NCAAS

National Coalition for Access to Autism Services

July 9, 2021

Chairman Jack Reed
Senate Armed Services Committee
228 Russell Senate Office Building
Washington, D.C. 20510

Ranking Member James Inhofe
Senate Armed Services Committee
228 Russell Senate Office Building
Washington, D.C. 20510

RE: Postponing the Effective Date of the DoD Autism Care Demonstration TRICARE Operations Manual Changes

Dear Chairman Reed and Ranking Member Inhofe:

We are writing to each of you today to express our concern with recent changes to the TRICARE Operations Manual (TOM) for the Autism Care Demonstration (ACD) which threaten access to medically necessary services for children of military families with autism spectrum disorder (ASD) and prevent military families from accessing benefits that are routinely accessed by their civilian counterparts. The National Coalition for Access to Autism Services (NCAAS) is a nonprofit organization representing autism treatment providers and the hundreds of thousands of children and families they serve in every state of America who are affected by ASD. NCAAS providers contract with TRICARE, public schools, Medicaid, CHIP, and commercial insurers to provide essential medically necessary treatment to patients of all ages, although the vast majority of patients are children.

According to the Defense Health Agency (DHA), more than 16,000 patients receive Applied Behavior Analysis (ABA) therapy, the primary treatment for ASD, through the ACD. ABA is the process of systematically applying interventions based upon the principles of learning theory to improve socially significant behaviors to a meaningful degree and to demonstrate that the interventions employed are responsible for the improvement in behavior. DHA published updates to the TOM section governing the ACD on March 23, 2021, making significant program changes with phased-in effective dates of certain provisions.[1]

NCAAS members are concerned about these recent changes to the TOM. They are significant and are proposed for quick implementation, giving little time for TRICARE's contractors, providers, *and most importantly, military families* to fully understand how provisions will be implemented. DHA has hosted a series of webinars on the changes, but its statements in those webinars have merely reiterated the language already included in the TOM. While DHA allowed for questions to be submitted, few have been answered, and follow-up responses have been slow to be released and are brief in length

[1] "Department Of Defense (DoD) Comprehensive Autism Care Demonstration (ACD)," Ch. 18, Sec. 4, TRICARE Operations Manual 6010.59-M, April 1, 2015, https://manuals.health.mil/pages/DisplayManualHtmlFile/2021-03-23/AsOf/TO15/C18S4.html.

with many answers being kicked over to the two regional TRICARE contractors to sort out. NCAAS providers have been unable to get consistent responses, and in some cases, any response from the two contractors or from DHA to questions on the implementation of certain provisions that are essential to understand so as to ensure continued services to military families when various provisions become effective - several consequential ones in *less than 30 days from now and other significant changes implemented this past May 1st*.

The lack of specificity in the TOM and DHA's decision to turn many of the confusing issues in the TOM revision over to contractors will almost certainly result in different interpretations and applications by the two TRICARE contractors. We have already seen an example of such differing interpretations with respect to one issue: outcomes measures, detailed in our attachment to this letter. The attachment specifically details the confusion, but more importantly, the lack of programmatic direction provided since the TOM changes were published and are imminently to be effective.

Given DHA's significant deferral of questions to the two TRICARE contractors and the lack of response to those questions, the sanctions being proposed in the TOM for lack of compliance with certain aspects and – even more importantly – the dramatic concerns of affected military families that we know have been communicated to your committee – **we respectfully propose that the effective date of the revised TOM be postponed until January 1, 2022 to facilitate a revision to the TOM as published on March 23, 2021 so that the concerns of families and providers can be adequately addressed.**

NCAAS members remain committed to serving TRICARE families with children with ASD. However, the sheer volume of changes to the program that must occur over a nine-month period will be extremely difficult to effectively implement with no delay in access to services. Delaying implementation of this TOM revision will give the contractors time to develop the new metrics they must use and hire and train the appropriate staff; allow providers to fully understand how the contractors will implement provisions so they can fully comply and appropriately train personnel; and help ensure families do not experience any delay in services or loss of access.

Military families already experience far greater challenges in accessing benefits for ASD than their civilian counterparts; DHA should not be unnecessarily adding to those challenges. In the absence of clarity on these dramatic program changes, we fear that providers will choose to leave the TRICARE network as the risks in terms of sanctions imposed on providers for a lack of compliance with the new TOM—*especially sanctions for actions over which providers have absolutely no control*—outweigh the demonstrated desire of ABA providers to serve military families. These risks simply do not exist with other commercial and public payers.

