September 20, 2022

Re: Proposed Rule: 59G-4.125/Behavior Analysis Services
Florida Medicaid Behavior Analysis Coverage Policy Draft Rule

MedicaidRuleComments@ahca.myflorida.com.


CASP is a non-profit association of organizations committed to providing evidence-based care to individuals with autism. CASP represents the autism provider community to the nation at large, including government, payers, and the general public. We provide information and education and promote standards that enhance quality of care. Our member organizations employ more than 600 Board Certified Behavior Analysts who serve more than 17,000 people with autism in Florida.

Of particular interest to our members is the coverage of evidence-based care in private health insurance plans and through Medicaid. Timely access to medically necessary treatment, including applied behavior analysis, is critical for children with autism spectrum disorder (ASD).¹

The State of Florida took a vital step more than a decade ago when it passed legislation requiring state-regulated health plans to cover medically necessary care for ASD. Since then, individuals diagnosed with ASD have had access to meaningful interventions, reducing their need for special education services, improving their quality of life, and opening doors for further education and employment. In addition, the number of qualified providers has dramatically multiplied statewide, creating jobs in Florida communities, and providing life-changing care.

Pursuant to Medicaid’s Early Periodic, Screening, Diagnostic and Treatment (EPSDT) mandate and CMS’ Informational Bulletin on Clarification of Medicaid Coverage of Services to Children with Autism\(^2\), medically necessary care for children under the age of 21 who have been diagnosed with autism, has also been implemented. We are grateful for this progress and for the opportunity to comment on the Florida Medicaid Behavior Analysis Coverage Policy Draft Rules.

We respectfully ask for your consideration of our recommendations below:

### 2.2 Who Can Receive

*Florida Medicaid recipients under the age of 21 years requiring BA services that are medically necessary to address behavior that impairs a recipient’s ability to perform a major life activity. Such functional impairment is expressed through the following behaviors:*

- **Safety** - aggression, self-injury, property destruction, elopement
- **Communication** - problems with expressive/receptive language, poor understanding or use of non-verbal communications, stereotyped, repetitive language
- **Self-stimulating** – abnormal, inflexible, or intense preoccupations
- **Self-care** - difficulty recognizing risks or danger, grooming, eating, or toileting
- **Other behaviors** not identified above but not limited to complexity of treatment, programming, or environmental variables

Medically necessary care specific to autism spectrum disorder is intended to correct or ameliorate *all* deficits and conditions arising from a child’s ASD. Specifically, the CMS Bulletin States:

Section 1905(r) of the Act defines the EPSDT benefit to include a comprehensive array of preventive, diagnostic, and treatment services for low-income infants, children, and adolescents under age 21. States are required to arrange for and cover for individuals eligible for the EPSDT benefit any Medicaid coverable service listed in section 1905(a) of the Act that is

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determined to be medically necessary to correct or ameliorate any physical or behavioral conditions.

Recommendation: EPSDT clearly states Medicaid plans are required to cover medically necessary behavioral conditions, including ASD. Rather than restrict treatment to the above, we recommend that the language reference the most recent version of the Diagnostic Statistical Manual of Mental Disorders (DSM) to identify the various symptoms that should be ameliorated under the medically necessary care required by EPSDT.

Section 2.2 goes on to state:

1. The recipient must be referred by an independent physician or practitioner qualified to assess and diagnose disorders related to functional impairment, including:
   - Primary care physician with family practice, internal medicine, or pediatrics specialty
   - Board certified or board eligible physician with specialty in developmental behavioral pediatrics, neurodevelopmental pediatrics, pediatric neurology, adult, or child psychiatry
   - Child psychologist

The referral must include a comprehensive diagnostic evaluation that recommends behavior analysis services.

EPSDT requires that medically necessary services be provided without delay. The previously referenced CMS bulletin³ states:

EPSDT also requires medically necessary diagnostic and treatment services. When a screening examination indicates the need for further evaluation of a child’s health, the child should be appropriately referred for diagnosis and treatment without delay. Ultimately, the goal of EPSDT is to assure that children get the health care they need, when they need it – the right care to the right child at the right time in the right setting.

³ Ibid.
The role of states is to make sure all covered services are available as well as to assure that families of enrolled children, including children with ASD, are aware of and have access to a broad range of services to meet the individual child’s needs.

According to the most recent guidance from the American Academy of Pediatrics:

The primary care provider should discuss with the family the importance of both the assessment of developmental status and evaluation for an ASD diagnosis and assist the family in navigating through the process, including connecting them with community resources. Families with low income or language barriers may need additional attention to take the next steps.

