



**MONTANA  
ADMINISTRATIVE  
REGISTER**



**DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES**

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**NOTICE OF PROPOSED RULEMAKING**

**MAR NOTICE NO. 2025-276.1**

**Summary**

Amendment of ARM 37.34.1902, 37.34.1918, and 37.34.1930 pertaining to Applied Behavior Analysis Services

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**Hearing Date and Time**

Thursday, May 15, 2025, at 10:00 a.m.

**Virtual Hearing Information**

Join Zoom Meeting at: <https://mt-gov.zoom.us/j/85745002873?pwd=l7irAf31XEtHv0QqK9OIE5WZ6Rhx0q.1>,

Meeting ID: 857 4500 2873, and password: 267855; or

Dial by telephone: +1 646 558 8656, meeting ID: 857 4500 2873, and password: 267855. Find your local number: <https://mt-gov.zoom.us/u/kcrtJ2waax>.

**Comments**

Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may be submitted using the contact information below. Comments must be received by Friday, May 23, 2025, at 5:00 p.m.

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## Accommodations

The agency will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. Requests must be made by Thursday, May 1, 2025, at 5:00 p.m.

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## Contact

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## Rulemaking Actions

### AMEND

The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

### 37.34.1902 DEFINITIONS

The definitions applicable to Applied Behavior Analysis (ABA) therapy services are as follows:

- (1) "Applied Behavior Analysis" (ABA) means a type of therapy that applies human behavior principles to improve a member's adaptive functioning and reduce problem behaviors due to a psychiatric and/or behavioral condition.
- (2) "Autism spectrum disorder" (ASD) means a condition as defined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR) of the American Psychiatric Association. The DSM-5 ASD definition is adopted and incorporated by reference. The DSM-5 defines and classifies mental disorders. A copy is available for public inspection at: Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities Division, Developmental Disabilities Program, 111 N. Sanders, Helena, MT 59604-4210. A copy may be purchased online at <https://dsm.psychiatryonline.org/doi/book/10.1176/appi.books.9780890425787>.
- (3) "Behavior identification assessment" (BIA) means a developmentally appropriate assessment that identifies strengths and weaknesses across domains and potential barriers to progress. Areas of assessment may include challenging behaviors and skill deficits, co-occurring medical and psychiatric conditions, cognitive, adaptive, and developmental functioning, and family dynamics.

- (4) "Board Certified Behavior Analyst<sup>®</sup>" (BCBA) means an individual with a graduate-level certification in behavior analysis who has been certified by the Behavior Analyst Certification Board (BACB). Professionals certified at the BCBA level are independent practitioners who provide ABA services.
- (5) "Board Certified Behavior Analyst-Doctoral<sup>®</sup>" (BCBA-D) means a Board Certified Behavior Analyst who has earned their PhD, in addition to their Master's and/or Bachelor's degrees, and had been certified by the BACB. Any reference to a BCBA in these rules includes BCBA-Ds, unless indicated otherwise.
- (6) "Board Certified Assistant Behavior Analyst<sup>®</sup>" (BCaBA) means an individual with an undergraduate level certification in behavior analysis who has been certified by the BACB. Professionals certified at the BCaBA level provide behavior analysis services under the supervision of a BCBA.
- (7) "DD eligible" means a member found eligible for the receipt of state-sponsored developmental disabilities services pursuant to ARM 37.34.201.
- (8) "Department" means the Montana Department of Public Health and Human Services.
- (9) "Developmental disability" (DD) means a condition or disability that meets the definition of "developmental disability" set forth in 53-20-202(3), MCA.
- (10) "Diagnostic evaluation" means an evaluation performed by a qualified health care professional with expertise in the diagnostic area, that establishes the qualifying diagnosis through interview, observation, and formal assessment tools appropriate to the condition for which services are requested. The qualified health care professional with expertise in the diagnosis area may use assessments from professionals outside of their fields to obtain information that contributes to the diagnostic process.
- (11) "Eligibility criteria" means those criteria established for the purposes of the program of ABA services authorized by the department, as specified in the Montana Medicaid Applied Behavior Analysis Services Manual (ABA Services Manual), dated ~~July 1, 2023~~ March 1, 2025. The department adopts and incorporates by reference the ABA Services Manual which provides the public with greater detail about ABA services. Any conflict between these rules and what is outlined in the ABA Services Manual should be resolved in favor of what is written in these rules. A copy may be accessed on the DPHHS website at the following link:  
<https://medicaidprovider.mt.gov/manuals/appliedbehavioranalysiservicesmanual>  
or a paper copy may be obtained from the department by a request in writing to the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities Division, Developmental Disabilities Program, 111 N. Sanders, P.O. Box 4210, Helena, MT 59604-4210 or at  
<https://medicaidprovider.mt.gov/76>.

