



EPSDT and Coverage for the Treatment of Autism



Update on coverage for ABA under Nebraska Medicaid

Michael Wasmer
Director, State Government Affairs
Autism Speaks

February 20, 2018

1

Overview

- Review EPSDT and Medicaid's obligation to cover medically necessary treatment for autism spectrum disorder
- Brief history of coverage for ABA under Nebraska Medicaid
- Potential threats to effective implementation of coverage
- Question & Answer



2

Medicaid/EPSDT (1967)

Early
Periodic
Screening
Diagnosis
Treatment



Designed to assure that Medicaid-eligible children (0 until 21) receive early detection and care, so that health problems are averted or **diagnosed and treated as early as possible**.

3

Who is Medicaid Eligible?

- Federal law allows states broad discretion over Medicaid eligibility; therefore **pathways vary from state to state**
- See www.accessnebraska.ne.gov
- Considerations are both **financial** (e.g. income and resources) and **non-financial** (e.g., categorical [children, disability, etc], residency)
- Children enrolled in **HCBS waiver programs** are also entitled to EPSDT

4

Katie Beckett Waiver/ TEFRA state plan option

- Family income waived if otherwise eligible child meets state definition of institutional level of care
- Allows significantly disabled children to receive care at home while retaining Medicaid coverage
- 18 States (including Nebraska) + DC have adopted this option



5

EPSD Treatment

- EPDST requires states to provide access to any Medicaid-coverable service in any amount that is **medically necessary**, regardless of whether the service is specified in the state plan.
- Federal law does not define medical necessity and **definitions adopted by states vary**

6

Medicaid Coverage for ABA in Federal Court

(2008) *PLEAS v Jones-Kelley* (6th Circuit)

ABA is coverable as medical assistance under Medicaid and must be covered under EPSDT

(2012) *WAAA v Porter* (W.D. Washington)

Settlement to cover ABA under EPSDT and submit a State Plan Amendment to cover ABA

(2012) *KG v Dudek* (11th Circuit)

ABA is not experimental and must be made available as a covered Medicaid service under EPSDT

(2013) *Chisolm v Kliebert* (E.D. Louisiana)

ABA must be provided under EPDST. Must provide ABA with BCBAs if insufficient number of licensed providers



Medicaid Coverage for ABA in the Nebraska Courts

KD v Winterer



- **May 2012**
- class action filed against DHHS on behalf of children with mental health conditions (including ASD) denied coverage for ABA
- **June 2015**, court ruled that:
 - when medically necessary, states must cover ABA under EPSDT
 - exclusion of coverage for ABA violated EPSDT
 - DHHS enjoined from enforcing its categorical exclusion of ABA



Meanwhile....

July, 2014

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop 92-26-12
Baltimore, Maryland 21244-1800



CMCS Informational Bulletin

DATE: July 7, 2014

FROM: Cindy Mann, Director
Center for Medicaid and CHIP Services

SUBJECT: **Clarification of Medicaid Coverage of Services to Children with Autism**

In response to increased interest and activity with respect to services available to children with autism spectrum disorder (ASD), CMS is providing information on approaches available under the federal Medicaid program for providing services to eligible individuals with ASD.

Background

Autism spectrum disorder is a developmental disability that can cause significant social, communication and behavioral challenges. A diagnosis of ASD now includes several conditions that used to be diagnosed separately: autistic disorder, pervasive developmental disorder not otherwise specified (PDD-NOS), and Asperger syndrome. These conditions are now all called autism spectrum disorder. Currently, the Center for Disease Control and Prevention (CDC) estimates that approximately 1 in 68 children has been identified with ASD.¹

Treatments for children with ASD can improve physical and mental development. Generally these treatments can be categorized in four categories: 1) behavioral and communication approaches; 2) dietary approaches; 3) medications; and 4) complementary and alternative medicine.² While much of the current national discussion focuses on one particular treatment modality called Applied Behavioral Analysis (ABA), there are other recognized and emerging treatment modalities for children with ASD, including those described in the ASD Services, Final Report on Environmental Scan (see link below)³. This bulletin provides information related to services available to individuals with ASD through the federal Medicaid program.

