in the long run, as many children with autism who receive such treatments can now carry on a normal conversation, enter a regular classroom, and form friendships with their peers.

To address the growing healthcare needs of individuals with autism spectrum disorders, we proposed the following definition of habilitative services:

Health care services that help a person keep, learn, or improve skills and functioning for daily living. Examples include therapy for a child who isn't walking or talking at the expected age. These services may include physical and occupational therapy, speech-language pathology, and other services for people with disabilities in a variety of inpatient or outpatient settings. Applied behavior analysis is included under habilitative services.

The proposed definition above follows the definition of habilitative services development by the National Association of Insurance Commissioners. It supplements that definition by requiring that applied behavior analysis be included in all qualified health plans. Roughly half of all states will require ABA to be provided through their health insurance marketplaces, recognizing the dimensions of autism as a public health challenge and the need to deliver evidence-based care to individuals on the autism spectrum. Ohio has defined habilitative services as including ABA in their recent letter to Centers for Medicare and Medicaid Services Center for Consumer Information and Insurance Oversight (<http://www.insurance.ohio.gov/Company/Documents/Habilitative%20Services%20Letter.pdf>); as well as Michigan ([http://www.michigan.gov/documents/lara/1.7.13\\_Order\\_No\\_13-003-M\\_EHB\\_Habilitative\\_Services\\_407955\\_7.pdf](http://www.michigan.gov/documents/lara/1.7.13_Order_No_13-003-M_EHB_Habilitative_Services_407955_7.pdf)).

Thank you for your serious consideration in this matter.

Very respectfully,

***Sandy Smith***

Sandy Smith

Executive Director

4733 Amber Valley Parkway, STE 200

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701-367-9855

[ndautismcenter.org](http://ndautismcenter.org)



North Dakota Occupational Therapy Association  
PO Box 14118  
Grand Forks, ND 58202

March 9, 2013

Submitted to [afonkert@nd.gov](mailto:afonkert@nd.gov)

Andrea Fonkert  
Public Information Officer  
North Dakota Insurance Department  
600 E. Boulevard Ave.  
Bismarck, ND 58505

Re: Request for comment on definition of habilitative services as Essential Health Benefit

Dear Ms. Fonkert:

The North Dakota Occupational Therapy Association (NDOTA) represents the interests of approximately 1,000 occupational therapists, occupational therapy assistants, and occupational therapy students in North Dakota, as well as their thousands of clients. Occupational therapists and occupational therapy assistants are licensed health professionals. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by promoting health and minimizing the functional effects of illness, injury, and disability. We appreciate the opportunity to comment on the critical decisions that the North Dakota Insurance Department (Department) is charged with making regarding the definition of habilitative services. As front-line providers of habilitative services, we are experts on this issue and are available to provide additional information upon request.

NDOTA strongly advocates for the Department to define habilitative services. While we understand that the U.S. Department of Health & Human Services (HHS) has created a default option that would allow insurance carriers to define the benefit, to allow the default to take effect is not in the best interests of North Dakota citizens. As a result of the Affordable Care Act's (ACA) insurance market reforms, health plans will be required to accept all applicants for coverage regardless of health status. Insurance carriers will have no incentive to offer a meaningful habilitative benefit if it is left to them to define it, because naturally they want to avoid adverse selection. While other provisions of the ACA, e.g., risk adjustment, are designed to mitigate the effects of adverse selection, insurance carriers may be wary of the effectiveness of those provisions and seek to minimize risk through plan design flexibility. People with disabilities, particularly children with developmental disabilities, will be negatively impacted by that policy decision. However, HHS has empowered states to take action to avoid this negative

outcome; each state can define the habilitative benefit to create a level playing field for health plans, so that adverse selection is avoided, while ensuring a minimum benefit is available to the vulnerable North Dakota citizens who need those services most. Therefore, we urge the Department to define the habilitative benefit.

Fortunately, defining the habilitative benefit does not need to be a complex task. The National Association of Insurance Commissioners (NAIC) already developed a definition.<sup>1</sup> HHS subsequently adopted that definition to include in its Summary of Benefits Glossary.<sup>2</sup> The Department can take advantage of the NAIC definition, which was developed through a deliberative process that included diverse stakeholder input, and NDOTA encourages it to do so. Adoption of the NAIC definition would bring a number of advantages. First, as previously stated the NAIC definition has already been thoroughly vetted. Second, because it is the definition that appears in the Summary of Benefits Glossary, it makes sense to use this definition, as it is what consumers will reasonably expect habilitation to mean in terms of the actual coverage they are purchasing. It is counterintuitive for consumers to see benefits defined in a consumer glossary one way, and allow health plans to define them another way, especially when it comes to a benefit like habilitation that many consumers are likely not familiar with. Lastly, the NAIC definition has the advantage of not imposing age or health status limits on the habilitation benefit. That is consistent with the intent of the ACA for benefit design to not be discriminatory.<sup>3</sup> The state of Michigan has adopted the NAIC definition for its market,<sup>4</sup> and a number of other states have adopted definitions that clearly used the NAIC definition as a model.<sup>5</sup> Therefore NDOTA urges the Department to adopt the NAIC definition of habilitation.

The final issue we would like to address is the manner by which habilitative services are covered, as opposed to how they are defined. Fortunately, HHS has identified a mechanism to use for this purpose as well, i.e., parity of coverage between rehabilitative services and habilitative services. It is important to recognize that rehabilitative services are not the same as habilitative services, however, they are often provided by the same health care professionals. As a result, health plan coverage of rehabilitative services can serve as a useful tool to establish parameters for coverage of habilitative services, and parity between the benefits is an option that

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<sup>1</sup> "Habilitation Services - Health care services that help a person keep, learn or improve skills and functioning for daily living. Examples include therapy for a child who isn't walking or talking at the expected age. These services may include physical and occupational therapy, speech-language pathology and other services for people with disabilities in a variety of inpatient and/or outpatient settings."

<http://cciio.cms.gov/resources/files/Files2/02102012/uniform-glossary-final.pdf>.

