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COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
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RECEIVED  
IRRC

2011 APR 27 A 8:26

April 26, 2011

Wayne Crawford, Executive Director  
House Professional Licensure Committee  
107 Ryan Office Building  
Harrisburg, PA 17120

Re: Final Rulemaking  
State Board of Medicine  
16A-4929 – Behavior Specialist

Dear Mr. Crawford:

On April 11, 2011, the State Board of Medicine (Board) delivered the referenced final rulemaking to the Independent Regulatory Review Commission (IRRC) and to the chairs and minority chairs of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee (HPLC). The regulations promulgated by this rulemaking will satisfy the Board's mandate under section 635.2(g) of the Insurance Company Act of 1921, added by Act 62 of 2008, to "promulgate regulations providing for the licensure or certification of behavior specialists." I am writing now, prior to the HPLC meeting on April 27, 2011, to address a question that has arisen concerning other licensed professionals.

Section 635.2 of the Insurance Company Act requires an insurer to provide covered individuals under age 21 years of age coverage for the diagnostic assessment and treatment of autism spectrum disorders and to contract with and accept as a participating provider any autism service provider that is licensed or certified in this Commonwealth. Section 635.2(f)(2)(i) of the Insurance Company Law defines "autism service provider" as one providing treatment of autism spectrum disorders pursuant to a treatment plan and is licensed or certified in this Commonwealth. The Insurance Company Act separately defines a "behavior specialist" by the activities performed. The question now raised is whether an insurer would be required to accept as a participating provider a person who is not licensed by the Board as a behavior specialist but who holds a professional license whose scope of practice includes providing treatment of autism spectrum disorders pursuant to a treatment plan.

As noted above, the Board is authorized to promulgate regulations providing for licensure or certification of behavior specialists; it is also authorized by section 635.2(g)(1) of the Insurance Company Law to impose disciplinary action against licensed or certified behavior specialists. The Board has no authority to otherwise enforce the Insurance Company Law. Accordingly, the Board must defer to the Insurance Commissioner and others statutorily authorized to enforce the Insurance Company Law. While the Board has the authority to determine that a particular person has sufficient qualifications for acceptance as a participating

provider by licensing that person as a behavior specialist, the Board cannot, even through the promulgation of its regulations, specify whether behavior specialist licensure, in addition to other professional licensure, is necessary or not for acceptance as a participating provider.

Although the Board does not have the statutory authority to make such a determination, the Board has considered this question because it is being raised to the HPLC in its review of the rulemaking pursuant to the Regulatory Review Act. Based upon the above statutory language, the Board understands the Insurance Company Law to permit a person to provide treatment of autism spectrum disorders pursuant to a treatment plan without behavior specialist licensure so long as the treatment is within the scope of practice of a license held by that person. The Board also understands the Insurance Company Law to require the insurer to accept such a person as a participating provider. In other words, the Board believes that a person holding a professional license whose scope of practice includes providing treatment of autism spectrum disorders pursuant to a treatment plan need not also obtain behavior specialist licensure from the Board in order to provide treatment of autism spectrum disorders. That being said, the Board will accept applications for behavior specialist licensure regardless of other professional licensure and will approve for licensure those applicants who demonstrate compliance with the requirements of section 635.2(g) of the Insurance Company Law and Board regulations.

IRRC has placed this final rulemaking on the agenda for its meeting May 19, 2011. In advance of this meeting, the Board intends to supplement the preamble of its rulemaking to address this question in greater detail.

If there are any questions or concerns, please contact Board counsel.

Sincerely,



Katie True  
Acting Commissioner of Professional and  
Occupational Affairs

KT/TAB:rs

cc: Steven V. Turner, Chief Counsel, Department of State  
Cynthia Montgomery, Regulatory Counsel, Department of State  
Thomas A. Blackburn, Senior Counsel in Charge, Department of State  
David M. Green, Counsel, State Board of Medicine  
State Board of Medicine  
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