

WSR 23-17-087

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed August 15, 2023, 2:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-13-023.

Title of Rule and Other Identifying Information: WAC

182-531A-0200 Applied behavior analysis (ABA)—Definitions,
182-531A-0400 Applied behavior analysis (ABA)—Client eligibility,
182-531A-0500 Applied behavior analysis (ABA)—Stage one: COE evaluation and order, 182-531A-0600 Applied behavior analysis (ABA)—Stage two: Functional assessment and treatment plan development, and
182-531A-0800 Applied behavior analysis (ABA)—Provider requirements.

Hearing Location(s): On September 26, 2023, at 10:00 a.m. The health care authority (HCA) holds public hearings virtually without a physical meeting place. To attend the virtual public hearing, you must register in advance https://us02web.zoom.us/webinar/register/WN_E7tAxNWnSVCG-SIhvxxsWg. If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of Intended Adoption: September 27, 2023.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by September 26, 2023, 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service 711, email Johanna.larson@hca.wa.gov, by September 8, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending these rules to: (1) Remove language referencing a center of excellence (COE) as a facility rather than an individual provider; for the purposes of this chapter, COE means an individual provider.

(2) Update the COE definition in WAC 182-531A-0200.

(3) Add physician assistants and naturopaths to the list of eligible providers who can diagnose autism spectrum disorder.

(4) Add additional clarification and requirement that ARNPs, physicians, physician assistants, and naturopaths must complete the required COE training authorized by HCA. Additionally, physician assistants and naturopaths, in order to be recognized as a COE by HCA, must submit a signed COE attestation form, HCA 13-0009, to HCA.

(5) Remove subsection (12)(b); the attestation form regarding ABA qualifications, HCA 13-0008, is not required by the certified behavior technician.

(6) Clarify in WAC 182-531A-0800(6) all COEs must be enrolled with HCA and all COEs providing services to clients enrolled with a managed care organization (MCO) must also be contracted with the MCO per the MCO contract specifications in accordance with 42 C.F.R. 438.14 to be reimbursed for fee-for-service or MCO services.

(7) Add housekeeping changes such as updating the term "clinician" to "provider" for language consistency and the term "order or ordered" to "prescribed or prescription" to align with standard of language that ABA therapy is a prescription.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Valerie Freudenstein, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1344; Implementation and Enforcement: Alyssa Jennings, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-1194.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. HCA is amending these rules to provide more precise language to define the program parameters and ensure consistency. This change does not impose a more-than-minor cost.

August 15, 2023
Wendy Barcus
Rules Coordinator

OTS-4723.2

AMENDATORY SECTION (Amending WSR 22-08-035, filed 3/29/22, effective 4/29/22)

WAC 182-531A-0200 Applied behavior analysis (ABA)—Definitions.

The following definitions and those found in chapter 182-500 WAC, medical definitions, and chapter 182-531 WAC, physician-related services, apply throughout this chapter.

Applied behavior analysis or **ABA** - Applied behavior analysis (ABA) is an empirically validated approach to improve behavior and skills related to core impairments associated with autism and a number of other developmental disabilities. ABA involves the systematic application of scientifically validated principles of human behavior to change inappropriate behaviors. ABA uses scientific methods to reliably demonstrate that behavioral improvements are caused by the prescribed interventions. ABA's focus on social significance promotes a family-centered and whole-life approach to intervention. Common methods used include: Assessment of behavior, caregiver interviews, direct observation, and collection of data on targeted behaviors. A single-case design is used to demonstrate the relationship between the environment and behavior as a means to implement client-specific ABA therapy treatment plans with specific goals and promote lasting change. ABA also includes the implementation of a functional behavior assessment to identify environmental variables that maintain challenging behavior and allow for more effective interventions to be developed that reduce challenging behaviors and teach appropriate replacement behaviors.

Autism spectrum disorder (ASD) - A condition, as defined by *Diagnostic and Statistical Manual of Mental Disorders* (DSM) or *Diagnostic Classification of Mental Health and Developmental Disorders of Infancy and Early Childhood* (DC 0-5) criteria.

