



S E A C
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February 28, 2018

**Special Education
Advisory Council**

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Senator Rosalyn H. Bader, Chair
Committee on Commerce, Consumer Protection and Health
Hawaii State Capitol
Honolulu, HI 96813

RE: S.B. 2925 - Relating to the Practice of Behavior Analysis

Dear Chairs Kidani and Baker and Members of the Committees,

The Special Education Advisory Council (SEAC), Hawaii's State Advisory Panel under the Individuals with Disabilities Education Act (IDEA), **supports the intent** of S.B. 2925 with recommended changes as follows:

- 1) The definition and scope of the practice of behavior analysis as it appears in Chapter 465D will be clarified **for application in a school setting**, so that is neither overly broad nor overly restrictive.
- 2) An additional extension of time to January, 2021 will be given to the Department of Education to build its internal capacity of licensed behavior analysts (LBAs) and registered behavior technicians (RBTs) necessary to deliver Applied Behavior Analysis (ABA) services to students defined in the scope of practice in order to come into full compliance with Chapter 465D.
- 3) The Department will utilize contracted LBAs and RBTs, as necessary, when internal capacity is insufficient, to ensure that students with autism and other developmental disabilities who have ABA services included in their Individualized Education Program receive those services in a timely manner.
- 4) The Department will form a work group to include SEAC and other key stakeholders to assist in planning, developing capacity, implementing and evaluating its response to Chapter 465D.

SEAC testified in support of health insurance parity for Autism Spectrum Disorders in 2012, 2013, and 2014. Despite the efforts of




multiple stakeholders, all of these measures failed to pass. However, in 2014 a bill to create a cost study to identify the potential cost of insurers to cover autism spectrum disorders did pass with SEAC support. That lead finally, in 2015, to the passage Luke's Law requiring mandated health insurance coverage of autism diagnosis and treatment. That same year, the licensure law (Act 199, now Chapter 465D) was drafted to satisfy the requirement of the health insurance industry that medical coverage for autism be provided by behavior analysts who were fully licensed.

From the relatively narrow scope of Applied Behavioral Analysis as a 'gold standard' for the treatment of children with autism and other significant developmental disabilities, SEAC has seen the definition of the "practice of behavior analysis" in Chapter 465D interpreted so broadly by some groups as to include virtually all students, regardless of their disability, who have a need for a functional behavioral assessment to address behavioral issues that are impeding their academic and functional achievement. This overbroad interpretation is causing confusion in the field and has resulted in referrals to the Department of Commerce and Consumer Affairs (DCCA) for questionable violations of the licensure statute.

SEAC acknowledges that while all special education teachers (and many general education teachers) receive preservice training in the delivery of a multi-tiered approach to teaching, including basic behavioral interventions to support learning, not every teacher has the required skillset to deliver ABA services to a subset of students with complex behavioral and communication needs. At the same time, some teachers and SBBH staff, notably teachers who have gone through the severe autism teacher licensure program at the University of Hawaii and SBBH psychologists, are capable of and within the scope of their practice in conducting functional behavioral assessments and behavior intervention plans without the need for additional licensure.

Thank you for the opportunity to provide testimony. Should you have any questions, we would be happy to answer them. We look forward to working together with DOE and other key stakeholders in addressing issues that have been raised in this bill and ensuring that students receive appropriate services.

Respectfully,


Martha Guinan
SEAC Chair



Ivalee Sinclair
Legislative Committee Chair



Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
www.mass.gov/masshealth

MassHealth
School-Based Medicaid Provider
Bulletin 29
September 2015

TO: School-Based Medicaid Providers Participating in MassHealth

FROM: Daniel Tsai, Assistant Secretary for MassHealth 

RE: **Expansion of School-Based Medicaid Program to Include Autism Services**

Summary

This bulletin provides information for Local Educational Authorities (LEAs) participating in the School-Based Medicaid Program. Effective October 1, 2015, the program will expand to include reimbursement for expenditures related to the practice of applied behavior analysis (ABA) services provided to treat individuals with autism spectrum disorders.

As with all SBMP services, the service must be authorized by the MassHealth child's Individualized Education Plan (IEP) in order for the service to be covered; additionally the service must be provided by a practitioner who holds the appropriate qualifications and was included in the participant pool for the Random Moment Time Study. All program requirements—defined in the *MassHealth School-Based Medicaid Program User Guide*, *School-Based Medicaid Administrative Claims Guide*, *School-Based Medicaid Random Moment Time Study Guide*, SBMP Bulletins, and Provider Contract—also must be met.

For further information on autism services refer to M.G.L. c. 112, §163.

Definition of Autism Services

Per M.G.L. c. 112, §163, the practice of applied behavior analysis is defined as “the design, implementation and evaluation of systematic instructional and environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvements in human behavior, including the direct observation and measurement of behavior and the environment, the empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis, and the introduction of interventions based on scientific research and which utilize contextual factors, antecedent stimuli, positive reinforcement and other consequences to develop new behaviors, increase or decrease existing behaviors and elicit behaviors under specific environmental conditions that are delivered to individuals and groups of individuals; provided, however, that the “practice of applied behavior analysis” shall not include psychological testing, neuropsychology, diagnosis of mental health or developmental conditions, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, psychopharmacological recommendations, hypnotherapy, or academic teaching by college or university faculty.”

