



**State of New Mexico
Human Services Department
Human Services Register**



I. DEPARTMENT
NEW MEXICO HUMAN SERVICES DEPARTMENT (HSD)

II. SUBJECT
8.321.2 NMAC SPECIALIZED BEHAVIORAL HEALTH SERVICES

III. PROGRAM AFFECTED
(TITLE XIX) MEDICAID

IV. ACTION
PROPOSED RULES

V. BACKGROUND SUMMARY

The Human Services Department (the Department) through the Medical Assistance Division (MAD), is proposing amendments to the New Mexico Administrative Code (NMAC) rule 8.321.2 *Specialized Behavioral Health Services*. The Department finalized Section 10 (*Applied Behavior Analysis*) of 8.321.2 NMAC January 1, 2014, with minimum detail as it developed the service. The service is specifically for eligible recipients with a diagnosis of Autism Spectrum Disorders (ASD) and a narrowly defined at-risk population. The Department has completed a lengthy study and discussion of Applied Behavior Analysis (ABA) services and is now promulgating amendments to this section of the rule. Throughout this section of the rule, the Department refers to ABA Billing Instructions. The Department is proposing to include more detailed information in the rule while continuing to have other information contained in the ABA Billing Instructions as appropriate. The Department will post for public comment the proposed amendments and the ABA billing instructions.

In addition, the Department is receiving comments on its proposed ABA fee schedule rates and State Plan Amendment 15-001, Attachment 4-19-B. The proposed ABA fee schedule is available for review at:

<http://www.hsd.state.nm.us/providers/fee-schedules.aspx>. At the page, accept the terms and conditions of using the site, scroll down to Proposed Fee Schedules or Rates, then see the posting titled: Applied Behavior Analysis (ABA) fee schedule rates 5.2015.

NMAC Highlights:

- The amendments provide for new services to eligible recipients under the age of 3 who meet an at-risk category which are not offered under the current service of Adaptive Skills Building (ASB). The intent of this service is to ensure that eligible recipients, who meet the research-based at-risk criteria for being diagnosed with ASD, receive this intensive intervention. Research demonstrates a very young child who has an older sibling with a diagnosis of ASD or the child himself has a Fragile X Syndrome diagnosis has a substantially increased risk for being diagnosed with ASD.
- The amendments extend ABA services up to 21 years of age, a change from the current limitation of up to five years of age.
- The amendments support the intervention of Specialty Care Providers to assist ABA agencies render services to challenging eligible recipients who present with complex care needs. Research indicates that intensive services to complex behaviors assist eligible recipients to remain in their home and community instead of in institutional care facilities.
- The amendments require ASD trained professionals to render highly effective diagnostic evaluations and ABA services to receive a reimbursement rate that supports a provider's agency to offer more slots to eligible recipients. ABA's effective outcomes are possible by having highly trained and nationally certified ABA providers rendering ABA services. The rule and accompanying billing instructions provide opportunities for ABA interim practitioners to be hired and to receive reimbursed during a specific phase-in period.
- The amendments offer an eligible recipient ABA services as long as they are medically necessary, rather than ASB time-limited services. Eligible recipients with an ASD diagnosis will encounter multiple situations where ABA services can provide positive outcomes.
- The American Medical Association (AMA) released new Current Procedural Terminology (CPT) codes specific for ABA services late 2014. HSD's proposed ABA fee schedule provides reimbursement for all ABA AMA approved codes to support children and adolescents with a diagnosis of Autism Spectrum Disorder (ASD) and those who are at-risk of being diagnosed with ASD receive high quality services.

VI. RULES

The proposed rule will be contained in 8.321.2 NMAC. This register and the proposed changes are available on the HSD website at:

<http://www.hsd.state.nm.us/LookingForInformation/registers.aspx>.

or at:

<http://www.hsd.state.nm.us/public-notices-proposed-rule-and-waiver-changes-and-opportunities-to-comment.aspx>.

If you do not have internet access, a copy of the proposed rules or proposed fee schedule may be requested by contacting the Medical Assistance Division at 505-827-7743.

VII. EFFECTIVE DATE

The Department proposes to implement this rule effective May 1, 2015.

