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Applied Behavior Analysis FAQ

1. What is Applied Behavior Analysis or ABA?

The practice of using behavioral stimuli to produce social improvement in human behavior. Implementation of ABA services is meant to provide a functional analysis of the relationship between a person's environment and their behavior.

2. Does Medicaid policy allow schools to be a setting for Applied Behavioral Analysis (ABA) services.

Medicaid policy is silent on allowable settings for ABA services. Per 8.321.2.12.F.4., "Activities that take place in the school setting and have the potential to supplant educational services" are considered non-covered services. State regulations specifically list ABA as a teaching strategy for students with autism spectrum disorder (ASD). 6.31.2.11(B)(5)(k) NMAC.

3. Does the Public Education Department (PED) or the School Health Office (SHO) have the authority to require schools to allow ABA services on school premises? What if an outside entity deems ABA services medically necessary?

No, PED or the SHO does not have the authority to require schools to provide ABA services because in New Mexico school districts maintain local control over operations.

4. Do local education agencies/state funded educational agencies/regional education cooperatives (LEAs/SFEAs/RECs) have the final say as to whether ABA services are provided in their school setting? What if ABA services are deemed medically necessary from an outside entity?

Yes, LEAs/SFEAs/RECs decide who is allowed to provide services in the school. Even if the ABA services are deemed medically necessary, the LEA/SFEA/REC still has local authority to

determine what services will be provided in the school setting. Neither PED nor SHO have the authority to override this decision.

5. Why do LEAs/SFEAs/RECs have the final decision as to which ABA services and providers are allowed within the school setting?

In the state of New Mexico, schools are responsible for implementing programming and services for students with disabilities. Per 6.31.2.9 NMAC, an IEP Team may determine that ABA services are needed in order to provide a student with a free appropriate public education (FAPE), which is the substantive legal requirement under the Individuals with Disabilities Act (IDEA). In this scenario, the school selects who to hire or contract with for providing in-school ABA services. An agreement for a particular agency to come on-site will spell out the service delivery requirements to ensure the student receives these services in accordance with their IEP. If services are provided in this manner, they would not be allowable for MSBS billing as ABA services are not viewed as a related service under IDEA.

6. If a LEA/SFEA/REC decides to allow ABA providers onto school premises to provide ABA services, are they required to have an agreement such as a Memo of Understanding (MOU)?

No, an MOU is not required. It is up to the discretion of the school district if they establish an MOU.

7. If an MOU is reached between the LEA/SFEA/REC and the ABA provider, then what terms are contained in such an agreement?

While the specific contents of the MOU will vary per unique situation, general purposes of an MOU would be to clarify the obligations between the parties. For example, the memorandum of understanding could establish the timeframes for when a service is at school, safety protocols, background check procedures, service delivery logistics, and aligning the services with the frequencies set forth in the service plan. Although an MOU sets forth the parameters of service delivery it does NOT serve as a financial agreement.

8. If a LEA/SFEA/REC decides to allow ABA providers onto school premises to provide ABA services, which party bills for services?

Schools do not bill for services, as ABA services are not reimbursable for the MSBS program. ABA providers and/or ABA organizations would be responsible for billing for ABA services through their own billing mechanism in accordance with 8.321.2.12 NMAC.

9. Would providing ABA services in LEAs/SFEAs/RECs run the risk of duplicating services offered and paid for as part of on an Individualized Education Program (IEP)?

ABA services are not eligible as a related service for Medicaid reimbursement. Accordingly, there is no risk of double dipping or duplicating services.

10. How are ABA services provided in conjunction with a student's other special education programming and services?

The provision of ABA services must not come at the cost of reducing a student's access to the other programs and services listed in their IEP because this could result in a denial of FAPE. School staff and the ABA provider should collaborate on how best to blend in ABA services to support the student's participation in their special education services.

11. Would ABA providers in a LEA/SFEA/REC setting fall under the Health Insurance Portability and Accountability Act (HIPAA) or under the Family Educational Rights and Privacy Act (FERPA)?

This depends on the source of payment. If a provider is paid by the school district, they fall under FERPA and the records should be maintained by the school. Outside ABA providers not paid by the school district are subject HIPAA and the records are maintained by the ABA provider.

12. How are ABA services provided in LEAs/SFEAs/RECs different from having a service animal in a school setting?

A service animal is a recognized accommodation under Title II of the Americans with Disabilities Act (ADA). The provision of ABA services at school may constitute a reasonable modification under Section 504 or Title II of the ADA only if it is needed for the student to access to the benefits of a public education. In other words, ABA services must be necessary for the student to access school.

13. What is the difference between ABA that is deemed to be educationally necessary and ABA that is deemed to be medically necessary?

Educationally necessary ABA services are when the child needs ABA to access their education. ABA services are deemed medically necessary when the child is at-risk for autism spectrum disorder or they are already diagnosed and services are needed to ameliorate symptoms, develop adaptive behaviors, and reduce maladaptive behaviors.

14. What is the distinction between a provider being contracted with an LEA/SFEA/REC and a provider that delivers services within the LEA/SFEA/REC setting?

A contracted provider is one in which the school pays the provider. An outside provider that delivers services in a school setting would need the permission to deliver services within the school, potentially have an MOU or agreement in place, and delivered services billed through an outside billing mechanism.

15. What if ABA services are determined to be medically necessary from an outside entity but the LEAs/SFEAs/RECs determines that ABA services are not educationally necessary and decline to have ABA providers on school premises?

Due to schools having local control, and the ability to decide who is allowed on school premises, ABA providers would not be allowed to deliver those services within the school setting. PED and the SHO would not have the authority to “override” a school’s decision to decline an ABA provider or ABA organization from entering school premises to deliver ABA services.

Acronym Key

ABA – Applied Behavior Analysis

ADA – Americans with Disabilities Act

FAPE – Free and Appropriate Public Education

FERPA – Family Educational Rights and Privacy Acts

HIPAA – Health Insurance Portability and Accountability Act

HSD – Human Services Department

IDEA – Individuals with Disabilities Act

IEP – Individualized Education Program

LEA/SFEA/REC - Local Education Agency/State Funded Educational Agency/Regional Education Cooperative; also referred to as “schools” or “school district” in this document.

MCO – Managed Care Organization

MOU – Memo of Understanding

MSBS – Medicaid School Based Services

PED – Public Education Department