



Michelle Lujan Grisham, Governor
David R. Scrase, M.D., Secretary
Nicole Comeaux, J.D., M.P.H., Director

November 11, 2022

James G. Scott, Director
Division of Program Operations
Medicaid & CHIP Operations Group
Centers for Medicare and Medicaid Services
601 E. 12th St., Room 355
Kansas City, MO 64106

Dear Mr. Scott:

Enclosed please find documents related to New Mexico State Plan Amendment (SPA) 22-0022 Applied Behavior Analysis (ABA) Coverage.

Effective October 1, 2022, New Mexico is updating its state plan to conform with state and federal requirements. State plan language is being added to prohibit age and dollar limits on services related to autism spectrum disorder (ASD).

The State of New Mexico is currently providing services to the adult ABA population and does not have dollar limits on services related to ASD; however, the state plan language does not specify those details.

HSD followed a process that included public notification, tribal notification and web posting. Documentation of these activities is attached.

Please refer to the attachments for the transmittal form and notices.

We appreciate your consideration of this state plan amendment. Should you have any questions on this amendment, please contact Valerie Tapia at: Valerie.Tapia@state.nm.us or (505) 257-8420.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nicole Comeaux", is written over a light blue circular stamp.

Nicole Comeaux, J.D., M.P.H., Director
Medical Assistance Division

cc: Peter Banks, CMS
Lorelei Kellogg, HSD/MAD Deputy Director

**TRANSMITTAL AND NOTICE OF APPROVAL OF
STATE PLAN MATERIAL
FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES**

1. TRANSMITTAL NUMBER <u>2</u> <u>2</u> — <u>0</u> <u>0</u> <u>2</u> <u>2</u>	2. STATE <u>NM</u>
3. PROGRAM IDENTIFICATION: TITLE OF THE SOCIAL SECURITY ACT XIX XXI	

TO: CENTER DIRECTOR CENTERS FOR MEDICAID & CHIP SERVICES DEPARTMENT OF HEALTH AND HUMAN SERVICES	4. PROPOSED EFFECTIVE DATE October 1, 2022
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5. FEDERAL STATUTE/REGULATION CITATION 1905(a) of the Social Security Act	6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars) a. FFY <u>23</u> \$ <u>80,357</u> b. FFY <u>24</u> \$ <u>177,305</u>
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7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT State Supplement A to Attachment 3.1 A pgs. 5h, 5i, 5j, 5k, 5l	8. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable) State Supplement A to Attachment 3.1 A pgs. 5h, 5i, 5j, 5k, 5l (TN 15-01)
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9. SUBJECT OF AMENDMENT
Applied Behavior Analysis (ABA) Coverage - New Mexico is updating its state plan to conform with state and federal requirements. State plan language is being added to prohibit age and dollar limits on services related to autism spectrum disorder (ASD).

10. GOVERNOR'S REVIEW (Check One)

GOVERNOR'S OFFICE REPORTED NO COMMENT	OTHER, AS SPECIFIED:
COMMENTS OF GOVERNOR'S OFFICE ENCLOSED	Authority delegated to the Medicaid Director
NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL	

11. SIGNATURE OF STATE AGENCY OFFICIAL 	15. RETURN TO Nicole Comeaux, J.D., M.P.H., Director Medical Assistance Division P.O. Box 2348 Santa Fe, NM 87504-2348
12. TYPED NAME Nicole Comeaux	
13. TITLE Director, Medical Assistance Division	
14. DATE SUBMITTED November 10, 2022	

FOR CMS USE ONLY

16. DATE RECEIVED	17. DATE APPROVED
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PLAN APPROVED - ONE COPY ATTACHED

18. EFFECTIVE DATE OF APPROVED MATERIAL	19. SIGNATURE OF APPROVING OFFICIAL
20. TYPED NAME OF APPROVING OFFICIAL	21. TITLE OF APPROVING OFFICIAL

22. REMARKS

Amount, Duration and Scope of Medical and Remedial Care and Services Provided to the Categorically Needy

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Preventive Services, 1905(a)(13)(c)
Autism Intervention (AI) Services

AI services are covered for individuals ~~under the age of 21 years~~ who have a diagnosis of Autism Spectrum Disorder (ASD), and for individuals who are at risk for the development of ASD as defined by the latest version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) or the International Classification of Diseases (ICD). AI services are provided to ~~a child~~ **an individual** as part of a three-stage comprehensive approach.

Stage 1 AI Services:

Following a referral made by a physician or another licensed practitioner to an Autism Evaluation Practitioner (AEP), the AEP makes the diagnosis of ASD or At-risk for developing ASD. Following the diagnosis, the AEP develops an Integrated Service Plan (ISP).

Stage 1 Service Description

An AEP completes a comprehensive diagnostic evaluation (CDE) to confirm the presence of ASD must be conducted in accordance with current practice guidelines as offered by professional organizations such as the American Academy of Child and Adolescent Psychiatry, American Psychological Association, American Academy of Pediatrics, and American Academy of Neurology. Although aspects of the evaluation will vary depending on the ~~child's~~ **individual's** age, developmental level, diagnostic history, etc., it is expected that the evaluation be multi-informant, multi-modal, ASD-specific, and conducted by an AEP who meets state agency AEP requirements. If a CDE is not medically warranted, a Targeted Evaluation or a Targeted Risk Evaluation is conducted.

