



# New York ABA Provider Meeting

Developments Specific to Delivery of  
ABA Services Funded  
Through Health Insurance  
January 30, 2023

# Background

- In July, 2014, CMS published an informational [bulletin](#) requiring coverage of medically necessary care for Medicaid-enrolled children under the age of 21 under its Early Periodic Screening Diagnostic and Treatment (EPSDT) provision.
- After several years of effort on the the legislative and regulatory front in New York, [revised rules](#) were published in 2021 in the New York State Register adding applied behavior analysis services for ASD to EPSDT services.
- There were multiple issues with the implementation of the revised rules, including:
  - Clarity regarding the role of behavior technicians
  - Inclusion of parent-training codes
  - Published Medicaid Rates

PLEASE NOTE THAT THE INFORMATION DISCUSSED IS NOT  
MEDICAL OR LEGAL ADVICE.

The Council of Autism Service Providers (CASP) strictly complies with the federal antitrust laws. CASP does not condone, support, or encourage any actions by its members or staff that violate antitrust laws or regulations. A member's conduct at all CASP-sponsored or CASP-scheduled meetings and events must comply with antitrust laws.

# PROGRESS

## Due to Lack of Participation, Rates Were Adjusted in April, 2022

Effective April 1, 2022, the Medicaid Program is proposing to incentivize ABA provider enrollment and participation by increasing Medicaid reimbursement amounts, **aligning fees with those paid by the Child Health Plus program.**

As of August 1, 2021, Medicaid began accepting enrollment of Licensed behavior Analysts as independent practitioners to provide ABA to Medicaid members under age 21 with a diagnosis of Autism Spectrum Disorder or Rhett's Syndrome. **However, Medicaid Managed Care Plans (MMC) and ABA providers indicated that the Medicaid reimbursement rate was below rates paid by CHP and commercial plans. Subsequently, very few ABA providers were willing to enroll as Medicaid managed care and/or fee-for-service providers.**

Effective on or after April 1, 2022, this notice proposes to establish Medicaid Assistance coverage and rates of payment for crisis intervention services to stabilize and treat mental health and substance use disorder conditions, provided by mobile crisis teams and residential crisis settings for adults, as well as crisis stabilization centers for adults and children.

More specifically, crisis intervention services provided by multi-disciplinary mobile crisis teams in both Section 9813 of the American Rescue Plan Act provide an array of crisis intervention services, including telephonic triage for both children and adults, mobile crisis response, and mobile or telephonic follow-up services, in a variety of settings in the community.

Crisis intervention services provided in crisis stabilization centers will provide urgently needed immediate evaluation, treatment, and support services, including coordination with other mental health and substance use services, for children and adults experiencing or at risk of a mental health or substance use disorder crisis.

Crisis intervention services will also be provided in residential crisis settings, which are short-term, voluntary, non-BED, sub-acute settings, and address a spectrum of acuity levels in which an individual may present in a mental health or substance use disorder crisis. Services stabilize crisis symptoms and restore functionality to enable transition back to the community and to prevent or reduce future psychiatric crises.

The estimated annual net aggregate increase in gross Medicaid expenditures related to this State Plan Amendment for State Fiscal Year 2023 is \$16M and for State Fiscal Year 2024 is \$4.5 million.

Effective on or after April 1, 2022, and for each State Fiscal Year thereafter, the State proposes to revise the method of distributing the funding for the Child Safety Net CSN distribution for comprehensive diagnostic and treatment centers that are other than Federally Qualified Health Centers (referred to as the non-FQHC CSN distribution).

There is no change to the annual gross Medicaid expenditures as a result of this proposed amendment.

Effective on or after April 1, 2022, the State proposes to enter into outcomes-based contract arrangements with drug manufacturers for drugs provided to Medicaid beneficiaries through supplemental rebate agreements.

The estimated annual net aggregate decrease in gross Medicaid expenditures attributable to this initiative contained in the budget for State Fiscal Year 2023 is \$5 million.

