

**DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF DEVELOPMENTAL DISABILITY SERVICES**

Statutory Authority: 18 Delaware Code, Section 3361(f) and 3570A (11 Del.C. §§3361(f) and 3570A)

PROPOSED

2102 Autism Service Providers

PUBLIC NOTICE

In compliance with the State's Administrative Procedures Act (APA - Title 29, Chapter 101 of the **Delaware Code**) and under the authority of Title 18 of the **Delaware Code**, Sections 3361(f) and 3570A, Delaware Health and Social Services (DHSS) / Division of Developmental Disabilities Service is proposing regulations to implement SB 22.

Any person who wishes to make written suggestions, compilations of data, testimony, briefs or other written materials concerning the proposed new regulations must submit same to Kai-Stefan Fountain, Division of Developmental Disabilities, Community Services, 26351 Patriots Way, Suite 101LL, Georgetown, Delaware 19947, Fax: 302-934-6193, E-Mail: kai-stefan.fountain@state.de.us by March 31, 2013.

The action concerning the determination of whether to adopt the proposed regulation will be based upon the results of Department and Division staff analysis and the consideration of the comments and written materials filed by other interested persons.

SUMMARY OF PROPOSAL

The proposal creates regulations regarding standards for certifying qualified autism services providers as required by the passage of Senate Bill 22 and Title 18 of the **Delaware Code**, Sections 3361(f) and 3570A.

Statutory Authority

Senate Bill 22: Title 18 of the **Delaware Code**, Sections 3361(f) and 3570A.

Background

SB22 was enacted into law in 2012 and requires DHSS to create regulations that establish standards for certifying qualified autism services providers for purposes of the insurance reimbursement now required by Delaware law.

Summary of Proposal

The purpose of the proposed regulations is to establish standards for certifying qualified autism services providers

Fiscal Impact Statement

This revision imposes no increase in cost on the General Fund.

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1.0 Purpose

Title 18, Sections 3361(f) and 3570A of the **Delaware Code** require that the Department of Health and Social Services promulgate regulations establishing standards for certifying qualified autism services providers. Once the regulations are promulgated, payment for the treatment of autism spectrum disorders covered under Sections 3361(f) and 3570A shall only be required to be made to autism services providers who meet the standards.

2.0 Definitions

"**Applied behavior analysis**" or "**ABA**" means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior. Applied behavior analysis interventions are based on scientific research and the direct observation and measurement of behavior and environment. They utilize contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other consequences

to help people develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions. The practice of applied behavior analysis expressly excludes psychological testing, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, and long-term counseling as treatment modalities.

“**Autism services provider**” means any person, entity, or group authorized by this section that designs, supervises, and/or provides treatment of autism spectrum disorders. This includes licensed physicians, psychologists or their assistants, psychiatrists, speech therapists or their aides, occupational therapists or their aides, physical therapists or their assistants, practitioners with the national certification of board-certified behavior analyst and behavioral technicians working under their supervision, licensed professional counselors of mental health, licensed clinical social workers, and advanced practice nurses.

“**Autism spectrum disorders**” means any of the pervasive developmental disorders as defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM), including Autistic Disorder, Asperger’s Disorder and Pervasive Developmental Disorder Not Otherwise Specified, as such may be amended hereafter from time to time.

“**Behavioral health treatment**” means professional counseling, guidance services or treatment programs, including applied behavior analysis, that are necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of an individual. This definition also applies to treatment or counseling to improve social skills and function.

“**Behavioral Technician**” means a person meeting the requirements set forth in Section 3 of these regulations who implements components of an applied behavior analysis treatment plan designed and supervised by a Board Certified Behavior Analyst® (BCBA) or a Board Certified Behavior Analyst-Doctoral® (BCBA-D).

“**Medically necessary**” means reasonably expected to do the following:

- prevent the onset of an illness, condition, injury, or disability;
- reduce or ameliorate the physical, mental, or developmental effects of an illness, condition, injury, or disability; or
- assist to achieve or maintain maximum functional capacity in performing daily activities, taking into account both the functional capacity of the individual and the functional capacities that are appropriate for individuals of the same age.

“**Pharmacy care**” means medications prescribed by a licensed practitioner and any health-related services deemed medically necessary to determine the need or effectiveness of the medications.

“**Psychiatric care**” means direct or consultative services provided by a psychiatrist licensed in the state in which the psychiatrist practices.

“**Psychological care**” means direct or consultative services provided by a psychologist licensed in the state in which the psychologist practices or by a psychological assistant acting under the supervision of a psychologist.

