

**DEPARTMENT OF HEALTH & HUMAN SERVICES**

Centers for Medicare & Medicaid Services  
601 E. 12<sup>th</sup> St., Room 355  
Kansas City, Missouri 64106



Medicaid and CHIP Operations Group

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January 25, 2023

Ms. Nicole Comeaux  
Director  
Medical Assistance Division  
New Mexico Human Services Department  
2025 South Pacheco Drive  
P.O. Box 2348  
Santa Fe, New Mexico 87504-2348

Re: New Mexico State Plan Amendment (SPA) NM-22-0022

Dear Ms. Comeaux:

The Centers for Medicare & Medicaid Services (CMS) reviewed your Medicaid State Plan Amendment (SPA) submitted under transmittal number (TN) NM-22-0022. This amendment proposes to add state plan language to prohibit age and dollar limits on services related to autism spectrum disorder.

We conducted our review of your submittal according to statutory requirements in Title XIX of the Social Security Act. This letter is to inform you that New Mexico Medicaid SPA NM-22-0022 was approved on January 25, 2023, with an effective date of October 1, 2022.

If you have any questions, please contact Dana Brown 410-786-0421 or via email at [Dana.Brown@cms.hhs.gov](mailto:Dana.Brown@cms.hhs.gov)

Sincerely,

James G. Scott, Director  
Division of Program Operations

cc: Nicole Comeaux  
Valerie Tapia  
Donna Lopez

**TRANSMITTAL AND NOTICE OF APPROVAL OF  
STATE PLAN MATERIAL  
FOR: CENTERS FOR MEDICARE & MEDICAID SERVICES**

1. TRANSMITTAL NUMBER <u>2</u> <u>2</u> — <u>0</u> <u>0</u> <u>2</u> <u>2</u>	2. STATE <u>NM</u>
3. PROGRAM IDENTIFICATION: TITLE OF THE SOCIAL SECURITY ACT XIX XXI	

TO: CENTER DIRECTOR CENTERS FOR MEDICAID & CHIP SERVICES DEPARTMENT OF HEALTH AND HUMAN SERVICES	4. PROPOSED EFFECTIVE DATE October 1, 2022
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5. FEDERAL STATUTE/REGULATION CITATION 1905(a) of the Social Security Act	6. FEDERAL BUDGET IMPACT (Amounts in WHOLE dollars) a. FFY <u>23</u> \$ <u>80,357</u> b. FFY <u>24</u> \$ <u>177,305</u>
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7. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT  State Supplement A to Attachment 3.1 A pgs. 5h, 5i, 5j, 5k, 5l	8. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable)  State Supplement A to Attachment 3.1 A pgs. 5h, 5i, 5j, 5k, 5l (TN 15-01)
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9. SUBJECT OF AMENDMENT  
Applied Behavior Analysis (ABA) Coverage - New Mexico is updating its state plan to conform with state and federal requirements. State plan language is being added to prohibit age and dollar limits on services related to autism spectrum disorder (ASD).

10. GOVERNOR'S REVIEW (Check One)

GOVERNOR'S OFFICE REPORTED NO COMMENT	OTHER, AS SPECIFIED:
COMMENTS OF GOVERNOR'S OFFICE ENCLOSED	Authority delegated to the Medicaid Director
NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL	

11. SIGNATURE OF STATE AGENCY OFFICIAL 	15. RETURN TO  Nicole Comeaux, J.D., M.P.H., Director Medical Assistance Division P.O. Box 2348 Santa Fe, NM 87504-2348
12. TYPED NAME Nicole Comeaux	
13. TITLE Director, Medical Assistance Division	
14. DATE SUBMITTED November 10, 2022	

**FOR CMS USE ONLY**

16. DATE RECEIVED 11/14/22	17. DATE APPROVED January 25, 2023
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**PLAN APPROVED - ONE COPY ATTACHED**

18. EFFECTIVE DATE OF APPROVED MATERIAL 10/1/22	19. SIGNATURE OF APPROVING OFFICIAL
20. TYPED NAME OF APPROVING OFFICIAL James G. Scott	21. TITLE OF APPROVING OFFICIAL Director, Division of Program Operations

22. REMARKS

**State Supplement A to Attachment 3.1A**

Preventive Services, 1905(a)(13)(c)  
**Autism Intervention (AI) Services**

AI services are covered for all individuals who have a diagnosis of Autism Spectrum Disorder (ASD), and for individuals who are at risk for the development of ASD as defined by the latest version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) or the International Classification of Diseases (ICD).