Our detailed list of immediate concerns is attached. We welcome the opportunity to discuss our concerns with you more fully. Please contact Denis Dwyer at djdwyer@wms-jen.com if you have questions or if there is any additional information we can provide.

Sincerely,

Michael E. Moran

Michael E. Moran
Chairman

Specific Concerns of the National Coalition for Access to Autism Services (NCAAS) Regarding the Implementation of the TRICARE Operations Manual (TOM) For the Department of Defense Autism Care Demonstration (ACD)

The following are specific concerns of NCAAS that, from a provider perspective, seriously impact the ability of ABA providers to meet the needs of military families under the requirements of the new ACD TOM. It is important to emphasize that these changes, in many instances, are merely creating administrative burdens for families and providers while offering little access or clinical improvements for children with ASD. In an effort to organize these concerns in a structured format, they are listed based upon the various effective dates as provided under the ACD TOM.

April 1, 2021

Discharge Planning (para. 8.8) – The TOM requires ABA providers to make a termination plan that is no shorter than 45 days (para. 8.8.2). This completely removes clinical discretion and does not take into account any family issues that may lead to an abrupt end to services. Further, the TOM threatens to report *individual* providers (not the companies they work for) to their certification board should they fail to comply - even if it goes against proper clinical decision-making or it is impossible to complete due to family non-compliance. It may also force providers to deliver services without reimbursement. We question the need for a sanction as providers have a pretty good track record of not preemptively terminating services without assisting in a transition. Threatening to sanction an *individual* provider for an action that may be completely beyond his or her control is resulting in some individual providers seeking to withdraw from providing TRICARE Services.

May 1, 2021

Services in School Settings (para. 8.10.15) – The TOM has eliminated coverage of services provided in the school setting by a behavior technician (para. 8.10.15), a vital service for all patients with autism and a covered benefit in all commercial and Medicaid coverage. Best practices in ABA promote the delivery of service across all natural environments to address specific behaviors that occur in different environments and to ensure skills acquired in one environment generalize across all environments. For a school-age child, school is one of these critical environments. It is difficult for children with ASD to transfer skills and behavior learned in one setting to another. TRICARE has asserted on its webinars that services in school have never been a covered location for ABA services. *This is simply untrue. Services in schools have long been authorized by TRICARE contractors and reimbursed.* This provision in the TOM is a *dramatic change* for most TRICARE families that was implemented very quickly. Additionally, DHA should clarify para. 8.10.11 on services in other community settings to ensure children with ASD can continue to receive treatment in *all* appropriate settings to address their needs and allow them to reach their full potential.

July 1, 2021

Background Checks (para. 8.2) – Under para. 8.2.3.3, there is a requirement for a 10-year Criminal History Background Check (CHBC) for all assistant behavior analysts and behavior technicians new to the TRICARE ACD. To be clear, NCAAS supports, and its members already undertake, criminal background checks for their employee providers that come into contact with not just TRICARE patients, but all patients. However, some states' background checks only go back 7 years or in some cases only 5 years, but the TOM makes no room for flexibility with respect to those states where CHBC go back less than 10 years. The TOM provides no direction or even practical discretion to

contractors in implementing this provision. Thus, we recommend DHA amend this provision to specify that the background check should look back 10 years or the maximum length available under state law, thus providing the contractors with practical discretion as it relates to providers complying with this requirement.

August 1, 2021

Beginning *in less than 30 days* from your receipt of this letter, there are a number of new TOM provisions that, without clarification, could dramatically affect the delivery of autism care services to military families.

Outcomes Measures (para. 8.6.4) – One of the most critical requirements is the new outcomes measures requirement (para. 8.6.4). Beginning on August 1, The TOM has significantly expanded the required outcomes measures, but TRICARE has provided little direction on who will deliver these assessments and how they are to be delivered. Are providers responsible for the outcome measures? No one knows. TRICARE has directed providers to rely on the contractors for such direction. Guidance one regional contractor provided is internally contradictory. As such, we expect that it is not the "official" contractor guidance on this issue. The other regional contractor has provided *no guidance whatsoever* about the assessments or how they will be scheduled to ensure treatment can be timely reauthorized. Further, the TOM provides no detail on what will occur if the *family* fails to comply and while family cooperation is essential, there are many good reasons why military families may not be able to comply on a timely basis. Any delays in completing the assessment will affect reauthorization and the ability of military families to continue to receive the services they need for their child with ASD. Delays and interruption in a child's course of treatment jeopardize a child's progress and may produce a permanent loss of skills. Contrary to other insurers, the TOM specifies authorizations will not be backdated (para. 8.6.3.1). Other payers routinely backdate authorizations to comply with their duty to provide continuity of care and ensure beneficiaries can continue to receive services and providers can be reimbursed during a lapse in authorization. Moreover, as providers are required to deliver at least 45 days of service before discharge, they (under the contradictory terms of the TOM) will have delivered services without reimbursement while awaiting reauthorization. The lack of guidance on this issue, not to mention the other requirements that no other commercial or federal or state public insurer requires, is incentivizing providers to leave the ACD program.

