



# PROPOSED RULE MAKING

## CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Health Care Authority, Washington Apple Health

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Preproposal Statement of Inquiry was filed as WSR 15-08-102; or | <input checked="" type="checkbox"/> Original Notice       |
| <input type="checkbox"/> Expedited Rule Making--Proposed notice was filed as WSR _____; or          | <input type="checkbox"/> Supplemental Notice to WSR _____ |
| <input type="checkbox"/> Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).                 | <input type="checkbox"/> Continuance of WSR _____         |

**Title of rule and other identifying information:**  
 WAC 182-531A-700 Stage three: Delivery of ABA services  
 WAC 182-531A-800 Provider requirements  
 WAC 182-531A-900 Covered services  
 WAC 182-531A-1000 Noncovered services  
 WAC 182-531A-1200 Services provided via telemedicine

**Hearing location(s):**  
 Health Care Authority  
 Cherry Street Plaza Building; Sue Crystal Conf Rm 106A  
 626 - 8<sup>th</sup> Avenue, Olympia WA 98504

Metered public parking is available street side around building. A map is available at:  
[http://www.hca.wa.gov/documents/directions\\_to\\_csp.pdf](http://www.hca.wa.gov/documents/directions_to_csp.pdf)  
 or directions can be obtained by calling: 360-725-1000

Date: **September 8, 2015** Time: **10:00 a.m.**

**Date of intended adoption:** Not sooner than September 9, 2015 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**  
 Name: HCA Rules Coordinator  
 Address: PO Box 45504, Olympia WA, 98504-5504  
 Delivery: 626 – 8<sup>th</sup> Avenue, Olympia WA 98504  
 e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov)  
 fax (360) 586-9727

by **September 8, 2015 5:00 PM**

**Assistance for persons with disabilities:** Contact Amber Lougheed by September 1, 2015  
 e-mail: [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov) or (360) 725-1349  
 TTY (800) 848-5429 or 711

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:**

The proposed rules align HCA's provider requirements in 182-531A-0800 with those set by the behavior analyst certification board (BACB). Amendments throughout all sections correct inaccurate WAC references, clarify language and simplify the rule's structure.

**Reasons supporting proposal:** The BACB has changed eligibility standards to sit for board certified behavior analyst (BCBA) certification.

**Statutory authority for adoption:** RCW 41.05.021, 41.05.160

**Statute being implemented:** RCW 41.05.021, 41.05.160

**Is rule necessary because of a:**

- |                         |                              |  |
|-------------------------|------------------------------|--|
| Federal Law?            | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision?   | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
- If yes, CITATION:

**DATE**  
August 4, 2015

**NAME**  
Wendy Barcus

**SIGNATURE**

**TITLE**  
HCA Rules Coordinator

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE: August 04, 2015**

**TIME: 11:32 AM**

**WSR 15-16-106**

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

N/A

**Name of proponent:** Health Care Authority

- Private
- Public
- Governmental

**Name of agency personnel responsible for:**

Name	Office Location	Phone
Drafting.....Chantelle Diaz	PO Box 2716, Olympia, WA 98504-2716	(360) 725-1842
Implementation....Lin Payton	PO Box 5506, Olympia, WA 98504-5506	(360) 725-1194
Enforcement.... Lin Payton	PO Box 5506, Olympia, WA 98504-5506	(360) 725-1194

**Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?**

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone ( ) \_\_\_\_\_

fax ( ) \_\_\_\_\_

e-mail \_\_\_\_\_

No. Explain why no statement was prepared.

The Joint Administrative Review Committee has not requested the filing of a small business economic impact statement, and these rules do not impose a disproportionate cost impact on small businesses.

**Is a cost-benefit analysis required under RCW 34.05.328?**

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone ( ) \_\_\_\_\_

fax ( ) \_\_\_\_\_

e-mail \_\_\_\_\_

No: Please explain:

RCW 34.05.328 does not apply to Health Care Authority rules unless requested by the Joint Administrative Rules Review Committee or applied voluntarily.

**WAC 182-531A-0700 Applied behavior analysis (ABA)—Stage three: Delivery of ABA services.** (1) (~~Applied behavioral analysis must be prior authorized~~) A provider must obtain prior authorization (PA) before delivery of applied behavior analysis (ABA) services. To request PA, a provider must submit the following documents to the medicaid agency:

(a) The comprehensive diagnostic evaluation and multidisciplinary clinical treatment plan completed by the center of excellence (COE) described in this chapter;

(b) The ABA assessment and ABA therapy treatment plan described in this chapter; and

(c) (~~Other~~) Any documents required (~~as described in~~) by the agency's ABA provider guide.