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Applied Behavioral Analysis (ABA) Covered Services

Discreet Trial Training/Teaching (DTT)
Early Intensive Behavioral Intervention (EIBI)
Pivotal Response Training/Treatment (PRT)
Verbal Behavior Intervention/Therapy (VB or VBI)
Functional Behavioral Assessment (FBA)
Early Start Denver Model (ESDM)

Provider Qualifications

LEAs may only submit claims for services delivered by qualified practitioners who are acting within the scope of their license, or as detailed below.

For autism services, the practitioner is required to be licensed by the Board of Registration of Allied Mental Health and Human Services Professions as an Applied Behavior Analyst (ABA), or if prior to January 6, 2016, may be a Board Certified Behavior Analyst (BCBA). In addition, services may be reimbursed if provided by a licensed physician, psychologist, or psychiatrist providing ABA within the scope of his or her licensure; or an Assistant Applied Behavior Analyst (AABA) or other paraprofessional working under the supervision of a licensed ABA. If prior to January 6, 2016, AABA or paraprofessionals may be working under the supervision of a BCBA.

Application forms and instructions for these two new professional licenses (ABA and AABA) are available on the state's Office of Consumer Affairs website at www.mass.gov/ocabr/licensee/dpl-boards/mh/forms/.

As set forth above, services provided by practitioners holding an AABA license and other non-licensed ABA providers must be supervised by a licensed ABA or other licensed professional providing ABA services within the scope of their licensure, as described above, or, if prior to January 6, 2016, may be supervised by a BCBA, in order for the service to be reimbursable.

Random Moment Time Study Participation

Effective October 1, 2015, LEAs seeking reimbursement for any autism services must include all ABA, AABA, and other appropriate staff providing autism services in their quarterly Random Moment Time Study (RMTS) Participant List.

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Interim Rates and Service Codes

School-Based Medicaid providers must use the following service codes and rates to bill for services provided on or after October 1, 2015, for the following per-unit autism services.

Service Code and Modifier	Service Description	Interim Rate	Practitioner
H0031-TM	Evaluation/Assessment for autism services (pursuant to an IEP), per hour with a maximum of four hours	\$44.54	Applied Behavior Analyst or professional employee meeting the requirements of the school or agency's licensure standards
H0031-TM-U1	Evaluation/Assessment for autism services (pursuant to an IEP) (in private residential school), per hour with a maximum of four hours	\$22.27	Applied Behavior Analyst or professional employee meeting the requirements of the school or agency's licensure standards
H2012-TM	Direct behavioral instruction by an ABA (pursuant to an IEP), per 15 minutes, may bill multiple units	\$16.71	Applied Behavior Analyst or professional employee meeting the requirements of the school or agency's licensure standards
H2012-TM-U1	Direct behavioral instruction by an ABA (pursuant to an IEP), per 15 minutes (in private residential school) may bill multiple units	\$8.35	Applied Behavior Analyst or professional employee meeting the requirements of the school or agency's licensure standards
H2012-TM-U2	Direct behavioral instruction by an ABA, group, two or more individuals (pursuant to an IEP), per 15 minutes, may bill multiple units	\$8.35	Applied Behavior Analyst or professional employee meeting the requirements of the school or agency's licensure standards

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Interim Rates and Service Codes (cont.)

Service Code and Modifier	Service Description	Interim Rate	Practitioner
H2012-TM-U1-U2	Direct behavioral instruction by an ABA, group, two or more individuals (pursuant to an IEP), per 15 minutes (in private residential school), may bill multiple units	\$4.17	Applied Behavior Analyst or professional employee meeting the requirements of the school or agency's licensure standards
H2019-TM	Direct behavioral instruction by a paraprofessional (pursuant to an IEP), per 15 minutes, may bill multiple units	\$10.31	Assistant Applied Behavior Analyst or other staff qualified to provide autism services
H2019-TM-U1	Direct behavioral instruction by a paraprofessional (pursuant to an IEP), per 15 minutes (in a private residential school), may bill multiple units	\$6.19	Assistant Applied Behavior Analyst or other staff qualified to provide autism services
H2019-TM-U2	Direct behavioral instruction by a paraprofessional, group, two or more individuals (pursuant to an IEP), per 15 minutes, may bill multiple units	\$5.16	Assistant Applied Behavior Analyst or other staff qualified to provide autism services
H2019-TM-U1-U2	Direct behavioral instruction by a paraprofessional, group, two or more individuals (pursuant to an IEP), per 15 minutes (in private residential school), may bill multiple units	\$2.58	Assistant Applied Behavior Analyst or other staff qualified to provide autism services

Documentation of Services

LEAs must document health-related autism services provided to those students for whom the provider claims payment under its SBMP Agreement. At a minimum, providers must document the child's name, the type of ABA therapy, the date of service, the length of time (units) the service was provided.