CDE requirements:

- a) **Multi-informant:** CDEs must include information from:
- The ~~child's, him or herself,~~ **individual themselves** via direct observation and interaction; , **interviews with the individual, their family set members, and for an adult individual in a residential or other congregate care setting, their caregivers or staff** and ~~The child's legal guardian or other primary caregiver;~~ and Whenever possible, one additional informant who has direct knowledge of the ~~child's~~ **individual's** functioning as it pertains to skill deficits and behavioral excesses associated with ASD:
- ~~1. Child's educational or early interventionist provider; or~~
 - ~~2. Child's PCP; or~~
 - ~~3. Child's physical, behavioral and long term care health provider (e.g., Speech-Language Pathologist, Social Worker, Occupational Therapist, Physical Therapist, Psychologist, Psychiatrist, Behavior Analyst, etc.);~~
1. The individual's physical, behavioral and long-term care health provider (e.g., Speech-Language Pathologist, Social Worker, Occupational Therapist, Physical Therapist, Psychologist, Psychiatrist, Behavior Analyst, etc.); or
 2. For an Early and Periodic Screening Diagnostic and Treatment (EPSDT)-aged recipient their educational or early interventionist provider.
- b) **Multi-Sources:** CDE must rely on various modes of information gathering, including but not limited to:
- ~~1. Review of educational and/or early interventions, physical, behavioral and long term care health records; and~~
 - ~~2. A legal guardian or primary caregiver interview for historical information, as well as a determination of current symptom presentation; and~~
 - ~~3. Direct observation of and interaction with the child; and~~
 - ~~4. Clear consideration of direct and/or indirect assessment of multiple areas of functioning, including but not limited to:~~
 - ~~i. Developmental, intellectual, or cognitive functioning; and~~
 - ~~ii. Adaptive functioning; and~~

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- ~~iii. Social functioning; and~~
- ~~iv. Speech, language, and communicative functioning; and~~
- ~~v. Medical and neurological functioning.~~

1. A legal guardian, primary caregiver, residential or congregated care staff and caregiver interviews for historical information, as well as a determination of current symptom presentation; and
2. Direct observation of and interaction with the individual; and
3. Clear consideration of direct and/or indirect assessment of multiple areas of functioning, including but not limited to:
 - vi. Developmental, intellectual, or cognitive functioning; and
 - vii. Adaptive functioning; and
 - viii. Social functioning; and
 - ix. Speech, language, and communicative functioning; and
 - x. Medical and neurological functioning; and
4. For an EPSDT-aged individual, review of educational and/or early interventions, physical, behavioral and long-term care health records.

- c) **ASD-specific:** The CDE must be specific enough to adequately assess symptoms associated with ASD, yet broad enough to make a valid differential diagnosis and consider possible co-morbid conditions.

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ISP Requirements: The AEP must issue a separate, individualized ISP if such a plan is not issued as part of the CDE Report. When developing and issuing the ISP, the AEP must adhere to the following requirements:

- a) If the AEP determines that AI services are clinically indicated, the ISP must include a statement that the AEP expects that the requested AI services will result in measurable improvement in the ~~child's individual's~~ ASD symptomatology, associated behavioral excesses and deficits, and/or overall functioning.
- b) The ISP must ensure that all areas of need are adequately addressed through AI services and other medically necessary services (e.g., speech-language therapy, occupational therapy, and specialized physical and behavioral services). The ISP must include all services the recipient is or will be utilizing, regardless of the payor.
- c) The AEP must ensure other services that are recommended are aligned with the AI services such that the anticipated benefits to the ~~child individual~~ can be realized.
- d) The ISP must be linked to findings from the CDE and reflect input from the ~~child individual~~ (as appropriate for age and developmental level), legal guardian, or other caretaker, as well as school staff and behavioral health professionals involved in the ~~child's individual's~~ care.
- e) The ISP must include a listing of all services and service providers as well as characteristics of the ~~child individual~~ that may affect the intervention positively or negatively.
- f) The ISP must be based on the ~~child's individual's~~ current clinical presentation, while being mindful of the long-term vision for ~~his or her~~ their potential.
- g) The ISP must address needs associated with the ~~child's individual's~~ ASD-related symptoms, as well as symptoms associated with co-morbid conditions.
- h) Given that the needs of ~~a child an individual~~ with ASD are characteristically numerous, the ISP must establish treatment priorities appropriate for the ~~child individual~~ defined by the pivotal nature of the skill and/or by the risk that the skill's absence or behavioral excess poses to the ~~child individual~~ or others.
- i) The ISP must include a plan for ongoing monitoring across multiple areas of functioning such that the plan can evolve as the ~~child's individual's~~ behavioral presentation changes in response to treatment.

Stage 1 AI Services Practitioner Requirements

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In order for an AEP to have an approved Provider Participation Agreement (PPA), an AEP must meet the following requirements in order to be eligible for reimbursement for provision of a Stage 1 Comprehensive Diagnostic Evaluation (CDE) or Targeted Evaluation and/or evaluation for the purposes of developing an Intervention Services Plan (ISP), and then the completion of an ISP. (Must meet a through f)

- 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, ~~or~~ adolescent and adult psychiatry; and
- b) Have experience in or knowledge of the medically necessary use of AI services and other empirically supported intervention techniques; and
- c) Be qualified to conduct and document both a CDE or 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, adolescent, and adult 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; and when requested, provide documentation substantiating training, experience, licensure and/or certification.

Stage 2 AI Services:

Following the completion of an ISP that includes a recommendation for AI Stage 2 services, a Behavior Analyst (BA) conducts a Behavior Analytic Assessment specific to Stage 2 to determine the need for skill

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acquisition and behavior reduction. From this determination, goals and intervention services are developed specific to ASD and detailed in the Autism Intervention Treatment Plan (AITP).

