

Department of Health and Social Services Answers to Questions Received Through
Public Comment Related to the Proposed Autism Services Regulations

“7 AAC 135.020(e)(3)(D) states: “confirms that other recommended EPSDT services listed have previously been provided or are presently being provided to the recipient and those services have not resulted in measurable improvement in the recipient’s behaviors.”

- a. What are the criteria for “measurable improvement”?
- b. How long do services have to have been tried?
- c. Can a newly diagnosed child get autism services right away? Or do they need to have a history of failure with other services first?
- d. Whose responsibility is it to determine improvement?”

The Department of Health and Social Services is deliberating on comments received through Public Comment and the Oral Hearing on this issue and will determine if there is need to revise the proposed regulations.

“Regarding covered services listed in 7 AAC 135.040(c)(19): What about coordination with other service EPSDT providers, school, etc.? Is there a way that BCBAs can attend or assist with coordination of behavior plans across environments?”

The proposed regulations do not limit the ability of any provider to exchange information and to coordinate services with other treatment providers. Presently, this is not a reimbursable service for autism services. The Department of Health and Social Services will determine if there is need to revise the proposed regulations in response to this issue.

“What about supervision of RBTs? RBTs are required to be observed 5% of their hours per month. At least half of those hours must be individual and must include observation while working directly with clients. For RBTs working full time (40 hours), they must be supervised at least 8 hours per month with at least 4 of those occurring while working with clients.”

The Medicaid program only covers services provided directly to a recipient.

“Supervision” is not a covered service. The Dept. is deliberating on comments received through Public Comment and the Oral Hearing on the question of adding the service: “Adaptive Behavior Treatment by Protocol Modification” and will determine if there is need to revise the proposed regulations.

“Where are the codes for billing? Where is the table of rates per code, as with other service providers?”

Proposed service rates for autism services can be found in 7 AAC 145.580 of the proposed regulations. The Department of Health and Social Services through Health Care Services also maintains Medicaid Billing Manuals for all services which include all covered services, rates, and billing codes (see: <http://manuals.medicaidalaska.com/>) The billing codes for autism services may be found in the National HCPCS Manual.

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“Will BCBA recommendations for amount of treatment hours be considered, or will all consumers receive 20 hours per week?”

Treatment planning, as noted in the proposed regulations, is based on assessment of need. Providers are not limited in prescribing services. However, all Medicaid services have annual limits. Providers may request through the service authorization procedure to exceed these limits.

“7 AAC 135.350(b)(1)(C) lists different sources of information that should be used in the assessment.

- a. Who will evaluate and approve these plans?
- b. Will a BCBA/BCBA-D be involved in the review process?
- c. Are all 5 items required, or a combination of any of them?
- d. Will the BCBA determine which interviews and assessments are used?”

The proposed regulation 7 AAC 135.350(b) requires an assessment to be conducted by a board certified behavior analyst. The assessment includes interpretation of information as gathered from various sources listed in sub-section (1)(C). The regulation, as written, requires all sources to be considered if they exist. The BCBA determines what information is relevant for the assessment and treatment planning.

“7 AAC 135.350(h) states: “To receive payment for autism services a provider must develop an individual treatment plan that is updated as needed and includes:...”

- a. Who will evaluate and approve these plans?
- b. Will a BCBA/BCBA-D be involved in the approval process?”

The proposed regulations requires a treatment plan that is developed by the provider (i.e. CBHS Provider, or a BCBA, or a Behavior Analyst Group Practice). No one other than the provider approves the plan.

“Autism services can be provided in the different settings listed in 7 AAC 135.350(j).

- a. Will the setting for autism services have to be declared in the authorization?
- b. Can the setting change throughout the authorization?”

Autism services are listed as rehabilitation. Service settings may change according to need, and are not required in a Service Authorization.

“Will there be a grace period for RBT credentialing? Currently, there are only 75 RBTs in the state. The credential requires completion of 40 hours of ABA training, passing a skill fluency checklist, applying to the Behavior Analyst Certification Board (BACB), and passing a written exam. The time between application and exam is generally 2-4 weeks for local providers. The exam can only be taken in Anchorage or Fairbanks at this time, so providers outside of those areas may need more time scheduling their travel to take the exam.”

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The Department of Health and Social Services appreciates this question and is deliberating comments received through Public Comment and the Oral Hearing on this issue and will determine if there is need to revise the proposed regulations.