Autism spectrum disorder (ASD) diagnostic tool - A validated tool used to establish the presence (or absence) of autism and to make a definitive diagnosis which will be the basis for treatment decisions and assist in the development of a multidisciplinary clinical treatment plan. Examples of autism diagnostic tools include:

- (a) Autism Diagnosis Interview (ADI); and
- (b) Autism Diagnostic Observation Schedule (ADOS).

Autism spectrum disorder (ASD) screening tool - A tool used to detect ASD indicators or risk factors which then require confirmation. Examples of screening tools include, but are not limited to:

- (a) Ages and Stages Questionnaire (ASQ);
- (b) Communication and Symbolic Behavior Scales (CSBS);
- (c) Parent's Evaluation and Developmental Status (PEDS);
- (d) Modified Checklist for Autism in Toddlers (MCHAT); and
- (e) Screening Tools for Autism in Toddlers and young children (STAT).

Centers of excellence (COE) - (~~(A facility that employs a health care provider, or alternatively)~~) An individual provider who has been trained, as listed in WAC 182-531A-0800, to establish or confirm the diagnosis of autism spectrum disorder and that has been designated by the agency as a center of excellence provider. For the purposes of this chapter, center of excellence (COE) refers to an individual provider, not a facility.

Client - For the purposes of this chapter, client means a person enrolled in Washington apple health (WAH).

Family member - A client's parent, guardian, caregiver, or other support person.

Qualifying diagnosis - A diagnosis of an ASD, as defined by the DSM or DC 0-5, or other intellectual or developmental disability for which there is evidence ABA is effective.

AMENDATORY SECTION (Amending WSR 22-08-035, filed 3/29/22, effective 4/29/22)

WAC 182-531A-0400 Applied behavior analysis (ABA)—Client eligibility. To be eligible for applied behavior analysis (ABA) services, a client must:

- (1) Be covered under Washington apple health (WAH);
- (2) Provide documentation created by a COE (~~(clinician)~~) provider

that:

(a) Establishes the presence of functional impairment; delay in communication, behavior, or social interaction; or repetitive or stereotyped behavior;

(b) Establishes that the client's impairment, delay, or behaviors adversely affect development or communication, or both, such that:

(i) The client cannot adequately participate in home, school, or community activities because the behavior or skill deficit interferes with these activities; or

(ii) The client's behavior endangers the client or another person, or impedes access to home and community activities; and

(c) An agency-recognized center of excellence (COE) (~~(clinician)~~) provider has confirmed that:

- (i) The client meets all requirements in (a) and (b) of this subsection;
- (ii) The client has a qualifying diagnosis;
 - (A) Autism spectrum disorder; or
 - (B) Developmental/intellectual disability;
- (iii) There is a reasonable expectation the requested services will result in measurable improvement in either the client's behavior, skills, or both; and
- (iv) Either:
 - (A) Less intrusive or less intensive behavioral interventions have been tried and have not been successful; or
 - (B) No equally effective and substantially less costly alternative is available for reducing interfering behaviors, increasing pro-social skills and behaviors, or maintaining desired behaviors.

AMENDATORY SECTION (Amending WSR 22-08-035, filed 3/29/22, effective 4/29/22)

WAC 182-531A-0500 Applied behavior analysis (ABA)—Stage one: COE evaluation and (~~order~~) prescription. (1) Any person may refer a client suspected of meeting the criteria in WAC 182-531A-0400 to a center of excellence (COE) provider for an evaluation.

(2) The individual COE provider must complete a comprehensive diagnostic evaluation and provide:

- (a) Documentation showing how the autism spectrum disorder or other intellectual/developmental disability (for which there is evidence ABA is effective) diagnosis was made or confirmed by an approved individual COE provider that includes:
 - (i) Results of formal diagnostic procedures performed by a (~~clinician~~) provider, including name of measure, dates, and results, as available; or
 - (ii) Clinical findings and observations used to confirm the diagnosis;
- (b) Documentation showing that the client's behaviors or skills deficits adversely affect development or communication, or demonstrating injurious behavior, such that:
 - (i) The client cannot adequately participate in home, school, or community activities because behavior or skill deficit interferes with these activities; or
 - (ii) The client presents a safety risk to self or others;
- (c) Documentation showing:
 - (i) Less intrusive or less intensive behavioral interventions have been tried and were not successful; or
 - (ii) There is no equally effective alternative available for reducing interfering behaviors, increasing prosocial behaviors, or maintaining desired behaviors;
- (d) Recommendations that address all of the client's health care needs;
- (e) A statement that the evaluating and prescribing provider believes that there is a reasonable expectation that the requested ABA services will result in measurable improvement in the client's behavior or skills; and