Stage 2 Service Description

A BA conducts a Behavior Analytic Assessment that incorporates assessment strategies and assessment measures that are developmentally appropriate for the ~~child~~ individual must identify strengths and weaknesses across domains. The information from such a process is the basis for developing the individualized AITP. A Behavior Analytic Assessment utilizes information from multiple methods and multiple informants, such as:

- a) Direct observation, measurement, and recording of behavior are defining characteristics of AI services. The information gathered serves as the primary basis for identifying pre-treatment levels, discharge goals, and evaluation of response to an AITP. They also assist the BA in developing and adapting treatment protocols on an ongoing basis.
- b) The assessments reflect the goal of treatment and are responsive to ongoing information updates as they are collected and analyzed.
- e) ~~The individual, Legal legal~~ guardians, caregivers and other ~~stakeholders~~ professionals are included when selecting treatment goals, protocols, and evaluating progress as appropriate. ~~Interviews with the individual, Legal legal~~ guardian and caregiver ~~interviews~~, rating scales, and validity measures are used to assess the ~~legal guardian and caregiver's~~ perceptions of the ~~child's individual's~~ skill deficits and behavioral excesses, and the extent to which these deficits and excesses impede the functioning of the ~~child individual~~ and ~~his or her~~ their family. ~~The child also participates in these processes as appropriate.~~

Treatment may vary in terms of intensity and duration, the complexity and range of treatment goals, and the extent of direct treatment provided.

- a) Many variables, including the number of behavioral targets, specific aspects of those behaviors, and the ~~child's individual's~~ response to treatment protocols help determine which treatments, interventions, and behavior modification services most appropriate for the ~~child~~ individual.

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Although existing on a continuum, a combination of treatments, interventions, and behavior modification services can be generally categorized as Focused AI services or Comprehensive AI approach to services. The differences between these two general approaches are in regard to the age, intensity, duration, and frequency of services most appropriate for the ~~child~~ individual.

- b) Once the Behavior Analytic Assessment has been executed and responses and information have been gathered, the BA must select goals for intervention and determine how these goals will be measured. The AITP must identify all target behaviors that are to be addressed by the Behavior Analyst Certification Board's (BACB's) Board Certified Assistant Behavior Analyst (BCaBA), Behavior Technician (BT) and/or the BA directly.
- c) The AITP includes, when appropriate, a goal of working with the family or caregivers of the ~~child~~ individual in order to assist with the acquisition, maintenance, and generalization of functional skills.

Stage 2 AI Services Practitioner Requirements: In order for an AP to have an approved MAD Provider Participation Agreement (PPA), an AP must meet the following requirements in order to be eligible for reimbursement for provision of a Stage 2 Behavior Analytic Assessment and then the completion of an AITP:

- a) A Board Certified Behavior Analyst® (BCBA®) or Board Certified Behavior Analyst-Doctoral® (BCBA-D®) by the Behavior Analyst Certification Board (BACB®). A BCBA or BCBA-D may supervise other Behavior Analysts (BAs), BCaBAs and Behavior Technicians (BTs).
- b) A licensed psychologist with documented education and experience in behavior analysis. A psychologist may supervise BAs, BCaBAs and BTs. The documentation required is:
 - 1. A professional credential issued by the Board of Psychologist Examiners of the New Mexico Regulation and Licensing Department (RLD).

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- 2. Documentation of education and training in behavior analysis comparable to that required to be eligible to take an examination for BCBA® or BCBA-D® certification including the following education, supervised experiential training, and continuing education requirements:

Completion of graduate level instruction in the following behavior analytic content areas:

Ethical and professional conduct (at least 45 classroom hours); concepts and principles of behavior analysis (at least 45 classroom hours); research methods in behavior analysis including measurement (at least 25 classroom hours), experimental design (at least 20 classroom hours); AI services including identification of the problem and assessment (at least 30 classroom hours); fundamental elements of behavior change and specific behavior change procedures (at least 45 classroom hours); intervention and behavior change consideration (at least 10 classroom hours); behavior change systems (at least 10 classroom hours); implementation, management and supervision (at least 10 classroom hours); and discretionary coursework (at least 30 classroom hours).

- 3. Completion of supervised experience in the design and delivery of AI services.

The practitioner must have a significant portion of his or her supervised experience (at least 1/3) accrued with an ASD or closely related (e.g., Fragile X, Intellectual Disability) population.

- 4. In addition, a psychologist rendering services as a BA must have completed supervised independent field work in AI services (non-university based) of at least 1500 hours, or

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practicum experience in AI services (university based) of at least 1000 hours, or intensive AI services practicum experience (university based) of at least 750 hours, and completion of at least 32 hours of continuing education in behavior analysis within a two year cycle period.

- c) An AI services Practitioner/Supervisor is a BA who is not a BCBA or psychologist:

Stage 2 and 3 AI services may be delivered and/or supervised by a practitioner who has the minimum qualifications listed below. The practitioner must provide documentation of the following:

1. A master's degree which the BACB® recognizes and would lead to certification as a BCBA;
2. New Mexico licensure, as appropriate for degree and discipline;
3. Clinical experience and supervised training in the evidence-based treatment of children with ASD, specifically AI services; and
4. Experience in supervising direct support personnel in the delivery and evaluation of AI services.

Stage 3 AI Services:

The BA, BCaBA and the BT deliver the treatments, interventions, and behavior modification services as

Stage 3 AI services in home, clinic, schools and community-based settings.

Stage 3 AI Services Service Description:

The following treatment and intervention services are rendered in the Stage 3:

- a) Increasing appropriate behavior via reinforcement. Treatment, intervention and behavior modification services include Positive and Negative Behavior Reinforcement.

