



**National Coalition  
for Access to  
Autism Services**

April 22, 2024

The Hon. Maura Healey  
Governor of Massachusetts  
[Maura.Healey@mass.gov](mailto:Maura.Healey@mass.gov)

Jeffrey S. Shapiro, Esq., CIG  
Inspector General  
Office of the Inspector General  
[Jeffrey.S.Shapiro@mass.gov](mailto:Jeffrey.S.Shapiro@mass.gov)

Kate Walsh  
Sec., Exec. Office of Health and Human Serv.  
[Kate.Walsh@mass.gov](mailto:Kate.Walsh@mass.gov)

The Hon. Ronald Mariano  
Speaker of the House  
[Ronald.Mariano@mahouse.gov](mailto:Ronald.Mariano@mahouse.gov)

The Hon. Karen E. Spilka  
President of the Senate  
[Karen.Spilka@masenate.gov](mailto:Karen.Spilka@masenate.gov)

Matthew Gorzkowicz  
Secretary, Exec. Office of Admin. and  
Finance  
[Matthew.Gorzkowicz@mass.gov](mailto:Matthew.Gorzkowicz@mass.gov)

Michael Levine  
Assistant Secretary for MassHealth  
[Mike.Levine@mass.gov](mailto:Mike.Levine@mass.gov)

The Hon. Michael J. Rodrigues  
Chair, Sen. Committee on Ways and Means  
[Michael.Rodrigues@masenate.gov](mailto:Michael.Rodrigues@masenate.gov)

The Hon. Aaron M. Michlewitz  
Chair, House Committee on Ways and Means  
[Aaron.M.Michlewitz@mahouse.gov](mailto:Aaron.M.Michlewitz@mahouse.gov)

The Hon. Patrick M. O'Connor  
Ranking Minority Member  
Senate Committee on Ways and Means  
[Patrick.OConnor@masenate.gov](mailto:Patrick.OConnor@masenate.gov)

The Hon. Todd M. Smola  
Ranking Minority Member  
House Committee on Ways and Means  
[Todd.Smola@mahouse.gov](mailto:Todd.Smola@mahouse.gov)

The Hon. Marc R. Pacheco  
Chair, Senate Post Audit and Oversight  
[Marc.Pacheco@masenate.gov](mailto:Marc.Pacheco@masenate.gov)

The Hon. John J. Mahoney  
Chair, House Post Audit and Oversight  
[John.Mahoney@mahouse.gov](mailto:John.Mahoney@mahouse.gov)

Steven T. James  
Clerk of the House of Representatives  
[Steven.James@mahouse.gov](mailto:Steven.James@mahouse.gov)

Michael D. Hurley  
Clerk of the Senate  
[Michael.Hurley@masenate.gov](mailto:Michael.Hurley@masenate.gov)

The Hon. Bruce E. Tarr  
Senate Minority Leader  
[Bruce.Tarr@masenate.gov](mailto:Bruce.Tarr@masenate.gov)

The Hon. Bradley H. Jones, Jr.  
House Minority Leader  
[Bradley.Jones@mahouse.gov](mailto:Bradley.Jones@mahouse.gov)

The Hon. Ryan C. Fattman  
Ranking Minority Member  
Senate Post Audit and Oversight  
[Ryan.Fattman@masenate.gov](mailto:Ryan.Fattman@masenate.gov)

Re: MassHealth's Applied Behavior Analysis Program – Service Providers

Dear Governor Healey, Inspector General Shapiro, and Commonwealth Leaders:

We are writing to you today to raise our concerns about the March 1, 2024, report titled, *MassHealth's Applied Behavior Analysis Program – Service Providers*, submitted by Inspector General Shapiro. The National Coalition for Access to Autism Services (NCAAS) is a nonprofit organization representing autism treatment providers and the hundreds of thousands of children and families they serve in every state of America who are affected by autism spectrum disorder (ASD). NCAAS providers contract with TRICARE, public schools, Medicaid, CHIP, and commercial insurers to provide essential, medically necessary treatment to patients of all ages, although the vast majority of patients are children. Many NCAAS members deliver services in Massachusetts to MassHealth beneficiaries.