<sup>2</sup> Summary of Benefits and Coverage and Uniform Glossary, 77 Fed. Reg. 8674 (Feb. 14, 2012).

<sup>3</sup> "Essential health benefits cannot be based on a benefit design that discriminates on the basis of an **individual's age**...present or predicted disability...or other **health conditions**." [Emphasis added]: 78 Fed. Reg. 4701 (proposed January 22, 2013) (to be codified at 42 C.F.R. pt. 440.347(e)).

<sup>4</sup> "Order Requiring Coverage for Habilitative Services," Office of Financial and Insurance Regulation, Jan. 7, 2013, [http://www.michigan.gov/documents/lara/1.7.13\\_Order\\_No\\_13-003-M\\_EHB\\_Habilitative\\_Services\\_407955\\_7.pdf](http://www.michigan.gov/documents/lara/1.7.13_Order_No_13-003-M_EHB_Habilitative_Services_407955_7.pdf) and "Additional Information on Essential Health Benefit Benchmark Plans" Center for Consumer Information and Insurance Oversight, <http://cciio.cms.gov/resources/EHBBenchmark/michigan-ehb-benchmark-plan.pdf>.

<sup>5</sup> See for example Colorado: <http://www.getcoveredco.org/COHBE/media/COHBE/PDFs/Federal%20Comms/EHB-Comment-Ltr-12-26-12.pdf> and Arkansas: <http://hbe.arkansas.gov/FFE/Steering/Reports/FFEMonthlyReportJan2013.pdf>.

many states have adopted for their markets.<sup>6</sup> While NDOTA believes habilitative services should not be subject to the same quantitative limits that rehabilitative services are subject to, because habilitative services may be required for a longer duration, at a minimum, NDOTA supports parity of coverage between rehabilitative and habilitative services. To be clear, habilitative services should be covered in addition to, and at least at parity with rehabilitative services, as Colorado has done.<sup>7</sup>

We understand the challenges the Department faces in implementing provisions of the ACA within a short time, and appreciate this opportunity to comment. NDOTA members with expertise in the provision of habilitative services are available to provide additional insight into these issues should that be helpful to the Department. Thank you for your careful consideration of these comments.

Respectfully submitted,

**Dianne Nechiporenko OTR/L**  
**NDOTA President**

(701)866-3015 Work  
[Dianne.nechiporenko@pracs.com](mailto:Dianne.nechiporenko@pracs.com)  
Associate Director  
4801 Amber Valley Parkway  
Fargo, ND 58104

cc. Levi Andrist (Vogel Kaw Firm)  
cc. Sarah Nielson (NDOTA Leg. Practice)

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<sup>6</sup> See for example Nevada: [http://doi.nv.gov/sinfo/doc/12.14.12\\_kipper\\_letter\\_re\\_ehb.pdf](http://doi.nv.gov/sinfo/doc/12.14.12_kipper_letter_re_ehb.pdf) and Kansas: [http://www.ksinsurance.org/consumers/healthreform/ehb\\_hearing\\_2012/KID\\_COMMENTS\\_ON\\_HHS\\_EHB\\_PROP\\_OSED\\_RULE%2012-26-2012.pdf](http://www.ksinsurance.org/consumers/healthreform/ehb_hearing_2012/KID_COMMENTS_ON_HHS_EHB_PROP_OSED_RULE%2012-26-2012.pdf).

<sup>7</sup> See note 5.

Andrea Fonkert  
ND Department of Insurance  
[afonkert@nd.gov](mailto:afonkert@nd.gov)

Ms. Fonkert,  
In response to public comment on Essential Health Benefits (EHB) final rule published February 25, 2013 and Health Insurance Market Rules; Rate Review final rule issued February 22, 2013

The North Dakota Physical Therapy Association would like to offer comment in response to the following:

1. The EHB rule indicates "...states have the first opportunity to determine which habilitative benefits must be covered by their benchmark plan. States may choose to use the NAIC or Medicaid definition. If states have not chosen to define habilitative benefits, the issuers' choice remains." The ND selection of the Sanford HMO plan (benchmark plan) did not define habilitative services.

- Should North Dakota define habilitative services?  
**Yes**

The North Dakota Physical Therapy Association is a statewide professional organization made up of North Dakota Physical Therapists. We are a member of the national American Physical Therapy Association. The mission of our organization is to represent and promote the profession of physical therapy in its endeavors to meet the physical therapy needs of society; to develop and improve the art and science of physical therapy including practice, education, and research; to meet the needs and interests of its members; and to assist the American Physical Therapy Association (APTA) to further its objectives.

As physical therapists it is not only our professional duty to advocate for our profession, but to advocate for the interests of those that we serve, namely patients/clients. Physical therapists are considered experts in movement dysfunction and regularly provide services for individuals with childhood onset movement disorders. We recognize their needs often differ significantly from individuals who obtain movement disorders which occur following growth and development and the achievement of independent function. Learning and maintaining a functional task in the presence of pre-existing movement disorder and a growing and changing body and mind, and relearning a previously demonstrated functional task in the presence of a new movement disorder are two very different things and require different skill in evaluation and intervention. This is essentially the difference between habilitative and rehabilitative services. Therefore, it is our organization's position that based on the different physical therapy needs that arise for these two very different circumstances it is essential that these terms be individually defined in our state's EHB. We also aim to protect our consumers and as physical therapists who work with individuals with chronic movement disorders, these consumers are vulnerable and often times find it difficult to navigate essential services, and therefore

require that these essential habilitative services be clearly defined as to not impede their access.

As physical therapists, we have the opportunity to work daily with third party payers, public and private, and are regularly faced with a variety of reimbursement issues. Our state was actually on the forefront of this debate when ~10 years ago medical necessity for therapy benefits of individuals with childhood onset movement conditions was being challenged and inconsistently covered by private third party payers. This unfortunately resulted in the pursuance of legislative action; however, fortunately all parties involved were able to disassemble the legislative efforts and work together to form a consensus that was agreed on by all involved. The NDPTA was involved in providing the task force with physical therapy experts. The solution essentially was that the rehabilitative and habilitative benefits were separately defined and the coverage for each needed to be different. The group recognized that the therapy needs of individuals with childhood onset conditions were definitely unique to that population and couldn't be defined by the rehabilitative benefits that already existed. This concept has proven effective in our state.

