



February 3, 2022

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:

On October 1, 2021, the Texas Health and Human Services Commission (HHSC) submitted Texas 1115 Demonstration Amendment 19 requesting the Centers for Medicare and Medicaid Services (CMS) approval to allow HHSC to reimburse managed care organizations (MCOs) for applied behavior analysis (ABA) services on a non-risk basis.

Amendment 19 proposed the following:

HHSC requested 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.

HHSC's waiver amendment submission was proposed to allow for CMS approval of the non-risk methodology that HHSC will use to pay the managed care organizations for providing the ABA services. ABA services will still be covered as an Early and Periodic Screening, Diagnostic and Treatment (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 Autism Spectrum Disorder (ASD) would include: behavior identification assessment; individual and group treatment by protocol; individual and group treatment with protocol modification;

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family treatment guidance; and the related service of treatment team conferences. No waiver amendment is needed to provide the coverage of the services.

On January 11, 2022, via email, CMS indicated, "An amendment to the 1115 Transformation waiver is not needed to make ABA payments using a non-risk methodology. This non-risk payment arrangement would be operationalized through the states Managed Care Plan (MCP) contract(s) and this guidance is applicable to MCOs." CMS confirmed this approach complies with federal regulations. Based on this direction from CMS, HHSC respectfully requests the withdrawal of amendment 19, effective immediately.

Additionally, for CMS' awareness, HHSC has amended its existing risk-based managed care contracts to include a non-risk payment provision (e.g., Uniform Managed Care Contract, Attachment A, Section 10.20). This provision includes a reference to the medical policy and listing of procedure codes covered under the policy. HHSC has also provided MCOs with a non-risk payment reimbursement criteria document that includes detailed information about the procedure codes excluded from the capitation rates and to be reimbursed on a non-risk basis. This process complies with upper payment limit expectations as outlined in 42 C.F.R. § 447.362.

Kathi Montalbano, Director of Policy Development Support, is the lead staff on this matter and can be contacted by telephone at 512-438-4299 or by e-mail at kathi.montalbano@hhs.texas.gov.

Sincerely,

Stephanie Stephens
State Medicaid Director