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- b) Promoting stimulus control via differential reinforcement. Treatment, intervention and behavior modification services include Differential Reinforce and Matching to Sample.
- c) Promoting appropriate behavior via stimulus change. Treatment, intervention and behavior modification services include Goal Setting; Modeling and Imitation Training; Instruction and Rules; Prompt and Prompt Fading; Prompting to Transfer; and Expand Stimulus Control.
- d) Procedures for maintaining behavior. Treatment, intervention and behavior modification services include Schedules of Reinforcement.
- e) Teaching new behaviors: Treatment, intervention and behavior modification services include Shaping; Chaining; Task Analysis; Discrete Trial Teaching; Verbal Behavior; Echoic Training; Mand Training; Tact Training; Intraverbal Training; Listener Training; Discrete Trial Teaching; and Verbal Behavior.
- f) Preventing and reducing maladaptive behavior: Treatment, intervention and behavior modification services include Antecedent Methods and Procedural Packages for Preventing or Reducing Maladaptive Behavior; Redirecting; Use Activity Schedule; Distracting with a Preferred Event; Behavioral Momentum/High-Probability Request Sequence; Providing Choice; Reducing Response Effort; Applying Non-Contingent Reinforcement; Modeling; Social Stories; and Social Skills Training.
- g) Consequential methods for reducing maladaptive behavior: Treatment, intervention and behavior modification services include Differential Reinforcement of Alternative Behaviors; Differential Reinforcement of Other Behavior or Omission Training; Differential Reinforcement of Low Rates; Differential Reinforcement of Diminishing Rates; Response Cost; Time Out; Overcorrection; Negative Practice; Punishment; Manipulation of Antecedents; Stimulus Equivalence; Stimulus Generalization Training; Behavioral Contrast Effects; Matching Law and Factors Influencing Choice; High Probability Request Sequence/Behavior Momentum; Premack

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Principle; Errorless Learning; and Matching to Sample.

- h) Extinction. Treatment, intervention and behavior modification services include: Differential Reinforcement of Alternative Behaviors.
- i) Behavior-change systems. Treatment, intervention and behavior modification services include: Self-management Strategies; Token Systems and Other Conditioned Reinforcement Systems; Direct Instruction; Precision Teaching; Personalized Systems of Instruction; Incidental Teaching; Functional Communication Training; Natural Environment Teaching; Lovaas Model of AIS; Augmentative Communication; PECS (Picture Exchange Communication Systems)

Stage 3 AI Services Practitioner Requirements:

The practitioners who render Stage 3 services are BAs who have the qualifications described above, and a BT. A BT must receive at least one hour of case supervision from the BA for every 10 hours of intervention the BT renders per **child individual**. There are two avenues through which a practitioner may qualify as a BT.

- a) A Registered Behavioral Technician® (RBT®) by the BACB®
- b) Documented training in Behavior Analysis without (RBT®) credentials and meet the following requirements:
 - 1. Be at least 18 years of age;
 - 2. Possess a minimum of a high school diploma or equivalent;
 - 3. Complete a minimum of four hours of training in ASD including training on prevalence, etiology, core symptoms, characteristics, and learning differences;
 - 4. Complete at least 40 hours of training in AI toward the requirements for RBT® credentialing by BACB®.
- c) **A Board Certified Autism Technician (BCAT) by the Behavioral Intervention Certification Council (BICC).**

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Preventive Services, 1905(a)(13)(c)
Autism Intervention (AI) Services

AI services are covered for individuals who have a diagnosis of Autism Spectrum Disorder (ASD), and for individuals who are at risk for the development of ASD as defined by the latest version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) or the International Classification of Diseases (ICD). AI services are provided to an individual as part of a three-stage comprehensive approach.

Stage 1 AI Services

Following a referral made by a physician or another licensed practitioner to an Autism Evaluation Practitioner (AEP), the AEP makes the diagnosis of ASD or At-risk for developing ASD. Following the diagnosis, the AEP develops an Integrated Service Plan (ISP).

Stage 1 Service Description

An AEP completes a comprehensive diagnostic evaluation (CDE) to confirm the presence of ASD must be conducted in accordance with current practice guidelines as offered by professional organizations such as the American Academy of Child and Adolescent Psychiatry, American Psychological Association, American Academy of Pediatrics, and American Academy of Neurology. Although aspects of the evaluation will vary depending on the individual's age, developmental level, diagnostic history, etc., it is expected that the evaluation be multi-informant, multi-modal, ASD-specific, and conducted by an AEP who meets state agency AEP requirements. If a CDE is not medically warranted, a Targeted Evaluation or a Targeted Risk Evaluation is conducted.

CDE Requirements

- a) **Multi-informant** - CDEs must include information from:
 - The individual themselves via direct observation and interaction, interviews with the individual, their family set members, and for an adult individual in a residential or other congregate care setting, their caregivers or staff; and whenever possible, one additional informant who has direct knowledge of the individual's functioning as it pertains to skill deficits and behavioral excesses associated with ASD:
 1. The individual's physical, behavioral and long-term care health provider (e.g., Speech-Language Pathologist, Social Worker, Occupational Therapist, Physical Therapist, Psychologist, Psychiatrist, Behavior Analyst, etc.); or
 2. For an Early and Periodic Screening Diagnostic and Treatment (EPSDT)-aged recipient, their educational or early interventionist provider.
- b) **Multi-Sources** - CDE must rely on various modes of information gathering, including but not limited to:
 1. A legal guardian, primary caregiver, residential or congregated care staff and caregiver interviews for historical information, as well as a determination of current symptom presentation; and
 2. Direct observation of and interaction with the individual; and
 3. Clear consideration of direct and/or indirect assessment of multiple areas of functioning, including but not limited to:
 - i. Developmental, intellectual, or cognitive functioning; and
 - ii. Adaptive functioning; and
 - iii. Social functioning; and
 - iv. Speech, language, and communicative functioning; and
 - v. Medical and neurological functioning; and
 4. For an EPSDT-aged individual, review of educational and/or early interventions, physical, behavioral and long-term care health records.
- c) **ASD-specific** - The CDE must be specific enough to adequately assess symptoms associated with ASD, yet broad enough to make a valid differential diagnosis and consider possible co-morbid conditions.