The NDPTA understands that state flexibility is important when implementing this EHB, however, lack of standardized insurer interpretation and implementation has the potential to limit crucial services for this population of children/young adults. This is the exact scenario that resulted in near legislation ~10 years ago. We are also concerned that if the state chooses to not define habilitative benefits the proposed rule allows for insurance companies to only supplement habilitative services as the benchmark plan does not offer any. We believe that this may result in non-optimal, difficult to access critical services for the public consumer, our patients and clients.

- If yes, what would the definition contain given the requirements in 45 CFR 156.115?

We support the use of the definition that the American Physical Therapy Association (a member of the Habilitation Benefits Coalition) is advocating the adoption of and is listed below.

**Rehabilitation Services:** Health care services that help a person keep, restore or improve skills and functioning for daily living that have been lost or impaired because a person was sick, hurt or disabled. These services may include physical therapy, occupational therapy, and speech-language pathology and psychiatric rehabilitation services in a variety of inpatient and/or outpatient settings.

**Habilitation Services:** Health care services that help a person keep, learn or improve skills and functioning for daily living. Examples include therapy for a child who isn't walking or talking at the expected age. These services may include physical therapy, occupational therapy, and speech-language pathology and other services for people with disabilities in a variety of inpatient and/or outpatient settings.

This definition is in line with the NAIC definition. We believe that it is important to define both of these services to eliminate any confusion surrounding the implementation of this issue.

The NDPTA asks you to please consider our request to clearly define habilitative services and to define those services parallel to the NAIC definition. We believe that our outlined position represents the interests of the physical therapists in ND that we represent as well as the consumers that we serve in order to afford them the opportunity to achieve their full potential as citizens of the state of ND.

Thank you for your time and attention to this matter.

Sincerely,

Kathleen Day, President North Dakota Physical Therapy Association



## North Dakota Developmental Center

### CARES Clinic

701 W 6<sup>th</sup> Street

Grafton ND 58237

T (701) 352-4551 F (701) 352-4410

03/11/2013

Ms. Andrea Fonkert  
Public Information Officer  
North Dakota Insurance Department  
600 E. Boulevard Ave.  
Bismarck, ND 58505

#### **RE: Request for comment on definition of habilitative services as Essential Health Benefit**

Dear Ms. Fonkert,

As an occupational therapist providing occupational therapy services to children with developmental disabilities, I would like to take this opportunity to comment regarding the definition of habilitative services as an Essential Health Benefit. Habilitative therapy is a very important part of development in the lives of the children I serve.

The National Association of Insurance Commissioners has defined habilitation as “services that help a person gain, keep, or improve skills for daily living. This includes physical and occupational therapy, speech-language pathology, and other needed services.

According to Blue Cross/Blue Shield of ND, Corporate Medical Policy, Habilitative Occupational Therapy is “care provided within the scope of practice of an occupational therapy professional dictated by the governing state practice act for conditions, which have limited the normal age appropriate development. To be considered habilitative, functional improvement and measurable progress must be made toward achieving functional goals within a predictable period of time toward a member's maximum potential. Problems such as hearing impairment including deafness, a speech or language impairment, a visual impairment including blindness, serious emotional disturbance, an orthopedic impairment, autism spectrum disorders, traumatic brain injury, deaf-blindness, or multiple disabilities may warrant habilitative therapies.”

Habilitation is developing delayed skills for the first time as compared to rehabilitation where the individual relearns a lost skill due to an illness or an injury. Habilitation is used when the child has a type of disability that has impacted the development of normal skills that prevents them from completing their occupations of daily life such as feeding themselves, dressing, bathing, toileting, playing, etc. In addition to helping the child achieve developmental milestones, habilitative occupational therapy services provide ongoing education to the parent/caregivers, provides communication to physicians who track the child's development, and provides valuable information to orthopedic and physical medicine

doctors. This helps “bridge” the gap of services across all aspects of the child’s life. In turn, habilitative occupational therapy promotes the child’s independence and helps prevent further injury or deformity.

I would also like to take this opportunity to ask you to consider the manner in which habilitative occupational therapy services are covered. In my experience as a clinician, I have found that the children needing habilitative services are very different than those individuals needing rehabilitation services and require longer duration of services. Please consider that children make progress however, depending on the diagnosis of the child, duration of services may need to be extended.

“Maddie” is a perfect example of this process. Maddie was referred for occupational therapy at the age of 18 months when her family practitioner noted a delay in her development at a well-baby check-up. Maddie was not using her right upper extremity and actually had signs of neglect. Further testing indicated that Maddie had a brain bleed in utero and presented with symptoms similar to someone who had suffered a stroke. Maddie was provided habilitative occupational therapy services with the goal of obtaining functional use of her right hand. As a clinician, I referred Maddie to a physical medicine specialist and physical therapist who became integral providers on her treatment team. Botox injections, serial casting, occupational therapy, physical therapy, splinting, and constraint induced movement therapy are all examples of the many modalities used to help Maddie obtain her independence. Today she is an active 2<sup>nd</sup> grader who excels at school and has functional use of both upper extremities!

Thank you for considering my concerns regarding habilitation services and the impact the decision will have on the services available to children with developmental disabilities.

Sincerely,

Julie Gemmill, OTR/L

## Fonkert, Andrea L.

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**From:** Ashley Pierce <aedp81@gmail.com>  
**Sent:** Friday, March 08, 2013 5:02 PM  
**To:** Fonkert, Andrea L.  
**Subject:** Habilitation Services

3/8/2013

Andrea Fonkert

Public Information Officer

North Dakota Insurance Department

600 E. Boulevard Ave.

Bismarck, ND 58505

Re: Request for comment on definition of habilitative services as Essential Health Benefit

Dear Ms. Fonkert:

As an occupational therapist, I want to take the opportunity to comment regarding the definition of habilitative services as an Essential Health Benefit. Occupational therapists and occupational therapy assistants are licensed health professionals. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by promoting health and minimizing the functional effects of illness, injury, and disability.

