PROPOSED AMENDMENT

13 CSR 70-98.030 Applied Behavior Analysis Services. The division is amending all sections of the rule, is adding a new section (2), and is renumbering accordingly.

PURPOSE: This amendment replaces the word “recipient” with the word “participant” where it occurs in the existing rule. This amendment removes language requiring licensure for independent practice for behavior analysts to participate in the program. This amendment clarifies language regarding licensure to align this rule with MO HealthNet practice wherein providers in bordering states may enroll and provide services. This amendment also adds incorporation by reference language for two (2) definitions and for the fee schedule.

(1) [The following definitions will be used in administering this rule:/Definitions.

(A) “Applied Behavior Analysis (ABA)” means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationships between environment and behavior. ABA does not include psychological testing, personality assessment, intellectual assessment, neuropsychological assessment, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, family therapy, or counseling;

(B) “ABA Assessment for Intervention Planning” means assessment that is conducted according to best practice guidelines and considers the individual’s specific strengths and concerns to inform the intervention planning process;

(C) “ABA intervention” means a type of intervention that involves directly and objectively measuring potential target behaviors and environmental events that influence them; constructing detailed, individualized behavior analytic treatment plans; using reinforcement and other scientifically validated procedures to build functional skills and reduce behaviors that jeopardize health, safety, and independent functioning; managing treatment environments to maximize client progress; implementing treatment protocols repeatedly, frequently, and consistently; measuring target behaviors directly and frequently; and adjusting treatment protocols based on data;

(D) “Licensed Psychologist (LP)” means an individual who is currently licensed by the psychology board of the state in which s/he is practicing;

(E) “Autism Spectrum Disorder (ASD)” — as defined in the most recent edition of Diagnostic and Statistical Manual of Mental Disorders [of], Fifth Edition, (DSM-5) pages 50-59 and updated by the DSM-5 Update, August 2015. This definition is incorporated by reference and made part of this rule as published by the American Psychiatric Association Publishing at its website at https://appi.org. A copy of the DSM-5 is available for reference at MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. The updates to DSM-5 criteria and text are available online at https://www.psychiatry.org/psychiatrists/practice/dsm/updates-to-dsm-5/updates-to-dsm-5-
and include the update to criterion A for autism spectrum disorder dated August 2015. This rule does not incorporate any subsequent amendments or additions;

[(C)](F) “Best practice guidelines” — means guidelines described in the Missouri Autism Guidelines Initiative’s publications entitled Autism Spectrum Disorders: Missouri Best Practice Guidelines for Screening, Diagnosis, and Assessment as published by the Missouri Department of Mental Health at their website at https://www.autismguidelines.dmh.mo.gov/pdf/Guidelines.pdf, August 25, 2022, and Autism Spectrum Disorders: Guide to Evidence-Based Interventions as published by the Missouri Department of Mental Health at their website at https://www.autismguidelines.dmh.mo.gov/documents/Interventions.pdf, August 25, 2022. These guidelines are incorporated by reference and made a part of this rule and a copy of each is available for reference at the MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109. This rule does not incorporate any subsequent amendments or additions

[(D)](G) Diagnostic evaluation — means evaluation conducted according to best practice guidelines in order to determine if an ASD is present;

[(E)](I) “Licensed Behavior Analyst (LBA)” — means an individual who is currently licensed by the [Missouri Behavior Analyst Advisory Board to practice ABA independently] behavior analyst board of the state in which s/he is practicing;

[(F) ABA qualified Licensed Psychologist (LP) — an individual who is currently licensed by Missouri to practice psychology and who has ABA in the scope of his/her education, training, and competence;]

[(G) Licensed Assistant Behavior Analyst (LABA)—an individual who is currently licensed by Missouri to practice behavior analysis under the supervision of an LBA;]

[(H) Technician—an individual who is credentialed by the Behavior Analyst Certification Board (BACB) as a Registered Behavior Technician™ (RBT™);]

[(I) ABA Assessment for Intervention Planning—assessment that is conducted according to best practice guidelines and considers the individual’s specific strengths and concerns to inform the intervention planning process; and]

[(J) ABA intervention—involves directly and objectively measuring potential target behaviors and environmental events that influence them; constructing detailed, individualized behavior analytic treatment plans; using reinforcement and other scientifically validated procedures to build functional skills and reduce behaviors that jeopardize health, safety, and independent functioning; managing treatment environments to maximize client progress; implementing treatment protocols repeatedly, frequently, and consistently; measuring target behaviors directly and frequently; and adjusting treatment protocols based on data.]

