

April 4, 2024

The Hon. Maura Healey
Governor of Massachusetts
Maura.Healey@mass.gov

Jeffrey S. Shapiro, Esq., CIG
Inspector General
Office of the Inspector General
Jeffrey.shapiro@mass.gov

Kate Walsh
Sec., Exec. Office of Health and Human
Serv.
Kate.Walsh@mass.gov

The Hon. Ronald Mariano
Speaker of the House
Ronald.Mariano@mahouse.gov

The Hon. Karen E. Spilka
President of the Senate
Karen.Spilka@masenate.gov

Matthew Gorzkowicz
Secretary, Exec. Office of Admin. and
Finance
Matthew.Gorzkowicz@mass.gov

Michael Levine
Assistant Secretary for MassHealth
Mike.Levine@mass.gov

The Hon. Michael J. Rodrigues
Chair, Sen. Committee on Ways and Means
Michael.Rodrigues@masenate.gov

The Hon. Aaron M. Michlewitz
Chair, House Committee on Ways and
Means
Aaron.M.Michlewitz@mahouse.gov

The Hon. Todd M. Smola
Ranking Minority Member
House Committee on Ways and Means
Todd.Smola@mahouse.gov

The Hon. Marc R. Pacheco
Chair, Senate Post Audit and Oversight
Marc.Pacheco@masenate.gov

The Hon. John J. Mahoney
Chair, House Post Audit and Oversight
John.Mahoney@mahouse.gov

Steven T. James
Clerk of the House of Representatives
Steven.James@mahouse.gov

Michael D. Hurley
Clerk of the Senate
Michael.Hurley@masenate.gov

The Hon. Bruce E. Tarr
Senate Minority Leader
Bruce.Tarr@masenate.gov

The Hon. Bradley H. Jones, Jr.
House Minority Leader
Bradley.Jones@mahouse.gov

The Hon. Ryan C. Fattman
Ranking Minority Member
Senate Post Audit and Oversight
Ryan.Fattman@masenate.gov

The Hon. Patrick M. O'Connor
Ranking Minority Member
Senate Committee on Ways and Means
Patrick.OConnor@masenate.gov

**Re: MassHealth and Health Safety Net: 2024 Annual Report; MassHealth's Applied
Behavior Analysis Program - Service Providers**

Esteemed Governor Healey, Inspector General Shapiro, and Commonwealth Leaders:

The Council of Autism Service Providers (CASP) is a non-profit trade association of over 350 autism service provider organizations that have demonstrated a commitment to promoting and delivering evidence-based services to over 127,000 individuals and families affected by autism. CASP represents the autism service provider community to the nation at large, including government, payers, and the general public. CASP provides information, education, and promotes the generally accepted standards of care for applied behavior analysis (ABA).

Fundamental goals of CASP include

- Ensuring quality, safe, and effective care for autistic individuals,
- Promoting continuous quality improvement, and
- Helping to ensure that money spent for care and treatment is directed to the most effective, evidence-based practices.¹

I am writing to you today to thank you for your analysis of MassHealth's Applied Behavior Analysis Program and to offer CASP as a partner and resource in your ongoing efforts to improve program integrity.

CASP applauds the Office of the Inspector General (OIG) for its emphasis on quality ABA treatment provided by properly credentialed Licensed Applied Behavior Analysts (LABAs) and behavior technicians (BTs) meeting minimum supervision requirements. CASP agrees with the OIG's conclusions that MassHealth managed care entities (MCEs) may be providing inadequately supervised ABA services to children with autism; that additional oversight controls are needed to screen for improper billing; and that MassHealth should coordinate and review processes with the MCEs to conduct integrity audits and develop additional systems to prevent fraud, waste, and abuse within the ABA program. Fraudulent billing is unacceptable, and providers found to be conducting fraudulent activities should be held accountable for their actions.

CASP shares the OIG's concerns, which is why in 2022 we created the Autism Commission on Quality (ACQ), a nonprofit accreditation program for organizations offering ABA as a healthcare service to individuals and families affected by autism. ACQ standards development and accreditation determinations are handled by independent committees of recognized experts and representatives involved in receiving, delivering, and funding ABA services for autism. The accreditation program utilizes a robust review process designed to identify and address the types of barriers to quality services identified in the OIG report. CASP recommends that MassHealth consider recognizing the ACQ accreditation of ABA provider organizations in its efforts to

¹ <https://www.casproviders.org/history-and-mission>

improve program integrity. More information about ACQ's accreditation program can be found at <https://autismcommission.org>.

CASP would also ask that the OIG please consider the following comments related to its analysis of MassHealth's ABA program and suggestions for improving the methodology of future program analyses and MCE audits.

Assessing Supervision Adequacy

MassHealth requires at least 1 hour of supervision (e.g., CPT code 97155) for every 10 hours of direct ABA services (e.g., CPT code 97153). In its March 2024 analysis of encounter data between January 1, 2022, and October 30, 2023, MassHealth reported that 108 ABA providers did not satisfy this supervision requirement.

However, evaluating only CPT codes 97153 and 97155 creates a potentially flawed analysis, as HCPCS codes for ABA services (e.g., H0031, H0032, H2019, H2012) were also used during the period evaluated. MassHealth transitioned from HCPCS codes to CPT Category I codes for adaptive behavior services in October 2022. When this transition took place, rolling authorizations occurred over six months, with each MCE handling the transition differently. Some MCEs issued a new authorization effective October 1, 2022, while others waited for the authorization on file to expire before issuing an authorization with the Category I codes.