VIII. PUBLIC HEARING

A public hearing to receive testimony on this proposed rule will be held in Hearing Room One, Toney Anaya Building, 2550 Cerrillos Road Santa Fe, NM on April 14, 2015, 11 a.m. Mountain Daylight Time (MDT).

If you are a person with a disability and you require this information in an alternative format or require a special accommodation to participate in the public hearing, please contact the Medical Assistance Division toll free at 1-888-997-2583 and ask for extension 7-3156. In Santa Fe call 827-7743. The Department's TDD system may be accessed toll-free at 1-800-659-8331 or in Santa Fe by calling 827-3184. The Department requests at least 10 working days advance notice to provide requested alternative formats and special accommodations.

Copies of all comments will be made available by MAD upon request by providing copies directly to a requestor or by making them available on the HSD website or at a location within the county of the requestor.

IX. ADDRESS

Interested persons may address written comments to:

Human Services Department
Office of the Secretary
ATTN: Medical Assistance Division Public Comments
P.O. Box 2348
Santa Fe, New Mexico 87504-2348

Recorded comments may be left at 505 827-1337. Interested persons may also address comments via electronic mail to: madrules@state.nm.us Written mail, electronic mail and recorded comments must be received no later than April 14, 2015, 5 p.m. MDT. Written and recorded comments will be given the same consideration as oral testimony made at the public hearing.

X. PUBLICATIONS

Publication of this rule and the notice of proposed fee schedules are approved by:



BRENT EARNEST, SECRETARY
HUMAN SERVICES DEPARTMENT

8.321.2.10

APPLIED BEHAVIOR ANALYSIS:

MAD pays for medically necessary, empirically supported, applied behavior analysis (ABA) services for eligible recipients 12 months up to 21 years of age who have a well-documented medical diagnosis of autism spectrum disorder (ASD), and for eligible recipients 12 months up to three years of age who have well-documented risk for the development of ASD. ABA services are provided to an eligible recipient as part of a three-stage comprehensive approach consisting of evaluation, assessment, and treatment which stipulates that ABA services be provided in coordination with other medically necessary services (e.g., family infant toddler program (FIT) services, occupational therapy, speech language therapy, medication management, etc.). Following a referral to an approved autism evaluation provider (AEP) to confirm the presence of, or risk for ASD, utilizing a comprehensive diagnostic evaluation, and/or the production of an integrated service plan (ISP) (stage 1), a behavior analytic assessment is conducted and a behavior analytic treatment plan is developed as appropriate for the selected service model (stage 2). ABA services are then rendered by an approved ABA provider (AP) in accordance with the treatment plan (stage 3). A HSD MCO must provide intensive care coordination of services for members authorized for ABA services. See the ABA billing instructions for detailed information for eligible providers and practitioners, service requirements, prior authorizations, and reimbursement for ABA stages 1 through 3. In this section of this rule, members of a MCO are included in the term eligible recipients.

A. Eligible providers: ABA services are rendered by a number of providers and practitioners: an AEP; a behavior analyst (BA), a behavior technician (BT) through an AP; and an ABA specialty care provider. Each ABA provider and practitioner has corresponding enrollment requirements and renders unique services according to his or her provider type and specialty. As an example, a practitioner may be eligible to render services as an AEP, BA or an ABA specialty care provider when the specific ABA billing requirements are met. A BT may only render BT services. A BA may render BT services or possibly ABA specialty care services.

(1) **stage 1 AEP:** Completes the comprehensive diagnostic evaluation and develops the ISP for an eligible recipient who has been referred through the MAD approved screening process and the AEP has professional reason to believe the eligible recipient may be diagnosed with ASD. An AEP must:

(a) be a licensed, doctoral-level clinical psychologist or a physician who is board-certified or board-eligible in developmental behavioral pediatrics, pediatric neurology, or child psychiatry; and

(b) have experience in or knowledge of the medically necessary use of ABA and other empirically supported intervention techniques; and

(c) be qualified to conduct and document both a comprehensive diagnostic evaluation and a targeted evaluation for the purposes of developing an ISP; and

(d) have advanced training and clinical experience in the diagnosis and treatment of ASD and related neurodevelopment disorders, including knowledge about typical and atypical child development and experience with variability within the ASD population; and

(e) have advanced training in differential diagnosis of ASD from other developmental, psychiatric, and medical disorders; and

(f) sign an attestation form affirming that all provider criteria, as outlined above have been and will continue to be met.