The federal Medicaid program may reimburse for services to address ASD through a variety of authorities. Services can be reimbursed through section 1905(a) of the Social Security Act (the Act), section 1915(i) state plan Home and Community-Based Services, section 1915(c) Home

¹ <http://www.cdc.gov/rcbddd/autism/facts.html>

² <http://www.cdc.gov/rcbddd/autism/treatment.html>

³ <http://www.medicare.gov/Medicaid-CHIP-Program-Information/By-Topics/Long-Term-Services-and-Supports/Downloads/Autism-Spectrum-Disorders.pdf>

Did CMS specify that states must cover ABA for autism?

- CMS does not specify what treatments must be covered under EPSDT for any condition



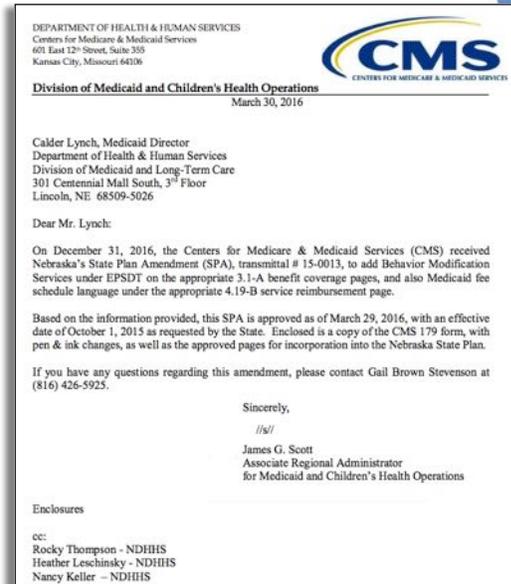
- must be **medically necessary**



- must be “coverable” under a 1905 (a) benefit category

Since 2014...

- Most states have amended or are in the process of amending Medicaid state plans to cover ABA
- State plan amendments are not necessary in order to provide coverage
- CMS approved Nebraska's **State Plan Amendment (#15-0013)** to add coverage for **“behavior modification services,”** including ABA on March 29, 2016 (*effective October 1, 2015*)



11

Nebraska SPA #15-0013 re: Behavior modification services

- filed coverage under the benefit category, 1905(a) (13)(c) - **preventative services**
- includes provision of applied behavior analysis when
 - prescribed by a licensed physician, and
 - provided by a BCBA, licensed psychologist, or licensed mental health practitioner
- **By filing services under this category, federal law allows for services to be provided by non-licensed providers as approved by the state.**

12

Nebraska SPA #15-0013 re: **Provider Qualifications**

- licensed psychologists and licensed mental health practitioners must have
 - a degree in psychology, social work, child development or related field, and
 - the equivalent of **one year of full-time work experience** in direct child/adolescent services, ASD and/or DD services.

- BCBAAs must have a **degree in “behavior analysis”**

Has this been a barrier to implementation?

13

Nebraska SPA #15-0013

- Acknowledges **tiered service delivery** model
 - **BCaBAs**
 - **RBTs**
 - **unlicensed direct care staff**
 - ▶ BS in related field + 1 year work experience
 - ▶ HS diploma + 2 years education in related field + 2 years work experience
- Allows for supervision via **Telehealth**

14

Implementation Issues

- improper limitations on medical necessity (e.g. aggressive or self-injurious behaviors)
- overly restrictive prior authorizations
- imposing limits on hours at levels below general standards of care
- overly stringent provider requirements (e.g., paraprofessionals)
- imposing fixed, mandatory parental participation requirements
- limitations on where services can be provided
- attempts to use school services to offset obligation to deliver medically necessary care
- age limitations (EPSDT requires coverage up to age 21)
- discontinuing services when process has plateaued
- Rates too low to sustain provider base
- Fail first or “step therapy” before providing ABA (may violate MHPAEA)

