



October 1, 2021

Ms. Diona Kristian  
Centers for Medicare and Medicaid Services  
Center for Medicaid, and CHIP Services  
Division of State Demonstrations and Waivers  
7500 Security Boulevard  
Mail Stop S2-25-26  
Baltimore, MD 21244-1850

Dear Ms. Kristian:

The Texas Health and Human Services Commission (HHSC) is requesting to amend the Texas Healthcare Transformation Quality Improvement Program (THTQIP-11-W-00278-6), a Medicaid waiver program operating under the authority of Section 1115 of the Social Security Act.

HHSC is proposing the following change in this amendment request:

HHSC is seeking approval to make non-risk payments to Managed Care Organizations (MCOs) for applied behavior analysis (ABA) services.

In response to Texas General Appropriations Act Rider 28, Article II, Senate Bill 1 for the 2022-23 Biennium, which appropriated funds for ABA services for autism, the Texas Health and Human Services Commission (HHSC) is clarifying the coverage of certain early and periodic screening, diagnostic, and treatment (EPSDT) services for children and youth with a diagnosis of autism spectrum disorder (ASD) in its State Plan.

HHSC will add ABA services to the State Plan for Medicaid-enrolled children/youth with a diagnosis of ASD. The services will include: behavior identification assessment; individual and group treatment by protocol; individual and group treatment with protocol modification; family treatment guidance; and the related service of treatment team conferences.

HHSC, at the recommendation of its actuaries, proposes to implement the ABA services under a non-risk payment arrangement with the MCOs until sufficient and credible data are available to be able to set actuarially sound capitation rates in accordance with 42 CFR 438.4. This will allow HHSC additional time to capture

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experience data which can be used to inform future efforts to revise capitation payments for inclusion of the autism services.

The Medicaid state plan will be amended at Appendix 1 to Attachment 3.1-A 6.d. Other Practitioners' Services page 13h 6.d(11) to clarify the coverage of certain EPSDT services for children and youth with a diagnosis of ASD; HHSC is also identifying the provider types eligible to deliver the services. Attachment 4.19-B, section 32 EPSDT will also be amended to update the fee schedule and rate methodologies to add reimbursement for the covered services as described above. HHSC will provide additional detail as part of the State Plan Amendment public notice process. The medical policy will detail the specific service level details.

HHSC requests CMS approve the requested changes in this amendment package to allow non-risk payments by February 1, 2022. Kathi Montalbano, Manager of Policy Development Support, is the lead staff on this matter and can be contacted by telephone at (512) 438-4299.

Sincerely,

Stephanie Stephens  
State Medicaid Director

## Texas Healthcare Transformation and Quality Improvement Program

Number: 11-W-00278/6

Amendment Request: Applied Behavior Analysis

Submitted: 10/01/2021

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### III. General Program Requirements

**STC 7. Amendment Process. Requests to amend the demonstration must be submitted to CMS for approval no later than 120 days prior to the planned date of implementation of the change and may not be implemented until approved. CMS reserves the right to deny or delay approval of a demonstration amendment based on non-compliance with the STCs, including but not limited to failure by the state to submit required elements of a viable amendment request as found in these STCs, reports or other deliverables required in the approved STCs in a timely fashion according to the deadlines specified herein. Amendment requests must, at a minimum, include the following information:**

- a) An explanation of the public notice process used by the State, consistent with the requirements of the STCs, to reach a decision regarding the requested amendment.**

Pursuant to the STCs regarding: Public Notice, Tribal Consultation, and Consultation with Interested Parties, the public notice for public comment about the changes requested in Amendment 19 was published in the Texas Register on August 20, 2021, (see attachment named TX Reg Public Notice). The Texas Register is published weekly and is the journal of state agency rulemaking for Texas. In addition to activities related to rules, the Texas Register publishes various public notices including attorney general opinions, gubernatorial appointments, state agency requests for proposals and other documents, and it is used regularly by stakeholders. HHSC publishes all Medicaid waiver submissions in the Texas Register in addition to many other notices. The publication is available online and in hard copy at the Texas State Library and Archives Commission, the State Law Library, the Legislative Reference Library located in the State Capitol building, and the University of North Texas libraries. All of these sites are located in Austin, except for the University of North Texas, which is located in Denton. Printed copies of the Texas Register are also available through paid subscription; subscribers include cities, counties and public libraries throughout the state. In accordance with the requirements included in STC 14, letters were sent on July 30, 2021, to Tribal Governments requesting comments, questions, or feedback on the amendment by August 29, 2021, (see attached copy of one Tribal letter). No comments, questions, or feedback on the project were received from stakeholders or Tribal Governments.

