



# RULE-MAKING ORDER

**CR-103E (July 2011)**  
**(Implements RCW 34.05.350)**

**Agency:** Health Care Authority, Washington Apple Health

**Emergency Rule Only**

**Effective date of rule:**

**Emergency Rules**

- Immediately upon filing.
- Later (specify)

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

- Yes
  - No
- If Yes, explain:

**Purpose:** To align the lead behavior analysis therapist (LBAT) requirements in WAC 182-531A-0800 with those set by the behavior analyst certification board (BACB), and to add board certified assistant behavioral analysts (BCaBAs) to the list of providers eligible to be an LBAT.

**Citation of existing rules affected by this order:**

Repealed:  
 Amended: 182-531A-0800  
 Suspended:

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

**Other authority:**

**EMERGENCY RULE**

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.
- That in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012, or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

**Reasons for this finding:**

The BACB has changed eligibility standards to sit for board certified behavior analyst (BCBA) certification. The agency's current rule is in conflict with these standards and is more lenient, which compromises public safety by letting an unqualified person provide ABA services. These emergency rules are necessary to continue the current emergency rule adopted under WSR 15-08-101. The agency initiated the permanent rulemaking process under WSR 15-08-102 (CR-101) filed April 1, 2015, and distributed an early draft of the permanent rule to interested parties for review and comment in June 2015. The agency is reviewing the comments received and plans to file the rules for public hearing soon.

**Date adopted:** July 31, 2015

**NAME**  
Wendy Barcus

**SIGNATURE**

**TITLE**  
HCA Rules Coordinator

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE: July 31, 2015**

**TIME: 8:14 AM**

**WSR 15-16-072**

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

<b>Federal statute:</b>	New	_____	Amended	_____	Repealed	_____
<b>Federal rules or standards:</b>	New	_____	Amended	_____	Repealed	_____
<b>Recently enacted state statutes:</b>	New	_____	Amended	_____	Repealed	_____

**The number of sections adopted at the request of a nongovernmental entity:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted in the agency's own initiative:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	_____	Amended	<u>1</u>	Repealed	_____
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Pilot rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Other alternative rule making:</b>	New	_____	Amended	<u>1</u>	Repealed	_____

**WAC 182-531A-0800 Applied behavior analysis (ABA)—Provider requirements.** (1) (~~(Stage one.)~~) The center of excellence's (COE's) evaluating and prescribing providers must function as a multidisciplinary team whether facility-based or practitioner-based.

(a) The qualifications for a COE are:

(i) The entity or individual employs:

(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) Neurology;

(II) Pediatric neurology;

(III) Developmental pediatrics;

(IV) Psychology;

(V) Pediatric psychiatry; or

(VI) Psychiatry; or

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

(ii) The entity or individual has been prequalified by the agency as meeting or employing persons meeting the following criteria:

(A) Physicians and psychologists must have demonstrated expertise to diagnose an autism spectrum disorder using a validated diagnostic tool or confirm the diagnosis by observing the client's behavior, interviewing family members, or 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 the medically necessary use of applied behavior analysis (ABA);

(C) Are 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 enrolled with the agency or the client's MCO, unless the client has third-party insurance.

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

(i) Multidisciplinary clinics;

(ii) Individual qualified provider offices; and

(iii) Neurodevelopmental centers.

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

(a) Lead behavior analysis therapist (LBAT).

(i) Requirements.

(A) The LBAT must be:

(I) 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 coun-

selor or certified counselor advisor under Title 18 RCW, in good standing with no license restrictions; or

(II) 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 restrictions; or

(III) 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) The LBAT must:

(I) Enroll as a servicing provider and be authorized to supervise ancillary providers; and

(II) Be a board-certified behavior analyst (BCBA) with proof of board certification through the Behavior Analysis Certification Board; 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.~~) Be eligible to sit for board certification under standards set by the behavior analyst certification board (BACB); or

(IV) Be a board certified assistant behavior analyst (BCaBA) by the BACB and practice according to the scope and responsibilities as defined by the BACB.

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

(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) Supervise a minimum of 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 must be:

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

(B) Have a written letter of attestation signed by the lead LBAT that the therapy assistant 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) Deliver services according to the ABA therapy treatment plan; and

(B) Be supervised by an LBAT who meets the requirements in (a)(i) of this subsection; and

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