(2) **stage 2 BA practitioner:** may render ABA stage 2-behavior analytic assessment, service model determination and treatment plan development and stage 3 services-implementation of ABA treatment plan. There are three possible avenues through which a stage 2 practitioner may qualify for BA provider enrollment: Certified BA, BA without certification, and interim ABA provider/supervisor-time limited.

(a) **documented certification in behavior analysis by the BACB®:**

(i) hold a professional credential issued by a licensing or certification board whose rules, regulations, and/or standards explicitly stipulate that the provision of ABA services is within the

scope of the profession's practice (e.g., behavior analyst certification board [BACB®], board of psychologist examiners of the New Mexico regulation and licensing department (RLD)); and

(ii) provide evidence that the provision of ABA services is within the scope of the practitioner's competence by providing documentation of certification as by the Behavior Analyst Certification Board (BACB®).

(3) **stage 2 psychologist with documented education and experience in behavior analysis without BACB® Certification:** holds a professional credential issued by RLD whose rules, regulations, and/or standards explicitly stipulate that the provision of ABA services is within the scope of the profession's practice. Provides documentation of training in behavior analysis comparable to that required to be eligible to take an examination for BCBA® or BCBA-D® certification, to include all of the following education, supervised experiential training, and continuing education requirements:

(a) possession of a minimum of a master's degree from an accredited university that was conferred in behavior analysis, education, or psychology, or conferred in a degree program in which the candidate completed a BACB® approved course sequence; and

(b) completion of graduate level instruction in the following behavior analytic content areas (b)(i) through (b)(x):

(i) ethical and professional conduct (at least 45 classroom hours);

(ii) concepts and principles of behavior analysis (at least 45 classroom hours);

(iii) measurement (at least 25 classroom hours);

(iv) experimental design (at least 20 classroom hours);

(v) identification of the problem and assessment (at least 30 classroom hours);

(vi) fundamental elements of behavior change and specific behavior change procedures (at least 45 classroom hours);

(vii) intervention and behavior change considerations (at least 10 classroom hours);

(viii) behavior change systems (at least 10 classroom hours);

(ix) implementation, management, and supervision (at least 10 classroom hours);

(x) discretionary coursework (at least 30 classroom hours); and

(c) supervised experience in the design and delivery of ABA services through supervised independent field work (non-university based) of at least 1500 hours, practicum experience (university based) of at least 1000 hours, or intensive practicum experience (university based) of at least 750 hours, supervised in accordance with the BACB®'s requirements for supervised experience. A significant portion (at least one third) of the supervised experience must have been accrued with an ASD or closely related population (e.g., Fragile X, Intellectual Disability); and

(d) Completion of at least 32 hours of continuing education in behavior analysis per two years.

(4) **stage 2 interim ABA provider/supervisor - (time-limited):** Up to and including June 30 2016, ABA services may be delivered and/or supervised by a clinician who has the minimum qualifications listed below; however, the provider may not refer to him/herself as a "Behavior Analyst" as this title is reserved for those meeting the criteria above. Rather, the provider, approved on a temporary basis only, may refer to him/herself as an "interim ABA supervisor" or "interim ABA practitioner." The AP must provide documentation of all of the following:

(a) a master's degree which the BACB® recognizes and would lead to certification as a BCBA ;

(b) New Mexico licensure, as appropriate for degree and discipline; and

(c) clinical experience and supervised training in the evidence-based treatment of children with ASD, specifically ABA; and

(d) experience in supervising direct support personnel in the delivery and evaluation of ABA services.