Effective on or after April 1, 2022, this notice proposes to enhance (increase) state-established reimbursement rates as follows:

Contingent upon CMS approval of the Spending Plan submitted by the state, established rates will be enhanced for state-plan approved private duty nursing (PDN) services for members 23 years of age and older by an additional 30 percent for the medically fragile training and experience and 45 percent for the private duty nursing directory starting April 1, 2022.

The estimated annual net aggregate increase in gross Medicaid expenditures as a result of the proposed amendments for PDN services for State Fiscal Year 2023 is \$18.9 million.

Effective on or after April 1, 2022, pursuant to the Centers for Medicare and Medicaid Services, Medicaid coverage must include routine patient costs for items and services furnished in connection with participation by beneficiaries in qualifying clinical trials. The Department will submit a State Plan Amendment for Medicaid to formalize federal approval of existing coverage in accordance with the requirements. Routine patient costs and qualifying clinical trials are defined in Section 1905(a)(30) and Section 1905(gg) of the Social Security Act (the Act), respectively. This includes clinical trials in any clinical phase of development that is conducted in relation to the prevention, detection, or treatment of any serious or life-threatening disease or condition and is described in any of classes (i)-(iii) of section 1905(gg) of the Act. Routine patient costs do not include any investigational item or service that is the subject of the qualifying clinical trial and is not otherwise covered outside of the clinical trial under the state plan, waiver, or demonstration project.

There is no estimated annual change to gross Medicaid expenditures as a result of this proposed amendment, since these benefits are already covered under long-standing NYS Medicaid policy.

Effective on or after April 1, 2022, pursuant to the Centers for Medicare and Medicaid Services, Alternative Benefit Plans (ABP) coverage must include routine patient costs for items and services furnished in connection with participation by beneficiaries in qualifying clinical trials. The Department will submit a State Plan Amendment for ABP to formalize federal approval of existing coverage in accordance with the requirements. Routine patient costs and qualifying clinical trials are defined in Section 1905(a)(30) and Section 1905(gg) of the Social Security Act (the Act), respectively. This includes clinical trials in any clinical phase of development that is conducted in relation to the prevention, detection, or treatment of any serious or life-threatening disease or condition and is described in any of classes (i)-(iii) of section 1905(gg) of the Act. Routine patient costs do not include any investigational item or service that is the subject of the qualifying clinical trial and is not otherwise covered outside of the clinical trial under the state plan, waiver, or demonstration project.

There is no estimated annual change to gross Medicaid expenditures as a result of this proposed amendment, since these benefits are already covered under long-standing NYS Medicaid policy.

Effective April 1, 2022, the Medicaid Program is proposing to incentivize ABA provider enrollment and participation by increasing Medicaid reimbursement amounts, aligning fees with those paid by the Child Health Plus program. "Applied behavior analysis" or "ABA" is the design, implementation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior. ABA services are provided to individuals who have a diagnosis of autism spectrum or related disorder. As of August 1, 2021, Medicaid began accepting enrollment of Licensed Behavior Analysts as independent practitioners to provide ABA to Medicaid members under age 21 with a diagnosis of Autism Spectrum Disorder or Rhett's Syndrome. However, Medicaid Managed Care Plans (MMC) and ABA providers indicated that the Medicaid reimbursement rate is below rates paid by CHP and commercial plans. Subsequently, very few ABA providers have been willing to enroll as Medicaid managed care and/or fee-for-service providers.

The estimated annual net aggregate increase in gross Medicaid expenditures as a result of the proposed amendment for State Fiscal Year 2023 is \$7.2 million.

Effective on or after April 1, 2022, this proposal to amend the State Plan to align with Subdivision 2 of section 305-a of the social services law, that authorizes clinical social workers, licensed pursuant to Article 154 of the Education law, to bill Medicaid directly for their services within their scope of practice, effective April 1, 2022.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for State Fiscal Year 2023 is \$24.2 million.

Effective on or after April 1, 2022, this proposal to amend the State Plan to align with Subdivision 2 of section 305-a of the social services law, that authorizes licensed mental health counselors and marriage and family therapists, licensed pursuant to Article 163 of the Education law, to bill Medicaid directly for their services within their scope of practice, effective April 1, 2022.