The decision made by the Insurance Department regarding the definition of habilitative services will have an impact on individuals served by occupational therapy, particularly children with developmental disabilities. I understand that Health and Human Services has empowered states to define the habilitative benefit to create a level playing field for health plans, so that adverse selection is avoided, while ensuring a minimum benefit is available to the vulnerable North Dakota citizens who need those services most. Therefore, I urge the Department to define the habilitative benefit.

It is my hope that you strongly consider using the definition of habilitation as set forth by the National Association of Insurance Commissioners. This definition clearly defines habilitation services so that consumers and providers can understand what is intended to be covered under this category.

I would also like to take this opportunity to ask you to consider the manner in which habilitative services are covered. While I support habilitative services with at least parity to rehabilitation services, I want to ask that you consider that clients needing habilitative services are very different and may require longer duration of services. This includes

pediatric clients with diagnoses such as cerebral palsy, autism spectrum disorders, developmental delay, and sensory integrative dysfunction.

Thank you for considering my concerns regarding habilitation services and the impact the Insurance Department's decision will have regarding children with developmental disabilities.

Respectfully submitted,

Ashley Pierce, MOTR/L

**Fonkert, Andrea L.**

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**From:** Polansky, Rebecca <rebecca.polansky@my.und.edu>  
**Sent:** Friday, March 08, 2013 1:15 PM  
**To:** Fonkert, Andrea L.  
**Subject:** Request for comment on definition of habilitative services as Essential Health Benefit

March 8, 2013

Andrea Fonkert  
Public Information Officer  
North Dakota Insurance Department  
600 E. Boulevard Ave.  
Bismarck, ND 58505

Re: Request for comment on definition of habilitative services as Essential Health Benefit

Dear Ms. Fonkert:

As an occupational therapy student, I want to take the opportunity to comment regarding the definition of habilitative services as an Essential Health Benefit. Occupational therapists and occupational therapy assistants are licensed health professionals. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by promoting health and minimizing the functional effects of illness, injury, and disability.

The decision made by the Insurance Department regarding the definition of habilitative services will have an impact on individuals served by occupational therapy, particularly children with developmental disabilities. I understand that Health and Human Services has empowered states to define the habilitative benefit to create a level playing field for health plans, so that adverse selection is avoided, while ensuring a minimum benefit is available to the vulnerable North Dakota citizens who need those services most. Therefore, I urge the Department to define the habilitative benefit.

It is my hope that you strongly consider using the definition of habilitation as set forth by the National Association of Insurance Commissioners. This definition clearly defines habilitation services so that consumers and providers can understand what is intended to be covered under this category.

I would also like to take this opportunity to ask you to consider the manner in which habilitative services are covered. While I support habilitative services with at least parity to rehabilitation services, I want to ask that you consider that clients needing habilitative services are very different and may require longer duration of services.

When I was on my fieldwork (clinical) rotation in Jamestown, ND I worked closely with some children with global developmental delays who, while receiving services, were in need of long term habilitative services to help them develop. One little girl in particular had a genetic disorder that impaired her ability to communicate as well as move like a typical developing child. She will require services for much longer than some other

clients and it would be very beneficial for her, and many of my other clients, to have these habilitative services available.

Thank you for considering my concerns regarding habilitation services and the impact the Insurance Department's decision will have regarding children with developmental disabilities.

Respectfully submitted,

Rebecca Polansky, MOTS  
University of North Dakota

**Lisa Carlson, representing Sanford Health Plan**  
**March 11, 2013**

Dear Commissioner Hamm,

In response to the Department's February 28, 2013 request, Sanford Health Plan respectfully submits the following answers to questions as posed by the Department regarding the Essential Health Benefits (EHB) final rule published February 25, 2013 and Health Insurance Market Rules, Rate Review final rule issued on February 22, 2013.

- 1. The EHB rule indicates "...states have the first opportunity to determine which habilitative benefits must be covered by their benchmark plan. States may choose to use the NAIC or Medicaid definition. If states have not chosen to define habilitative benefits, the issuers' choice remains." The ND selection of the Sanford HMO plan (benchmark plan) did not define habilitative services.**
  - **Should North Dakota define habilitative services?**
  - **If yes, what would the definition contain given the requirements in 45 CFR 156.115?**

It is Sanford Health Plan's opinion that the State of North Dakota should not have to define habilitative services. Pursuant to 45 CFR §156.115, if the EHB-benchmark plan does not include habilitative services, a plan must include habilitative services that meet one of the following: (i) Provide parity by covering habilitative services benefits that are similar in scope, amount, and duration to benefits covered for rehabilitative services; or (ii) Are determined by the issuer and reported to HHS.

Habilitative services, like rehabilitative services, generally include occupational and physical therapy, as well as speech-language services. However, unlike rehabilitative services, which aim to restore capacities lost (and so generally are not needed long-term), habilitative services are typically provided to attain and maintain a skill or function that was never learned or acquired.

Sanford Health Plan appreciates that the scope and duration of care required for habilitative services likely necessitates separate utilization review, medical necessity review and reliance on evidence-based medicine. However, there is risk in expanding the scope of coverage to include other services in the categories of motor, cognitive, communication, and self-help/adaptive care from being included in a coverage definition of habilitative services, as well as the burden of the State to define which services to exclude. Expanding the scope of coverage will result in increased costs for the consumer.

In order to avoid further compounding of the rate shock that will already be experienced in the small group and individual market, Sanford Health Plan supports allowing carriers to provide habilitative services at parity with rehabilitative services. This methodology will ensure clients and consumers experience consistency in the services already provided by their insurer, as well as cost control. As a provider-owned health plan, we will continually monitor benefits that bring value to our clients and quality of care to our members, ensuring that we remain competitive in the marketplace.

