

Major Settlement Terms

To address the issues identified in the Complaint, material provisions of the settlement include:

1) ABA as a distinct service:

While ABA will be provided through Defendant's BHRS program, Defendant will separately designate ABA and create either a procedure code or a modifier for it for billing purposes.

2) Scope of ABA:

By March 31, 2016, the defendant will develop, with stakeholder input, and issue a bulletin that will provide information on ABA for children diagnosed with ASD, including, among other things, an explanation "that ABA can be used to develop the skills necessary to perform activities of daily living if a child has an ASD-related deficit that can be ameliorated through the use of ABA interventions, and will reiterate that a child does not have to present with externalizing or negative behaviors in order for ABA to be medically necessary."

3) Medical necessity guidelines:

The defendant, with some input from plaintiffs' counsel, has convened a workgroup consisting of clinical experts and the Department's contracted managed care organizations to recommend

medical necessity guidelines for ABA. The defendant is currently accepting stakeholder input and will issue new medical necessity guidelines by February 20, 2016 that are consistent with the standard of care and the definition of medically necessary services in the Pennsylvania Code, which includes services to ameliorate the effects of a disability as well as services to enable an individual to achieve or maintain maximum functional capacity in performing daily activities relative to his or her age. 55 PA Code 1121a.

4) Qualifications of ABA providers:

Within eighteen months after the execution of the agreement, the defendant, with input from experts in the field, will promulgate regulations defining the training, experience and supervision required for practitioners of ABA. The minimum qualifications will be such that the practitioners who provide ABA will have the knowledge and skills set forth in Exhibit "A."

In the interim, the defendant will require its behavioral health managed care organizations (BHMCO's) to, by February 25, 2016, list in their online directories all providers who have attested that they can perform ABA consistent with Exhibit A until the defendant promulgates substantive regulations as described above. Moreover,

supervisors responsible for implementing ABA treatment plans must also attest that they can perform the skills set forth in Exhibit A of the agreement.

The Department will also, pending the regulations, clarify that some portion of its current minimal training requirements for licensed Behavior Specialists and TSS be focused on ABA, and will start creating tests for its on-line courses.

The Department will immediately require the HealthChoices behavioral health contractors to provide to families upon request information about the licensure, education, ABA and other relevant training, and experience of any BHRS practitioner who delivers ABA to their children.

5) Capacity of qualified providers:

The Department will, by January 15, 2016, establish a process for enrolling in the MA program ABA provider agencies with qualified Behavior Specialists and TSS who had previously been prevented from enrolling due to the lack of a mental health license.

Starting in April, 2016, the defendant will conduct annual surveys to assess the capacity of its BH-MCOs to provide ABA consistent with Exhibit A or its newly promulgated regulations, whichever is in affect

at the time. If the defendant determines that a BHMCO does not have the capacity to deliver ABA to class members consistent with Exhibit A or the newly promulgated regulations, the defendant will require the BHMCO to take prompt steps to remedy the lack of capacity.

Relatedly, by February, 2016, the Department will start tracking every request from a family for ABA, including calls to member services. If a BHMCO does not have a practitioner who can timely deliver ABA to a class member within its network, the defendant will require the BHMCO to find an out-of-network practitioner until the BHMCO can provide ABA in-network.

- 6) The defendant will maintain a point person to receive complaints from class members who are not receiving timely or adequate ABA through its BHMCO's.