In order to submit claims and be reimbursed for the ABA services, the provider must prescribe such services in the student's Service Delivery Needs in the IEP. If the ABA Therapy is not yet specified in the IEP but the student has a diagnosis of autism in the IEP, claims may be submitted, provided, however, that by January 6, 2016, the ABA therapy

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Documentation of Services (*cont.*)

must be included in the Service Delivery Needs of the IEP. In this situation, supplementary documentation sources specifying the ABA services being provided is required to include type of personnel providing the ABA therapy and the duration/frequency of such therapy. The documentation should match the ABA services that will be included with the IEP amendment.

For additional detail on required documentation data elements and all other program regulations, please refer to the *School-Based Medicaid Program User Guide* (revised 2014), *SBMP Administrative Guide*, and *SBMP RMTS Guide* (revised 2015), as well as the *Municipally Based Health Services Bulletin 9* (October 2003), *Municipally Based Health Service Bulletin 10* (January 2004), and the Provider Contract.

It is the responsibility of the LEA to ensure that all subcontractors, including private schools, Chapter 766 schools, and collaboratives, maintain proper documentation of all autism services provided. Refer to the Massachusetts Department of Elementary and Secondary Education memo on the documentation of services and form 28M/12 available at <http://www.doe.mass.edu/news/news.aspx?id=6695>, dated February 23, 2012.

Other Considerations

Section 4.3B of the School-Based Medicaid Program Provider Contract details the LEA's responsibilities regarding the security and protection of Protected Information (PI) as it relates to the School-Based Medicaid Program. Each LEA should review this section in detail. Steps should be taken to ensure that all obligations are being met by the LEA and any subcontractors, such as billing agents.

PI shall mean any "Personal Data" as defined in M.G.L. c. 66A; any "Personal Information" as defined in M.G.L. c. 93H; any "Patient Identifying Information" as defined in 42 CFR Part 2; any "Protected Health Information" as defined in the Standards for Privacy of Individually Identifiable Health Information, at 45 CFR Parts 160 and 164; and any other confidential, individually identifiable information under any federal and state law that the provider uses, maintains, discloses, receives, creates or otherwise obtains under this Contract.

Information, including aggregate information, is considered PI if it is not fully deidentified in accord with 45 CFR § 164.514 (a), (b), and (c). (See *School-Based Medicaid Program Provider Contract*, Section 4.3.A.4.)

Questions

For additional assistance or clarification, please contact the School-Based Medicaid Program at SchoolBasedClaiming@umassmed.edu or 1-800-535-6741.

SB-2925

Submitted on: 2/28/2018 3:01:44 PM

Testimony for EDU on 2/28/2018 2:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kendrick Farm	Individual	Comments	No

Comments:

In support with HABA amendments in current form no

2/28/2018 SB2925

Good afternoon,
Chairs Kidani and Baker, Vice Chairs Kahele and Tokuda and Members of the Senate Committees on Education and Commerce, Consumer Protection, and Health.

I'm here on my behalf of my 5 year-old son. He started in the DOE with special education preschool at the age of 3. My husband and I were so happy that we were able to place him somewhere we felt, at the time, would provide him the services he needed. Like many other parents who are unfamiliar with the system we felt this was the best place for him since the educators are trained and hired by the State DOE to educate our children.

What we have learned over these few years is this is not the case. For example, at 3 years old, my son was restrained in a Rifton chair to keep my him from getting out of his seat. We didn't know it was for children that can't support themselves sitting up. We only found out from the Autism Consultant Teacher (ACT) from the DES office when she came for a home visit. We had to ask her about it. Nobody shared this info. We were led to believe this was okay and it was completely normal. How long would this have gone on had we not asked?

When we were approved by HMSA to receive ABA services in the school setting (we were the first in the state to get HMSA approval) we thought this was going to be a game changer for us. Little did we know that those who we thought were in the business of educating our son would create roadblocks to prevent our son from receiving the services he needs to be able to obtain his educational goals. These roadblocks include delay tactics to prevent our HMSA approved provider from observing our son in school to see what kind of help he needs to telling us we would be having a Licensed Behavior Analyst on the IEP team when we requested then showing up to the meeting and being told they don't need to provide one. The list goes on and on.

Senator Dela Cruz and Representative Fukumoto have been such a great help in contacting Superintendent Kishimoto to try to get us help, but their letters went virtually ignored and without the appropriate resolution.

We finally had to make the difficult decision to file for due process to get him to a private preschool setting where they are more than willing to work with our ABA provider and us. We are thankful that the DOE agreed to a settlement so we could get the outside help. His private preschool has been wonderful at collaborating with us and I wish that could happen at his home school where there are some great people that my son loved.

He will be back in the DOE system in August. What will happen to him then? Will a psychologist's trainee's trainee now be telling his teacher it's okay to put him in the restraint chair for time out again? For my son's sake, I hope not.

If the language that allows a psychologists trainee to oversee a trainee passes this will essentially allow the DOE to continue to fail my son.

I support SB2925 with amendments IF the psychologist's trainee's trainee is not allowed to practice ABA on my son. He cannot wait any longer to receive the help he needs. The DOE has had enough time to get their act together. Please do not allow them to fail my son another day.

Thank you,
Jeanette White
808-285-5706