(5) **stage 3 behavioral technician:** A BT, under supervision of a BA, may implement Stage 3 ABA treatment plan interventions/services. MAD recognizes two types of BTs:

(a) **documented credentialing in behavior analysis** by providing an written attestation, and when appropriate provide formal records, documenting that the BT meets the following requirements:

- (i) be at least 18 years of age; and
- (ii) possess a minimum of a high school diploma or equivalent; and
- (iii) successfully complete a criminal background registry check; and
- (iv) complete a minimum of four hours of training in ASD (prior to the BT billing for ABA services) including, but not limited to, training about prevalence, etiology, core symptoms, characteristics, and learning differences; and
- (v) complete 40 hours of training in ABA that meets the requirements for Registered Behavioral Technician® (RBT®) by the BACB®.
- (vi) At least 20 hours of RBT training (in addition) to the four hours of ASD training) must occur prior to the AP billing for BT services. The other 20 hours of RBT training must be accrued, and RBT® certification from the BACB must be secured, no more than 90 calendar days following the first submission of billing for BT services.

(b) **documented training in behavior analysis, without RBT® credential-(time-limited):** the BT may render services for up to six months while working towards his or her certification as a RBT® when the AP provides written attestation that the BT meets the following requirements:

- (i) be at least 18 years of age; and
- (ii) possess a minimum of a high school diploma or equivalent; and
- (iii) successfully complete a criminal background registry check; and
- (iv) complete a minimum of four hours of training in ASD including, but not limited to, training about prevalence, etiology, core symptoms, characteristics, and learning differences prior to the AP billing for BT services; and
- (v) complete 40 hours of training (provided by a BA as defined above) with at least 20 hours of training occurring prior to the AP billing for the BT's services, and the other 20 hours accrued no more than 90 calendar days following first submission of billing for the BT's services.

(6) **stage 3 ABA specialty care provider:** Eligibility requirements for ABA specialty care providers are practitioners who are enrolled as BAs and must provide additional documentation that demonstrates the practitioner has the skills, training and clinical experience to oversee and render ABA services to highly complex eligible recipients who require specialized ABA services.

B. **Eligible recipients:** MAD has established a level of care (LOC) (see ABA billing instructions for details) for an eligible recipient to receive ABA services that must be met in addition one of the two categories of eligibility below:

(1) **at-risk for ASD:** An eligible recipient may be considered 'at-risk' for ASD and therefore eligible for time-limited ABA services, if he or she does not meet full criteria for ASD per the latest version of the diagnostic and statistical manual of mental disorders (DSM) or international classification of diseases (ICD). ABA services are time limited; see ABA billing instructions for detailed time limits. The eligible recipient must meet all four criteria to meet the at-risk for ABA eligibility criteria:

- (a) is between 12 and 36 months of age; and
- (b) presents with developmental differences and/or delays as measured by standardized assessments; and
- (c) demonstrates some characteristics of the disorder (e.g., impairment in social communication and early indicators for the development of restricted and repetitive behavior); and
- (d) presents with at least one genetic risk factor (e.g., genetic risk due to having an older sibling with a well-documented ASD diagnosis; eligible recipient has a diagnosis of Fragile X syndrome).

(2) **diagnosed with ASD:** an eligible recipient 12 months up to 21 years of age who has a documented medical diagnosis of ASD according to the latest version of the diagnostic and statistical manual of mental disorders (DSM) or the international classification of diseases (ICD) is eligible for ABA services with no time limits if he or she presents a comprehensive diagnostic evaluation completed by either a MAD enrolled AEP or a practitioner meeting MAD's ABA billing instructions of an AEP when the eligible recipient's ISP states ABA services are medically necessary. Prior authorizations are set at periodic intervals.

C. **Covered Services-Stage 1:** For an eligible recipient 12 months up to 21 years of age who is suspected of having ASD, stage 1 involves (a) screening, and if the results are positive, (b) referral to an AEP for diagnostic evaluation, ISP development, and the determination of medical necessity for ABA. For an eligible recipient who has an existing ASD diagnosis, as provided in accordance with the ABA billing instructions, stage 1

does not require diagnostic re-evaluation, but does require development of an ISP and the determination of medical necessity for ABA. Stage 1 entails that the AEP:

(1) ensures a screening and the referral is completed prior to the to AEP's services. For a detailed description of the requirements of screening and referral requirements refer to the ABA billing instructions;

(2) completes a comprehensive diagnostic evaluation once prior approval is received. The full requirements of a comprehensive diagnostic evaluation are detailed in the ABA billing instructions;

(3) conducts a targeted evaluation when the AEP determines a full comprehensive diagnostic evaluation is not appropriate. See the ABA billing instructions for details on when a targeted evaluation is appropriate;

(4) develops and issues the eligible recipient's evaluation report and ISP following the ABA billing instructions.