- b) A detailed description of the amendment, including what the state intends to demonstrate via the amendment as well as impact on beneficiaries with sufficient supporting documentation, the objective of the change and desired outcomes including a conforming Title XIX and/or Title XXI state plan amendment, if necessary.**

HHSC is requesting permission to pay for ABA services on a non-risk basis. ABA services will be covered as an EPSDT service to the extent required by 42 U.S.C. 1396a(a)(43). ABA services for Medicaid-enrolled children/youth with a diagnosis of ASD will include: behavior identification assessment; individual and group treatment by protocol; individual and group

treatment with protocol modification; family treatment guidance; and the related service of treatment team conferences.

HHSC, at the recommendation of its actuaries, proposes to implement the ABA services under a non-risk payment arrangement with the MCOs until sufficient and credible data are available to be able to set actuarially sound capitation rates in accordance with 42 CFR 438.4. This will allow HHSC additional time to capture experience data which can be used to inform future efforts to revise capitation payments for inclusion of the autism services.

Appendix 1 to Attachment 3.1-A and B, Other Practitioners' Services in the Medicaid State Plan will also be amended to add the coverage described above. Attachment 4.19-B, section 32 EPSDT will also be amended to update the fee schedule and rate methodologies to add reimbursement for the covered services as described above.

The amendment does not affect program eligibility; therefore, no significant impact to enrollment is anticipated.

Additionally, Medicaid enrolled children/youth and their families will not share costs of the program.

**c) A list, along with a programmatic description, of the waivers and expenditure authorities that are being requested for the amendment.**

The State is not requesting changes to existing expenditure authorities as part of this amendment.

HHSC is requesting an amendment to waive Section 1903(m) of the Social Security Act and related regulations including 42 CFR 438.2 to allow certain non-risk payments to MCOs pursuant to 42 C.F.R. 447.362.

**d) A data analysis worksheet which identifies the specific “with waiver” impact of the proposed amendment on the current BN agreement. Such analysis shall include current total computable (TC) “With Waiver” and “Without Waiver” status on both a summary and detailed level through the current approval period using the most recent actual expenditures, as well as summary and detailed projections of the change in the “with waiver” expenditure total as a result of the proposed amendment, which isolates (by Eligibility Group) the impact of the amendment.**

Budget Neutrality of the waiver will be amended to reflect coverage of ABA to the extent required by 42 U.S.C. 1396a(a)(43) (relating to EPSDT services). The impact to budget neutrality is not significant as the amendment is included under both with waiver and without waiver expenditures.

Upon collection of sufficient historical experience for ABA utilization, the benefit will be considered for incorporation into capitated rates.

- e) **The state must provide an up-to-date CHIP allotment neutrality worksheet, if necessary.**

Not applicable.

- f) **A description of how the evaluation design, and reports will be modified to incorporate the amendment provisions, as well as the oversight, monitoring and measurement of the provisions.**

Texas is requesting an amendment to this 1115 to allow for non-risk payments for ABA services. Texas is requesting an amendment to its State Plan to clarify the coverage of certain early and periodic screening, diagnostic, and treatment (EPSDT) services for children and youth with a diagnosis of autism spectrum disorder (ASD). Texas Medicaid currently provides services for individuals with ASD including, but not limited to, speech therapy, occupational therapy, and outpatient behavioral health services. Starting February 1, 2022, Applied Behavior Analysis (ABA) will be covered under the THTQIP demonstration waiver as required by the State Plan. Texas will make non-risk payments to Managed Care Organizations for ABA services.