ISP Requirements

The AEP must issue a separate, individualized ISP if such a plan is not issued as part of the CDE Report. When developing and issuing the ISP, the AEP must adhere to the following requirements:

- a) If the AEP determines that AI services are clinically indicated, the ISP must include a statement that the AEP expects that the requested AI services will result in measurable improvement in the individual's ASD symptomatology, associated behavioral excesses and deficits, and/or overall functioning.
- b) The ISP must ensure that all areas of need are adequately addressed through AI services and other medically necessary services (e.g., speech-language therapy, occupational therapy, and specialized physical and behavioral services). The ISP must include all services the recipient is or will be utilizing, regardless of the payor.
- c) The AEP must ensure other services that are recommended are aligned with the AI services such that the anticipated benefits to the individual can be realized.
- d) The ISP must be linked to findings from the CDE and reflect input from the individual (as appropriate for age and developmental level), legal guardian, or other caretaker, as well as school staff and behavioral health professionals involved in the individual's care.
- e) The ISP must include a listing of all services and service providers as well as characteristics of the individual that may affect the intervention positively or negatively.
- f) The ISP must be based on the individual's current clinical presentation, while being mindful of the long-term vision for their potential.
- g) The ISP must address needs associated with the individual's ASD-related symptoms, as well as symptoms associated with co-morbid conditions.
- h) Given that the needs of an individual with ASD are characteristically numerous, the ISP must establish treatment priorities appropriate for the individual defined by the pivotal nature of the skill and/or by the risk that the skill's absence or behavioral excess poses to the individual or others.
- i) The ISP must include a plan for ongoing monitoring across multiple areas of functioning such that the plan can evolve as the individual's behavioral presentation changes in response to treatment.

Stage 1 AI Services Practitioner Requirements

In order for an AEP to have an approved Provider Participation Agreement (PPA), an AEP must meet the following requirements in order to be eligible for reimbursement for provision of a Stage 1 CDE or Targeted Evaluation and/or evaluation for the purposes of developing an ISP, and then the completion of an ISP.

- a) Be a licensed, doctoral-level clinical psychologist or a physician who is board-certified or board-eligible in developmental behavioral pediatrics, pediatric neurology, child psychiatry, or adolescent and adult psychiatry; and
- b) Have experience in or knowledge of the medically necessary use of AI services and other empirically supported intervention techniques; and
- c) Be qualified to conduct and document both a CDE or 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, adolescent, and adult 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; and when requested, provide documentation substantiating training, experience, licensure and/or certification.

Stage 2 AI Services

Following the completion of an ISP that includes a recommendation for AI Stage 2 services, a Behavior Analyst (BA) conducts a Behavior Analytic Assessment specific to Stage 2 to determine the need for skill acquisition and behavior reduction. From this determination, goals and intervention services are developed specific to ASD and detailed in the Autism Intervention Treatment Plan (AITP).

Stage 2 Service Description

A BA conducts a Behavior Analytic Assessment that incorporates assessment strategies and assessment measures that are developmentally appropriate for the individual must identify strengths and weaknesses across domains. The information from such a process is the basis for developing the individualized AITP. A Behavior Analytic Assessment utilizes information from multiple methods and multiple informants, such as:

- a) Direct observation, measurement, and recording of behavior are defining characteristics of AI services. The information gathered serves as the primary basis for identifying pre-treatment levels, discharge goals, and evaluation of response to an AITP. They also assist the BA in developing and adapting treatment protocols on an ongoing basis.
- b) The assessments reflect the goal of treatment and are responsive to ongoing information updates as they are collected and analyzed.
- c) The individual, legal guardians, caregivers and other professionals are included when selecting treatment goals, protocols, and evaluating progress as appropriate. Interviews with the individual, legal guardian and caregiver, rating scales, and validity measures are used to assess the perceptions of the individual's skill deficits and behavioral excesses, and the extent to which these deficits and excesses impede the functioning of the individual and their family.

Treatment may vary in terms of intensity and duration, the complexity and range of treatment goals, and the extent of direct treatment provided.

- a) Many variables, including the number of behavioral targets, specific aspects of those behaviors, and the individual's response to treatment protocols help determine which treatments, interventions, and behavior modification services most appropriate for the individual. Although existing on a continuum, a combination of treatments, interventions, and behavior modification services can be generally categorized as Focused AI services or Comprehensive AI approach to services. The differences between these two general approaches are in regard to the age, intensity, duration, and frequency of services most appropriate for the individual.
- b) Once the Behavior Analytic Assessment has been executed and responses and information have been gathered, the BA must select goals for intervention and determine how these goals will be measured. The AITP must identify all target behaviors that are to be addressed by the Behavior Analyst Certification Board's (BACB's) Board Certified Assistant Behavior Analyst (BCaBA), Behavior Technician (BT) and/or the BA directly.
- c) The AITP includes, when appropriate, a goal of working with the family or caregivers of the individual in order to assist with the acquisition, maintenance, and generalization of functional skills.