(2) After the services are prior authorized, (~~the ABA therapy treatment plan is implemented by~~) the lead behavior analysis therapist (LBAT) or a therapy assistant (TA) implements the ABA therapy treatment plan in conjunction with other care team members. The LBAT is responsible for communicating and collaborating with other care team members to ensure (~~consistency in~~) consistent approaches to (~~achieve~~) achieving treatment goals.

(3) If services are rendered by a (~~therapy assistant, the therapy assistant~~) TA, he or she must:

(a) Assess the client's response to techniques and report that response to the LBAT;

(b) Provide direct on-site services in the client's natural setting (~~found~~) (for example, in the home, office, clinic, or community), or in the day services program;

(c) Be supervised directly by an LBAT for (~~a minimum of~~) at least five percent of total direct care per week (~~(e.g., one hour per twenty hours of care)~~);

(d) Consult the LBAT (~~when considering modification to technique, when barriers and challenges occur that prohibit implementation of plan, and as otherwise clinically indicated (see WAC 182-531-1426 for appropriate procedures and physical interventions and WAC 182-531-1428 for prohibited procedures and physical interventions)~~); if:

(i) Considering modifying a technique;

(ii) A barrier or challenge prevents implementation of the treatment plan; and

(iii) Clinically indicated.

(e) Ensure family involvement through modeling, coaching, and training to support generalization and maintenance of achieved behaviors;

(f) (~~Keep documentation of~~) Document each visit with the client (~~and family to include~~) or family and include:

(i) Targeted behavior, interventions, response, modifications in techniques(, and a);

(ii) A plan for the next visit(, along with);

(iii) Behavior tracking sheets that record and graph data collected for each visit; and

(~~(g) Maintain documentation of family's confirmation that the visit occurred, recording signature, and date.~~) (iv) Confirmation

that each visit has occurred, recording the parent's signature and the date.

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

**WAC 182-531A-0800 Applied behavior analysis (ABA)—Provider requirements.**

**Center of excellence.**

(1) ~~((Stage one. The))~~ A center of ((excellence's (COE's))) excellence (COE) may be an entity or an individual. The COE's evaluating and prescribing providers must function as a multidisciplinary care team ~~((whether facility based or practitioner based.~~

~~(a) The qualifications for a COE are:~~

~~(i) The entity or individual employs:~~  
~~(A))~~.

(2) The COE must employ:

(a) A person ((or persons)) licensed under Title 18 RCW who is experienced in the diagnosis and treatment of autism spectrum disorders and has a specialty in one of the following:

- ~~((I))~~ (i) Neurology;
- ~~((II))~~ (ii) Pediatric neurology;
- ~~((III))~~ (iii) Developmental pediatrics;
- ~~((IV))~~ (iv) Psychology;
- ~~((V))~~ (v) Psychiatry; or
- (vi) Pediatric psychiatry; or
- ~~((VI) Psychiatry; or~~

~~(B))~~ (b) A licensed midlevel practitioner (i.e., advanced registered nurse practitioner (ARNP) or physician assistant (PA)) who has been trained by and works under the tutelage of one of the specialists in (a)((i)(A)) of this subsection and meets the qualifications in ~~((a)(ii) of this subsection; or~~

~~(C) Another))~~ subsection (3) of this section; or

(c) A qualified medical provider who meets qualifications in ~~((a)(ii))~~ subsection (3) of this ((subsection)) section and who has been designated by the agency as a ((center of excellence by the agency)) COE.

~~((ii) The entity or individual has been))~~ (3) The COE must be prequalified by the agency as meeting or employing ((persons meeting)) people who meet the following criteria:

~~((A))~~ (a) Physicians and psychologists must have demonstrated expertise ((to diagnose)) in diagnosing an autism spectrum disorder by:

(i) Using a validated diagnostic tool ((or confirm));

(ii) Confirming the diagnosis by observing the client's behavior((r)) and interviewing family members((r)); or

(iii) Reviewing the documentation available from the client's primary care provider, ((the child's)) individualized education plan ((IEP)), or individualized family service plan ((IFSP); or

~~(B) Have sufficient experience in or knowledge of))~~;

(b) Physicians and psychologists must understand the medically necessary use of applied behavior analysis (ABA);

~~((C) Are))~~ and

(c) Physicians and psychologists must be sufficiently qualified to conduct and document a comprehensive diagnostic evaluation, and ~~((to))~~ develop a multidisciplinary clinical treatment plan ~~((as described in WAC 182-531-1418(2)); and~~

~~((iii))~~ ~~The entity or individual is~~ under WAC 182-531A-0500(2).

(4) The COE must be enrolled with the agency or the client's ~~((MCO))~~ managed care organization, unless the client has third-party insurance.