**2. In the market final rule it states “a state may require the individual and small group insurance markets within a state to be merged into a single risk pool if the state determines appropriate.”**

- **Should North Dakota require carriers to merge their individual and small group non-grandfathered markets into one risk pool?**

Sanford Health Plan strongly objects to merging the individual and small group markets into one risk pool. Merging the small group risk pool may result in stabilizing premiums for individuals, however, it will likely result in increasing premiums for small employer groups.

**3. The final market rule allows states to establish geographic rating areas in one of the following boundaries:**

- **Counties**
  - **Three-digit ZIP codes**
  - **Metropolitan statistical areas (MSA) and non-metropolitan statistical (non-MSA) areas**
- Should a state not make a choice, the default will be one rating area for each MSA and one rating area for all non-MSAs in the state (no greater number than the number of MSAs in the state plus one), which is four for North Dakota.**

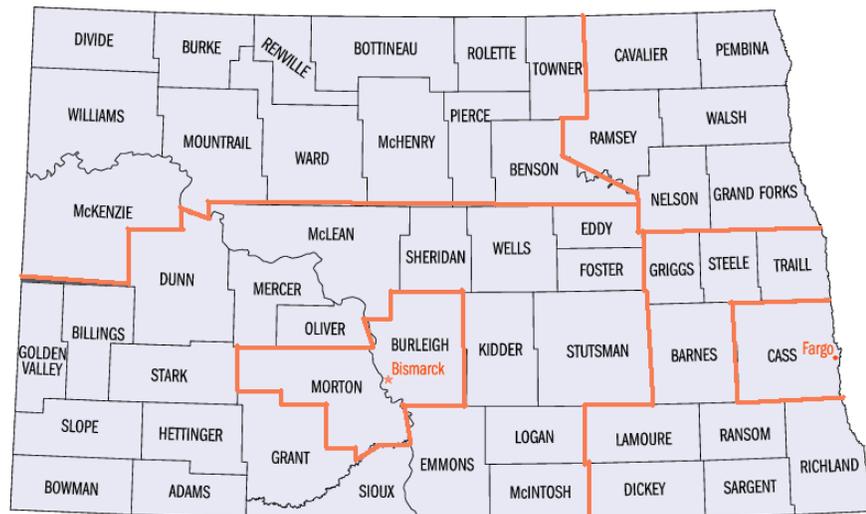
- **Should North Dakota establish its own geographic rating area?**
- **If yes, how should the state be divided?**

Yes, North Dakota should establish its own geographic rating area and additionally, it should request HHS to review and approve its own, custom geographic rating areas that extend beyond the limit of four regions. On February 25, 2013 CCIIO issued Sub-Regulatory Guidance Regarding Geographical Rating Areas. This allows states to request geographic rating areas beyond the limit of 4 so long they submit the request to CMS no later than March 29, 2013.

Sanford Health Plan supports flexibility in establishing rating areas that fit the particular market specific to North Dakota. North Dakota currently permits a variety of geographic rating approaches allowing each carrier to develop rates on a regional basis that reflect different utilization and cost patterns across the State. Typically, a carrier might consider the following factors in

determining premium rating areas: disease prevalence, utilization patterns, the cost of services and/or the availability of providers of services within a proposed premium rating area; and the size of the covered population within each proposed premium rating area.

Sanford Health Plan believes the current flexibility in rating regions have been effective in controlling costs and encourages the state to preserve this flexibility. Therefore Sanford Health Plan supports 6 rating regions by county as illustrated in this map. We feel these rating regions accurately reflect the aforementioned factors that are at play with rating regions while also allowing carrier flexibility to aggregate rating regions into fewer regions, should they so choose. However, Sanford Health Plan is willing to have an open dialogue with the Department to consider alternative, county-based regions.



as

Sanford Health Plan does not support rating areas based on MSAs and non-MSAs as this would limit North Dakota to 4 rating regions: 1) Bismarck MSA inclusive of Morton and Burleigh counties; 2) Fargo MSA inclusive of Fargo county in ND and Clay county in MN; 3) Grand Forks MSA inclusive of Grand Forks county in ND and Polk County in MN; and 4) all other counties. With only four rating regions, areas with higher utilization or contracting costs may be combined with areas with lower utilization or contracting costs causing consumers in lower cost areas to experience unnecessary increased premiums. Conversely, the limited rating regions around the MSA's do not reflect the normal travel and referral patterns from surrounding cities, therefore potentially limiting nearby MSA counties from benefiting from the more aggressive contracts in the MSA areas.

Finally, we believe that allowing rating regions to default to the federal standard puts the state is at odds with the encouragement of health plans to develop accountable care organizations (ACO) principles and the shifting away from fee-for-service payment towards ACO plan designs and reimbursement arrangements.

**4. PHSA 2701(a)(1)(A)(iii) limits the use of age rating to 3:1. The final market rule requires the use of uniform age rating bands specified by HHS and a uniform age rating curve specified by HHS, unless the state specifies its own curve for the individual and small group markets. If the state does not establish a uniform age rating curve, a default will be specified by the Secretary of HHS.**

- **Should North Dakota establish its own age rating curve for either the individual or small group markets?**
- **If yes, please describe the suggested rating curve(s).**

Sanford Health Plan supports the federal approach of assigning each age its own separate category without establishing alternative age bands different than the current proposed rules:

- Children: Ages 0-20 single age band where all rates are the same
- Adults: One-year age bands for ages 21-63
- Older Adults: Single age band for age 64+ where all premium rates are the same

**5. According to the final market rule, a state may elect to require that premiums for family coverage be determined by using uniform family tiers and the corresponding multipliers established by the state. If a state does not establish uniform family tiers and the corresponding multipliers, the per-member rating methodology mentioned in 45 CFR 147.102 (c)(1) applies.**

- **Should North Dakota elect uniform family tiers?**

Current carrier practice in the small group market is to allow carriers to develop their own family tier methodology. Carriers are cognizant and appreciative of employer group preference to family tiers and therefore have a wide range of family tiers in order to accommodate an employer's financial needs.