### **CMS-Approved Evaluation Design**

The THTQIP evaluation design CMS approved on August 2, 2018 includes 5 evaluation questions and 13 evaluation hypotheses. There are no evaluation questions, hypotheses, or measures related to ABA services for individuals with a diagnosis of ASD. As a result, clarification of the Medicaid-funded ABA service does not directly impact the evaluation design and reports. However, it is possible the ABA service may indirectly influence a small number of evaluation measures. Specifically, the ABA service may indirectly influence measures under hypotheses 3.3, and likely to a lesser degree measures under hypotheses 1.4, 3.2, 3.4, 3.5, 4.1, 5.1, and 5.2. Table 1 summarizes the projected impact of this amendment on THTQIP evaluation measures.

The THTQIP evaluation also includes a component on the STAR Kids Medicaid managed care program, which will offer ABA services. Texas' External Quality Review Organization conducted a multi-year focus study to evaluate the implementation of STAR Kids between 2016 and 2019. The STAR Kids study conducted by the External Quality Review Organization ended prior to ABA service implementation so the service will not influence evaluation findings associated with this study.<sup>1</sup>

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<sup>1</sup> CMS requested HHSC expand upon the Texas' External Quality Review Organization's study of STAR Kids by reporting a subset of metrics for additional demonstration years. At the time of writing, HHSC was reviewing options for expanding upon the Texas' External Quality Review Organization's study of STAR Kids. HHSC is unsure if additional STAR Kids reporting will continue after the ABA service is implemented, or whether selected metrics may be impacted by the ABA service. If necessary, HHSC will adjust analytic methods for additional STAR Kids reporting to account for impacts of ABA services where possible.

**Table 1. Summary of ABA Amendment Impact on Evaluation Measures**

Measures	Study Population	Impact of Amendment	Explanation of Impact
<b>Delivery System Reform Incentive Payment (DSRIP)</b>			
1.1.1 to 1.1.6 (Social network analysis)	DSRIP performing providers	None	Study population does not include individuals receiving benefit.
1.1.7 to 1.1.8 (Health information exchange)	DSRIP performing providers	None	Study population does not include individuals receiving benefit.
1.2.1 to 1.2.4 (Improvements among clients with diabetes diagnosis)	DSRIP and non-DSRIP clients with diabetes diagnosis	None	Study period ends prior to implementation (ends 9/30/2019).
1.3.1 to 1.3.5 (Category C measures)	Medicaid and low-income uninsured	None	Study period ends prior to implementation (ends 9/30/2019).
1.4.1 to 1.4.5 (Category D measures)	DSRIP performing providers	Possible, limited	Children with ASD are more likely to utilize emergency department services. <sup>2</sup> If ABA services support service integration and primary care services, preventable emergency department events may decrease.
<b>Uncompensated Care (UC)</b>			
2.1.1 to 2.1.2 (UC costs)	Providers and hospitals reporting UC costs	None	Study period ends prior to implementation (ends 9/30/2020).

<sup>2</sup> Deavenport-Saman, A., Lu, Y., Smith, K., & Yin, L. (2015). Do children with autism overutilize the emergency department? Examining visit urgency and subsequent hospital admissions. *Maternal and Child Health Journal*, 20, 306-314.

Measures	Study Population	Impact of Amendment	Explanation of Impact
<b>Medicaid Managed Care (MMC)</b>			
3.1.1 to 3.5.2 (MMC populations)	Children’s Medicaid Dental Services (CMDS) Nursing Facility (NF) Former Foster Care Children (FFCC) Adoption Assistance (AA) Permanency Care Assistance (PCA) Medicaid for Breast and Cancer (MBCC)	Possible, limited	<p>CMDS: None; study period ends prior to implementation (ends 9/30/2020).</p> <p>NF: None; study period ends prior to implementation (ends 9/30/2020).</p> <p>FFCC/AA/PCA:<sup>3</sup> ABA services may:</p> <ul style="list-style-type: none"> <li>• Decrease use of antipsychotic medications (measure 3.3.2).</li> <li>• Improve service coordination (measure 3.2.1).</li> <li>• Improve behavior modification plans (measure 3.3.4).</li> <li>• Decrease preventable emergency department events (measures 3.4.4, 3.4.5, and 3.4.6).</li> <li>• Increase client satisfaction (measures 3.5.1 and 3.5.2)</li> </ul> <p>MBCC: None; ABA services are not expected to impact MBCC outcomes.</p>
<b>Overall Evaluation</b>			
4.1.1 to 4.1.3 (Alternative payment models)	Managed Care Organizations	Possible, limited	HHSC does not anticipate ABA services to impact APMs, but is possible ABA services and/or non-risk payments may influence which APMs MCOs pursue.

