

DEPARTMENT OF HEALTH & HUMAN SERVICES

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



Medicaid and CHIP Operations Group

January 27, 2022

Stephanie Stephens
State Medicaid Director
Texas Health and Human Services Commission
Mail Code: H100
Post Office Box 13247
Austin, TX 78711

Re: TX SPA 21-0002

Dear Ms. Stephens:


We have reviewed the proposed Texas State Plan Amendment (SPA) TX 21-0002, which was submitted to the Centers for Medicare and Medicaid Services (CMS) on September 3, 2021. The purpose of this SPA is to amend the Other Practitioners' Services pages of the state plan to clarify that, to the extent required by EPSDT, a licensed behavior analyst (LBA) operating within the LBA's state scope of practice and licensure requirements may provide applied behavior analysis (ABA) evaluation and treatment services to children under 21 who have a diagnosis of autism spectrum disorder (ASD).

Based upon the information provided by the State, we have approved the amendment with an effective date of February 1, 2022. We are enclosing the approved CMS-179 and a copy of the new state plan pages.

If you have any additional or need further assistance, please contact Ford Blunt of my staff at (214) 767-6381 or by email at Ford.Blunt@cms.hhs.gov.

Sincerely,

James G. Scott
Division of Program Operations

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL FOR: CENTERS FOR MEDICARE AND MEDICAID SERVICES	1. TRANSMITTAL NUMBER: 21-0002	2. STATE: TEXAS
	3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID)	
TO: REGIONAL ADMINISTRATOR CENTERS FOR MEDICARE AND MEDICAID SERVICES DEPARTMENT OF HEALTH AND HUMAN SERVICES	4. PROPOSED EFFECTIVE DATE: February 1, 2022	
5. TYPE OF PLAN MATERIAL (Circle One): <input type="checkbox"/> NEW STATE PLAN <input type="checkbox"/> AMENDMENT TO BE CONSIDERED AS NEW PLAN <input checked="" type="checkbox"/> AMENDMENT		
COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)		
6. FEDERAL STATUTE/REGULATION CITATION: SSA 1905(a)(6); 42 CFR 440.60	7. FEDERAL BUDGET IMPACT: SEE ATTACHMENT a. FFY 2022 \$ 394* b. FFY 2023 \$ 1,476* c. FFY 2024 \$ 2,879* *Figures in whole thousands	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: See Attachment to Blocks 8 & 9	9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable): See Attachment to Blocks 8 & 9	
10. SUBJECT OF AMENDMENT: HHSC is amending the Other Practitioners' Services pages of the state plan to clarify that, to the extent required by EPSDT, a licensed behavior analyst (LBA) operating within the LBA's state scope of practice and licensure requirements may provide applied behavior analysis (ABA) evaluation and treatment services to children under 21 who have a diagnosis of autism spectrum disorder (ASD).		
11. GOVERNOR'S REVIEW (Check One): <input type="checkbox"/> GOVERNOR'S OFFICE REPORTED NO COMMENT <input checked="" type="checkbox"/> OTHER, AS SPECIFIED: Sent to Governor's Office this date. Comments, if any, will be forwarded upon receipt. <input type="checkbox"/> COMMENTS OF GOVERNOR'S OFFICE ENCLOSED <input type="checkbox"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL		
12. SIGNATURE OF STATE AGENCY OFFICIAL:  Stephanie Stephens <small>Stephanie Stephens 1/3/2022 10:07 AM</small>	16. RETURN TO: Stephanie Stephens State Medicaid Director Post Office Box 13247, MC: H-100 Austin, Texas 78711	
13. TYPED NAME: Stephanie Stephens		
14. TITLE: State Medicaid Director		
15. DATE SUBMITTED: January 7, 2022		
FOR REGIONAL OFFICE USE ONLY		
17. DATE RECEIVED: January 7, 2022	18. DATE APPROVED: January 27, 2022	
PLAN APPROVED – ONE COPY ATTACHED		
19. EFFECTIVE DATE OF APPROVED MATERIAL: February 1, 2022	20. SIGNATURE OF REGIONAL OFFICIAL:	
21. TYPED NAME: James G. Scott	22. TITLE: Director, Division of Program Operations	
23. REMARKS: This is a revised CMS-179. The original 179 was submitted on 9/3/21.		

Attachment to Blocks 8 & 9 of CMS Form 179

Transmittal Number 21-0002

<u>Number of the Plan Section or Attachment</u>	<u>Number of the Superseded Plan Section or Attachment</u>
Appendix 1 to Attachement 3.1-A	
Page 13i	New Page
Page 13i.1	New Page
Appendix 1 to Attachement 3.1-B	
Page 13i	New Page
Page 13i.1	New Page
Attachement 4.19-B	
Page 1a.3	1a.3 TN (21-0022)

6.d. Other Practitioners' Services

(12) Licensed Behavior Analysts

- a. To the extent required by EPSDT, a licensed behavior analyst (LBA) operating within the LBA's state scope of practice and licensure requirements may provide applied behavior analysis (ABA) evaluation and treatment services to children under 21 who have a diagnosis of autism spectrum disorder (ASD) when the services are delivered in accordance with state licensure requirements.

LBAs must provide direct supervision to licensed assistant behavior analysts (LaBAs) and behavior technicians (BTs), if LaBAs or BTs are utilized to deliver covered ABA services. LBAs shall assume professional responsibility for and ensure the quality of ABA services rendered by the LaBAs and BTs under the LBA's direct supervision. The supervision of an LaBA and BT is within state scope of practice for the LBA. The supervision of a BT by an LaBA who is supervised by an LBA is within state scope of practice for the LBA and LaBA.