It is our understanding States may require carriers to base small group premiums on an average (composite) amount for each employee in the group, provided that the total group premium equals the premium that would be derived through the per-member-rating approach and that HHS acknowledges two primary ways employee contributions may be determined:

- Fixed Percentage - Employer pays a fixed percentage of each employee's age rated premium
- Composite/Average Rate - Employer generates a composite or average rate for all employees and determines employer and employee contributions based on the composite rate.

Sanford Health Plan believes that the per member rating methodology as proposed by HHS will adequately meet the demands our employer groups and individual consumers through diverse and flexible options. Therefore we support the federal per member rating methodology.

**6. The final market rule limits the use of tobacco use as a rating factor to a maximum of 1.5:1 applicable only to individuals in a family that smoke.**

- **Should North Dakota adopt a narrower ratio for tobacco use?**
- **If yes, what should it be?**

It's our understanding that pursuant to the federal registrar "states **or issuers** would have flexibility within these limits to determine the appropriate tobacco rating factor for different age groups."

Sanford Health Plan supports the flexibility to determine the appropriate tobacco rating factor for different age groups. For example, younger enrollees could be charged a lower tobacco use factor than older enrollees provided the tobacco use factor does not exceed 1.5:1 for any age group. However, we don't feel the state needs to define these standards if the carrier's have the flexibility to do so within their rate filing. We welcome further dialogue with the State to ensure like interpretation of the statute.

**7. The final market rule states "We encourage states to consider approaches to discourage adverse selection while ensuring consumer's guaranteed availability rights are protected since state policies that limit guaranteed availability are preempted by this law." It goes on to suggest future guidance will be issued on other permissible strategies to mitigate adverse selection.**

- **If allowed, what other strategies would you suggest North Dakota pursue to mitigate adverse selection?**

Sanford Health Plan believes that a state-designated open enrollment period outside the Exchange for the individual market is important to mitigate many of the adverse selection issues anticipated in 2014, helping to control premium increases. It would also set clear rules for carriers and consumers alike; minimizing the marketplace confusion and risk of gaming that could result from each carrier independently determining its own open enrollment period. However, we understand the concern expressed by the agent and broker stakeholders over the reduced time period in which they will be able to sell individual insurance.

The inability to sell individual insurance policies year-round will most certainly affect the high level of service and flexibility consumers have come to expect from their insurance agent in the existing individual market. Consequently, we would support a year-round open enrollment period that incorporates the following parameters:

- Consumers in the individual market who chose to purchase insurance outside of the federal open enrollment period are subject to a 90 day waiting period imposed by the carrier; or
- Consumers in the individual market who chose to purchase insurance outside of the federal open enrollment period are subject to a late enrollment surcharge/penalty as set by the carrier; or
- Both of the above, at the carrier's discretion.

The above constraints would strike a good balance between providing stability for the exchanges and allowing consumers to change or begin coverage outside of the exchange's regular enrollment period. Not all individuals will qualify for the cost sharing reductions or advance premium tax credits and hence have the incentive to purchase insurance through the exchange. The suggested waiting period and/or late surcharge would allow individuals and families to continue to purchase insurance outside of the insurance exchange and ensure they don't wait until they get sick to enroll in coverage, or switch to more comprehensive coverage when they are about to have an expensive medical procedure and enroll in coverage for short periods and then dropping coverage after receiving medical services.

In the absence of a state-designated, year round open enrollment period inclusive of the waiting period and surcharge parameters, Sanford Health Plan urges the Department to issue specific language via Bulletin permitting carriers to establish their own open enrollment periods for individual policies sold outside of the insurance exchange.

Thank you for your time and consideration of these comments.

## Fonkert, Andrea L.

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**From:** Jessica Stimpson <Jessica.Stimpson@bcbsnd.com>  
**Sent:** Monday, March 11, 2013 10:59 AM  
**To:** Fonkert, Andrea L.  
**Cc:** Luther Stueland  
**Subject:** Response: EHB and Health Insurance Market Rules; Rate Review final rules

Andrea, thank you for the opportunity to weigh in regarding the EHB and Market Rules; Rate Review final rules. Our responses are in bold below. Please let us know if you have any questions.

1. The EHB rule indicates "...states have the first opportunity to determine which habilitative benefits must be covered by their benchmark plan. States may choose to use the NAIC or Medicaid definition. If states have not chosen to define habilitative benefits, the issuers' choice remains." The ND selection of the Sanford HMO plan (benchmark plan) did not define habilitative services.
  - Should North Dakota define habilitative services?  
**No, BCBSND prefers the issuers' choice remains.**
  - If yes, what would the definition contain given the requirements in 45 CFR 156.115?
  
2. In the market final rule it states "a state may require the individual and small group insurance markets within a state to be merged into a single risk pool if the state determines appropriate."
  - Should North Dakota require carriers to merge their individual and small group non-grandfathered markets into one risk pool?  
**No, BCBSND believes that there should continue to be two separate pools for individual and small group. There are many differences between the two markets; there are premium subsidies, cost sharing subsidies and a temporary reinsurance program that will provide affordability in the individual market. The small group will not get the advantage of these programs. BCBSND believes this option will create less disruption in the small group market.**
  
3. The final market rule allows states to establish geographic rating areas in one of the following boundaries:
  - Counties
  - Three-digit ZIP codes
  - Metropolitan statistical areas (MSA) and non-metropolitan statistical (non-MSA) areasShould a state not make a choice, the default will be one rating area for each MSA and one rating area for all non-MSAs in the state (no greater number than the number of MSAs in the state plus one), which is four for North Dakota.
  - Should North Dakota establish its own geographic rating area?  
**Yes, BCBSND believes the state should proactively establish its own geographic rating area.**
  - If yes, how should the state be divided?  
**BCBSND recommends having one statewide rating area. BCBSND currently has one rating area and this would be less disruptive to existing customers. Overall, ND is a rural state there**

**is not much variation in provider reimbursement.**

**If the state does decide to provide more areas, we support the default of using MSAs.**

4. PHSA 2701(a)(1)(A)(iii) limits the use of age rating to 3:1. The final market rule requires the use of uniform age rating bands specified by HHS and a uniform age rating curve specified by HHS, unless the state specifies its own curve for the individual and small group markets. If the state does not establish a uniform age rating curve, a default will be specified by the Secretary of HHS.
  - Should North Dakota establish its own age rating curve for either the individual or small group markets?  
**No, BCBSND believes the HHS uniform age rating curve should be utilized by North Dakota at this time. It may make sense to have a North Dakota specific rating curve in the future, but at this time there is not enough data to evaluate.**
  - If yes, please describe the suggested rating curve(s).
  
