



December 16, 2024

Margaret M. Rose  
Division of Medical Assistance and Health Services  
Office of Legal and Regulatory Affairs  
Mail Code #26  
P.O. Box 712  
Trenton, NJ 08625-0712

**Re: In response to DMAHS Advance Notice of Proposed New Rulemaking N.J.A.C. 10:77**

Dear Ms. Rose,

Autism New Jersey commends the Division of Medical Assistance and Health Services' (DMAHS) implementation of the Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit for children with autism and the Division's responsiveness to the community's needs. Since the EPSDT benefit began statewide on April 1, 2020, significantly more children with autism are accessing medically necessary treatment.

Given that there are thousands more children who need such treatment, we also deeply appreciate the Murphy Administration's commitment to the success of this benefit as evidenced by the rate increase for behavior technician services on February 1, 2022. This rate increase had the intended effect – more providers are now applying to become Medicaid approved. As a result, more children are participating in treatment.

It is in this spirit of collaboration and with a focus on outcomes that Autism New Jersey offers the following practice papers and recommendations for the proposed new subchapter of N.J.A.C. 10:77 to maximize the efficiency and effectiveness of administering and delivering EPSDT benefits to children with autism.

In addition to the recommendations for beneficiary eligibility, provider requirements, reimbursement, and record keeping requirements listed below, Autism New Jersey recommends that the drafters of this new subchapter become familiar with three industry-standard documents:

- **Council of Autism Service Providers' [Applied Behavior Analysis Practice Guidelines for the Treatment of Autism Spectrum Disorder: Guidance for Healthcare Funders, Regulatory Bodies, Service Providers, and Consumers \(3<sup>rd</sup> ed.\)](#)**-- The purpose of this document is to inform decision-making regarding the use of Applied Behavior Analysis (ABA) to treat medically necessary conditions so as to develop, maintain, or restore, to the maximum extent practicable, the functioning of individuals with Autism Spectrum Disorder (ASD) in ways that are both efficacious and cost effective. The document is based on the best available scientific evidence and expert clinical opinion regarding the use of ABA as a behavioral health treatment for individuals diagnosed with ASD. The guidelines are intended to be a brief and user-friendly introduction to the delivery of ABA services for ASD. These guidelines are written for healthcare funders and managers, such as insurance companies, government health programs, employers, among others. The guidelines may also be useful for consumers, service providers, and regulatory bodies.

- **ABA Coding Coalition's [Model Coverage Policy for Adaptive Behavior Services](#)** -- This document is a model health insurance coverage policy developed in 2020 by the ABA Coding Coalition (representatives of the Association of Professional Behavior Analysts, Autism Speaks, Behavior Analyst Certification Board, Council of Autism Service Providers, and their CPT® consultant). The Coalition comprises most of the individuals and organizations who authored the application that was submitted to the American Medical Association in 2016 to obtain Category I CPT® codes for adaptive behavior (applied behavior analysis; ABA) assessment and treatment services. The purpose of this model coverage policy is to offer information about appropriate coverage determinations, including indications, limitations, and competence recommendations. Questions regarding this model coverage policy or the 2019 CPT® codes for adaptive behavior services can be directed to the ABA Coding Coalition at <https://abacodes.org/contact/>.
- **ABA Coding Coalition's [Supplemental Guidance Article: How to Work with the 2019 CPT® Codes](#)** -- This article was developed to assist providers, billers, and payers in using the Category I and modified Category III CPT codes for adaptive behavior services that went into effect January 1, 2019, and provides the descriptor for each code and the typical patient vignette that the AMA CPT® Editorial Panel approved, followed by a clinical example illustrating the use of that code.

## Recommendations

- **Beneficiary eligibility** – All Medicaid beneficiaries with a diagnosis of autism should be eligible to participate in the EPSDT program.
- **Provider requirements** – Any enrolled provider may deliver EPSDT screening, diagnostic, and treatment services within the scope of their practice. Specifically for ABA services, provider qualifications should align with the [Applied Behavior Analyst Licensing Act](#) and the corresponding [regulations](#). The [State Board of Applied Behavior Analyst Examiners](#) began issuing licenses to practice behavior analysis in September 2024. Now that the promulgation of licensing regulations has occurred, licensed behavior analysts should be codified in this subchapter.
- **Reimbursement** – Rates should be competitive to incentivize providers to work with Medicaid beneficiaries.
- **Recordkeeping requirements** – Recordkeeping requirements should be clearly and fully described in this subchapter and conform to the Applied Behavior Analyst Licensing Act regulations. Specific requirements for session notes for ongoing ABA services and signatures and co-signatures will make providers aware of expectations to help promote compliance and reduce exposure with respect to audits and recoupments. An example of session note requirements is appended below.
- **Location of ABA services** – The scope of the EPSDT benefit is broad. It has no prohibition or limitation on the point of service for that treatment. Consistent with sections 1905(a)(4)(B) and 1905(r) of the Social Security Act, the EPSDT benefit dictates that children under the age of 21 must receive "necessary health care [...] to correct or ameliorate defects and physical and mental illnesses and conditions[.]" In short, Medicaid must cover medically necessary treatment for their autism. Any other policy that limits the location where children can receive medically necessary autism intervention, such as in a school setting, deprives children of the opportunity to receive their EPSDT benefit. Inconsistent with the broad EPSDT mandate, DMAHS had previously indicated that ABA services cannot be provided in a school facility. However, when a state policy and federal law conflict, federal law preempts

the state policy, which should be stricken. Thus, it should be made clear that ABA services can be provided in a therapist's office, community setting, child's home, or within a school facility.

Autism New Jersey is available to discuss any aspect of these or other recommendations regarding ABA treatment. Thank you for the opportunity to share these recommendations and your time and consideration on behalf of children with autism.



Suzanne Buchanan, Psy.D., BCBA-D, LBA  
Executive Director

### **Appendices**

- [Applied Behavior Analysis Practice Guidelines for the Treatment of Autism Spectrum Disorder: Guidance for Healthcare Funders, Regulatory Bodies, Service Providers, and Consumers \(3rd ed.\)](#)
- [Model Coverage Policy for Adaptive Behavior Services](#)
- [Supplemental Guidance Article: How to Work with the 2019 CPT® Codes](#)
- [Sample ABA session note](#)