The estimated annual net aggregate increase in gross Medicaid expenditures attributable to this initiative contained in the budget for State Fiscal Year 2023 is \$4.2 million.

Effective on or after July 1, 2022, Medicaid reimbursement rates for non-facility physician services will be updated to 70% of current Medicare rates. This update will apply to Evaluation & Management (EAM) and Medicine procedure codes. Most Medicaid physician reimbursement rates have not been updated since 2009 and New York Medicaid is currently reimbursing physicians, on average, at 45% of Medicare for EAM codes and 95% of Medicare for Medicine codes. Updating the Medicaid physician fee schedule is intended to increase the use of primary care and preventive services and reduced utilization of costlier downstream care.

## Updated Medicaid Rates

Blended reimbursement rate of \$76 per hour for tiered delivery model (vs previous \$29 per hour proposal)

## More Progress (Thank you!!) Advocacy Strategies

Let the plans you work with know that recognition of behavior technicians is the standard for the provision of applied behavior analysis according to [generally accepted standards of care](#) that they are required to adopt.



# PROGRESS

## Medicaid Handbook Updated January 23, 2023

Section 8807 of Title VIII of the Education Law permits unlicensed persons, who may be identified as aides, to participate in a multi-disciplinary team. Services and activities provided by unlicensed persons may include:

- o Performing tasks that do not require professional skill or judgment, such as recording progress and completing other routine and repetitive activities to assist in the implementation of an individual ABA plan
- o Participating as a member of a multi-disciplinary team to implement an ABA plan, as long as the multidisciplinary team shall include one or more professionals licensed as physicians, psychologists, licensed clinical social workers, licensed master social workers, licensed mental health counselors, licensed psychoanalysts, licensed marriage and family therapists, licensed behavior analysts, certified behavior analyst assistant and licensed creative arts therapists as long as the activities performed by members of the team fall within the scope of practice for each team member licensed or authorized under Title VIII of the Education Law.

# PROGRESS

## Medicaid Handbook Updated January 23, 2023

For the purposes of this provider manual, an “unlicensed individual”, also referred to as a “technician”, supports an ABA service delivery team under the supervision of a LBA, but is not licensed, certified or registered by the State of New York as an ABA provider.

An LBA may not delegate to an unlicensed person any tasks included in the scope of practice of applied behavior analysis even under the direct supervision of a LBA, however, an unlicensed individual may carry out the specific, scripted treatment plan activities/sessions created by an LBA to address a client’s targeted behavior(s). The LBA’s behavior treatment plan directs the unlicensed individual’s interaction with the client and engages them as the objective recorder of that interaction.



# PROGRESS Medicaid Handbook Updated January 23, 2023

Unlicensed individuals may carry out supportive tasks as directed by their supervising LBA. These activities may include the following:

- o meeting with the LBA to review the LBA's behavioral treatment plan for the client, including the scripted activities designed to address the client's needs;
- o working directly with the client to carry out the behavior treatment plan designed by the supervising LBA;
- o preparing the setting for the treatment plan's sessions/activities, such as arranging the environment and ensuring the required session materials are present;
- o following the treatment plan session instructions as scripted by the supervising LBA;
- o recording/entering data without interpretation, using the data collection system designed by the supervising LBA;
- o making observations regarding communication skills and behaviors, conducting and recording assessments using protocols identified by the supervising LBA; and providing factual session notes for review by the supervising LBA.

# PROGRESS Medicaid Handbook Updated January 23, 2023

An LBA can supervise no more than six CBAA/unlicensed individuals at a time (e.g., one CBAA and five unlicensed individuals or two CBAA and four unlicensed individuals, etc.).

Questions related to the scope of practice of LBAs, CBAA and the role of “unlicensed individuals” (also referred to as “technicians”) in providing Applied Behavior Analysis related services must be directed to the NYSED, Office of the Professions via e-mail to [ababd@nysed.gov](mailto:ababd@nysed.gov).

# Questions or Suggestions:

Judith Ursitti

Vice President of Government Affairs

[jursitti@casproviders.org](mailto:jursitti@casproviders.org)

(508) 785-4074

[www.casproviders.org](http://www.casproviders.org)