To be clear from the outset, NCAAS endeavors to preserve access to quality applied behavior analysis (ABA) and supports efforts to identify real instances of fraud. MassHealth has not audited ABA services with the frequency of other services, and we would welcome such additional audits, but also other interactions with the Inspector General's Office, MassHealth officials, and other activities that create opportunities to increase all stakeholders' understanding of the ABA benefit. Given the information presented in the report, NCAAS is concerned that the report's conclusions may be missing critical information from the analysis that concluded MassHealth "overpaid MCEs' [managed care entities] ABA providers for service claims over the 10:1 supervision ratio in the amount of \$16,761,445" and questioned 561 claims for services "purportedly provided to 311 members on holidays, amounting to \$162,535."

Regarding the first conclusion that presumably arises from an analysis of paid claims, please note:

- **Incomplete Analysis:** No analysis of paid claims will yield an accurate picture of supervision hours because *a significant percentage of supervision activities are not billable* according to CASP's (Council of Autism Service Providers) Applied Behavior Analysis Treatment of Autism Spectrum Disorder: Practice Guidelines for Healthcare Funders and Managers ("CASP Guidelines"; p. 32). In fact, providers likely met or exceeded the arbitrary 10:1 threshold below which Inspector General Shapiro characterized as "inadequate supervision" in his report. Furthermore, MassHealth appropriately authorizes multiple billing codes to capture billable supervision activities, including CPT codes 97151, 97155, 97156, 97157, and H0031-U2 (101 CMR 358.00). The service descriptions for these activities are subsumed under "case supervision activities" as described by CASP Guidelines (p. 33); *yet only CPT code 97155 was included in the OIG analysis*. Billing for "H" code activities, assessment activities under 97151, direction of the parent/caregiver under 97156, and group direction of parent/caregiver should all be included in any analysis of supervision, recognizing that such an analysis is still limited to *paid* claims and provides no insight into supervision activities that regularly occur but are not billable. To be clear, this report suggests recoupment from providers who did not *bill* for supervision without evidence that so-called "adequate supervision" did not occur.
  - MassHealth ABA has directed providers to use an "H" code to bill for activities that include supervision activities, such as updating the treatment plan, reviewing progress data to change behavioral protocols, and responding to critical situations; all of these activities predicated in large part by the supervised behavior technicians' reports and notes.

- Direct supervision activities as described in the CASP Guidelines include direction of caregivers/parents “in the implementation of new or revised treatment protocols. *Such activities would be billed under CPT code 97156, which was not included in the analysis to determine supervision ratios.*”
- **Secondary Claims Data:** The Inspector General’s report did not appear to account for secondary MassHealth claims that would inflate 97153 CPT units provided by behavior technicians.<sup>1</sup> To the extent that the data analysis captured services for which MassHealth was the secondary payor, the cost-sharing paid by MassHealth is likely assessed against 97153 (1:1 ABA) only and would not show any units of 97155 that may have been billed to the primary payor. In such a scenario, MassHealth payments as a secondary payor would likely have skewed the data.
- **Improper Supervision Ratio:** The OIG report’s first “key finding” states “1,831 MassHealth members received inadequately supervised ABA services” (p. 8) and then characterizes payments for “inadequately supervised ABA” as “overpayments” (p. 30). The characterization of payment for ABA as “overpayments” when the 10:1 supervision threshold was allegedly not met is improper. First, if all supervision activities were captured by the analysis, the 10:1 ratio would likely be met. Second, CASP Guidelines state, “Although the amount of supervision for each case must be responsive to individual client needs, two hours for every 10 hours of direct treatment is the general standard of care.... A number of factors increase or decrease case supervision needs on a shorter- or longer-term basis.” (p. 35). That is, treatment must be individualized for each patient. Moreover, research demonstrates that the single most important variable contributing to patient outcomes is the number of hours of ABA a patient receives, without regard for supervision.
- **Contractual Specifications:** The OIG report cites Optum performance specifications in its conclusion that a ratio of 10 hours of direct ABA to 1 hour of supervision is necessary to avoid the label of “inadequate supervision” (OIG Report, p. 21). Optum’s document states, “The hours approved are based on the staff’s direct hours, i.e., a minimum of one hour of case supervision for every 10 hours of direct service” (p.3) The use of the word *approved* indicates that this guidance relates to prior authorization, meaning that requests for authorization of supervision in excess of the one hour for every 10 hours of ABA would be denied or would require additional explanation to demonstrate medical necessity.<sup>2</sup> The Optum document does not in any way restrict Licensed Applied Behavior Analysts (LABAs) from exercising their clinical judgment in determining medically necessary supervision hours. *More importantly, however, Optum does not—unlike the OIG analysis—limit supervision activities to a specific billing code. “Case supervision” activities described by CASP would be billed to Optum using CPT codes 97151, 97156, 97157, and H0031, in addition to 97155. Yet, the report states that only 97155 units were reviewed to determine the supervision ratio (OIG Methodology, p. 8).*
- **Troubling Timeline:** The rates and codes for ABA used in the analysis (101 CMR 358.00) were effective 10/1/2022, yet the analysis of those codes begins nine months earlier, spanning 1/1/2022-10/31/2023. *Prior to 10/1/2022, additional H-codes (i.e., H0032) were used to bill for supervision. The report fails to account for this critical change in claims billing during the analysis period.*