“Will any other credentials be recognized, such as BCAT and ABAT?”

The proposed regulations list the only rendering providers who are currently approved to deliver autism services.

“Will audits be conducted?”

- a. What will be required for an audit?
- b. Who will be conducting audits?
- c. How frequently will audits be conducted?
- d. Are these in line with other disciplines?”

All Medicaid services and Medicaid service providers are subject to audit. Medicaid related audits include Meyers & Stauffer, PERM, DHSS Program Integrity, and DHSS/DBH Quality Assurance. Each audit has its own focus and frequency.

“How will these proposed services affect school?”

- a. Will schools be able to bill as related service?
- b. What if schools are using all the authorized hours?
- c. Will there be a percent designated between school and home/community providers?”

Autism services are designed as Medicaid behavioral health rehabilitation services. Any rehabilitation service may be delivered in any appropriate community setting, including a school. The services must appear appropriately in a treatment plan, and must be delivered by a BCBA, BCaBA, or RBT. The parent / care giver, and the school should give their permission for services to be provided in a school setting. However, autism services are not “school-based services” and cannot be provided by school personnel or billed to Medicaid by a school district.

“Are systems in place for providers to get enrolled? How do BCBA's get a Medicaid number? Are there processes in place for implementation?”

Regulations governing Medicaid provider enrollment may be found in 7 AAC 105.200 - .290. Assistance with enrollment may be obtained through Conduent State Healthcare: <http://medicaidalaska.com/> (907) 644-6800 or in-state toll-free number: (800) 770-5650; or the Division of Behavioral Health, Medicaid Assistance Section 3601 C. St. Suite 878, 907-269-3600.

“What is the rationale for this regulation being “autism services” rather than applied behavior analysis services (as other professions are referred to specifically within State regs)?”

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The Department of Health and Social Services developed autism services regulations in response to federal mandate to cover all children's services under Early and Periodic Screening, Diagnostic and Treatment services (EPSDT), including services for children diagnosed with ASD. The Department of Health and Social Services determined that the proposed regulations should be placed within Medicaid behavioral health and should be written to specifically address the needs of the population.

“Can you please clarify if BCBA's will be allowed to hold and bill for social groups (as only RBT's and BCABA's are currently listed within the draft)?”

The proposed regulations under 7 AAC 135.350(d) – (e) identify the least qualified providers who can render services. Licensed behavior analysts are qualified to render any service listed in the proposed regulations. The Department of Health and Social Services will determine if there is need to revise the proposed regulations to provide additional clarity.

“Can you clarify the evidence/best practice and rationale behind prohibition of two services at the same time?”

Medicaid rules prohibit the provision of more than one service per recipient in the same clock hour.

“Can you clarify the evidence/best practice relied upon in specifically excluding the client from being present during family guidance sessions?”

The phrase used in the definition under 7 AAC 135.990(32) that states: “but, without the recipient present” is potentially written in error. The Department of Health and Social Services will determine the need to revise the language to state: “with or without the recipient present.”

“Can you clarify the evidence/best practice relied upon in limiting family guidance sessions to four per year?”

The Department of Health and Social Services is deliberating on comments received through Public Comment and the Oral Hearing on this issue and will determine if there is need to revise the proposed regulations. All proposed autism services rates and service limits were based on equivalent Medicaid behavioral health services rates and service limits.

“Can you please explain the exclusion of foster parents and guardians within the draft definition of family (which would effectively preclude family guidance for those families of children in State's custody)?”

The language used in proposed regulation under 7 AAC 135.990(34) is potentially incomplete. The Department of Health and Social Services will determine the need to revise the regulation to include foster parents or other non-relative care-givers.

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“Do you anticipate other service areas beyond autism services (such as FASD) that have demonstrated success through receipt of ABA services to be added to these regulations?”

The proposed regulations are written to specifically address the needs for children diagnosed with ASD. The Department of Health and Social Services would need to develop separate regulation to address the service needs of other populations.

“What percentage of ABA services do you estimate will be covered under this regulation through federal funds &/or federal funds received by the State?”

Medicaid services for children diagnosed with ASD will be reimbursed through approximately 50% State funding and 50% Federal match.