(2) Administration.
(A) The MO HealthNet ABA program shall be administered by the Department of Social Services, MO HealthNet Division. ABA services covered and not covered and the limitations under which services are covered shall be determined by the MO HealthNet Division and shall be included in MO HealthNet provider manual, which is incorporated by reference and made a part of this rule as published by the Department of Social Services, MO HealthNet Division, 615 Howerton Court, Jefferson City, MO 65109, at its website at dss.mo.gov/mhd, August 25, 2022. This rule does not incorporate any subsequent amendments or additions;

[(2)](3) [Recipient] Participant Criteria.
(A) In order to qualify for and receive ABA services, a MO HealthNet participant must meet all of the following criteria. The participant must:
1. Be under 21 years of age;
2. Exhibit the presence of excesses and/or deficits of behaviors that significantly interfere with home or community activities (examples include, but are not limited to, aggression, self-injury, and elopement);
3. Have a diagnostic evaluation performed by a licensed physician or licensed psychologist, resulting in a diagnosis of ASD, and recommending ABA services as medically necessary.

[(3)](4) Provider Criteria.
(A) To direct, supervise, and render ABA services, a professional shall meet the following specifications:
1. Be currently licensed [by Missouri] as an LBA or LP;
2. In order to be reimbursed by the MO HealthNet Division for ABA services, an LP must have ABA in his/her education, training, and experience.
   [2.] 3. Be covered by professional liability insurance to limits of one (1) million dollars per occurrence, three (3) million dollars aggregate;
   [3.] 4. Have no sanctions or disciplinary actions by the applicable state licensing board or the BACB;
   [4.] 5. Have no current overpayment(s) due MO HealthNet and no Medicare or Medicaid sanctions or exclusions from participation in federally funded programs; and
(B) Assistant behavior analysts who render or supervise ABA services shall meet the following qualifications:
1. Be currently licensed [by Missouri] as an LABA;
2. Be currently supervised by a [Missouri] LBA;
   A. The supervisory relationship must be documented in writing.
3. Be covered by professional liability insurance to limits of one (1) million dollars per occurrence, three (3) million dollars aggregate;
4. Have no sanctions or disciplinary actions by the state licensing board or BACB;
5. Have no current overpayment(s) due MO HealthNet and no Medicaid or Medicare sanctions or exclusions from participation in federally funded programs; and
6. Be currently enrolled with MO HealthNet as a provider.
(C) Technicians who render ABA services shall:
1. Be credentialed by the BACB as an RBT;
2. Work under the supervision of an LBA, LP (if officially granted supervisory privileges by the BACB), or LABA to the extent allowed for holders of the latter credential and at the discretion of the supervising LBA. RBTs are required by the BACB to be supervised by LBAs who are also Board Certified Behavior Analysts, Board Certified Behavior Analysts-Doctoral, Board Certified Assistant Behavior Analysts, or members of a professional group officially granted supervisory privileges by the BACB;

A. The supervisory relationship must be documented in writing; and

3. Have no current overpayment(s) due MO HealthNet and no Medicaid or Medicare sanctions or exclusions from participation in federally funded programs.

[(4) (5)] Covered Services and Limitations.

(A) MO HealthNet covered ABA services (ABA assessment for intervention planning and ABA intervention) must be:

1. Medically necessary;
2. Precertified by MO HealthNet or its designee;
3. Delivered in accordance with the [recipient’s] participant’s treatment plan; and
4. Overseen and delivered by providers who meet criteria specified herein.

(B) Medical necessity for initial ABA assessment for intervention planning shall be determined based on a diagnostic evaluation. Medical necessity for periodic re-assessments shall be determined based on rationale for re-assessment, to include but not limited to such considerations as re-administration of tools, new behavior has been observed, new environment and participant is responding differently, or lack of adequate progress. Medical necessity for ABA intervention shall be determined based on an ABA assessment for intervention planning for initial intervention. Medical necessity for continued ABA intervention beyond the initial precertification period shall be determined based upon requested documentation including, but not limited to, updated treatment plan and progress graphs. If progress is not evident, identification of barriers to progress and strategies to improve effectiveness of interventions are required.

(C) ABA intervention services may be precertified for a time period not to exceed one hundred-eighty (180) days. Services provided without precertification shall not be considered for reimbursement, except in the case of retroactive MO HealthNet eligibility.

(D) Service Limitations.

1. Services shall be based upon the individual needs of the child and must give consideration to the child’s age, school attendance requirements, and other daily activities as documented in the treatment plan.