(5) develops and issues the eligible recipient's targeted evaluation report and ISP following the ABA billing instructions;

(6) develops and issues the eligible recipient's updated ISP following the ABA billing instructions.

E. Stage 2 BA Covered Services: For all eligible recipients, stage 2 involves the prior authorization process for behavior analytic assessment, ABA service model determination, and treatment plan development. Once the AP has received a prior authorization for the assessment and treatment plan development, as outlined below, the family, eligible recipient (as appropriate for age and developmental level), and the AP's supervising BA works collaboratively to make a final determination regarding the clinically appropriate ABA service model, with consultative input from the AEP as needed. Then a behavior analytic assessment addressing needs associated with both skill acquisition and behavior reduction is conducted, and an individualized ABA treatment plan, as appropriate for the ABA service model, is developed by the supervising BA.

(1) Essential practice elements: The BA is ultimately responsible for ensuring that all essential practice elements are apparent throughout service delivery as required in the ABA billing instructions.

(2) Service model determination: ABA treatment may vary in terms of intensity and duration, the complexity and range of treatment goals, and the extent of direct treatment provided. Many variables, including the number of behavioral targets, specific aspects of those behaviors, and the eligible recipient's response to treatment help determine which model is most appropriate. Although existing on a continuum, these models can be generally categorized as focused ABA or comprehensive ABA, both of which are MAD covered ABA stage 3 services. The ABA billing instructions provide the BA with details on each of these requirements. The BA is responsible for completing all of the following services:

(a) the eligible recipient's assessment;

(b) selection and measurement of goals; and

(c) treatment plan formulation and documentation.

(3) Clinical management and case supervision: In order to achieve the desired, medically necessary outcome, all cases require clinical management, and if a BT is tasked with implementing the treatment plan, the BT requires frequent, ongoing case supervision from the BA. Provision of both clinical management and case supervision allows for the individualization of treatment plans, careful and detailed collection and analysis of data, and timely modifications to treatment protocols, all of which are essential to ensuring treatment effectiveness. As such, MAD not only reimburses for, but requires both clinical management and case supervision. See the ABA billing instructions for detailed description of the requirements for rendering clinical management and case supervision.

F. ABA Specialty Care Services: While it is customary for MAD to limit rendering of a benefit to one provider to the same date of service and same time of service, MAD recognizes that there may be cases where the needs of the eligible recipient exceed the expertise of the AP and/or the logistical or practical ability of the AP to fully support the eligible recipient. In such cases, MAD allows the BA through his or her AP to refer the eligible recipient to a MAD approved, and as appropriate, a MCO contracted ABA specialty care provider.

G. Prior Authorizations-General Information:

(1) An eligible recipient's utilization review contractor (UR) must extend authorizations every six months including approving new requests for ABA services if the AEP's ISP or update indicates the medical necessity for the continuation of services and the corresponding treatment plan updates specify how these services will be delivered (e.g., service model, allocation of hours, etc.). During the 36-month service authorization period for focused ABA, services may or may not be continuously rendered depending on medical need, availability of service providers, and/or other factors. Prior authorization must be secured every six months until the end of the 36-month service authorization period. At each six month authorization point, the eligible recipient's UR will assess,

with input from the family and AP, whether or not changes are needed in the eligible recipient's ISP, as developed by the AEP. If so, the UR will facilitate contact with the AEP to modify the plan. Additionally, the family or AP may request ISP modifications prior to the MCO's six-month authorization point if immediate changes are warranted to preserve the health and wellbeing of the eligible recipient. See the ABA billing instructions for detailed description of prior authorization requirements.