Although most children will need to see a specialist, such as a developmental-behavioral or neurodevelopmental pediatrician, psychologist, neurologist, or psychiatrist, for a diagnostic evaluation, general pediatricians and child psychologists comfortable with application of the DSM-5 criteria can make an initial clinical diagnosis.

Recommendation: Rather than delay access to services through a comprehensive diagnostic evaluation, we recommend that the draft proposal aligns with AAP Guidance and EPSDT requirements by covering medically necessary services prescribed by a licensed physician or psychologist.

4.2.1 Behavior Assessment and Behavior Plan

A behavior assessment must be conducted prior to the initiation of behavior analysis interventions. The assessment must identify behavioral deficits that interfere with a major life activity including the events and subsequent interactions that elicit and sustain targeted behavior.

The assessment must include the administration and scoring of two standardized behavior assessments, as follows:

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The complete scoring report must be submitted with service prior authorization requests. Additional standardized tools may be used at the Lead Analyst’s discretion. The behavior plan identifies intervention strategies that are likely to eliminate, mitigate or replace the behavior to produce change sufficient to reengage the recipient in the major life activity. The plan must include specific behavior goal(s), intervention strategies for each goal, anticipated timeframes that are of sufficient duration to address the targeted behavior, and how the ongoing progress of intervention strategies will be reported.

The behavior plan must reflect the requested authorization period (up to six months).

In contrast, generally accepted standards of care from the Applied behavior analysis treatment of autism spectrum disorder: Practice guidelines for healthcare funders and managers 2nd 5th state:

The measurement system for tracking progress toward goals should be individualized to the client, the treatment context, the critical features of the behavior, and the available resources of the treatment environment. Specific, observable and quantifiable measures should be collected for each goal and should be sensitive enough to capture meaningful behavior change relative to ultimate treatment goals.

The results of standardized assessments may be used to monitor progress toward long-term treatment goals. However, IQ scores and other global assessments are not appropriate as sole determiners of an individual’s response or nonresponse to ABA treatment. Many individuals may show substantial progress in important characteristics of the disorder (for example, language functioning, social functioning, repetitive behavior, adaptive behavior, safety and wellness, and co-morbid mental health conditions) without a substantial change in measures of intellectual functioning. Thus,

scores on such assessments should not be used to deny or discontinue ABA treatment.

Recommendation: It is our recommendation that, rather than require specific assessment tools, that the draft rule be revised to reference generally accepted standards of care, i.e. Applied behavior analysis treatment of autism spectrum disorder: Practice guidelines for healthcare funders and managers 2nd.

4.2.4 Discharge

Recipients receiving Florida Medicaid BA services who meet one or more of the following will be considered for discharge from services:

- The recipient is no longer eligible for BA services as outlined in the Florida Medicaid Behavior Analysis Services Coverage Policy, incorporated by reference in Rule 59G-4.125, F.A.C.
- The recipient no longer meets medical necessity criteria as defined in Rule 59G- 1.010, F.A.C. Florida Medicaid Behavior Analysis Services Coverage Policy
- The recipient no longer engages in maladaptive behaviors.
- Data indicates the frequency and severity of maladaptive behavior(s) or level of functional impairment no longer poses a barrier to the recipient’s ability to function in his/her environment.
- The level of functional impairment as expressed through behaviors no longer justifies continued BA services.
- Parent or guardian withdraws consent for treatment.

In contrast, generally accepted standards of care, i.e. Applied behavior analysis treatment of autism spectrum disorder: Practice guidelines for healthcare funders and managers 2nd state,

Services should be reviewed and evaluated and discharge planning begun when:

- the client has achieved treatment goals OR
the client no longer meets the diagnostic criteria for ASD (as measured by appropriate standardized protocols) OR

the client does not demonstrate progress towards goals for successive authorization periods OR

the family is interested in discontinuing services OR

the family and provider are unable to reconcile important issues in treatment planning and delivery

When there are questions about the appropriateness or efficacy of services in an individual case, including pursuant to any internal or external appeal relating to insurance benefits, the reviewing body should include a Behavior Analyst with experience in ABA treatment of ASD.

**Recommendation:** We recommend that discharge be based on generally accepted standards of care, specifically the most recent version of the Practice Guideline.

According to the most recent estimates from the Centers for Disease Control, 1 in every 44 children is diagnosed with autism spectrum disorder. This means that 1.5% of Florida children who are on Medicaid have an autism spectrum disorder and need access to appropriate care as mandated under EPSDT.

Thank you for your work in the past and moving forward to ensure that Florida children with autism who are enrolled in Medicaid have access to life-changing, evidence-based care. Should you have any questions, please do not hesitate to contact me at jursitti@casproviders.org.

Respectfully,

Judith Ursitti
Vice President of Government Affairs