AI services are provided to an individual as part of a three-stage comprehensive approach.

**Stage 1 AI Services**

Following a referral made by a physician or another licensed practitioner to an Autism Evaluation Practitioner (AEP), the AEP makes the diagnosis of ASD or At-risk for developing ASD, using the comprehensive diagnostic evaluation (CDE), as described below. Following the diagnosis, the AEP develops an Integrated Service Plan (ISP).

**Stage 1 Service Description**

An AEP completes a CDE to confirm the presence of ASD. The CDE must be conducted in accordance with current practice guidelines as offered by professional organizations such as the American Academy of Child and Adolescent Psychiatry, American Psychological Association, American Academy of Pediatrics, and American Academy of Neurology. Although aspects of the evaluation will vary depending on the individual's age, developmental level, diagnostic history, etc., it is expected that the evaluation be multi-informant, multi-modal, ASD-specific, and conducted by an AEP who meets state agency AEP requirements. An individual must have an initial CDE. Thereafter, a targeted evaluation or a targeted risk evaluation may be conducted unless the AEP determines it is medically necessary to conduct a new CDE. The targeted evaluation or risk evaluation focuses on specific areas of the recipient's current presentation and requires the same considerations and use of multi-informants as the CDE. The AEP must use their clinical judgement to identify the evaluation tools necessary to develop the individual service plan (ISP) and whether another practitioner's input is required to produce a valid targeted evaluation or risk evaluation.

**CDE Requirements**

- a) **Multi-informant** - CDEs must include information from:  
The individual themselves via direct observation and interaction, interviews with the individual, their family set members, and for an adult individual in a residential or other congregate care setting, their caregivers or staff; and whenever possible, one additional informant who has direct knowledge of the individual's functioning as it pertains to skill deficits and behavioral excesses associated with ASD:
  1. The individual's physical, behavioral and long-term care health provider (e.g., Speech-Language Pathologist, Social Worker, Occupational Therapist, Physical Therapist, Psychologist, Psychiatrist, Behavior Analyst, etc.); or
  2. For an Early and Periodic Screening Diagnostic and Treatment (EPSDT)-aged recipient, their educational or early interventionist provider.
- b) **Multi-Sources** - CDE must rely on various modes of information gathering, including but not limited to:
  1. A legal guardian, primary caregiver, residential or congregated care staff and caregiver interviews for historical information, as well as a determination of current symptom presentation; and
  2. Direct observation of and interaction with the individual; and
  3. Clear consideration of direct and/or indirect assessment of multiple areas of functioning, including but not limited to:
    - i. Developmental, intellectual, or cognitive functioning; and
    - ii. Adaptive functioning; and
    - iii. Social functioning; and
    - iv. Speech, language, and communicative functioning; and
    - v. Medical and neurological functioning; and

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4. For an EPSDT-aged individual, review of educational and/or early interventions, physical, behavioral and long-term care health records.
- c) **ASD-specific** - The CDE must be specific enough to adequately assess symptoms associated with ASD, yet broad enough to make a valid differential diagnosis and consider possible co-morbid conditions.