- (12) "Functional impairment criteria" are defined in the ABA Services Manual.
- (13) "Member" means a person enrolled in Montana Medicaid who is eligible to receive ABA services.
- (14) "Provisional qualifying diagnosis" means a member's diagnosis that qualifies the member for initiation of ABA services but that has not yet been confirmed by a qualified health care professional with expertise in the diagnostic area. The diagnosis must meet functional impairment criteria and be:
  - (a) SED;
  - (b) ASD; or
  - (c) DD eligible.
- (15) "Qualified health care professional with expertise in the diagnostic area," for the purpose of Montana Medicaid ABA therapy services, refers to a licensed professional with formal training in child and adolescent psychiatric diagnosis and treatment, and has training specific to SED and ASD. A qualified health care professional with expertise in the diagnostic area must belong to one of the following categories:
  - (a) child and adolescent psychiatrist;
  - (b) general psychiatrist;
  - (c) psychiatric mental health nurse practitioner;
  - (d) developmental pediatrician;
  - (e) neurologist;
  - (f) neuropsychologist or psychologist;
  - (g) pediatrician;
  - (h) family physician;
  - (i) family or pediatric nurse practitioner;
  - (j) physician assistant;
  - (k) clinical professional counselor; or
  - (l) clinical social worker.
- (16) "Qualifying diagnosis" means a member's diagnosis that is established by a qualified health care professional with expertise in the diagnostic area through a diagnostic evaluation. The diagnosis must meet functional impairment criteria and the diagnosis must be:
  - (a) SED;

- (b) ASD; or
  - (c) DD eligible.
- (17) "Registered behavior technician" (RBT) means an individual with a paraprofessional certification by the BACB in behavior analysis. The RBT assists in delivering behavior analysis services and practices under the direction and close supervision of a BCBA. The supervising BCBA is responsible for all work the RBT performs.
  - (18) "Serious emotional disturbance" (SED), for the purposes of the program of ABA services authorized by the department, is a mental disorder as defined in the Clinical Guidelines chapter of the ABA Services Manual.
  - (19) "Treatment plan" means an individualized written document that has been developed from the BIA and contains all the critical features listed in the Applied Behavior Analysis Practice Guidelines for the Treatment of Autism Spectrum Disorder: Practice Guidelines Guidance for Healthcare Funders, Regulatory Bodies, Service Providers, and Managers Consumers, Second Third Edition (ABA Treatment of ASD: Practice Guidelines) issued by the Behavior Analyst Certification Board, Inc. (BACB) and/or Council of Autism Service Providers. The department adopts and incorporates by reference the ABA Treatment of ASD: Practice Guidelines, which provides guidelines and other information about ABA treatment for ASD. A copy is available for public inspection at the Department of Public Health and Human Services, Behavioral Health and Developmental Disabilities Division, Developmental Disabilities Program, located at 111 N. Sanders, Helena, MT 59604-4210 and is available online at <https://www.casproviders.org/asd-guidelines> ~~[https://assets002.noviams.com/novi-file-uploads/casp/pdfs-and-documents/ASD\\_Guidelines/ABA-ASD-PracticeGuidelines.pdf](https://assets002.noviams.com/novi-file-uploads/casp/pdfs-and-documents/ASD_Guidelines/ABA-ASD-PracticeGuidelines.pdf)~~.
  - (20) "Unit of service" means 15 minutes of treatment service.