5. According to the final market rule, a state may elect to require that premiums for family coverage be determined by using uniform family tiers and the corresponding multipliers established by the state. If a state does not establish uniform family tiers and the corresponding multipliers, the per-member rating methodology mentioned in 45 CFR 147.102 (c)(1) applies.
  - Should North Dakota elect uniform family tiers?  
**No, BCBSND does not believe that North Dakota is allowed to determine a uniform family tier under the Affordable Care Act. 78 Fed. Reg. 13409 (Feb. 27, 2013) states, "Only community rated states, which do not allow rating based on age or tobacco use, are able to implement family-tier-rating consistent with PHS Act section 2701(a)(4)." BCBSND believes North Dakota is required to follow the individual build up methodology.**
  
6. The final market rule limits the use of tobacco use as a rating factor to a maximum of 1.5:1 applicable only to individuals in a family that smoke.
  - Should North Dakota adopt a narrower ratio for tobacco use?  
**No, BCBSND believes the full 50% tobacco load should be allowed to give the maximum flexibility to adequately rate for the risk of tobacco usage.**
  - If yes, what should it be?
  
7. The final market rule states "We encourage states to consider approaches to discourage adverse selection while ensuring consumer's guaranteed availability rights are protected since state policies that limit guaranteed availability are preempted by this law." It goes on to suggest future guidance will be issued on other permissible strategies to mitigate adverse selection.
  - If allowed, what other strategies would you suggest North Dakota pursue to mitigate adverse selection?  
**The Affordable Care Act regulations allow for each family member to pick a different plan. This allows for adverse selection which increases the cost of insurance. Requiring the family to pick a plan as one unit will lower adverse selection.**

**Jessica Stimpson, PMP**

Manager, Health Care Reform Analysis

**BLUE CROSS BLUE SHIELD OF NORTH DAKOTA, FARGO**

701-277-2171 | [jessica.stimpson@BCBSND.com](mailto:jessica.stimpson@BCBSND.com) | [www.BCBSND.com](http://www.BCBSND.com)



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## Fonkert, Andrea L.

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**From:** Thunshelle, Terry <Terry.Thunshelle@SanfordHealth.org>  
**Sent:** Monday, March 11, 2013 12:54 PM  
**To:** Fonkert, Andrea L.  
**Importance:** High

Hi Andrea,

In response to the question below, I definitely believe that North Dakota should define the habilitative services using the NAIC definition.

Terry Thunshelle, PT

**From:** Fonkert, Andrea L. [<mailto:afonkert@nd.gov>]  
**Sent:** Thursday, February 28, 2013 1:43 PM  
**To:** Fonkert, Andrea L.  
**Subject:** Request for Comment on the EHB and Health Insurance Market Rules; Rate Review final rules

### **Request for Comment on the Essential Health Benefits (EHB) final rule published February 25, 2013 and Health Insurance Market Rules; Rate Review final rule issued February 22, 2013**

**To:** Health care reform stakeholders  
**Comment To:** [afonkert@nd.gov](mailto:afonkert@nd.gov)  
**Comment Closing Date:** 5:00 p.m. CST March 11, 2013

The intent of this request for comment is to inform North Dakota's health care reform stakeholders of several state options presented by the U.S. Department of Health and Human Services (HHS) in two final rules issued recently—Essential Health Benefits and Market Rules. The North Dakota Insurance Department is gathering comments at this time and is making no assurance as to its willingness to make specific choices.

HHS is requiring state choices, if made, to be submitted on the market reform rules by March 29, 2013. For that reason, the Department is requesting all comments be sent electronically to [afonkert@nd.gov](mailto:afonkert@nd.gov) by 5:00 p.m. CST on March 11, 2013.

Should you have any questions regarding this process, please contact Public Information Officer Andrea Fonkert at 701.328.2484 or [afonkert@nd.gov](mailto:afonkert@nd.gov).

1. The EHB rule indicates "...states have the first opportunity to determine which habilitative benefits must be covered by their benchmark plan. States may choose to use the NAIC or Medicaid definition. If states have not chosen to define habilitative benefits, the issuers' choice remains." The ND selection of the Sanford HMO plan (benchmark plan) did not define habilitative services.

- Should North Dakota define habilitative services?
- If yes, what would the definition contain given the requirements in 45 CFR 156.115?

Terry Thunshelle, PT  
Manager of Physical Therapy  
Sanford Medical Center  
300 N. Seventh St.  
Bismarck, N.D. 58501  
(701) 323-6345 office  
(701) 323-6189 fax  
[terry.thunshelle@sanfordhealth.org](mailto:terry.thunshelle@sanfordhealth.org)



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## Fonkert, Andrea L.

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**From:** Vatnsdal, Corrine <Corrine.Vatnsdal@SanfordHealth.org>  
**Sent:** Friday, March 08, 2013 4:44 PM  
**To:** Fonkert, Andrea L.  
**Cc:** vatndal@min.midco.net  
**Subject:** request for comment on definition of habilitative services as Essential Health Benefit

March 8, 2012

Andrea Fonkert  
Public Information Officer  
North Dakota Insurance Department  
600 E Boulevard Avenue  
Bismarck, ND 58505

Dear Ms Fonkert:

As an Occupational Therapist and a mother of a child currently receiving OT and PT services, I want to take this opportunity to comment regarding the definition of habilitative services as an Essential Health Benefit. Occupational Therapists and Occupational Therapy Assistants are licensed health professionals. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by promoting health and minimizing the functional effects of illness, injury, and disability.