- b. Provider Qualifications

1. LBAs must:

- a. Be licensed by the Texas Department of Licensing and Regulation (TDLR);
 - b. Have a current certification of Board-Certified Behavior Analyst-Doctoral (BCBA-D) or Board-Certified Behavior Analyst (BCBA) by the Behavior Analyst Certification Board (BACB) or other certification as required by TDLR;
 - c. Have no active, disqualifying sanctions or disciplinary actions; and
 - d. Have a completed criminal background check according to the State's requirements.

2. LaBAs must:

- a. Be licensed by the TDLR;
 - b. Have a current certification of Board-Certified assistant Behavior Analyst (BCaBA) by the BACB or other certification as required by TDLR;
 - c. Have no active, disqualifying sanctions or disciplinary actions;
 - d. Have a completed criminal background check according to the State's requirements;
 - e. Work under the direct supervision of an LBA; and
 - f. Have the supervisory relationship documented in writing.

TN: 21-0002
Supersedes TN: new page

Approval Date: 01/27/2022
Effective Date: 02/01/2022

3. BTs must:
 - a. Be 18 years old or older;
 - b. Be currently registered by the BACB or another national body that is accredited by the American National Standards Institute (ANSI) or National Commission for Certifying Agencies (NCCA) and that certifies BTs specializing in ABA or autism spectrum disorder;
 - c. Have a high school diploma or national equivalent;
 - d. Have a completed criminal background check that meets the certifying body's requirements;
 - e. Work under the direct supervision of an LBA or an LaBA, who is supervised by an LBA; and
 - f. Have the supervisory relationship documented in writing.

6.d. Other Practitioners' Services

(12) Licensed Behavior Analysts

- a. To the extent required by EPSDT, a licensed behavior analyst (LBA) operating within the LBA's state scope of practice and licensure requirements may provide applied behavior analysis (ABA) evaluation and treatment services to children under 21 who have a diagnosis of autism spectrum disorder (ASD) when the services are delivered in accordance with state licensure requirements.

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- b. Provider Qualifications

1. LBAs must:

- a. Be licensed by the Texas Department of Licensing and Regulation (TDLR);
 - b. Have a current certification of Board-Certified Behavior Analyst-Doctoral (BCBA-D) or Board-Certified Behavior Analyst (BCBA) by the Behavior Analyst Certification Board (BACB) or other certification as required by TDLR;
 - c. Have no active, disqualifying sanctions or disciplinary actions; and
 - d. Have a completed criminal background check according to the State's requirements.

2. LaBAs must:

- a. Be licensed by the TDLR;
 - b. Have a current certification of Board-Certified assistant Behavior Analyst (BCaBA) by the BACB or other certification as required by TDLR;
 - c. Have no active, disqualifying sanctions or disciplinary actions;
 - d. Have a completed criminal background check according to the State's requirements;
 - e. Work under the direct supervision of an LBA; and
 - f. Have the supervisory relationship documented in writing.

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- c. Have a high school diploma or national equivalent;
- d. Have a completed criminal background check that meets the certifying body's requirements;
- e. Work under the direct supervision of an LBA or an LaBA, who is supervised by an LBA; and
- f. Have the supervisory relationship documented in writing.

1. Physicians and Other Practitioners (continued)

- (f) When a procedure code is nationally discontinued, a replacement procedure code is nationally assigned for the discontinued procedure code, and Medicaid implements the replacement procedure code, a state plan amendment will not be submitted since the fee for the service has not changed.
- (g) To ensure access to care and prompt provider reimbursement, when a new national procedure code is assigned to a physician-administered drug or biological product, a preliminary reimbursement rate will be established by the Texas Health and Human Services Commission (HHSC) based on the published Medicare reimbursement rate; or the average wholesale price (AWP) in the absence of a Medicare reimbursement rate for the procedure code or the comparable code. In accordance with 42 CFR §447.205(b)(1), a public notice and state plan amendment will not be submitted for this preliminary reimbursement rate. This will allow the new procedure code to be payable as the reimbursement process is completed with a public notice published and a state plan amendment submitted.
- (h) All fee schedules are available through the agency's website, as outlined on Attachment 4.19-B, page 1.
- (i) The agency's fee schedule was revised with new fees for services provided by physicians and other practitioners affiliated with tuberculosis clinics or employed by tuberculosis clinics, effective July 1, 2018, and this fee schedule was posted on the agency's website on July 6, 2018.
- (j) The agency's fee schedule was revised with new fees for therapy assistants. Effective September 1, 2019, the reimbursement for therapy assistants will equal 80 percent of the payment to a therapist.
- (k) The agency's fee schedule was revised with new fees to include peer specialists effective January 1, 2019, and this fee schedule was posted on the agency's website on January 7, 2019.
- (l) The agency's fee schedule was revised with new fees to include licensed behavior analysts and licensed assistant behavioral analysts effective February 1, 2022, and this fee schedule will be posted on the agency's website on or prior to February 15, 2022. The reimbursement for licensed assistant behavioral analysts will equal 80 percent of the payment to a licensed behavior analyst.
- (m) The agency's fee schedule was revised with new fees for physicians and other practitioners effective February 1, 2022. This fee schedule will be posted on the Agency's website on or prior to February 15, 2022.

TN: 21-0002
Supersedes TN: 21-0022

Approval Date: 01/27/2022
Effective Date: 02/01/2022