**Authorizing statute(s):** 53-2-201, 53-6-113, 53-21-703, MCA

**Implementing statute(s):** 53-1-601, 53-1-602, 53-2-201, 53-6-101, MCA

### **37.34.1918 SERVICE REQUIREMENTS**

- (1) Services are covered only when within the scope of the provider's license. All providers must comply with all applicable state and federal statutes, rules, and regulations.
- (2) Individuals receiving ABA services must meet the department's applicable initial and/or continuing eligibility criteria. The services delivered must meet all the following service requirements:

- (a) The services must be approved by utilizing the processes, including the authorization process, outlined in the ABA Services manual. The ABA provider must satisfy the service requirements listed here and in the ABA Services manual.
- (b) The services must be directed by a BCBA or BCBA-D. Some services may be provided by a BCaBA or an RBT if the BCaBA or RBT meets the qualifications of ARM 37.34.1930 and is supervised by the BCBA in accordance with ~~ARM 24.189.910~~ 37-17-403 and 37-17-405, MCA.
- (c) The services delivered must be consistent with the following elements as outlined in the Applied Behavior Analysis Practice Guidelines for the Treatment of Autism Spectrum Disorder: Guidance for Healthcare Funders, Regulatory Bodies, Service Providers, and Consumers, Third Edition ~~ABA Treatment of ASD Practice Guidelines:~~
  - (i) ABA core characteristics;
  - (ii) Essential practice elements; and
  - (iii) Assessment, formulation of treatment goals, and measurement of client progress.
- (d) Services are delivered in compliance with the member's individualized treatment plan, developed within 30 calendar days of onset of services, and containing all the critical features listed in the ~~ABA Treatment of ASD Practice Guidelines~~ Applied Behavior Analysis Practice Guidelines for the Treatment of Autism Spectrum Disorder: Guidance for Healthcare Funders, Regulatory Bodies, Service Providers, and Consumers, Third Edition.
- (e) Services must be provided or supervised by the BCBA, BCBA-D, or BCaBA who wrote the treatment plan.
- (f) Services must be provided to the member in person, with the provider and the member in the same physical location, unless specifically authorized in writing by the department.
- (3) ABA services may continue so long as the member does not meet any of the service exclusion criteria set forth in ARM 37.34.1912(3)(b).
- (4) In addition to the requirements outlined in this rule, the ABA Services manual sets forth requirements, request and review processes, and procedures for ABA services with which an ABA provider must comply.

**Authorizing statute(s):** 53-2-201, 53-6-113, 53-21-703, MCA

**Implementing statute(s):** 37-17-403, 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-21-701, 53-21-702, MCA

### **37.34.1930 PROVIDER REQUIREMENTS**

- (1) A BCBA/BCBA-D must:
  - (a) comply with, and agree to be bound by, all laws, rules, regulations, and policies generally applicable to Medicaid providers including the provisions of ARM 37.85.401, 37.85.402, 37.85.406, 37.85.407, 37.85.410, 37.85.414, and 37.85.415;
  - (b) be licensed and have met the licensure requirements for the State of Montana ~~located in ARM 24.189.901~~ set forth in 37-17-403 and 37-17-405, MCA;
  - (c) follow all supervision requirements ~~of ARM 24.189.910~~ set forth in 37-17-403 and 37-17-405, MCA; and
  - (d) maintain responsibility for billing for BCaBA's and RBT's services and assuring that the services are delivered in accordance with the member's Treatment Plan.
- (2) A BCaBA must:
  - (a) be licensed and have met the licensure requirements for the State of Montana ~~found in ARM 24.189.907~~ set forth in 37-17-403 and 37-17-405, MCA; and
  - (b) work under the oversight of a BCBA who assumes full professional responsibility for the services delivered and billed.
- (3) An RBT must work under the oversight of a BCBA who bills and assumes full responsibility for services delivered.