~~((b))~~ (5) Examples of providers who can qualify ~~((and be paid for these services))~~ as a designated COE ~~((are))~~ include:

~~((i))~~ (a) Multidisciplinary clinics;

~~((ii))~~ (b) Individual qualified provider offices; and

~~((iii))~~ (c) Neurodevelopmental centers.

~~((2))~~ (6) All ABA providers must meet the specified minimum qualifications and comply with applicable state laws.

~~((a))~~ **Lead behavior analysis therapist** ~~((LBAT)).~~

~~((i))~~ Requirements.

~~((A))~~ (7) The lead behavior analysis therapist (LBAT) must be:

~~((I))~~ (a) Licensed by the department of health (DOH) to practice independently as a physician, psychologist, or licensed mental health practitioner under Title 18 RCW, or credentialed as a certified counselor or certified counselor advisor under Title 18 RCW, in good standing ~~((with no license))~~ and without disciplinary restrictions, either formal or informal; ~~((or~~

~~((II))~~ (b) Employed by or contracted with an agency that is enrolled as a participating provider and licensed by DOH as a hospital, a residential treatment facility, or an in-home services agency and be licensed by DOH to practice independently as a physician, psychologist, licensed mental health practitioner, or credentialed as a counselor, under Title 18 RCW in good standing ~~((with no license))~~ and without disciplinary restrictions, either formal or informal; or

~~((III))~~ (c) Employed or contracted with an agency that is enrolled as a participating provider and licensed by the department of social and health services' division of behavioral health and recovery (DBHR) with certification to provide ABA services, and be able to meet the staff requirements specified in chapter 388-877A WAC.

~~((B))~~ (8) The LBAT must ~~((~~

~~((I))~~ enroll as a servicing provider ~~((and)),~~ be authorized to supervise ancillary providers ~~((; and~~

~~((II))~~ Be), and be:

(a) A board-certified behavior analyst (BCBA) with proof of board certification through the Behavior Analysis Certification Board (BACB); or

~~((III))~~ Have two hundred twenty five hours of course work related to behavior analysis and either: Seven hundred fifty hours of supervision under a BCBA, or two years of practical experience designing and implementing comprehensive ABA therapy treatment plans. (a)(i)(B)(III) of this subsection is retroactive to January 1, 2013.

~~((ii))~~ Role.) (b) Eligible to sit for board certification under standards set by the BACB; or

(c) Certified by the BACB as an assistant behavior analyst (BCaBA) and practice according to the scope and responsibilities defined by the BACB.

(9) If the LBAT's role is filled by a BCaBA, the responsibilities below must be fulfilled by both the BCaBA and the supervising BCBA, as required by the BACB. The LBAT must:

~~((A))~~ (a) Develop and maintain an ABA therapy treatment plan that is comprehensive, incorporating treatment ~~((being))~~ provided by other health care professionals, and that states how all treatment will be coordinated ~~((, as applicable))~~; and

~~((B))~~ (b) Supervise ~~((a minimum of))~~ at least five percent of the total direct care provided by the therapy assistant per week ~~((e.g., one hour per twenty hours of care))~~.

~~((b))~~ **Therapy assistant.** ~~((Requirements-~~

~~(i) Therapy assistants))~~ (10) The therapy assistant (TA) must be:

~~((A))~~ (a) Able to practice independently by being licensed by DOH as a licensed mental health practitioner or credentialed as a counselor under Title 18 RCW in good standing with no license restrictions; ~~((or~~

~~(B))~~ (b) Employed by or contracted with an agency ~~((that is))~~ enrolled as a participating provider and licensed by DOH as a hospital, a residential treatment facility, or an in-home services agency with a home health service category to provide ABA services, and be able to practice independently by being licensed by DOH as a licensed mental health practitioner or credentialed as a counselor under Title 18 RCW in good standing with no license restrictions; or

~~((C))~~ (c) Employed by or contracted with an agency ~~((that is))~~ enrolled as a participating provider and licensed by DBHR as a community mental health agency with certification to provide ABA services, and be able to meet the staff requirements specified in chapter 388-877A WAC;

~~((ii) The therapy assistant must:~~

~~(A) Have))~~ (11) The TA must enroll as a performing or servicing provider and have:

(a) Sixty hours of ABA training that includes applicable ABA principles and techniques, services, and caring for a ~~((child))~~ client with core symptoms of autism; and

~~((B) Have a written))~~ (b) A letter of attestation signed by the lead LBAT, documenting that the ~~((therapy assistant))~~ TA has demonstrated competency in implementing ABA therapy treatment plans and delivering ABA services ~~((prior to providing services without supervision to covered clients; and~~

~~(C) Enroll as a performing/servicing provider.~~

~~(iii) Role. The therapy assistant must:~~

~~(A))~~.