(f) ~~((An order))~~ A prescription for ABA services. If ~~((ordered))~~ prescribed, a copy of the ~~((COE's))~~ COE provider's comprehensive diagnostic evaluation and multidisciplinary clinical treatment plan must be forwarded to the ABA provider selected by the client or the client's guardian under this chapter or provided to the client or the client's guardian to forward to the selected ABA provider.

(3) The COE provider must also include the following items if ~~((it possesses))~~ they possess a copy:

(a) Results of routine developmental screening;

(b) Audiology and vision assessment results, or documentation that vision and hearing were determined to be within normal limits during assessment and not a barrier to completing a valid evaluation;

(c) The name of the completed autism spectrum disorder (ASD) screening tool, including date completed and significant results;

(d) Documentation of a formal cognitive or developmental assessment performed by the COE provider or another qualified ~~((clinician))~~ provider, including name of measure, dates, results, and standardized scores providing verbal, nonverbal, and full-scale scores; and

(e) Documentation of a formal adaptive behavior assessment performed by the COE provider for developmental/intellectual disability or another qualified ~~((clinician))~~ provider, including name of measure, dates, results, and standardized scores providing scores of each domain.

AMENDATORY SECTION (Amending WSR 22-08-035, filed 3/29/22, effective 4/29/22)

WAC 182-531A-0600 Applied behavior analysis (ABA)—Stage two:

Functional assessment and treatment plan development. (1) If the center of ~~((excellence's (COE's) evaluating and prescribing))~~ excellence (COE) provider has ~~((ordered))~~ prescribed applied behavior analysis (ABA) services, the client may begin stage two - ABA assessment, functional analysis, and ABA therapy treatment plan development.

(2) Prior authorization must be obtained from the agency prior to implementing the ABA therapy treatment plan. The prior authorization request must be received no more than 60 days from the date of the assessment and ABA therapy treatment plan. See WAC 182-501-0165 for agency authorization requirements.

(3) The client or the client's legal guardian selects the ABA provider and the setting in which services will be rendered. ABA services may be rendered in one of the following settings:

(a) Day services program, which mean an agency-approved, outpatient facility or clinic-based program that:

(i) Employs or contracts with a lead behavior analysis therapist (LBAT), therapy assistant, speech therapist, and if clinically indicated, an occupational therapist, physical therapist, psychologist, medical ~~((clinician))~~ provider, and dietitian;

(ii) Provides multidisciplinary services in a short-term day treatment program setting;

(iii) Delivers comprehensive intensive services;

(iv) Embeds early, intensive behavioral interventions in a developmentally appropriate context;

(v) Provides an individualized developmentally appropriate ABA therapy treatment plan for each client; and

(vi) Includes family support and training.

(b) Community-based program, which means a program that provides services in a natural setting, such as a school, home, workplace, office, or clinic. A community-based program:

(i) May be used after discharge from a day services program (see subsection (3)(a) of this section);

(ii) Provides a developmentally appropriate ABA therapy treatment plan for each client;

(iii) Provides ABA services in the home (wherever the client resides), office, clinic, or community setting, as required to accomplish the goals in the ABA therapy treatment plan. Examples of community settings are: A park, restaurant, child care, early childhood education, school, or place of employment and must be included in the ABA therapy treatment plan with services being provided by the enrolled LBAT or therapy assistant approved to provide services via authorization;

(iv) Requires recertification of medical necessity through continued authorization; and

(v) Includes family or caregiver education, support, and training.