“The State’s “fiscal crisis” was mentioned at the September 22nd hearing. In light of our State’s “crisis” will the State be reducing the reimbursement rates for all Medicaid service areas or will ABA service reimbursement rates be the sole area looked at to help reduce overall costs?”

The intent of the proposed regulations is to meet the service needs of children diagnosed with ASD. The proposed Medicaid service rates for this population are equivalent to other Medicaid behavioral health services. The inclusion of autism services in the Medicaid program represents a substantial increase to the state budget. While some the rates for many Medicaid providers were reduced beginning FY18, behavioral health services rates were not included in those rates reduced.

“Can you explain why the currently proposed rates are so far below those of other comparable disciplines?”

The proposed Medicaid rates for autism services are equivalent to all other behavioral health services covered under the same chapter of regulation.

“On September 6th, in written formal request, and again at September 22’s hearing, our State’s Association made formal request for collaboration and extension of time to best assist in creation of best practice regulations, which has been denied. Do you anticipate this position to change?

- a. If not, can you please explain the rationale for creation of draft regulations in the absence of collaboration with our State’s professional organization and its members?
- b. Can you provide examples of other discipline’s regulations that were crafted in the absence of collaboration with Alaskan practitioners and State and National Associations?
- c. Is this common practice for our State?”

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To generate information and ideas related to the development of the proposed regulations the Department of Health and Social Services utilized assistance of a multi-stakeholder group of professionals familiar with the IDD waiver and treatment of children diagnosed with ASD.

“Can you explain how the currently proposed cap on service hours can meet EPSDT, BCBA ethical guidelines, the BACB’s treatment guidelines and federal requirement to cover all medically necessary services for children including children with ASDs under EPSDT?”

All Medicaid behavioral health services have an annual limit. However, treatment services should always be prescribed according to need. Providers may request Service Authorizations to exceed stated service limits. The proposed regulations for autism services were drafted to meet the treatment needs of the population of children diagnosed with ASD. The regulations were not drafted to comply with any profession’s ethical standards.

“Can you explain why issuance of these draft regulations has taken over two years’ time?”

The average time to draft, file, notice regulations for review, and finally adopt regulation is approximately 8 – 10 months. There may be significant additional time spent prior to this process conducting topic research and analysis, and for Dept. deliberation on numerous questions and issues that need to be addressed before a draft can be written.

“Can you explain why ABA service provision oversight has been placed within the Division of Behavior Health?”

The proposed regulations were written to meet the treatment needs of children diagnosed with ASD. The Department of Health and Social Services determined that the best fit for this treatment provision was within the Division of Behavior Health. This allows for an expansion of service capacity by including all publicly funded agencies around the state that will be eligible to provide autism services.

“Can you explain how the two year delay has allowed DBH to “vastly improve the Division’s behavioral health delivery system, including the inclusion of a more integrated approach to the delivery of both primary and behavioral health care” and how “the adoption of ABA services are (were) incorporated into DBH’s broader systems review” (as stated in director Burns’ July 1, 2016 letter as reason for further regulation delay)?”

The proposed regulations have been merged into the Division of Behavioral Health’s Medicaid regulatory system making it more efficient for providers and enabling DBH staff to monitor the integration of autism services into a Medicaid fee-for-service system.

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“Can you please explain why the rate for a Licensed Assistant Behavior Analyst (who has an undergraduate degree) is the same as a Registered Behavior Technician (who does not need to have a degree)?”

Medicaid behavioral health services are not tiered according to provider type, but are categorized by clinic and rehabilitation. Autism services are considered rehabilitation which allows all qualified providers to render the services, with the exception of assessments which requires a BCBA.

“Can you give the rationale as to why the technician level staff would need to be an RBT when the state already has billing codes and regulations for a behavior health technician?”

The Department of Health and Social Services determined the need to assure that anyone providing services to children with ASD meet minimum training and knowledge requirements. The qualifications of a Behavioral Health Clinical Associate do not require these standards.

“Why don’t the regulations reference the Licensed Behavior Analyst and Licensed Assistance Behavior Analyst professions instead of BCBA/BCABA?”

The proposed regulations inconsistently reference either licensed behavior analyst / assistant, or utilize the term Board Certified. The Dept. will determine the best language to be used in the proposed regulations to reference qualified rendering providers.

“Is there a dollar cap for all EPSDT services combined?”

No. All treatment services are to be provided according to need. Based on assessed need providers may request Service Authorization to exceed any annual service limit.