**ISP Requirements**

The AEP must issue a separate, individualized ISP if such a plan is not issued as part of the CDE Report. When developing and issuing the ISP, the AEP must adhere to the following requirements:

- a) If the AEP determines that AI services are clinically indicated, the ISP must include a statement that the AEP expects that the requested AI services will result in measurable improvement in the individual's ASD symptomatology, associated behavioral excesses and deficits, and/or overall functioning.
- b) The ISP must ensure that all areas of need are adequately addressed through AI services and other medically necessary services (e.g., speech-language therapy, occupational therapy, and specialized physical and behavioral services). The ISP must include all services the recipient is or will be utilizing, regardless of the payor.
- c) The AEP must ensure other services that are recommended are aligned with the AI services such that the anticipated benefits to the individual can be realized.
- d) The ISP must be linked to findings from the CDE and reflect input from the individual (as appropriate for age and developmental level), legal guardian, or other caretaker, as well as school staff and behavioral health professionals involved in the individual's care.
- e) The ISP must include a listing of all services and service providers as well as characteristics of the individual that may affect the intervention positively or negatively.
- f) The ISP must be based on the individual's current clinical presentation, while being mindful of the long-term vision for their potential.
- g) The ISP must address needs associated with the individual's ASD-related symptoms, as well as symptoms associated with co-morbid conditions.
- h) Given that the needs of an individual with ASD are characteristically numerous, the ISP must establish treatment priorities appropriate for the individual defined by the pivotal nature of the skill and/or by the risk that the skill's absence or behavioral excess poses to the individual or others.
- i) The ISP must include a plan for ongoing monitoring across multiple areas of functioning such that the plan can evolve as the individual's behavioral presentation changes in response to treatment.

**Stage 1 AI Services Practitioner Requirements**

In order for an AEP to have an approved Provider Participation Agreement (PPA), an AEP must meet the following requirements in order to be eligible for reimbursement for provision of a Stage 1 CDE or Targeted Evaluation and/or evaluation for the purposes of developing an ISP, and then the completion of an ISP.

- a) Be a licensed, doctoral-level clinical psychologist or a physician who is board-certified or board-eligible in developmental behavioral pediatrics, pediatric neurology, child psychiatry, or adolescent and adult psychiatry; and
- b) Have experience in or knowledge of the medically necessary use of AI services and other empirically supported intervention techniques; and
- c) Be qualified to conduct and document both a CDE or a Targeted Evaluation for the purposes of developing an ISP; and
- d) Have advanced training and clinical experience in the diagnosis and treatment of ASD and related neurodevelopment disorders, including knowledge about typical and atypical child, adolescent, and adult development and experience with variability within the ASD population; and

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- e) Have advanced training in differential diagnosis of ASD from other developmental, psychiatric, and medical disorders; and
- f) Sign an attestation form affirming that all provider criteria, as outlined above, have been and will continue to be met; and when requested, provide documentation substantiating training, experience, licensure and/or certification.

**Stage 2 AI Services**

Following the completion of an ISP that includes a recommendation for AI Stage 2 services, a Behavior Analyst (BA) conducts a Behavior Analytic Assessment specific to Stage 2 to determine the need for skill acquisition and behavior reduction. From this determination, goals and intervention services are developed specific to ASD and detailed in the Autism Intervention Treatment Plan (AITP).

**Stage 2 Service Description**

A BA conducts a Behavior Analytic Assessment that incorporates assessment strategies and assessment measures that are developmentally appropriate for the individual must identify strengths and weaknesses across domains. The information from such a process is the basis for developing the individualized AITP. A Behavior Analytic Assessment utilizes information from multiple methods and multiple informants, such as:

- a) Direct observation, measurement, and recording of behavior are defining characteristics of AI services. The information gathered serves as the primary basis for identifying pre-treatment levels, discharge goals, and evaluation of response to an AITP. They also assist the BA in developing and adapting treatment protocols on an ongoing basis.
- b) The assessments reflect the goal of treatment and are responsive to ongoing information updates as they are collected and analyzed.
- c) The individual, legal guardians, caregivers and other professionals are included when selecting treatment goals, protocols, and evaluating progress as appropriate. Interviews with the individual, legal guardian and caregiver, rating scales, and validity measures are used to assess the perceptions of the individual's skill deficits and behavioral excesses, and the extent to which these deficits and excesses impede the functioning of the individual and their family.