2. Services must be delivered in a clinically appropriate setting for the behavior being treated.

[(5) (6)] Not Medically Necessary/Non-Covered Services. The following services do not meet medically necessity criteria, nor qualify as MO HealthNet covered ABA services:

(A) Intervention services rendered when measureable functional improvement is not expected and services are not necessary to maintain function or prevent deterioration;

(B) Services that are solely educational are not covered. ABA treatment goals, objectives, and procedures that may be related in some way to educational activities but are medically necessary to address the deficits and symptoms of ASD in an individual are covered;

[(C) Educational services provided under an individualized family service plan (IFSP) or an individualized educational program (IEP), as required under the federal Individuals with Disabilities Education Act (IDEA);]
Services that are solely vocational or recreational are not covered. ABA treatment goals, objectives, and procedures that may be related in some way to vocational or recreational activities but are medically necessary to address the deficits and symptoms of ASD in an individual are covered; and

Custodial care is not an ABA service and is not covered as part of this benefit. Developing, restoring, or maintaining self-help, daily living, or safety skills as part of an ABA treatment plan does not constitute custodial care and are covered.

ABA Treatment Plan.

(A) ABA intervention services shall be rendered in accordance with the individual’s treatment plan. The treatment plan shall:

1. Be person centered and individualized;
2. Be developed by an LBA or LP;
3. Be based on the ABA assessment for intervention planning;
4. Delineate the baseline levels of target behaviors;
5. Specify long- and short-term objectives that are defined in observable, measurable, behavioral terms;
6. Specify the criteria that will be used to determine achievement of objectives;
7. Include assessment and treatment protocols for addressing each of the target behaviors;
8. Clearly identify the schedule of services planned and the individuals responsible for delivering the services, including frequent review of data on target behaviors and adjustments in the treatment plan and/or protocols by the LBA or LP as needed;
9. Include training to enable LABAs and RBTs to implement assessment and treatment protocols;
10. Include training and support to enable parents and other caregivers to participate in treatment planning and treatment plan implementation;
11. Include care coordination involving the parents or caregiver(s), school, state disability programs, and others as applicable; and
12. Be consistent with applicable professional standards and guidelines relating to the practice of ABA as well as state Medicaid laws and regulations and applicable Missouri licensure laws and regulations.

(B) It is recommended that the treatment plan also:

1. Delineate the baseline levels of target behaviors;
2. Specify long- and short-term objectives that are defined in observable, measurable, behavioral terms;
3. Specify the criteria that will be used to determine achievement of objectives;
4. Clearly identify the schedule of services planned and the individuals responsible for delivering the services, including frequent review of data on target behaviors and adjustments in the treatment plan and/or protocols by the LBA or LP as needed;

Reimbursement Methodology.
(A) MO HealthNet shall provide reimbursement for ABA services to enrolled LBAs or LPs who are currently licensed and in good standing with the state. Payment for services rendered by LBAs shall be made to the LBA supervising and employing these personnel. Payment for services rendered by technicians shall be made to the LBA or LP supervising and employing these personnel. If the LBA or LP operates through an agency or corporate entity, payment may be made to that agency or entity. Reimbursement for ABA services shall not be made to or for services rendered by a parent, a legal guardian, or other legally responsible person.

(B) Reimbursement for ABA services is made on a fee-for-services basis. The maximum allowable fee for a unit of service has been determined by the MO HealthNet to be a reasonable fee, consistent with efficiency, economy, and quality of care. Payment for covered services is the lower of the provider’s actual billed charge (should be the provider’s usual and customary charge to the general public for the service), or the maximum allowable per unit of service. Reimbursement shall only be made for services [authorized] precertified by [the Medicaid agency]. MO HealthNet or its designee.

(C) The fee schedule and any annual/periodic adjustments to the fee schedule are published at [http://www.dss.mo.gov/mhd/providers/index.htm](http://www.dss.mo.gov/mhd/providers/index.htm). The Fee Schedule is incorporated by reference and made a part of this rule as published by the Department of Social Services, Division of Legal Services, 221 West High Street, Jefferson City, MO 65101, at its website, at [https://apps.dss.mo.gov/fmsFeeSchedules/default.aspx](https://apps.dss.mo.gov/fmsFeeSchedules/default.aspx), August 25, 2022. This rule does not incorporate any subsequent amendments or additions.


PUBLIC COST: This proposed amendment is estimated to cost The MO HealthNet Division $366,669.71 annually in reimbursement for services provided by provisional licensed behavior analysts.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the Department of Social Services, Legal Services Division-Rulemaking, P O Box 1527, Jefferson City, MO 65102-1527, or by email to Rules.Comment@dss.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.