Billing for CPT Code 97155 (para. 8.11.6.2.3) – The TOM adds a new requirement for CPT Code 97155 requiring ABA supervisors to bill for this code once per month or be subjected to recoupment. In general, this is not a problem for providers and may even be used more frequently as needed to modify treatment protocols. However, there may be instances where it cannot be performed because a family may be unavailable, whether for deployment, travel, or an illness. The TOM includes *no direction* for contractors on how this monthly requirement should be measured or allowances for when the family may be unavailable. Instead, it imposes a 10 percent recoupment penalty on providers for *all* ABA services over a six-month look back for failing to deliver the code each month. We recommend amending this section to clarify that the code should be delivered a certain number of times over the six-month authorization.

Utilization Management Tools (para. 9.1.1) – The contractors are required *in less than 30 days from your receipt of this letter* to implement utilization management tools to guide approval of all treatment plans, initial authorization, and reauthorizations. Providers have received *no information* from TRICARE or the regional contractors on the parameters of these new tools to ensure their compliance and ensure their patients do not see their services arbitrarily limited.

October 1, 2021

Autism Services Coordination (para. 6.0) – DHA is creating a new Autism Services Navigator (ASN) for all new ACD patients to help families manage the services available for their child with ASD. NCAAS members fully support services for families that can help them coordinate their child's care. However, as currently written in the TOM, the ASN position could delay access to ABA treatment by 90 days or more. Families who decline the services of the ASN will be denied participation in the ACD and lose access to ABA therapy (para. 6.8). The ASN has 90 days to develop a Comprehensive Care Plan (CCP), though there is no penalty if the ASN does not complete this in a timely manner. The beneficiary cannot begin to receive ABA services until the CCP is completed (para. 6.2.4). While DHA has insisted ABA services may begin immediately and are not dependent on the CCP, *the TOM as written prevents services from beginning.* In a recent webinar, DHA reiterated this is simply a typo in the TOM and ABA services can begin immediately; however, DHA has not issued an updated TOM correcting this error. Our experience shows, and understandably so, that TRICARE contractors are going to follow the TOM as written, not how DHA intended it to be implemented. Further, the contractors will need to hire and train these ASNs - providers who are already in short supply. This entirely new requirement begins in only three months, and the contractors do not even have an accurate TOM, by DHA's own admission, with which to design the program and train these new ASNs.

Provider Education Training (para. 9.3.4) – The TOM contains conflicting dates on when the contractors are required to begin providing this training (January 1, 2022) and when providers are expected to comply and complete the training (October 1, 2021) or be subject to a 10 percent claims penalty. DHA has indicated the October date was an error but has not released an update to correct it. Written words matter, and provider experience is that TRICARE contractors rely on the written word of the TOM, so there is no comfort, especially in the face of a 10 percent claims penalty, which we read as applying to *all* TRICARE claims, not just an individual patient's claims.

January 1, 2022

ABA Provider Steerage Model (para. 9.3.12) – The contractors are responsible for developing an ABA provider steerage model implementing provider quality metrics and giving priority to the highest-ranking providers in online directories and when assigning patients. The TOM leaves most of the design of these measures to the contractors' discretion, which means, if the past is any guide, the contractors are likely to use different metrics, leading to an inconsistency across the country for how providers are measured and ranked. Moreover, in similar peer analysis in other sectors of the economy, there is usually an outreach to the community that is prospectively to be assessed to cooperatively develop metrics of assessment, both to assure uniformity across the field being assessed and to provide clarity to the field being assessed as to the metrics to be measured. None of that has happened thus far. While the effective date of this requirement is still 6 months away, given the complete lack of direction from TRICARE or the contractors, we have little confidence that timely guidance will be forthcoming.