<sup>3</sup> HHSC estimates less than 1 percent of these populations will receive the ABA service. As a result, impacts to the evaluation are likely to be negligible.

Measures	Study Population	Impact of Amendment	Explanation of Impact
5.1.1 (Preventable ED use)	Medicaid and low-income uninsured	Possible, limited	If ABA services support service integration and primary care services, preventable emergency department events may decrease.
5.2.1 (Demonstration cost growth)	Medicaid and low-income uninsured	Possible, limited	‘Without Waiver’ and ‘With Waiver’ costs will be amended to account for the Medicaid-funded ABA service and both are expected to increase. However, ‘Without Waiver’ and ‘With Waiver’ costs will have an equal adjustment, so comparisons of annual ‘Without Waiver’ growth rates to ‘With Waiver’ growth rates will experience negligible impact.



Although the amendment may indirectly influence measures outlined in Table 1, HHSC anticipates potential impacts to be limited as individuals already have access to services that treat ASD, and utilization of ABA services following the service clarification is projected to be limited to a small proportion of Medicaid beneficiaries under age 21 who require ABA services in addition to ASD services already provided. Additionally, ABA services are being introduced during the final year of the Demonstration Renewal period. Due to data lags and the time required to pull, analyze, and produce the report, the final evaluation will only include six months or less of data after the introduction of ABA services. Overall evaluation findings are unlikely to be meaningfully impacted by the introduction of ABA services, which have limited utilization by a subset of the study population and are being implemented during the final months of the evaluation study period.

Contingent on data availability, HHSC will provide the external evaluator with MCO encounter data related to individuals included in the THTQIP demonstration evaluation who received ABA services. This information will allow the external evaluator to identify influences associated with the introduction of ABA services and, if necessary, adjust analytic methods to account for impacts of ABA services where possible. HHSC is not proposing adding evaluation questions or hypothesis specific to ABA services as it is outside the scope of the current evaluation. Additionally, HHSC is not proposing changes to the evaluation reports, annual progress reports, or oversight, monitoring, and measurement of the provisions outlined in the STCs.

#### **Draft Evaluation Design for the THTQIP Extension**

HHSC submitted a draft evaluation design for the THTQIP Demonstration Extension to CMS on July 14, 2021. HHSC determined not to include any evaluation questions, hypotheses, or measures related to ABA services for individuals with a diagnosis of ASD because this amendment does not reflect a substantial service delivery change and therefore does not support the objectives of the evaluation. Because the new evaluation design does not include any evaluation questions, hypotheses or measures related to ABA services, clarification of the Medicaid-funded ABA service does not directly impact the evaluation design and reports. Nevertheless, it is possible the ABA service clarification may indirectly influence a limited number of evaluation measures in the new THTQIP Demonstration evaluation design if CMS approves it as-submitted. However, indirect influences of this amendment on the THTQIP Demonstration evaluation design will not be fully known until CMS approves the evaluation design. HHSC anticipates any indirect impacts to be minimal due to the tangential relationship between this amendment and evaluation measures.

Among the measures included in the draft evaluation design that may be indirectly influenced by the clarification of ABA services, all but one currently rely on aggregate or provider-reported data; as a result, outcomes for these measures cannot be isolated for individuals who receive ABA services. The external evaluator may examine measures following the ABA service clarification on February 1, 2022 and interpret results within the context of this clarification, as necessary. Upon request, HHSC may provide the external evaluator with administrative data necessary to identify individuals who receive ABA services, where applicable for indirectly influenced measures which rely on client-level data. This information will allow the external evaluator to identify influences associated with the clarification of ABA services and, if necessary, adjust analytic methods. HHSC is not proposing changes to the evaluation reports,

annual progress reports, or oversight, monitoring, and measurement of the provisions outlined in the STCs for the THTQIP Demonstration.

## TEXAS HEALTH AND HUMAN SERVICES COMMISSION

### Public Notice

The Health and Human Services Commission (HHSC) is submitting a request to the Centers for Medicare & Medicaid Services (CMS) to amend the Texas Healthcare Transformation Quality Improvement Program (THTQIP) waiver under section 1115 of the Social Security Act. The proposed effective date for this amendment is February 1, 2022.