The decision made by the Insurance Department regarding the definition of habilitative services will have an impact on individuals served by occupational therapist, particularly children with developmental disabilities. I understand that Health and Human Services has empowered states to define the habilitative benefit to create a level playing field for health plans, so that adverse selection is avoided, while ensuring a minimum benefit is available to the vulnerable North Dakota citizens who need those services most. Therefore, I urge the Department to define the habilitative benefit.

It is my hope, as an Occupational Therapist and a mom of child with disabilities, that you strongly consider using the definition of habilitative as set forth by the National Association of Insurance Commissioners. This definition clearly defines habilitation services so that consumers and providers can understand what is intended to be covered under this category.

I would also like to take this opportunity to ask you to consider the manner in which habilitative services are covered. While I support habilitative services with at least parity to rehabilitation services. I want to ask that you consider that clients needing habilitative services are very different and may require longer duration of services.

An example is my daughter - Cassidy has mild cerebral palsy and has had OT and PT all her life. At times services were more aggressive depending on growth spurts or developmental changes (that she was not acquiring like normal little girls). She would not be receiving these services if the definition was not specific for habilitative services. Her gains were slow but deliberate. She currently just had 2 major surgeries and was covered under rehabilitative definition but now is again slowing down. Yes she can stand on both legs but not go up steps, can't stand unsupported to shower for prolonged time, walk barefoot, ride a bike, throw a ball, carry backpack without going into delayed developmental posturing. All these "details" are not covered if habilitative care is not specified. There is basic function and there is quality of life. Please allow these kids (and adults) to have a chance at quality of life. Quality of life you and I take for granted as we walk up the steps or carry a bag of groceries or opening the door to womens bathroom. Seems so simple right?

Thank you for considering my concerns regarding habilitation services and the impact the Insurance Department's decision will have regarding children with developmental disabilities.

Respectfully,

Corrine Vatnsdal-Geck  
Certified Occupational Therapist  
Mother  
Consumer

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## Fonkert, Andrea L.

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**From:** Rental Property <mcvegm70@bis.midco.net>  
**Sent:** Sunday, March 10, 2013 10:39 PM  
**To:** Fonkert, Andrea L.  
**Subject:** Habilitative Benifts

Dear Andrea,

In response to the open comment period regarding the question if North Dakota should chose to define habilitative benefits, I strongly support adoption of a definition.

As a therapist who has worked in the field of Pediatric physical therapy for 18 years, I have found the term habilitative is often poorly understood by secondary payment sources and at times by a variety of medical stake holders. I have, in the past, served on a task force with insurance partners to develop pathways for improved processes for the provision of care for clients requiring habilitative services. The adoption of a definition was paramount to the success of improved process development resulting in cost saving to both the insurance company and providers. I believe simply defining habilitative benefits for the state benchmark plan will offer clarity to all interested parties and will optimize provision of care.

Regarding the choice between the NAIC and Medicaid definition I prefer the former, however, I believe that providing a definition is essential while the choice between definitions is secondary when given the option between NAIC and the Medicaid definition.

Thank you for the opportunity to provide input during this open comment period.

Sincerely,  
Michelle Vetter PT

## **Fonkert, Andrea L.**

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**From:** Willert, Shea <shea.willert@my.und.edu>  
**Sent:** Friday, March 08, 2013 2:54 PM  
**To:** Fonkert, Andrea L.  
**Subject:** Request for comment on definition of habilitative services as Essential Health Benefit

3-8-13

Andrea Fonkert  
Public Information Officer

North Dakota Insurance Department

600 E. Boulevard Ave.

Bismarck, ND 58505

Re: Request for comment on definition of habilitative services as Essential Health Benefit

Dear Ms. Fonkert:

As an occupational therapy student, I want to take the opportunity to comment regarding the definition of habilitative services as an Essential Health Benefit. Occupational therapists and occupational therapy assistants are licensed health professionals. The practice of occupational therapy is science-driven, evidence-based, and enables people of all ages to live life to its fullest by promoting health and minimizing the functional effects of illness, injury, and disability.

The decision made by the Insurance Department regarding the definition of habilitative services will have an impact on individuals served by occupational therapy, particularly children with developmental disabilities. I understand that Health and Human Services has empowered states to define the habilitative benefit to create a level playing field for health plans, so that adverse selection is avoided, while ensuring a minimum benefit is available to the vulnerable North Dakota citizens who need those services most. Therefore, I urge the Department to define the habilitative benefit.

It is my hope that you strongly consider using the definition of habilitation as set forth by the National Association of Insurance Commissioners. This definition clearly defines habilitation services so that consumers and providers can understand what is intended to be covered under this category.

I would also like to take this opportunity to ask you to consider the manner in which habilitative services are covered. While I support habilitative services with at least parity to rehabilitation services, I want to ask that you consider that clients needing habilitative services are very different and may require longer duration of services.

This past summer, I completed a clinical rotation at an outpatient occupational therapy clinic. Approximately 75% of the clients I treated were children in need of habilitative services related to occupational therapy.

Thank you for considering my concerns regarding habilitation services and the impact the Insurance Department's decision will have regarding children with developmental disabilities.

Respectfully submitted,

Shea Willert

## Fonkert, Andrea L.

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**From:** Zimmerman,Hannah <Hannah.Zimmerman@SanfordHealth.org>  
**Sent:** Monday, March 11, 2013 4:30 PM  
**To:** Fonkert, Andrea L.  
**Subject:** Hannah Zimmerman

**Categories:** Red Category

1. The EHB rule indicates "...states have the first opportunity to determine which habilitative benefits must be covered by their benchmark plan. States may choose to use the NAIC or Medicaid definition. If states have not chosen to define habilitative benefits, the issuers' choice remains." The ND selection of the Sanford HMO plan (benchmark plan) did not define habilitative services.

- Should North Dakota define habilitative services? Yes
- If yes, what would the definition contain given the requirements in 45 CFR 156.115?

This North Dakota should established a definition for Habilitative services in which to treat these children that fall under this type of benefits. As of now Sanford's plans excludes payment for this type of treatment. I strongly agree with establishing a definition for Habilitative benefits.

Hannah Zimmerman, MS, OTR/L  
Sanford Children's Therapies  
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