(4) An assessment, as described in this chapter, must be conducted and an ABA therapy treatment plan developed by an LBAT in the setting chosen by the client or the client's legal guardian. The ABA therapy treatment plan must follow the agency's ABA therapy treatment plan report template and:

(a) Be signed by the LBAT responsible for the plan development and oversight;

(b) Be applicable to the services to be rendered over the next six months, based on the LBAT's judgment, and correlate with the ((COE's)) COE provider's current diagnostic evaluation (see WAC 182-531A-0500(2));

(c) Address each behavior, skill deficit, and symptom that prevents the client from adequately participating in home, school, employment, community activities, or that presents a safety risk to the client or others;

(d) Be individualized;

(e) Be client-centered, family-focused, community-based, culturally competent, and minimally intrusive;

(f) Take into account all school or other community resources available to the client, confirm that the requested services are not redundant or in conflict with, but are in coordination with, other services already being provided or otherwise available, and coordinate services (e.g., from school and special education, from early intervention programs and early intervention providers or from the developmental disabilities administration) with other interventions and treatments (e.g., speech therapy, occupational therapy, physical therapy, family counseling, and medication management);

(g) Focus on family engagement and training;

(h) Identify and describe in detail the targeted behaviors and symptoms;

(i) Include objective, baseline measurement levels for each target behavior/symptom in terms of frequency, intensity, and duration, including use of curriculum-based measures, single-case studies, or other generally accepted assessment tools;

(j) Include a comprehensive description of treatment interventions, or type of treatment interventions, and techniques specific to each of the targeted behaviors/symptoms, (e.g., discrete trial train-

ing, reinforcement, picture exchange, communication systems) including documentation of the number of service hours, in terms of frequency and duration, for each intervention;

(k) Establish treatment goals and objective measures of progress for each intervention specified to be accomplished in the authorized treatment period;

(l) Incorporate strategies for promoting the learning of skills that improve targeted behaviors within settings as listed in this chapter;

(m) Integrate family education, goals, training, support services, and modeling and coaching family/client interaction;

(n) Incorporate strategies for coordinating treatment with school-based education and vocational programs, behavioral health treatment, habilitative supports, and community-based early intervention programs, and plan for transition through a continuum of treatments, services, and settings; and

(o) Include measurable discharge criteria and a discharge plan.

AMENDATORY SECTION (Amending WSR 22-08-035, filed 3/29/22, effective 4/29/22)

WAC 182-531A-0800 Applied behavior analysis (ABA)—Provider requirements.

Center of excellence.

(1) For the purposes of this chapter, center of excellence (COE) refers to an individual provider, not a facility.

(2) A center of excellence (COE) (~~may include a facility or an individual.~~

~~(2) The COE facility evaluating and prescribing providers must function as a multidisciplinary care team)~~ must be an evaluating and prescribing provider.

(3) The COE provider must be (~~or must employ~~):

(a) A person licensed under Title 18 RCW who is experienced in the diagnosis and treatment of autism spectrum disorders and is:

(i) A developmental pediatrician;

(ii) A neurologist;

(iii) A pediatric neurologist;

(iv) A pediatric psychiatrist;

(v) A psychiatrist; or

(vi) A psychologist; or

(b) A qualified medical provider who meets qualifications in subsection (4) of this section and who has been designated by the agency as a COE provider. (~~Behavioral health clinicians do not apply.~~)

(4) With the exception of providers listed in subsection (3)(a) of this section, ARNPs, physicians, physician assistants, and naturopaths must complete the required COE training authorized by the agency. The COE provider must be prequalified by the agency (~~or employ people who~~) and meet the following criteria:

(a) ARNPs, physicians, (~~and psychologists~~) physician assistants, and naturopaths must have demonstrated expertise in diagnosing an autism spectrum disorder by:

(i) Using a validated diagnostic tool;

(ii) Confirming the diagnosis by observing the client's behavior and interviewing family members; or

(iii) Reviewing the documentation available from the client's primary care provider, individualized education plan, or individualized family service plan;

(b) ARNPs, physicians, ~~((and psychologists))~~ physician assistants, and naturopaths must understand the medically necessary use of applied behavior analysis (ABA); and

(c) ARNPs, physicians, ~~((and psychologists))~~ physician assistants, and naturopaths must be sufficiently qualified to conduct and document a comprehensive diagnostic evaluation~~((7))~~ and develop a multidisciplinary clinical treatment plan under WAC 182-531A-0500(2).

