



PROPOSED RULE MAKING

CR-102 (July 2022) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: March 29, 2024

TIME: 8:40 AM

WSR 24-08-053

Agency: Health Care Authority

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 24-03-161 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) 182-531A-0900, Applied behavior analysis (ABA) – Covered services

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
May 7, 2024	10:00 AM	The Health Care Authority holds public hearings virtually without a physical meeting place.	To attend the virtual public hearing, you must register in advance : https://us02web.zoom.us/webinar/register/WN_PQetrA72RJuTy42XnHFNMQ If the link above opens with an error message, please try using a different browser. After registering, you will receive a confirmation email containing information about joining the public hearing.

Date of intended adoption: Not sooner than May 8, 2024 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: HCA Rules Coordinator

Address: PO Box 42716, Olympia WA 98504-2716

Email: arc@hca.wa.gov

Fax: 360-586-9727

Other:

By (date) May 7, 2024, by 11:59 PM

Assistance for persons with disabilities:

Contact Johanna Larson

Phone: 360-725-1349

Fax: 360-586-9727

TTY: Telecommunication Relay Services (TRS): 711

Email: Johanna.larson@hca.wa.gov

Other:

By (date) April 26, 2024

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The agency is amending this rule to specify that the agency's applied behavior analysis program does not pay for services provided by a client's parent, guardian, caregiver, or other support person.

Reasons supporting proposal: See Purpose

Statutory authority for adoption: RCW 41.05.021, 41.05.160

Statute being implemented: RCW 41.05.021, 41.05.160

Is rule necessary because of a:

Federal Law?

Yes No

Federal Court Decision?

Yes No

State Court Decision?

Yes No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Type of proponent: Private Public Governmental

Name of proponent: (person or organization) Health Care Authority

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Brian Jensen	PO Box 42716, Olympia, WA 98504-2716	360-725-0815
Implementation:	Alyssa Jennings	PO Box 45502, Olympia, WA 98504-5502	360-725-1194
Enforcement:	Alyssa Jennings	PO Box 45502, Olympia, WA 98504-5502	360-725-1194

Is a school district fiscal impact statement required under [RCW 28A.305.135](#)?

Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

Is a cost-benefit analysis required under [RCW 34.05.328](#)?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

No: Please explain: RCW 34.05.328 does not apply to Health Care Authority rules unless requested by the Joint Administrative Rules Review Committee or applied voluntarily.

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

- This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:
- | | |
|---|---|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
(i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |
- This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#) (does not affect small businesses).
- This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of how the above exemption(s) applies to the proposed rule:

(2) Scope of exemptions: *Check one.*

- The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs.

The agency is amending this rule to specify that the agency's applied behavior analysis (ABA) program does not pay for services provided by a client's parent, guardian, caregiver, or other support person.

The [Behavior Analyst Certification Board \(BACB\)](#) is a national organization that certifies ABA providers. ABA provider types include a Board Certified Behavior Analyst (BCBA), Board Certified Assistant Behavior Analyst (BCaBA) and Registered Behavior Technician (RBT). In Washington State, the Department of Health has three [ABA professions](#) that correspond with the BACB's provider types, including a Licensed Behavior Analyst (LBA), Licensed Assistant Behavior Analyst (LABA) and Certified Behavior Technician (CBT). The LBA conducts assessments, develops, and maintains a treatment plan and oversees the implementation of the treatment plan by the LABA or CBT. The LABA may perform similar duties as an LBA, but under the supervision of an LBA.

The BACB's [Ethics Code for Behavior Analysts](#) and [RBT Ethics Code](#) both require providers avoid multiple relationships including professional, personal and familial relationships with clients, colleagues, supervisors and supervisees. For example, if a parent became an RBT for their child, this would be considered a multiple relationship for both the RBT and the supervising LBA. The LBA would be the LBA of the parent's child in addition to their supervisor. The BACB recently published a [newsletter](#) specifying that parents must not act as the RBT for their own children and differentiates this from participating in caregiver training. Multiple relationships in ABA create conflicts of interest and would likely cloud a provider's judgement and lead to procedural drift. The Health Care Authority (HCA) is making the rule change to prevent conflicts of interest and promote ethical, effective treatment for Apple Health recipients.

