August 13, 2013

To: Representative Jacque

From: Maureen Ryan, moryan@charter.net; (608) 444-3842;

**Re: AB 272 - Change to the Medical Assistance Autism Benefit**

Thank you for your interest in supporting children with significant disabilities in Wisconsin. Our statewide coalition writes to offer our support for your efforts and our willingness to engage with you as you pursue legislation to improve support to children with disabilities. As a cross-disability group, we represent the interests of children with all types of disabilities, including autism, and their families. Our comments and questions seek to improve this proposed legislation and ensure that all children who are at risk of out-of-home placement and meet the Department of Health Services definition of requiring an “institutional level of care” are adequately supported as this proposal moves toward implementation.

**Children with Significant Disabilities Waiting for Supports in Wisconsin**

The Department of Health Services (DHS) reports that approximately 2700 children with significant disabilities are waiting for access to supports. Of these, 524 children with autism are waiting for intensive services. (Approximately 2500 children with autism are currently receiving intensive and long-term supports and services.) According to DHS, due to limited funding children with autism waiting for intensive services (under age 8) can wait for approximately 1 1/2 years before receiving services. The 2200 children, including older children with autism, are waiting (up to 8 years) for essential long-term supports and services. These children are eligible for specialized supports due to substantial limitations in multiple daily activities as a result of one or more of the following disabilities: developmental disabilities, severe emotional disturbances, and physical disabilities. Overall, DHS’s Children’s Long-Term Supports program (which includes the autism benefit) recognizes that meeting the needs of children who have severe disabilities may place hardships on a family's emotional, physical and financial resources.

**Questions about AB 272 Autism Benefit Proposal**

Wisconsin’s Medicaid waiver programs are in place in part to guarantee compliance with the 1999 Olmstead Supreme Court decision which requires that a state eliminate unnecessary segregation and institutionalization of persons with disabilities, including children. Because AB 272creates a “sum sufficient” entitlement only to autism treatment supports, when children with autism age out of this benefit or utilize the benefit for the required one year timeframe, they will bypass other waiting children in the system and move without wait into the “on-going” or general long-term supports benefit within the children’s system. We are concerned this will create a longer wait for children with other diagnoses who have significant and perhaps more severe needs and disabilities. Specifically we question if longer wait periods will result in expensive out-of-home or institutional placements of children with significant disabilities and create Olmstead-related concerns for Wisconsin.

We also question the equity of creating an entitlement to services for one diagnostic group while others who may have similar and compelling needs for support wait. While the evidence-base for early autism treatment is specific to young children with autism, access to quality long-term community-based supports and related services has demonstrated significant benefits to children across a variety of diagnoses. An entitlement to intensive services in this bill will create an entitlement to long-term supports. This second component of the entitlement exacerbates the inequity between children with different disabilities. In July of this year the 7th Circuit Court of Appeals ruled that disparate treatment of one group of people with disabilities as compared to a group with different disabilities is a potential violation of the Americans with Disabilities Act and the Rehabilitation Act. Therefore, Wisconsin should explore whether this policy would expose the state to liability.[[1]](#footnote-1)

**Questions**

* AB 272 creates an entitlement to services for children with autism (sum sufficient) yet only provides funding for the current group who is waiting for intensive services. As funding follows children from intensive into long-term supports, what funding will be used to serve new children needing intensive services?
* How will waiting lists for access to long-term supports for children with all other disabilities be addressed to provide equity between Medicaid populations and address discrimination based on disability?
* The autism insurance mandate was intended to alleviate the need for public supports and provide access to autism services in the private sector in a timely manner. What has been the impact of the insurance mandate on the need for intensive services provided by Medicaid? Are there barriers to families maximizing access to these services?
* Research shows that intensive services are most effective for children under the age of six. Waiting 1 ½ years for early intervention contradicts best practice. Would creating a separate waiver for these services insure that children could be served in the timeliest way? The current structure of the waivers for children with autism results in a steadily increasing number of children moving into the full waiver sometimes after only one year of intensive services. Children can remain in the waiver until age 21. This ‘ties up dollars” that could serve children needing the intensive benefit.
* What would it cost to reduce or end the waiting list for long-term supports for all children waiting, allowing children with autism who have long term support needs following intensive services to move seamlessly into long-term supports?
1. [Amundson v. WI Department of Health Services; U.S. Court of Appeals For the Seventh Circuit; No. 13-1351; July 10, 2013.](http://us7thcircuitcourtofappealsopinions.justia.com/2013/07/10/amundson-v-wi-dept-of-health-servs/) [↑](#footnote-ref-1)