Treatment may vary in terms of intensity and duration, the complexity and range of treatment goals, and the extent of direct treatment provided.

- a) Many variables, including the number of behavioral targets, specific aspects of those behaviors, and the individual's response to treatment protocols help determine which treatments, interventions, and behavior modification services most appropriate for the individual. Although existing on a continuum, a combination of treatments, interventions, and behavior modification services can be generally categorized as Focused AI services or Comprehensive AI approach to services. The differences between these two general approaches are in regard to the age, intensity, duration, and frequency of services most appropriate for the individual.
- b) Once the Behavior Analytic Assessment has been executed and responses and information have been gathered, the BA must select goals for intervention and determine how these goals will be measured. The AITP must identify all target behaviors that are to be addressed by the Behavior Analyst Certification Board's (BACB's) Board Certified Assistant Behavior Analyst (BCaBA), Behavior Technician (BT) and/or the BA directly.
- c) The AITP includes, when appropriate, a goal of working with the family or caregivers of the individual in order to assist with the acquisition, maintenance, and generalization of functional skills.

**Stage 2 AI Services Practitioner Requirements**

In order for an AP to have an approved MAD PPA, an AP must meet the following requirements in order to be eligible for reimbursement for provision of a Stage 2 Behavior Analytic Assessment and then the completion of an AITP:

- a) A Board Certified Behavior Analyst® (BCBA®) or Board Certified Behavior Analyst-Doctoral®

TN No. 22-0022

Approval Date: 1/25/2023

Supersedes TN. No. 15-01

Effective Date: 10/1/2022

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(BCBA-D®) by the Behavior Analyst Certification Board (BACB®). A BCBA or BCBA-D may supervise other BAs, BCaBAs and BTs.

- b) A licensed psychologist with documented education and experience in behavior analysis. A psychologist may supervise BAs, BCaBAs and BTs. The documentation required is:
1. A professional credential issued by the Board of Psychologist Examiners of the New Mexico Regulation and Licensing Department (RLD).
  2. Documentation of education and training in behavior analysis comparable to that required to be eligible to take an examination for BCBA® or BCBA-D® certification including education, supervised experiential training, and continuing education requirements with completion of graduate level instruction in the following behavior analytic content areas: Ethical and professional conduct (at least 45 classroom hours); concepts and principles of behavior analysis (at least 45 classroom hours); research methods in behavior analysis including measurement (at least 25 classroom hours), experimental design (at least 20 classroom hours); AI services including identification of the problem and assessment (at least 30 classroom hours); fundamental elements of behavior change and specific behavior change procedures (at least 45 classroom hours); intervention and behavior change consideration (at least 10 classroom hours); behavior change systems (at least 10 classroom hours); implementation, management and supervision (at least 10 classroom hours); and discretionary coursework (at least 30 classroom hours).
  3. Completion of supervised experience in the design and delivery of AI services. The practitioner must have a significant portion of his or her supervised experience (at least 1/3) accrued with an ASD or closely related (e.g., Fragile X, Intellectual Disability) population.
  4. In addition, a psychologist rendering services as a BA must have completed supervised independent field work in AI services (non-university based) of at least 1500 hours, or practicum experience in AI services (university based) of at least 1000 hours, or intensive AI services practicum experience (university based) of at least 750 hours, and completion of at least 32 hours of continuing education in behavior analysis within a two year cycle period.
- c) An AI services Practitioner/Supervisor is a BA who is not a BCBA or psychologist:  
Stage 2 and 3 AI services may be delivered and/or supervised by a practitioner who has the minimum qualifications listed below. The practitioner must provide documentation of the following:
1. A master's degree which the BACB® recognizes and would lead to certification as a BCBA;
  2. New Mexico licensure, as appropriate for degree and discipline;
  3. Clinical experience and supervised training in the evidence-based treatment of children with ASD, specifically AI services; and
  4. Experience in supervising direct support personnel in the delivery and evaluation of AI services.