Stage 2 AI Services Practitioner Requirements

In order for an AP to have an approved MAD PPA, an AP must meet the following requirements in order to be eligible for reimbursement for provision of a Stage 2 Behavior Analytic Assessment and then the completion of an AITP:

- a) A Board Certified Behavior Analyst® (BCBA®) or Board Certified Behavior Analyst-Doctoral® (BCBA-D®) by the Behavior Analyst Certification Board (BACB®). A BCBA or BCBA-D may supervise other BAs, BCaBAs and BTs.
- b) A licensed psychologist with documented education and experience in behavior analysis. A psychologist may supervise BAs, BCaBAs and BTs. The documentation required is:

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1. A professional credential issued by the Board of Psychologist Examiners of the New Mexico Regulation and Licensing Department (RLD).
 2. Documentation of education and training in behavior analysis comparable to that required to be eligible to take an examination for BCBA® or BCBA-D® certification including education, supervised experiential training, and continuing education requirements with completion of graduate level instruction in the following behavior analytic content areas: Ethical and professional conduct (at least 45 classroom hours); concepts and principles of behavior analysis (at least 45 classroom hours); research methods in behavior analysis including measurement (at least 25 classroom hours), experimental design (at least 20 classroom hours); AI services including identification of the problem and assessment (at least 30 classroom hours); fundamental elements of behavior change and specific behavior change procedures (at least 45 classroom hours); intervention and behavior change consideration (at least 10 classroom hours); behavior change systems (at least 10 classroom hours); implementation, management and supervision (at least 10 classroom hours); and discretionary coursework (at least 30 classroom hours).
 3. Completion of supervised experience in the design and delivery of AI services. The practitioner must have a significant portion of his or her supervised experience (at least 1/3) accrued with an ASD or closely related (e.g., Fragile X, Intellectual Disability) population.
 4. In addition, a psychologist rendering services as a BA must have completed supervised independent field work in AI services (non-university based) of at least 1500 hours, or practicum experience in AI services (university based) of at least 1000 hours, or intensive AI services practicum experience (university based) of at least 750 hours, and completion of at least 32 hours of continuing education in behavior analysis within a two year cycle period.
- c) An AI services Practitioner/Supervisor is a BA who is not a BCBA or psychologist: Stage 2 and 3 AI services may be delivered and/or supervised by a practitioner who has the minimum qualifications listed below. The practitioner must provide documentation of the following:
1. A master's degree which the BACB® recognizes and would lead to certification as a BCBA;
 2. New Mexico licensure, as appropriate for degree and discipline;
 3. Clinical experience and supervised training in the evidence-based treatment of children with ASD, specifically AI services; and
 4. Experience in supervising direct support personnel in the delivery and evaluation of AI services.

Stage 3 AI Services

The BA, BCaBA and the BT deliver the treatments, interventions, and behavior modification services as Stage 3 AI services in home, clinic, schools and community-based settings.

Stage 3 AI Services Service Description

The following treatment and intervention services are rendered in the Stage 3:

- a) Increasing appropriate behavior via reinforcement. Treatment, intervention and behavior modification services include Positive and Negative Behavior Reinforcement.
- b) Promoting stimulus control via differential reinforcement. Treatment, intervention and behavior modification services include Differential Reinforce and Matching to Sample.
- c) Promoting appropriate behavior via stimulus change. Treatment, intervention and behavior modification services include Goal Setting; Modeling and Imitation Training; Instruction and Rules; Prompt and Prompt Fading; Prompting to Transfer; and Expand Stimulus Control.
- d) Procedures for maintaining behavior. Treatment, intervention and behavior modification services include Schedules of Reinforcement.

Amount, Duration and Scope of Medical and Remedial Care and Services Provided to the Categorically Needy

State Supplement A to Attachment 3.1A

Page 5/

- e) Teaching new behaviors: Treatment, intervention and behavior modification services include Shaping; Chaining; Task Analysis; Discrete Trial Teaching; Verbal Behavior; Echoic Training; Mand Training; Tact Training; Intraverbal Training; Listener Training; Discrete Trial Teaching; and Verbal Behavior.
- f) Preventing and reducing maladaptive behavior: Treatment, intervention and behavior modification services include Antecedent Methods and Procedural Packages for Preventing or Reducing Maladaptive Behavior; Redirecting; Use Activity Schedule; Distracting with a Preferred Event; Behavioral Momentum/High-Probability Request Sequence; Providing Choice; Reducing Response Effort; Applying Non-Contingent Reinforcement; Modeling; Social Stories; and Social Skills Training.
- g) Consequential methods for reducing maladaptive behavior: Treatment, intervention and behavior modification services include Differential Reinforcement of Alternative Behaviors; Differential Reinforcement of Other Behavior or Omission Training; Differential Reinforcement of Low Rates; Differential Reinforcement of Diminishing Rates; Response Cost; Time Out; Overcorrection; Negative Practice; Punishment; Manipulation of Antecedents; Stimulus Equivalence; Stimulus Generalization Training; Behavioral Contrast Effects; Matching Law and Factors Influencing Choice; High Probability Request Sequence/Behavior Momentum; Premack Principle; Errorless Learning; and Matching to Sample.
- h) Extinction: Treatment, intervention and behavior modification services include Differential Reinforcement of Alternative Behaviors.
- i) Behavior-change systems: Treatment, intervention and behavior modification services include Self-management Strategies; Token Systems and Other Conditioned Reinforcement Systems; Direct Instruction; Precision Teaching; Personalized Systems of Instruction; Incidental Teaching; Functional Communication Training; Natural Environment Teaching; Lovaas Model of AIS; Augmentative Communication; PECS (Picture Exchange Communication Systems).

Stage 3 AI Services Practitioner Requirements

The practitioners who render Stage 3 services are BAs who have the qualifications described above, and a BT. A BT must receive at least one hour of case supervision from the BA for every 10 hours of intervention the BT renders per individual. There are two avenues through which a practitioner may qualify as a BT.

- a) A Registered Behavioral Technician® (RBT®) by the BACB®.
- b) Documented training in Behavior Analysis without (RBT®) credentials and meet the following requirements:
 - 1. Be at least 18 years of age;
 - 2. Possess a minimum of a high school diploma or equivalent;
 - 3. Complete a minimum of four hours of training in ASD including training on prevalence, etiology, core symptoms, characteristics, and learning differences;
 - 4. Complete at least 40 hours of training in AI toward the requirements for RBT® credentialing by BACB®.
- c) A Board Certified Autism Technician (BCAT) by the Behavioral Intervention Certification Council (BICC).