In order for businesses to comply with the rule change, they must ensure that any ABA services billed to HCA or a managed care organization (MCO) were not provided by a family member of the client. If any of their Apple Health clients are receiving ABA services from a family member at the time of the rule change, they will need to assign a different provider to the client, switch to a different model of care or refer the client to a different ABA provider. For example, if an ABA company is employing a parent as a CBT for one's own child, the company may either assign a different CBT to the child, move to a caregiver training only model of ABA or refer the client to a different company. The costs associated with hiring and training new staff will depend on whether the provider is already licensed and whether the company chooses to reimburse the provider for any training, application, or examination fees. In a caregiver training only model, the LBA and/or LABA, who is not a family member of the client, provides training and consultation to the caregivers on the use of ABA interventions. This is not considered providing direct ABA services to their own child. A caregiver training only model typically consists of fewer hours per week overall than a traditional model of ABA. However, the rates published on the [Apple Health Fee-for-service ABA Fee Schedule](#) for caregiver training is higher than the rates for providing direct ABA services. The number of units of each code is highly individualized to each client receiving ABA.

To obtain information for the purposes of completing a small business economic impact statement, the agency surveyed its applied behavior analysis stakeholders. The agency provided a copy of the proposed rule, asked stakeholders for input on the rule draft, and asked stakeholders to provide information relevant to the following issues:

- Whether the proposed rule imposes compliance or other costs on your business, and if so, the kind and extent of those costs
- Whether the proposed rule will result in lost revenue, and if so, the extent of that lost revenue
- How the agency could amend its proposed rule to reduce the costs and other impacts the rule imposes on businesses while retaining the rule's objectives

On February 21, 2024, the agency sent the survey by electronic mail to the 3,476 addresses that stakeholders have registered for the receipt of agency communications related to any applied behavior analysis rulemaking. The agency requested receipt of responses by March 6, 2024. The agency received no responses.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name: Alyssa Jennings
Address: PO Box 45502, Olympia, WA 98504-5502
Phone: 360-725-1194
Fax: 360-586-9727
TTY: Telecommunication Relay Services (TRS): 711
Email: alyssa.jennings@hca.wa.gov
Other:

Date: March 29, 2024

Name: Wendy Barcus

Title: HCA Rules Coordinator

Signature:



WAC 182-531A-0900 Applied behavior analysis (ABA)—Covered services. (1) The medicaid agency covers only the following applied behavior analysis (ABA) services, delivered in settings described in WAC 182-531A-0600, for eligible clients:

(a) The ABA assessments that determine the relationship between environmental events and the client's behaviors;

(b) The direct provision of ABA services by the therapy assistant (TA) or lead behavior analysis therapist (LBAT);

(c) Initial ABA assessment and development of a written, initial ABA therapy treatment plan, limited to one per year;

(d) Up to four additional ABA assessments and revisions of the initial ABA therapy treatment plan per year, if necessary to meet client's needs;

(e) One lifetime authorization of day treatment services. If a provider's request for covered services exceeds limitations in this section, the agency evaluates the request under WAC 182-501-0169.

(f) Supervision of the TA;

(g) Training and evaluation of family members or caregivers to carry out the approved ABA therapy treatment plans;

(h) Observation of the client's behavior to determine the effectiveness of the approved ABA therapy treatment plan; and

(i) On-site assistance in the event of a crisis.

(2) The agency covers the following services, which may be provided in conjunction with ABA services under other agency programs:

(a) Counseling;

(b) Dietician services;

(c) Interpreter services;

(d) Occupational therapy;

(e) Physical therapy;

(f) Speech and language therapy; and

(g) Transportation services.

(3) The agency does not (~~authorize payment of~~) pay for ABA services:

(a) That duplicate services provided in another setting; or

(b) That are provided by a family member.

(4) If a provider's request for covered services exceeds limitations in this section, the agency evaluates the request under WAC 182-501-0169.