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<sup>1</sup> MassHealth is the secondary payor when a patient has both commercial and Medicaid coverage. As a secondary payor, Medicaid typically covers cost-sharing (e.g., co-pays, co-insurance, and deductible) up to the Medicaid rate.

<sup>2</sup> Optum Provider Specifications <https://public.providerexpress.com/content/dam/optum-provexpr/us/pdfs/ourNetworkMain/welcomeNtwk/ma/ma-perform-specs/3855hh.pdf>, accessed 3/25/2024.

- **Credentialing Delays:** The OIG Report acknowledges the “growing shortage of qualified BCBA clinicians with LABA credentials” (p.17). In addition to BCBA certification and state licensure, LABAs must be credentialed with the relevant MCE to deliver services to that MCE’s beneficiaries. Although Massachusetts regulations require such credentialing with commercial insurers to be completed within 60 days, MCEs often take as long as 6 months to credential a practitioner, a genuine programmatic vulnerability. Since these are the individuals who would provide supervision activities, any meaningful effort to increase supervision must be accompanied by a commitment by the MCEs to complete credentialing in a more timely fashion.
- **Use of Mid-Tier LaABAs:** Unlike its commercial counterparts and most state Medicaid agencies, MassHealth does not permit use of the mid-tier Licensed Assistant Applied Behavior Analysts (LaABA) who are qualified to undertake supervision activities. Any meaningful effort to increase supervision should add LABAs as QHP who are permitted to undertake supervision activities.<sup>3</sup>
- **MHPAEA Violation:** The authors of the report establish 1 hour of supervision for every 10 hours of ABA as “adequate” and suggest that payment for ABA when supervision falls short of this ratio is an “overpayment.” This rationale imposes a quantitative treatment limitation that violates the federal Mental Health Parity and Addiction Equity Act (MHPAEA) to which MassHealth is clearly subject.<sup>4,5</sup>

Regarding the third conclusion that suggests services billed on New Year’s Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, and/or Christmas may not have occurred, NCAAS is unaware of any contractual language that prohibits services on these holidays. Please note:

- **Respectfully, autism does not take a holiday.** In fact, holiday activities are commonly understood to increase challenging behaviors for a number of reasons, including a change in schedule; increased activities and exposure to unfamiliar people; and heightened sensory experiences from loud noises, to name only a few holiday elements that make the holidays especially challenging for the patients we serve and create unique opportunities to work on goals approved in the treatment plan.
- Patient demographics are diverse, and assumptions about which holidays are observed by MassHealth beneficiaries are insensitive to the cultural and religious diversity of the patient population served. The BACB *Ethics Code for Behavior Analysts* requires its certificants to ensure their practices are culturally responsive (Section 1.08) and not discriminatory (Section 1.07), and assumptions about which holidays are observed by which beneficiaries are improper.<sup>6</sup>
- *All hours are preauthorized, which means that both the MCE and the provider have determined that such hours are medically necessary.* Therefore, an analysis of paid wages on federal holidays should