“**Screening and diagnosis of autism spectrum disorders**” means medically necessary assessments, evaluations, or tests to diagnose whether an individual has or is at risk for one of the autism spectrum disorders.

“**Therapeutic care**” means services provided by speech, occupational, or physical therapists or an aide or assistant under their supervision.

“**Treatment for autism spectrum disorders**” shall include the following care prescribed or ordered for an individual diagnosed with one of the autism spectrum disorders by a licensed physician or licensed psychologist who determines the care to be medically necessary:

- behavioral health treatment;
- pharmacy care;
- psychiatric care;
- psychological care;
- therapeutic care;
- items and equipment necessary to provide, receive, or advance in the above listed services, including those necessary for applied behavioral analysis.

3.0 Qualified Autism Service Providers

- 3.1 If an autism services provider is currently certified as a BCBA or BCBA-D, such autism services provider shall be deemed to have met the standards to be established under this section to provide applied behavior analysis services. The Behavior Analyst Certification Board sets forth a task list of acceptable activities of an individual they certify and maintains disciplinary and ethical standards. Certified individuals must act within the scope of these documents and their certification, as currently set forth and as subsequently amended. These

documents and requirements are set forth on the Behavior Analyst Certification Board website, www.bacb.com.

- 3.2 Professionals and their aides and assistants listed in 2.2 may provide treatment for autism spectrum disorders, provided that such services are medically necessary and within the professional's scope of practice and scope of competence and training. Aides and assistants must work under the direction and supervision of the professional. Only people certified as a BCBA or BCBA-D or behavioral technicians who work under the supervision of a BCBA or BCBA-D are considered qualified, under these regulations, to provide applied behavior analysis.
- 3.3 Behavioral Technicians who work under the supervision of a BCBA or BCBA-D and who meet the criteria listed below may implement components of applied behavior analysis treatment plans. The supervising BCBA or BCBA-D must verify that the criteria set forth have been met.
- 3.3.1 The supervision by BCBA or BCBA-D must be such that the ratio of clinical management and case supervision hours to direct treatment hours should reflect the needs of the client but shall not be less than 1.5:10. If ABA treatment is more than 10 hours a week, 2 hours of supervision is required.
- 3.3.2 Supervision means that for every 10 hours per week or less of ABA treatment delivered by a Behavioral Technician, the supervising professional provides a minimum of 1.5 hours per week of clinical management and case supervision.
- 3.3.3 Other requirements:
- 3.3.3.1 High School Diploma or GED;
- 3.3.3.2 Proof of passing a federal and state criminal background and child and adult abuse registry check;
- 3.3.3.3 Annual CPR certification;
- 3.3.3.4 Annual signed statement that they have read and understand an explanation of Delaware's mandatory child abuse reporting law (including hotline);
- 3.3.3.5 Signed statement that they have read and understand an explanation of HIPAA;
- 3.3.3.6 Proof of successful completion of an online or in-person course on Autism Spectrum Disorders that is on the list of continuing education providers authorized by the BACB, provided by any accredited two or four year college (online or in-person), or provided by an ABA or behavioral health agency training its own staff so long as such training is done by a BCBA.
- 3.3.3.7 Proof of completion of competency-based training in implementing applied behavior analysis procedures delivered and verified by the supervising BCBA, or BCBA-D. A person holding a current certification of board certified assistant behavior analyst (BCaBA) is deemed to have met this requirement.
- 3.3.3.8 Proof of successful completion of an online or in-person course on ABA principles that has been approved by the Delaware Association of Behavior Analysts or Autism Delaware. This may include coursework offered by an agency which provides ABA therapy and trains its employees in-house. A person holding a current certification of board certified assistant behavior analyst (BCaBA) is deemed to have met this requirement.
- 3.3.3.9 After completion of the above, a minimum of 10 hours of competency-based training and direct service, observed by the BCBA or BCBA-D, before providing one-on-one service.

4.0 Disqualification of Autism Service Providers

- 4.1 A person who meets a definition of an Autism Service Provider under section 3.0 becomes disqualified if
- 4.1.1 The BCBA or BCBA-D no longer has a credential issued by the Behavior Analyst Certification Board.
- 4.1.2 The professional license under which a person practices is suspended or revoked;
- 4.1.3 The person is under investigation and review for or is substantiated for or convicted of abuse, mistreatment, neglect, or exploitation; or
- 4.1.4 An aide, assistant, or behavioral technician ceases employment or the agreement under which the person is supervised by the Autism Service Provider is terminated.

16 DE Reg. 918 (03/01/13) (Prop.)