

WSR 24-08-053

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed March 29, 2024, 8:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-03-161.

Title of Rule and Other Identifying Information: WAC

182-531A-0900 Applied behavior analysis (ABA)—Covered services.

Hearing Location(s): On May 7, 2024, 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_PQetrA72RJuTy42XnHFNMQ. 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: Not sooner than May 8, 2024.

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 May 7, 2024, by 11:59 p.m.

Assistance for Persons with Disabilities: Contact Johanna Larson, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay service (TRS) 711, email Johanna.larson@hca.wa.gov, by April 26, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: HCA is amending this rule to specify that HCA's ABA program does not pay for services provided by a client's parent, guardian, caregiver, or other support person.

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: Brian Jensen, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-0815; 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 this rule to specify that HCA's ABA program does not pay for services provided by a client's parent, guardian, caregiver, or other support person.

The Behavior Analyst Certification Board (BACB) is a national organization that certifies ABA providers. ABA provider types include a board certified behavior analyst (BCBA), board certified assistant behavior analyst (BCaBA) and registered behavior technician (RBT). In Washington state, the department of health has three ABA professions that correspond with BACB's provider types, including a licensed be-

havior analyst (LBA), licensed assistant behavior analyst (LABA) and certified behavior technician (CBT). The LBA conducts assessments, develops, and maintains a treatment plan and oversees the implementation of the treatment plan by the LABA or CBT. The LABA may perform similar duties as an LBA, but under the supervision of an LBA.

BACB's ethics code for behavior analysts and RBT ethics code both require that providers avoid multiple relationships, including professional, personal, and familial relationships with clients, colleagues, supervisors, and supervisees. For example, if a parent became an RBT for their child, this would be considered a multiple relationship for both the RBT and the supervising LBA. The LBA would be the LBA of the parent's child in addition to their supervisor. BACB recently published a newsletter specifying that parents must not act as RBT for their own children and differentiates this from participating in caregiver training. Multiple relationships in ABA create conflicts of interest and would likely cloud a provider's judgment and lead to procedural drift. HCA is making the rule change to prevent conflicts of interest and promote ethical, effective treatment for apple health recipients.

In order for businesses to comply with the rule change, they must ensure that any ABA services billed to HCA or a managed care organization (MCO) were not provided by a family member of the client. If any of their apple health clients are receiving ABA services from a family member at the time of the rule change, they will need to assign a different provider to the client, switch to a different model of care, or refer the client to a different ABA provider. For example, if an ABA company is employing a parent as a CBT for one's own child, the company may either assign a different CBT to the child, move to a caregiver training only model of ABA, or refer the client to a different company. The costs associated with hiring and training new staff will depend on whether the provider is already licensed and whether the company chooses to reimburse the provider for any training, application, or examination fees. In a caregiver training only model, the LBA and/or LABA, who is not a family member of the client, provides training and consultation to the caregivers on the use of ABA interventions. This is not considered providing direct ABA services to their own child. A caregiver training only model typically consists of fewer hours per week overall than a traditional model of ABA. However, the rates published on the apple health fee-for-service ABA fee schedule for caregiver training is higher than the rates for providing direct ABA services. The number of units of each code is highly individualized to each client receiving ABA.

To obtain information for the purposes of completing a small business economic impact statement, HCA surveyed its ABA stakeholders. HCA provided a copy of the proposed rule, asked stakeholders for input on the rule draft, and asked stakeholders to provide information relevant to the following issues:

- Whether the proposed rule imposes compliance or other costs on your business, and if so, the kind and extent of those costs.
- Whether the proposed rule will result in lost revenue, and if so, the extent of that lost revenue.
- How HCA could amend its proposed rule to reduce the costs and other impacts the rule imposes on businesses while retaining the rule's objectives.

On February 21, 2024, HCA sent the survey by electronic mail to the 3,476 addresses that stakeholders have registered for the receipt of HCA communications related to any applied behavior analysis rule

making. HCA requested receipt of responses by March 6, 2024. HCA received no responses.

A copy of the detailed cost calculations may be obtained by contacting Alyssa Jennings, P.O. Box 45502, Olympia, WA 98504-5502, phone 360-725-1194, fax 360-586-9727, TRS 711, email alyssa.jennings@hca.wa.gov.

March 29, 2024
Wendy Barcus
Rules Coordinator

OTS-5218.2

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

WAC 182-531A-0900 Applied behavior analysis (ABA)—Covered services. (1) The medicaid agency covers only the following applied behavior analysis (ABA) services, delivered in settings described in WAC 182-531A-0600, for eligible clients:

- (a) The ABA assessments that determine the relationship between environmental events and the client's behaviors;
- (b) The direct provision of ABA services by the therapy assistant (TA) or lead behavior analysis therapist (LBAT);
- (c) Initial ABA assessment and development of a written, initial ABA therapy treatment plan, limited to one per year;
- (d) Up to four additional ABA assessments and revisions of the initial ABA therapy treatment plan per year, if necessary to meet client's needs;
- (e) One lifetime authorization of day treatment services. If a provider's request for covered services exceeds limitations in this section, the agency evaluates the request under WAC 182-501-0169.
- (f) Supervision of the TA;
- (g) Training and evaluation of family members or caregivers to carry out the approved ABA therapy treatment plans;
- (h) Observation of the client's behavior to determine the effectiveness of the approved ABA therapy treatment plan; and
- (i) On-site assistance in the event of a crisis.

(2) The agency covers the following services, which may be provided in conjunction with ABA services under other agency programs:

- (a) Counseling;
- (b) Dietician services;
- (c) Interpreter services;
- (d) Occupational therapy;
- (e) Physical therapy;
- (f) Speech and language therapy; and
- (g) Transportation services.

(3) The agency does not (~~authorize payment of~~) pay for ABA services:

- (a) That duplicate services provided in another setting; or
- (b) That are provided by a family member.

(4) If a provider's request for covered services exceeds limitations in this section, the agency evaluates the request under WAC 182-501-0169.