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<sup>3</sup> See 262 CMR Section 10.04, available at <https://www.mass.gov/doc/262-cmr-10-requirements-for-licensure-as-an-applied-behavior-analyst-and-assistant-applied-behavior-analyst/download>.

<sup>4</sup> Pursuant to MHPAEA, 29 U.S.C. Section 1185a and its implementing regulations at 45 CFR Sections 146.136 and 147.160, quantitative limits on mental health coverage cannot be imposed or enforced unless the insurer imposes the same limits as the predominant treatment limitation on substantially all of its medical/surgical coverage in the same classification (e.g., outpatient).

<sup>5</sup> CMS Guidance - SHO # 13-001 ACA #24 - [Application of the Mental Health Parity and Addiction Equity Act to Medicaid MCOs, CHIP, and Alternative Benefit \(Benchmark\) Plans](#) (2013)

<sup>6</sup> Behavior Analyst Certification Board. (2020). Ethics code for behavior analysts. <https://bacb.com/wp-content/ethics-code-for-behavior-analysts/>

discern whether services were, in fact, provided. The report's assumption that services on federal holidays represent "overpayment" is likely very inaccurate for the forgoing reasons. Additionally, many individuals in today's world simply don't observe federal holidays any differently than any other day of the week.

- Most behavior technicians are part-time employees who may not earn paid holidays. Many ABA providers are open on Memorial Day, Fourth of July, and Labor Day. Employees who do not observe Christmas may choose to work on Christmas. Patients who do not celebrate Christmas may use the holiday to access service hours while other patients are celebrating Christmas. Finally, Thanksgiving is uniquely challenging and offers numerous opportunities to work on treatment goals for patients who demonstrate behaviors at a higher rate when confronted with unfamiliar food, people, sounds, and schedules.

Finally, the Inspector General's report provides no context relative to the service settings and circumstances in which ABA-based treatment is delivered. Children affected by autism receive services in their home, community, and ABA centers. Treatment schedules can be highly variable due to the ages and personal circumstances of these children. Families often cancel ABA-based treatment sessions without adequate notice due to child-illness, competing family priorities, and work-related reasons. Given the well-established shortage of behavior analysts and the 6-month delay in credentialing new LABAs, rescheduling supervision sessions is challenging as credentialed LABAs have full schedules due to the high number of families in the Commonwealth in need of ABA services. The difficulty in rescheduling supervision sessions is compounded by families' tending to receive services after school hours, leaving a very limited window for rescheduled sessions. Under these conditions, the LABA must make use of non-billable supervision activities, such as data analysis and protocol modification and direction of the technicians without the patient present, to ensure ongoing patient progress.

**Given the circumstances outlined above, NCAAS respectfully asks the Inspector General to consider amending the report's key findings, conclusions, and recommendations or undertaking an additional report that takes into account the factors identified herein, especially the fact that supervision of ABA services can be billed under multiple MassHealth recognized CPT codes beyond just the single code that the Inspector General examined.**

Please let us know if you have any questions or if there is any additional information we can provide. We would welcome the opportunity to discuss this with you directly.

Respectfully submitted,



Michael Moran  
President

cc: Jane Ryder, Commissioner, Department of Developmental Services (jane.f.ryder@mass.gov)  
Susanne M. O'Neil, Acting Deputy Inspector General and General Counsel, OIG (Susanne.M.ONeil@mass.gov)  
Gregory H. Matthews, Director, Healthcare Division, OIG (Gregory.H.Matthews@mass.gov)  
Joshua Giles, Director, Policy and Government Division, OIG (Joshua.Giles@mass.gov)