Newspaper Notice: SPA 22-0022 Applied Behavior Analysis (ABA) Coverage

The New Mexico Human Services Department (HSD), through the Medical Assistance Division (MAD), is providing this notice of opportunity to comment on proposed State Plan Amendment (SPA) 22-0022 Applied Behavior Analysis (ABA) Coverage.

Effective October 1, 2022, New Mexico is updating its state plan to conform with state and federal requirements. State plan language is being added to prohibit age and dollar limits on services related to autism spectrum disorder (ASD).

The State of New Mexico is currently providing services to the adult ABA population and does not have dollar limits on services related to ASD; however, the state plan language does not specify those details.

The estimated total financial impact is \$80,357 in federal funds for FFY 23 and \$177,305 in federal funds for FFY 24.

OPPORTUNITY TO VIEW DOCUMENTS AND MAKE COMMENTS

Medicaid providers, Medicaid recipients, and other interested parties are invited to make comments on this proposed SPA. The complete draft amendment may be found on the Department's website at: <https://www.hsd.state.nm.us/public-information-and-communications/opportunity-for-public-comment/public-notices-proposed-waiver-changes-and-opportunities-to-comment/comment-period-open/>

A written copy of these proposed documents may be requested by contacting the HSD Medical Assistance Division (HSD/MAD) in Santa Fe at (505) 827-1337.

Recorded comments may be left by calling (505) 827-1337. Electronic comments may be submitted to madrules@state.nm.us. All comments must be received no later than 5:00 p.m. MT on **October 16, 2022**. Written or e-mailed comments are preferred because they become part of the record associated with these changes.

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

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

AFFIDAVIT OF PUBLICATION

STATE OF NEW MEXICO

County of Bernalillo SS

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Journal: September 16, 2022

David Montoya, the undersigned, authorized Representative of the Albuquerque Journal, on oath states that this newspaper is duly qualified to publish legal notices or advertisements within the meaning of Section 3, Chapter 167, Session Laws of 1937, that payment therefore has been made of assessed as court cost; and that the notice, copy of which is hereto attached, was published in said paper in the regular daily edition, for 1 time(s) on the following date(s):

09/16/2022

David Montoya

Sworn and subscribed before me, a Notary Public, in and for the County of Bernalillo and State of New Mexico this 16 day of September of 2022

PRICE \$111.15

Statement to come at the end of month.

ACCOUNT NUMBER 1009565

CHRISTINA MARIE WHITE
Notary Public - State of New Mexico
Commission # 1122050
My Comm. Expires Jul 26, 2026

Las Cruces Sun News.

PART OF THE USA TODAY NETWORK

Affidavit of Publication

Ad # 0005411936

This is not an invoice

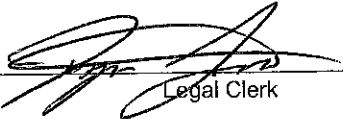
HUMAN SVCS DEPT - ME D ASSIST DIV
PO BOX 2348

SANTA FE, NM 87504-2348


I, a legal clerk of the **Las Cruces Sun News**, a newspaper published daily at the county of Dona Ana, state of New Mexico and of general paid circulation in said county; that the same is a duly qualified newspaper under the laws of the State wherein legal notices and advertisements may be published; that the printed notice attached hereto was published in the regular and entire edition of said newspaper and not in supplement thereof in editions dated as follows:

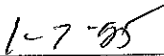
09/16/2022

Despondent further states this newspaper is duly qualified to publish legal notice or advertisements within the meaning of Sec. Chapter 167, Laws of 1937.


Legal Clerk

Subscribed and sworn before me this September 16,
2022:


State of WI, County of Brown
NOTARY PUBLIC


My commission expires

KATHLEEN ALLEN
Notary Public
State of Wisconsin

Ad # 0005411936
PO #:
of Affidavits 1

This is not an invoice

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Michelle Lujan Grisham, Governor
David R. Scrase, M.D., Secretary
Nicole Comeaux, J.D., M.P.H, Director

September 16, 2022

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Michelle Lujan Grisham, Governor
David R. Scrase, M.D., Secretary
Nicole Comeaux, J.D., M.P.H, Director

September 16, 2022

RE: Tribal Notification to Request Advice and Comments Letter 22-27: Applied Behavior Analysis (ABA) Coverage

Dear Tribal Leadership, Indian Health Service, Tribal Health Providers, and Other Interested Parties:

Seeking advice and comments from New Mexico's Indian Nations, Tribes, Pueblos and their health care providers is an important component of the government-to-government relationship with the State of New Mexico. In accordance with the New Mexico Human Services Department's (HSD's) Tribal Notification to Request Advice and Comments process, this letter is to inform you that HSD, through the Medical Assistance Division (MAD), is accepting comments until **5:00 p.m. Mountain Time (MT), October 16, 2022** regarding proposed state plan amendment (SPA) 22-0022 Applied Behavior Analysis (ABA) Coverage.

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Tribal Impact

There is no service or financial impact to Indian Nations, Tribes, Pueblos and their health care providers. New Mexico state plan language is being updated to specify current coverage of ABA services.

Tribal Advice and Comments

Tribes and their healthcare providers may view the proposed changes, on the HSD webpage at: <https://www.hsd.state.nm.us/providers/written-tribal-consultations/> **Tribal Notification 22-27.**

Important Dates

Written comments must be submitted by 5:00 p.m. Mountain Time (MT) October 16, 2022. Please send your comments to the MAD Native American Liaison, **Theresa Belanger**, at (505) 670-8067 or by email at: Theresa.Belanger@state.nm.us. All written comments received will be posted on the HSD website at: <https://www.hsd.state.nm.us/providers/written-tribal-consultations/> along with this notification letter. The public posting will include the name and any contact information provided by

the commenter.

