



State of Louisiana
Louisiana Department of Health
Office of the Secretary

To: **The Honorable John Bel Edwards, Governor, State of Louisiana (Via Email)**
The Honorable Jeff Landry, Attorney General, Louisiana Department of Justice (apa.submission@ag.louisiana.gov)
The Honorable Patrick Page Cortez, President, Louisiana Senate (apa.senatepresident@legis.la.gov)
The Honorable Clay Schexnayder, Speaker, Louisiana House of Representatives (apa.housespeaker@legis.la.gov)
Catherine Brindley, Editor, Louisiana Register (reg.submission@la.gov)
Senate Health and Welfare Committee (apa.s-h&w@legis.la.gov)
House Health and Welfare Committee (apa.h-hw@legis.la.gov)

From: **Dr. Courtney N. Phillips, Secretary, LDH**

A handwritten signature in cursive script, appearing to read "Rene Huff".

Date: **July 1, 2022**

Re: **Justification of Promulgation of Emergency Rule**
Applied Behavior Analysis-Based Therapy Services – Place of Service
Limitations (LAC 50:XV.301)

MEMORANDUM

In accordance with the Administrative Procedure Act (La. R.S. 49:950 *et seq.*) as amended, the Louisiana Department of Health is submitting the following emergency rule that amends Applied Behavior Analysis-Based Therapy Services – Place of Service Limitations (LAC 50.XV.301).

Should you have any questions or require additional information regarding this matter, please do not hesitate to contact Rene Huff, Rene.Huff@la.gov.

Attachments: Emergency Rule – Applied Behavior Analysis-Based Therapy Services – Place of Service Limitations (LAC 50.XV.301)

Cc: **Tara A. LeBlanc, LDH Medicaid Director**
Veronica Dent, LDH Medicaid Program Manager
Bethany Blackson, LDH Legislative Liaison
Catherine Brindley, Louisiana Register Editor, Office of the State Register

DECLARATION OF EMERGENCY

**Department of Health
Bureau of Health Services Financing**

**Applied Behavior Analysis-Based Therapy Services
Place of Service Limitations
(LAC 50:XV.301)**

The Department of Health, Bureau of Health Services Financing amends LAC 50:XV.301 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953.1, and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health, Bureau of Health Services Financing amends the provisions governing applied behavior analysis-based (ABA) therapy services in order to remove non-conventional place of service limitations to ensure ABA services can be delivered in a community setting.

This action is being taken to promote the health and welfare of Medicaid recipients by allowing services to be delivered in more locations. It is anticipated that this Emergency Rule will not result in programmatic costs in the Medicaid Program for State Fiscal Year 2022-2023.

Effective July 15, 2022, the Department of Health, Bureau of Health Services Financing amends the provisions governing ABA therapy services to remove non-conventional place of service limitations and allow delivery of services in a community setting.

Title 50

PUBLIC HEALTH-MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 1. Applied Behavior Analysis-Based Therapy Services

Chapter 3. Services

§301. Covered Services and Limitations

A. - D. ...

E. Service Limitations

1. ...

2. Services must be delivered in a natural setting (e.g., home and community-based settings, including schools and clinics).

a. Services delivered in a school setting must not duplicate services rendered under an individualized family service plan (IFSP) or an individualized educational program (IEP) as required under the federal Individuals with Disabilities Education Act (IDEA).

3. ...

F. Not Medically Necessary/Non-Covered Services. The following services do not meet medical necessity criteria, nor qualify as Medicaid covered ABA-based therapy services:

1. - 3. ...

4. treatment whose purpose is vocationally- or recreationally-based; and

5. - 5.a.ii. ...

iii. could be provided by persons without professional skills or training; ~~and.~~

6. ~~services, supplies, or procedures performed in a non-conventional setting including, but not limited:~~

~~a. resorts;~~

~~b. spas;~~

~~c. therapeutic programs; and~~

~~d. camps. Repealed.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:926 (May 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:2498 (December 2017), LR 48:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services

(CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Tara A. LeBlanc, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030. Ms. LeBlanc is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Dr. Courtney N. Phillips

Secretary

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