**Authorizing statute(s):** 53-2-201, 53-6-113, 53-21-703, MCA

**Implementing statute(s):** 53-1-601, 53-1-602, 53-2-201, 53-6-101, 53-6-111, 53-6-113, 53-21-701, 53-21-702, MCA

## Reasonable Necessity Statement

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.34.1902, 37.34.1918, and 37.34.1930 pertaining to the Applied Behavior Analysis (ABA) program.

The department's Developmental Disabilities Program (DDP) is proposing to adopt an updated ABA Services Manual to address issues raised by ABA providers, the department's authorization review contractor, and the Children's Mental Health Bureau (CMHB). The updated manual would also update language to allow usage of the most current edition of referenced materials.

### ARM 37.34.1902

The department proposes to adopt and incorporate by reference the March 1, 2025 ABA Services Manual in (11). The March 1, 2025 ABA Services Manual can be located at <https://dphhs.mt.gov/BHDD/DisabilityServices/developmentaldisabilities/>. DDP proposes amending (11) to adopt and incorporate the updated ABA Services Manual which includes the following proposed changes:

1. Clarification on Intermediate professionals. ABA providers have reported that the ABA Services Manual's definition of intermediate professionals is ambiguous and have requested the proposed clarification which conveys that intermediate professionals may complete their required coursework in tandem with the experience portion of their training.
2. Process for requesting information (RFI) if there are missing documents and issuing technical denials during authorization reviews. The department's authorization review contractor has requested this proposed change to be consistent with the CMHB authorization review process.
3. Updated Additional Units of Service Request and Provider Transfer Request forms to include distinct fields for ABA providers to enter their group national provider identifier (NPI) and rendering NPI. This proposed change is necessary as it allows the contractor to associate the authorization with the correct NPI. The department's authorization review contractor has also requested a distinct field in the Additional Units of Service Request form for providers to enter the original start date of ABA services, which is another proposed change to the ABA Services Manual.
4. CMHB has reported that unless the ABA eligibility span in Medicaid Management Information System (MMIS) is end dated after an ABA provider discontinues ABA services, CMHB services are incorrectly denied. DDP proposes to include a termination of service section in the ABA Services Manual to advise providers how to report the discontinuation of ABA services to the department.
5. Proposed updated language to allow usage of the most current edition of referenced materials.



#### ARM 37.34.1918

In (2)(b), the rule references ARM 24.189.910, which was repealed by the Department of Labor and Industry (DLI). DDP proposes to amend this rule to remove this rule reference and replace the reference with reference to the applicable statutes. DDP also proposes to amend (2)(c) and (d) to allow usage of the third edition of the Applied Behavior Analysis Treatment of Autism Spectrum Disorder: Practice Guidelines for Healthcare Funders, Regulatory Bodies, Service Providers, and Consumers.

#### ARM 37.34.1930

In (1)(b), (1)(c), and (2)(a), the rule references ARM 24.189.901 and 24.189.910, which were repealed by DLI. DDP proposes to amend this rule to remove these rule references and to replace them with references to the applicable statutes.

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#### **Fiscal Impact**

The department does not anticipate a fiscal impact.

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#### **Effective Date**

The department intends for these rule amendments to be retroactively effective to March 1, 2025.

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#### **Interested Persons**

The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the department. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be emailed, mailed or otherwise delivered to the contact person above.

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#### **Bill Sponsor Notification**

The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

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#### **Small Business Impact**

Pursuant to 2-4-111, MCA, the department has determined that the rule changes proposed in this notice will not have a significant and direct impact upon small businesses.

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**Medicaid Performance-Based Statement**

Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

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**Rule Reviewer**

Olivia Schuler

**Approval**

Charles T. Brereton, Director  
Department of Public Health and Human Services