In response to Texas General Appropriations Act Rider 28, Article II, Senate Bill 1 for the 2022-23 Biennium, which appropriated funds for applied behavioral analysis (ABA) services for autism, the Texas Health and Human Services Commission (HHSC) is clarifying the coverage of certain early and periodic screening, diagnostic, and treatment (EPSDT) services for children and youth with a diagnosis of autism spectrum disorder (ASD) in its State Plan. HHSC is seeking approval to make non-risk payments to Managed Care Organizations (MCOs) for ABA services.

ABA services will be covered as an EPSDT service to the extent required by 42 U.S.C. 1396a(a)(43).

Providing ABA services will allow HHSC to expand the array of services available for the treatment of individuals with a diagnosis of ASD. ABA services will be provided using an interdisciplinary model of care, which will include participation of the individual and their parent/caregiver and will ensure the coordination of care for the individual. This is consistent with the 1115 demonstration waiver goal of supporting the development and maintenance of a coordinated care delivery system.

#### ***Proposed Changes***

ABA services for Medicaid-enrolled children/youth with a diagnosis of ASD will include: behavior identification assessment; individual and group treatment by protocol; individual and group treatment with protocol modification; family treatment guidance; and the related service of treatment team conferences. HHSC, at the recommendation of its actuaries, proposes to implement the ABA services under a non-risk payment arrangement with the MCOs until sufficient and credible data are available to be able to set actuarially sound capitation rates in accordance with 42 CFR 438.4. This will allow HHSC additional time to capture experience data which can be used to inform future efforts to revise capitation payments for inclusion of the autism services.

Appendix 1 to Attachment 3.1-A and B, Other Practitioners' Services, in the Medicaid State Plan will be amended to add the coverage described above and to identify the provider types eligible to deliver the services. Attachment 4.19-B, section 32 EPSDT will also be amended to update the fee schedule and rate methodologies to add reimbursement for the covered services as described above.

#### ***Financial Analysis***

Budget Neutrality of the waiver will be amended to reflect the provision of ABA to the extent required by 42 U.S.C. 1396a(a)(43) (relating to EPSDT services). The impact to budget

neutrality is not significant as the amendment is included under both with waiver and without waiver expenditures.

HHSC is requesting an amendment to waive 42 U.S.C. 1396a(a)(30)(A) and 42 U.S.C 1396b(m) of the Social Security Act and related regulations to allow certain non-risk payments to MCOs. Upon collection of sufficient historical experience for ABA utilization, the services will be considered for incorporation into capitated rates.

### ***Evaluation Design***

The CMS-approved 1115 evaluation design and the 1115 draft evaluation design submitted to CMS on July 14, 2021 do not include any evaluation questions, hypotheses, or measures directly related to services for children and youth with a diagnosis of ASD. The majority of measures are not impacted by this waiver amendment because they focus on study populations not receiving these services, outcomes unrelated to ABA services, and/or study periods which end prior to the service change. It is possible this waiver amendment may indirectly influence a limited number of measures in either 1115 evaluation design, however, impacts are expected to be minimal due to the tangential relationship between this amendment and evaluation measures.

HHSC is not planning to add evaluation questions or hypotheses related to ABA services to the either 1115 evaluation design because this amendment does not reflect a substantial service delivery change and therefore does not support the objectives of the evaluation. Upon request, HHSC may provide the external evaluator with administrative data necessary to identify individuals who receive ABA services, and if possible, identify influences associated with the clarification of ABA services where necessary.

### ***Enrollment, Cost Sharing and Service Delivery***

There will be no cost sharing for Medicaid-enrolled children/youth and their families and the amendment does not affect program eligibility; therefore, no significant impact to enrollment is anticipated.

An individual may obtain a free copy of the proposed waiver amendment, ask questions, obtain additional information, or submit comments by September 20, 2021 regarding this amendment by contacting Dawn Roland by U.S. mail, telephone, or email. The addresses are as follows:

#### **U.S. Mail**

Texas Health and Human Services Commission  
Attention: Dawn Roland, Waiver Coordinator, Policy Development Support  
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Mail Code H-310  
Austin, Texas 78751

#### **Email**

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