**Stage 3 AI Services**

The BA, BCaBA and the BT deliver the treatments, interventions, and behavior modification services as Stage 3 AI services in home, clinic, schools and community-based settings.

**Stage 3 AI Services Service Description**

The following treatment and intervention services are rendered in the Stage 3:

- a) Increasing appropriate behavior via reinforcement. Treatment, intervention and behavior modification services include Positive and Negative Behavior Reinforcement.
- b) Promoting stimulus control via differential reinforcement. Treatment, intervention and behavior modification services include Differential Reinforce and Matching to Sample.
- c) Promoting appropriate behavior via stimulus change. Treatment, intervention and behavior modification services include Goal Setting; Modeling and Imitation Training; Instruction and Rules; Prompt and Prompt Fading; Prompting to Transfer; and Expand Stimulus Control.
- d) Procedures for maintaining behavior. Treatment, intervention and behavior modification services include Schedules of Reinforcement.

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- e) Teaching new behaviors: Treatment, intervention and behavior modification services include Shaping; Chaining; Task Analysis; Discrete Trial Teaching; Verbal Behavior; Echoic Training; Mand Training; Tact Training; Intraverbal Training; Listener Training; Discrete Trial Teaching; and Verbal Behavior.
- f) Preventing and reducing maladaptive behavior: Treatment, intervention and behavior modification services include Antecedent Methods and Procedural Packages for Preventing or Reducing Maladaptive Behavior; Redirecting; Use Activity Schedule; Distracting with a Preferred Event; Behavioral Momentum/High-Probability Request Sequence; Providing Choice; Reducing Response Effort; Applying Non-Contingent Reinforcement; Modeling; Social Stories; and Social Skills Training.
- g) Consequential methods for reducing maladaptive behavior: Treatment, intervention and behavior modification services include Differential Reinforcement of Alternative Behaviors; Differential Reinforcement of Other Behavior or Omission Training; Differential Reinforcement of Low Rates; Differential Reinforcement of Diminishing Rates; Response Cost; Time Out; Overcorrection; Negative Practice; Punishment; Manipulation of Antecedents; Stimulus Equivalence; Stimulus Generalization Training; Behavioral Contrast Effects; Matching Law and Factors Influencing Choice; High Probability Request Sequence/Behavior Momentum; Premack Principle; Errorless Learning; and Matching to Sample.
- h) Extinction: Treatment, intervention and behavior modification services include Differential Reinforcement of Alternative Behaviors.
- i) Behavior-change systems: Treatment, intervention and behavior modification services include Self-management Strategies; Token Systems and Other Conditioned Reinforcement Systems; Direct Instruction; Precision Teaching; Personalized Systems of Instruction; Incidental Teaching; Functional Communication Training; Natural Environment Teaching; Lovaas Model of AIS; Augmentative Communication; PECS (Picture Exchange Communication Systems).

**Stage 3 AI Services Practitioner Requirements**

The practitioners who render Stage 3 services are BAs who have the qualifications described above, and a BT. A BT must receive at least one hour of case supervision from the BA for every 10 hours of intervention the BT renders per individual. There are two avenues through which a practitioner may qualify as a BT.

- a) A Registered Behavioral Technician® (RBT®) by the BACB®.
- b) Documented training in Behavior Analysis without (RBT®) credentials and meet the following requirements:
  - 1. Be at least 18 years of age;
  - 2. Possess a minimum of a high school diploma or equivalent;
  - 3. Complete a minimum of four hours of training in ASD including training on prevalence, etiology, core symptoms, characteristics, and learning differences;
  - 4. Complete at least 40 hours of training in AI toward the requirements for RBT® credentialing by BACB®.
- c) A Board Certified Autism Technician (BCAT) by the Behavioral Intervention Certification Council (BICC).