(12) The TA must:

(a) Deliver services according to the ABA therapy treatment plan; and

~~((B))~~ (b) Be supervised by an LBAT who meets the requirements ~~((in (a)(i) of this subsection))~~ under subsection (7), (8), and (9) of this section; and

~~((C))~~ (c) Review the client's progress with the LBAT at least every two weeks to confirm that the ABA therapy treatment plan still meets the ~~((child's))~~ client's needs. If changes are clinically indicated, they must be made by the LBAT.

~~((c) Licensure for facility based day program setting. This applies to the model described in WAC 182-531-1420 (2)(a).))~~

#### Facility-based day program.

(13) All facility-based day program providers must meet the requirements under WAC 182-531A-0600 (3)(a), and meet the following licensure requirements:

- (a) Outpatient hospital facilities (~~(providing these services)~~) must meet the applicable DOH licensure requirements(~~(-)~~);
- (b) A clinic or nonhospital-based facility (~~(providing these services)~~) must be licensed as a community mental health agency by DBHR(~~(, as described in)~~) under chapter 388-877A WAC(~~(-)~~);
- (c) A provider rendering direct ABA services must meet the qualifications and applicable licensure or certification requirements as described in this subsection, as applicable(~~(- Other)~~); and
- (d) Any provider(~~(s)~~) serving as a member(~~(s)~~) of the multidisciplinary care team must be licensed or certified under Title 18 RCW(~~(- as required)~~).

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

**WAC 182-531A-0900 Applied behavior analysis (ABA)—Covered services.** (1) The medicaid agency covers only the following applied behavior analysis (ABA) services, delivered in settings described in (~~(stage two, as noted in WAC 182-531-1420 (1) and (2),)~~) WAC 182-531A-0600, for eligible clients:

- (a) The ABA assessments (~~(to)~~) that determine the relationship between environmental events and the client's behaviors;
- (b) The direct provision of ABA services by the therapy assistant (TA) or lead behavior analysis therapist (LBAT);
- (c) Initial ABA assessment and development of a written, initial ABA therapy treatment plan, limited to one per year;
- (d) Up to four additional ABA assessments and revisions of the initial ABA therapy treatment plan per year, if necessary to meet client's needs(~~(, limited to four per year)~~);
- (e) Supervision of the (~~(therapy assistant)~~) TA;
- (f) Training and evaluation of family members or caregivers to carry out the approved ABA therapy treatment plans;
- (g) Observation of the client's behavior to determine the effectiveness of the approved ABA therapy treatment plan; and
- (h) On-site assistance in (~~(a difficult or crisis situation)~~) the event of a crisis.

(2) The agency covers the following services, which may be provided in conjunction with ABA services under other agency programs (~~(and be consistent with the program rules in the Washington Administrative Code)~~):

- (a) (~~Speech and language therapy;~~
- (b) ~~Occupational therapy;~~
- (c) ~~Physical therapy;~~
- (d) ~~Counseling;~~
- (e) ~~Interpreter services;~~
- (f) ~~Dietician services)~~ Counseling;
- (b) Dietician services;
- (c) Interpreter services;
- (d) Occupational therapy;
- (e) Physical therapy;
- (f) Speech and language therapy; and
- (g) Transportation services.

(3) The agency does not authorize payment of ABA services ((if the services are duplicative of services being rendered)) that duplicate services provided in another setting.

(4) ((Limits in amount or frequency of the covered services described in this section are subject to the provisions in WAC 182-501-0169, limitation extension.)) If a provider's request for covered services exceeds limitations in this section, the agency evaluates the request under WAC 182-501-0169.

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

**WAC 182-531A-1000 Applied behavior analysis (ABA)—Noncovered services.** The medicaid agency does not cover ((the following)) certain services under the applied behavior analysis (ABA) program ((including, but)) include, but are not limited to:

- (1) Autism camps;
- (2) Dolphin therapy;
- (3) Equine therapy((/)) or hippo therapy;
- (4) Primarily educational services;
- (5) Recreational therapy;
- (6) Respite care;
- (7) Safety monitoring services;
- (8) School-based health care services or early intervention program-based services under WAC 182-531A-0600 (3)(b)(iii), unless prior authorized ((and as described in WAC 182-531-1420 (2)(b)(iii)));
- (9) Vocational rehabilitation;
- (10) Life coaching; and
- (11) Treatment that is unproven or investigational ((e.g.)) for example, holding therapy, Higashi (day life therapy), auditory integration therapy).

AMENDATORY SECTION (Amending WSR 14-24-083, filed 12/1/14, effective 1/1/15)

**WAC 182-531A-1200 Applied behavior analysis (ABA)—Services provided via telemedicine.** Telemedicine, as defined in ((WAC 182-531-1730)) chapter 182-531 WAC, may be used to provide the following authorized services:

- (1) Program supervision when the client is present; and
- (2) Family training, which does not require the client's presence.