By performing only an analysis of 97153 and 97155, there is no way to know if claims for HCPCS codes H2019, H0031, H2012, etc., were included within this analysis and cross-walked on the backend of claims systems by the MCE or by the OIG. The inclusion of HCPCS codes may result in different findings related to the overall supervision-to-treatment ratio.

***Query:** Can the OIG share the process by which claims from October 2022 to April 2023 were included within this analysis during the transition from HCPCS to CPT codes?*

In addition, analyzing paid claims data to determine supervision adequacy will never be completely accurate because time spent performing *indirect case supervision* is not captured by 97155.

Indirect case supervision is rarely a billable activity on its own but is required for effective services. As much as 50% of supervision activities are indirect and may never be submitted as a claim.² These activities include but are not limited to data interpretation and analysis; revising procedures; developing new written protocols, including event or phase change lines within graphs to allow for ongoing analysis of procedural changes; visual analysis and interpretation of graphs; training technicians to implement certain procedures with fidelity without the patient being present; and coordination of care activities. Additional information on pre- and post-

² <https://www.casproviders.org/asd-guidelines>

rendering activities, and indirect case supervision activities, is available in the Applied Behavior Analysis Treatment of Autism Spectrum Disorder: Practice Guidelines for Healthcare Funders and Managers, Second edition (pp. 32-33).³

MassHealth allows for some indirect case supervision to be billed, utilizing H0031. Thus, H0031 should be included in the analysis to ensure a more accurate representation of the supervision-to-treatment ratio.

We also believe that the OIG, MassHealth, and the MCEs will be able to better identify claims that are inconsistent with contractual obligations by considering these questions:

- 1) Did any authorization requests include a supervision-to-treatment ratio that was less than 1:10, and, if so, was this ratio justified as medically necessary, e.g., as part of a transition or discharge plan?
- 2) Did pre- or post-claim payment review take place at the MCE level where additional clinical documentation demonstrated the medical necessity for less than a 1:10 ratio?

Impossible Billing

Impossible billing was characterized by claims over 24 hours within a single day. One possible consideration for some of these claims may be the absence of CPT code 0373T from the MassHealth-approved code set. This CPT code is utilized when an individual with severe or challenging behavior requires more than one behavioral technician (BT) assigned to their care at the same time.

0373T: Adaptive behavior treatment with protocol modification, each 15 minutes of technicians' time face-to-face with a patient, requiring the following components: administration by the physician or other qualified healthcare professional who is on-site; with the assistance of two or more technicians; for a patient who exhibits destructive behavior; completion in an environment that is customized to the patient's behavior.⁴

Including CPT code 0373T within the approved MassHealth code set and requiring prior authorization for this code, would quickly identify when multiple BTs are required to safely treat a client with severe challenging, and destructive behavior. This would also help to easily

³ Id.

⁴ <https://abacodes.org/wp-content/uploads/2022/01/Model-Coverage-Policy-for-ABA-01.25.2022.pdf>

discriminate between impossible and potentially fraudulent claims and those claims that are for medically necessary, prior authorized services.

The use of medically unlikely edits (MUEs) helps to identify outlier claims and prevent payment for services that are not medically necessary. When an outlier claim is denied, the provider has a chance to appeal and submit documentation that supports the medical necessity of the claim. The current MUE for CPT code 97153 is 8 hours (32 units) per day; far less than the claims which exceeded 24 hours per day identified within the OIG report.

***Query:** Do MassHealth and the MCEs utilize MUEs to screen for potential instances of impossible billing?*

We believe that the OIG, MassHealth, and the MCEs will be able to better identify claims that are consistent with impossible billing, and therefore fraudulent activities, by considering the following:

- 1) Were any of the claims in question prior authorized as medically necessary with more than one BT?
- 2) Did pre- or post-payment claim review take place at the MCE level where additional documentation demonstrated medical necessity?
- 3) Were any of these claims denied, and successfully appealed with submission of additional documentation demonstrating medical necessity?

Services delivered on holidays

To the best of our knowledge, neither MassHealth nor the MCE contract or policy manuals disallow service delivery on holidays. Thus, services rendered on a holiday should be subject to the same medical necessity requirements as services delivered on any other day.

***Query:** What was the OIG's rationale for assessing service delivery on holidays?*

CASP fully supports the OIG's conclusion that opportunities exist for MassHealth and its MCEs to better ensure that ABA services are adequately supervised and better identify fraud, waste, and abuse within the ABA program. On behalf of CASP and our member organizations serving individuals with autism in Massachusetts, thank you for considering our comments, suggestions, and questions posed above concerning these issues.

***Query:** Can the OIG analysis be conducted again to address these questions and take into consideration the full eligible code set, including H0031?*

CASP also agrees with the OIG's conclusion that a collective stakeholder effort will be required to address the shortage of qualified LABAs and BTs in the Commonwealth. CASP would welcome the opportunity to support efforts to address this shortage, e.g., through programs offering financial relief to individuals pursuing careers in ABA.

CASP would be honored to participate in further discussions with the OIG, MassHealth, or the MCEs about other ways to improve program integrity, monitor service provision and supervision, and ensure access to high-quality clinical care, including recognizing ACQ's nonprofit accreditation program to help ensure that individuals and families are receiving care that aligns with industry standards and payor policies. I welcome the opportunity to answer any questions you may have and look forward to further supporting access to quality ABA services in Massachusetts.

Respectfully submitted,



Mariel Fernandez, M.S., BCBA, LBA (Tx)
Vice President of Government Affairs
Council of Autism Service Providers
mfernandez@casproviders.org
(334) 332-2504