(5) To be recognized as a COE by the agency, the provider, as listed in (4)(a) of this section, must submit a signed COE Attestation form, HCA 13-0009, to the agency.

(6) ~~((The))~~ To be reimbursed for fee-for-service or agency-contracted managed care organization (MCO) services:

(a) All COE providers must be enrolled with the agency ~~((or the client's managed care organization to be reimbursed for services.~~

~~(7) Examples of providers who can qualify as a designated COE include:~~

~~(a) Multidisciplinary clinics;~~

~~(b) Individual qualified provider offices; and~~

~~(c) Neurodevelopmental centers.~~

~~(8)).~~

(b) All COEs providing services to clients enrolled with an agency-contracted MCO must also be contracted with the MCO, per the MCO contract specifications in accordance with 42 C.F.R. § 438.14.

(7) All ABA providers must meet the specified minimum qualifications and comply with applicable state laws.

Lead behavior analysis therapist.

~~((9))~~ (8) The lead behavior analysis therapist (LBAT) must:

(a) Be licensed by the department of health (DOH) to practice independently as a behavior analyst or an assistant behavior analyst with supervision from a licensed behavior analyst or licensed psychologist (see chapter 18.380 RCW) and be an eligible provider according to chapter 182-502 WAC; or

(b) Be a DOH-licensed mental health counselor, DOH-licensed marriage and family therapist, DOH-licensed independent clinical social worker, DOH-licensed advanced social worker, or DOH-licensed psychologist (see chapter 18.380 RCW). Providers listed in this subsection must have a signed Applied Behavior Analysis (ABA) Attestation form, HCA 13-0008, regarding certification as a board-certified behavior analyst (BCBA) or a board-certified assistant behavior analyst (BCaBA) on file with the agency.

~~((10))~~ (9) The LBAT must enroll as a servicing provider under chapter 182-502 WAC, be authorized to supervise ancillary providers, and be:

(a) A DOH-licensed behavior analyst (LBA) (see chapter 18.380 RCW); or

(b) A DOH-licensed assistant behavior analyst (LABA) (see chapter 18.380 RCW).

~~((11))~~ (10) If the LBAT's role is filled by a LABA, the responsibilities below must be fulfilled by both the LABA and the supervising LBA or licensed psychologist, as required by DOH under chapter 246-805 WAC. The LBAT must:

(a) Develop and maintain an ABA therapy treatment plan that is comprehensive, incorporating treatment provided by other health care professionals, and that states how all treatment will be coordinated; and

(b) Supervise at least five percent of the total direct care provided by the certified behavior technician per week.

Certified behavior technician.

~~((12))~~ (11) The certified behavior technician (CBT) must ~~((a))~~ be certified by DOH as a CBT under chapter 18.380 RCW in good standing with no license restrictions ~~((and~~
~~(b) Have a signed Applied Behavior Analysis (ABA) Attestation form, HCA 13-0008, regarding ABA qualifications on file with the agency))~~.

~~((13))~~ (12) The CBT must enroll as a servicing provider under chapter 182-502 WAC.

~~((14))~~ (13) The CBT must:

(a) Deliver services according to the ABA therapy treatment plan;

(b) Be supervised by a DOH-licensed professional who meets the requirements under WAC 246-805-330; and

(c) Review the client's progress with the supervisor at least every two weeks to confirm that the ABA therapy treatment plan still meets the client's needs. If changes are clinically indicated, they must be made by the supervisor.

Facility-based day program.

~~((15))~~ (14) All facility-based day program providers must meet the requirements under WAC 182-531A-0600 (3)(a), and meet the following requirements:

(a) Outpatient hospital facilities must meet the applicable DOH licensure requirements under chapter 246-320 WAC;

(b) Any provider rendering direct ABA services in the facility-based day program must meet the qualifications and applicable licensure or certification requirements as described in this subsection, as applicable;

(c) Any provider serving as a member of the multidisciplinary care team must be licensed or certified under Title 18 RCW; and

(d) Have a signed ABA Day Program Capacity Attestation form, HCA 13-0007, on file with the agency.