(1) To secure prior authorization, the BA through the AP must submit the prior authorization request, specifically noting:

(a) the prior authorization request must be submitted with the comprehensive diagnostic evaluation report and ISP from the AEP (developed in stage 1) along with the ABA treatment plan (developed in stage 2 by the AP).

(b) the requested treatment model (focused or comprehensive), maximum hours of service requested per week; and

(c) the number of hours of case supervision requested per week, if more than two hours of supervision per 10 hours of intervention is requested. See the ABA billing instructions for detailed requirements for case supervision; and

(d) the number of hours of clinical management requested per week, if more than two hours of clinical management per 10 hours of intervention is requested. See ABA billing instructions for detailed requirements for case supervision; and

(e) the need for collaboration with an ABA specialty care provider, if such a need has been identified through initial assessment and treatment planning. After services have begun, the AP may refer the eligible recipient to a ABA specialty care provider who may then request prior authorization to render ABA specialty care stage 2 assessment and stage 3 ABA services. See the ABA billing instructions for detailed requirements to access ABA specialty care services.

(2) The request must document hours allocated to other services (e.g., early intervention through FIT) that are in the eligible recipient's ISP in order for the eligible recipient's UR to determine if the requested intensity (i.e., hours per week) is feasible and appropriate.

(3) When an eligible recipient's behavior exceeds the expertise of the AP and/or logistical or practical ability of the AP to fully support him or her, MAD allows the AP to refer the eligible recipient to his or her UR for prior authorization to allow an ABA specialty care provider to intervene. The UR will approve a prior authorization to the ABA specialty care provider to complete a targeted assessment and provide the primary AP with, or to implement itself, individualized interventions to address the behavioral concerns for which the referral is based on medical documentation.

(4) Services may continue until the eligible recipient ages out of eligibility for comprehensive ABA services as described in the ABA billing instructions.

I. Noncovered services:

(1) The eligible recipient's comprehensive or targeted diagnostic evaluation or the ISP and treatment plan updates recommend placement in a higher, more intensive, or more restrictive level of care and no longer recommends ABA services.

(2) The eligible recipient is in a residential facility that either specializes in or has as part of its treatment modalities MAD ABA services. The facility should render ABA services as detailed in the ABA billing instructions, such as they would general outpatient services of individual, family and group therapy.

(a) The eligible recipient's UR may authorize time limited ABA services while he or she remains in the facility for transition when ABA services are approved to be rendered upon his or her discharge from the facility to a community ABA provider.

(b) Specifically for an eligible recipient who meets admission criteria for ABA services and who is in a treatment foster care placement, he or she is not considered to be in a residential facility and may receive full ABA services.

(3) The referral for the comprehensive diagnostic evaluation did not utilize a MAD ABA specific screening tool as the basis of the referral. The eligible recipient's family or the referring agency must provide a MAD recognized positive screening result to an AEP. At that time, the AEP may request a prior authorization to complete a MAD ABA comprehensive diagnostic evaluation.

(4) The eligible recipient has reached the maximum age range for ABA services.

(5) Activities that are not designed to accomplish the objectives delineated in covered services and that are not included in the treatment plan.

(6) Activities that are not based on the principles and application of behavior analysis.

(7) Activities that take place in school settings and/or have the potential to supplant educational services.

 (8) Activities that are better described as another therapeutic service (e.g., speech language therapy, occupational therapy, physical therapy, counseling, etc.), even if the provider has expertise in the provision of ABA.

 (9) Activities which are better characterized as staff training or certification/licensure supervision requirements, rather than ABA case supervision.

J. Reimbursement Stage 1 – AEP Comprehensive Diagnostic Evaluation and ISP: MAD supports reimbursement for a comprehensive diagnostic evaluation and development of an ISP from an AEP through three situations listed in Section 10 Subsection C of this rule. See the ABA billing instructions for a detailed description of specific requirements in order to be reimbursed for AEP services.

K. Reimbursement Stage 2 and 3 ABA Prior Authorization: If the AEP prescribes ABA services as part of the eligible recipient's ISP, and the AP received prior approval from the eligible recipient's UR, the AP may bill form stage 2 and 3 services following the ABA billing instructions.

[8.321.2.10 NMAC - N, 1-1-14; A, xx-xx-15]