Tribal Leadership may request a government-to-government consultation by October 16, 2022.
This request may be made to: Theresa.Belanger@state.nm.us or by calling (505) 670-8067.

Sincerely,



Nicole Comeaux, J.D., M.P.H.
State Medicaid Director

Comments and Responses: SPA 22-0022 Applied Behavior Analysis (ABA) Coverage

Comment: One commenter expressed support for the proposed changes and indicated that the plan to eliminate the outdated provision of providing Autism Intervention (AI) services to individuals under the age of 21 is appreciated.

Department Response: The Department thanks the commenter for their support.

Comment: One commenter thanked the Department for including adults in AI services and recommended adding Behavior Analyst Certification Board (BACB) Board Certified Assistant Analysts (BCaBAs) to the list of practitioners that are able to address the target behaviors identified by the Autism Intervention Treatment Plan (AITP).

Department Response: The Department will add BCaBAs to the list of approved providers.

Further Comment: The same commenter asked to add BCaBAs to the list of practitioners supervised by a psychologist under the AI Services Practitioner Requirements section of the state plan page.

Department Response: The Department will add BCaBAs to the list of approved providers.

Further Comment: The same commenter suggested adding BCaBAs to the list of practitioners able to deliver the treatments, interventions, and behavior modification services as Stage 3 AI services and also recommended adding schools to the list of places where treatments, interventions and behavior modification services can be delivered.

Department Response: The Department will add BCaBAs to the list of approved providers and will include schools to the places where treatments, interventions and behavior modification services can be delivered.

Further Comment: The final comment recommended adding the verbiage “A Board Certified Autism Technician (BCAT) by the Behavioral Intervention Certification Council (BICC)” under the Stage 3 AI Services Practitioner Requirements section.

Department Response: The Department will add “A Board Certified Autism Technician (BCAT) by the Behavioral Intervention Certification Council (BICC)” under the Stage 3 AI Services Practitioner Requirements section.

Standard Funding Questions NM SPA 22-0022 Applied Behavior Analysis (ABA) Coverage

The following questions are being asked and should be answered in relation to all payments made to all providers reimbursed pursuant to a methodology described in Attachment 4.19-B of this SPA. For SPAs that provide for changes to payments for clinic or outpatient hospital services or for enhanced or supplemental payments to physician or other practitioners, the questions must be answered for all payments made under the state plan for such service.

1. Section 1903(a)(1) provides that Federal matching funds are only available for expenditures made by States for services under the approved State plan. Do providers receive and retain the total Medicaid expenditures claimed by the State (includes normal per diem, supplemental, enhanced payments, other) or is any portion of the payments returned to the State, local governmental entity, or any other intermediary organization? If providers are required to return any portion of payments, please provide a full description of the repayment process. Include in your response a full description of the methodology for the return of any of the payments, a complete listing of providers that return a portion of their payments, the amount or percentage of payments that are returned and the disposition and use of the funds once they are returned to the State (i.e., general fund, medical services account, etc.)

STATE RESPONSE: Providers are not required to return any portion of payments for these services.

2. Section 1902(a)(2) provides that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan. Please describe how the state share of each type of Medicaid payment (normal per diem, supplemental, enhanced, other) is funded. Please describe whether the state share is from appropriations from the legislature to the Medicaid agency, through intergovernmental transfer agreements (IGTs), certified public expenditures (CPEs), provider taxes, or any other mechanism used by the state to provide state share. Note that, if the appropriation is not to the Medicaid agency, the source of the state share would necessarily be derived through either through an IGT or CPE. In this case, please identify the agency to which the funds are appropriated. Please provide an estimate of total expenditure and State share amounts for each type of Medicaid payment. If any of the non-federal share is being provided using IGTs or CPEs, please fully describe the matching arrangement including when the state agency receives the transferred amounts from the local governmental entity transferring the funds. If CPEs are used, please describe the methodology used by the state to verify that the total expenditures being certified are eligible for Federal matching funds in accordance with 42 CFR 433.51(b). For any payment funded by CPEs or IGTs, please provide the following:
 - (i) a complete list of the names of entities transferring or certifying funds;

- (ii) the operational nature of the entity (state, county, city, other);
- (iii) the total amounts transferred or certified by each entity;
- (iv) clarify whether the certifying or transferring entity has general taxing authority: and,
- (v) whether the certifying or transferring entity received appropriations (identify level of appropriations).

STATE RESPONSE: These services are paid using appropriations from the state legislature from funds received by broad-based taxes levied by the state.

3. Section 1902(a)(30) requires that payments for services be consistent with efficiency, economy, and quality of care. Section 1903(a)(1) provides for Federal financial participation to States for expenditures for services under an approved State plan. If supplemental or enhanced payments are made, please provide the total amount for each type of supplemental or enhanced payment made to each provider type.

STATE RESPONSE: No supplemental or enhanced payments are made.

4. For clinic or outpatient hospital services please provide a detailed description of the methodology used by the state to estimate the upper payment limit (UPL) for each class of providers (State owned or operated, non-state government owned or operated, and privately owned or operated). Please provide a current (i.e., applicable to the current rate year) UPL demonstration.

STATE RESPONSE: These fee schedule changes do not apply to any provider subject to the UPL calculations.

5. Does any governmental provider receive payments that in the aggregate (normal per diem, supplemental, enhanced, other) exceed their reasonable costs of providing services? If payments exceed the cost of services, do you recoup the excess and return the Federal share of the excess to CMS on the quarterly expenditure report?

STATE RESPONSE: If governmental providers were to receive payments that exceed their reasonable cost of providing services, the excess payment would be recovered and the federal share of the excess would be reported and returned to CMS.