“Autism Legal Issues and Updates 2016”, Dan Unumb, Esq., ALRC

15

Potential Concern in Nebraska

- Complaint filed by LIMHP with NE Board of Mental Health Practitioners alleging
 - performance of functional behavior assessments (FBAs) by non-licensed BCBA's violates the **Nebraska Mental Health Practice Act**
 - non-licensed BCBA's practicing in NE risk public safety
- Specific to Medicaid but could impact private insurance
- **Written response filed** with Board co-signed by Autism Speaks, NEABA, APBA, BACB, Autism Legal Resource Center, AFN, AAP and other local autism organizations
- We are on the agenda for March Board meeting

16

Tips for Providers

- Become familiar with the state's fair hearing procedure and be prepared to assist the family to **appeal negative decisions**
- Make sure to **demonstrate medical necessity in the treatment authorizations**
- Make sure that targeted goals are medical in nature and **not "educational"**.

17

dhhs.ne.gov

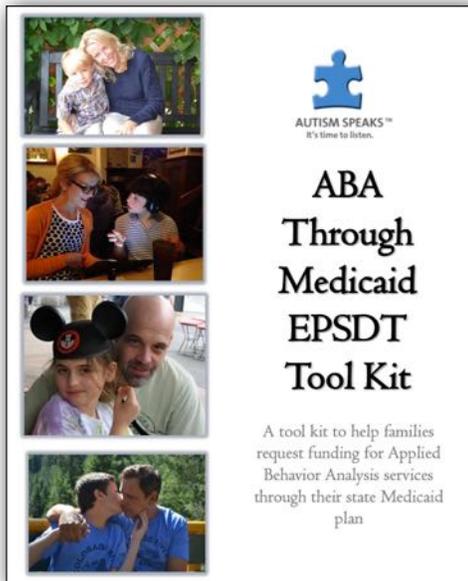
The screenshot shows the official Nebraska Government Website for the Nebraska Department of Health & Human Services. The navigation menu includes Behavioral Health, Children & Family Services, Developmental Disabilities, Medicaid & Long-Term Care (circled in red), and Public Health. The main content area is titled "Division of Medicaid & Long-Term Care" and features a "HERITAGE HEALTH" logo, a photo of Rocky Thompson (Interim Director), and sections for "Long-Term Care Redesign Project" and "Dental Benefits". A red arrow points to the "Provider Information" link in the left sidebar. A callout box on the right lists "Provider Information" details: how to enroll, coding, and reimbursement rates.

Provider Information

- how to enroll
- coding
- reimbursement rates

18

Additional Resources



The cover of the 'ABA Through Medicaid EPSDT Tool Kit' features the Autism Speaks logo at the top, which includes a blue puzzle piece and the text 'AUTISM SPEAKS™ It's time to listen.™'. Below the logo, the title 'ABA Through Medicaid EPSDT Tool Kit' is written in a bold, black, serif font. To the left of the title are four small, square photographs: the top one shows a woman and a child; the second shows a woman and a child at a table; the third shows a man and a woman; the bottom one shows two men. Below the title, a short paragraph reads: 'A tool kit to help families request funding for Applied Behavior Analysis services through their state Medicaid plan'.

- Autism Speaks “ABA Through Medicaid EPSDT Toolkit”
https://www.autismspeaks.org/sites/default/files/docs/epsdt_toolkit.pdf
- Autism Speaks State Government Affairs Team
michael.wasmer@autismspeaks.org
- Dan Unumb, Esq.; Autism Legal Resource Center
danunumb.alrc@gmail.com

19

Questions/Concerns



20

About Autism Speaks

Autism Speaks is dedicated to promoting solutions, across the spectrum and throughout the life span, for the needs of individuals with autism and their families. We do this through advocacy and support; increasing understanding and acceptance of people with autism; and advancing research into causes and better interventions for autism spectrum disorder and related conditions. We empower people with autism and their families with resources, online tools and information covering the life span. Go to AutismSpeaks.org to learn more, donate or join a fundraising walk.

