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Department of Defense Backs Down From Prior Policy in Response to Military Families' Lawsuit Seeking Payment for Applied Behavior Analysis Therapy for Children With Autism

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TROY, Mich., July 7 -- /PRNewswire-USNewswire/ -- Military families having children with autism have filed a class action lawsuit against the Department of Defense, alleging that the DoD and its health benefits division, TRICARE, have wrongfully refused to provide insurance coverage for applied behavior analysis (ABA) therapy. In a dramatic new development, the Department of Defense has vacated its prior policy of denying payment for ABA therapy for autistic children of military families, but it is still refusing to pay for such claims.

Specifically, the DoD's attorneys have issued a policy letter stating, "The TRICARE Management Activity has vacated any previous instruction it may have issued to its contractors that ABA is not covered under the Basic Program." Military families having an autistic child should file claims for ABA therapy without delay.

ABA therapy is known to be extremely effective in treating children with autism if given at an early stage of development. It is scientifically validated and includes positive reinforcements and individual goal setting, to achieve dramatic behavior modification. ABA therapy allows children with autism the opportunity to reach maximum potential and the hope of becoming independent in their adult lives. Yet, the DoD refuses to afford this therapy to autistic children of military families.

The lawsuit contends that the military health benefits division, TRICARE, at the direction of the DoD, incorrectly characterizes ABA therapy as "special education" and thereby improperly excludes ABA therapy from the health care available to members of the military. The families refute this position and demonstrate in their Complaint that many prestigious individuals and organizations, including the United States Army, the Army and Marine Corps Autism Task Force, the Executive Director of the National Autism Center, the Acting Surgeon General of the United States Army, and United States Air Force Major Ella B. Kundu, Diplomat of the American Board of Psychiatry and Neurology, agree that ABA therapy is not "special education."

The case is *Berge v. United States of America, et al*, No. 10-cv-00373-RBW (DC), and it was assigned to Judge Reggie B. Walton of the federal district court in Washington, D.C.

The Department of Defense has recently requested that all action on the case be stayed and that the matter be remanded, or sent back, so that the DoD can study the issue further.

The families have vigorously opposed the request for a stay or a remand, contending that time is of the essence for the approximately 20,000 military children with autism. Counsel

for the families assert that the DoD's policy of denying such care to autistic children of military families is illegal and should be invalidated without delay.

Gerard Mantese, co-counsel for the families, stated: "The thousands of military families that we represent deserve health care coverage comparable to what is being offered by private insurers. These military families give us so much to be thankful for in this country – our freedom and our safety. Our military should not also be asked to sacrifice proper health care for their children in order to serve their country."

Former Michigan State Senator, David Honigman, co-counsel for the families, emphasized: "There is only a small window of opportunity for these children to receive this therapy and obtain maximum benefit from it. The studies show that this therapy yields the most dramatic improvement in abilities if administered at early ages. We oppose any attempt to delay this case because children with autism will suffer during the delay. The DoD's denial of coverage based on the assertion that ABA therapy is 'special education' is contrary to the plain meaning of the health benefits statute and is incorrect as a matter of law."

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