



BRIAN SANDOVAL
Governor

STATE OF NEVADA
DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF HEALTH CARE FINANCING AND POLICY
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RICHARD WHITLEY, MS
Director

MARTA JENSEN
Acting Administrator

Division of Health Care Financing and Policy
Notice of meeting to solicit public comments and intent to act
Upon Amendments to the State Plan for Medicaid Services

Public Hearing October 19, 2015
Minutes

Date and Time of Meeting: October 19, 2015 at 9:00 AM

Name of Organization: State of Nevada, Department of Health and Human Services, Division of Health Care Financing and Policy (DHCFP)

Place of Meeting: Nevada State Legislature Building
401 S. Carson Street, Room 3137
Carson City, NV 89701

Place of Video Conference: Grant Sawyer Office Building
555 E. Washington Avenue, Suite 4412
Las Vegas, NV 89101

Teleconference: (888) 363-4735

Access Code: 1598050

Attendees

In Carson City, NV

Lynne Foster, DHCFP
Jon Sasser, LACSN
Joseline P. Castillo, AHONN
Brook Adie, ADSD
Parker Stremmel, Ferrari Public Affairs
Lisa Dyer, DHCFP
Sheree Cassingham
Desiree Espinoza
Sarah Ramirez, HPES
Theresa Carsten, DHCFP
Coleen Lawrence, DHCFP
Tiffany Lewis, DHCFP

Jenni Bonk, DHCFP
Jose O. Castillo Jr, AHONN
Jeff Gesick, Chrysalis
Marta Jensen, DHCFP
Michelle Scott-Lewing, Autism Coalition of NV
Darrell Faircloth, DAG
Sherry Manning, NGCDD
Michaela Wardrobe, ATAP
Ken MacAleese, Advanced Behavior Solutions
Megan Szeto, Advanced Behavior Solutions
Betsy Aiello, DHCFP
Shannon Sprout, DHCFP

In Las Vegas, NV

Charles Marriott, Autism Care West	Yelena Marriott, Autism Care West
Eric Kessler, The Lovaas Center	Jennifer Strobel, FEAT of Southern Nevada
Rebecca Weber, The Lovaas Center	Jacklyn Murphy, The Lovaas Center
Luis Trujillo, The Lovaas Center	Adriana Roman, The Lovaas Center
Carol Devon, FEAT of Southern Nevada	Diana Monsivais, FEAT of Southern Nevada
Kelley McClellan, Children's Heart Foundation	Marcella D'anio, FEAT (Parent)
Lulelena Garcia, Azul Blue	Suzanne Hartman-Jansen, ATAP
Sherlene Simpson, Office for Consumer Health	Lynnette Medina, Parent
Betzaida C. Hill, Parent	Lina Brous, Parent
James Ohrenschall, Nevada Assembly	Leia Morrison, Parent
Shannon Strout, Grant a Gift Autism Foundation	Anne Horton, The Lovaas Center
Jamie Johnson, Grant a Gift Autism Foundation	Monica Dell'Orto, Family Ties of Nevada
Sam Jasa, The Lovaas Center	Melanie Drown, The Lovaas Center
Sean Corley, The Lovaas Center	Veronica Ramirez, SFS Therapies
Rogue Nuno, Nevada Partners in Policymaking	Adryon Ketcham, Goals for Autism
Yeni Trujillo, Parent	Marc Tedoff, ABA Institute
Jackie Ulrey, Relative	Saraphine Zane, Relative
Jan Crandy, Former Commission ASD	Gonzalo Vergonzini, Relative
Alicia Warner, The Lovaas Center	Gabriela Ortega-Rios, The Lovaas Center
Nieraela Nititadakni, The Lovaas Center	Molly Michelman, Relative
Jackie Valley, Las Vegas Sun	Sagrario Cadena-Benitez, Family Ties of Nevada
Michael D'Angelo, The Lovaas Center	Stephanie Hill, Parent
JC Hill	Jonacynth Mendoza
Stephani Guzman, The Lovaas Center	Justin Kyriannis, Achievable Behavior Strategies
Michael Hobbs, Crescent Academy, Inc.	Isabel Sanchez
Martha Leticia Novan FEAT/Milagros Escandidos	Maria C. Perez, Milagros Escondidos
Gina Garcia, The Lovaas Center	Bonifacio Preciado, Azul Blue (Parent)
Dulce Maria Santillon, FEAT of Southern Nevada	Donna Abnathy, The Lovaas Center
Susana Melgoza Mata, FEAT/Milagros Escandidos	Kimberly Brierly, The Lovaas Center
Claudia Munoz, Parent	Stan Cornell, Disability Resource Center
Chris Holcomb, Tandem Therapy Services	Lidia Gonzales, FEAT (Parent)
LaToya Horton-Williams, The Lovaas Center	Suri Marquez, FEAT (Parent)
Heather Lazarakis, DHCFP	Barbara Buckley, Legal Aid Center of S. Nevada
Lynise Kryk, The Lovaas Center	Dana Aronsen, Center for Autism
Dr. Jessica Love, UNLV	

On the state-wide phone line

Wanda Aguinaldo, DHCFP	Gwen Dwiggin, Accelerated Learning Clinic
Julie Kornack, Center for Autism	Stephanie Swain
Dana Cassadore	Jan Prentice, DHCFP
Dan Unumb, Autism Speaks	

Introduction:

Ms. Lynne Foster, HIPAA Privacy Officer, Division of Health Care Financing and Policy (DHCFP), opened the Public Hearing introducing herself, Ms. Elizabeth Aiello, Deputy Administrator of the DHCFP, Ms. Marta Jensen, Acting Administrator of the DHCFP, and Mr. Darrell Faircloth, Senior Deputy Attorney General (SDAG).

Ms. Foster – The notice for this public hearing was published on September 18, 2015 in accordance with the code of Federal Regulation 42 CFR 447.205 and the Nevada Revised Statute 422.2369.

1. Public Comments

No Comments

2. For Possible Action: Review and approve meeting minutes from the September 29, 2015 public hearings.

Ms. Foster:

The DHCFP staff was asked if they had any proposed revisions or corrections to the September 29, 2015 meeting minutes and none received.

Public Comments

- No Comments

Ms. Foster – Recommended the Deputy Administrator approve as written.

Ms. Aiello – Approved as written.

3. Discussion of Amendments to the State Plan for Medicaid Services and Solicitation of Public Comments

Subject: Intensive Behavior Intervention – Applied Behavior Analysis (ABA)

Ms. Shannon Sprout:

In accordance with guidance CIB 07-07-2014, states must allow for medically necessary diagnostic and treatment services for children with Autism to include intensive behavior intervention services, Applied Behavior Analysis (ABA), under State Plan Authority. This State Plan is to expand Early and Periodic Screening, Diagnosis & Treatment (EPSDT) benefit to cover the intensive behavior intervention services by other licensed practitioners. The other licensed practitioners authorized to perform intensive behavior intervention services are a qualified psychologist, behavior analyst, assistant behavior analyst, and a registered behavior technician.

On Attachment 3.1-A Page 2i, spell out the acronym ASD to now read Autism Spectrum Disorder.

The effective date is January 1, 2016.

At the conclusion of Ms. Sprout's presentation, Ms. Foster asked Ms. Aiello, Deputy Administrator, and Mr. Faircloth, SDAG, if they had any questions or comments.

Ms. Aiello's Comments:

- No Comment

Mr. Faircloth's Comments:

- No Comment

Public Comments:

- Mr. Jon Sasser – Thanked the Governor, Legislature and the DHCFP staff for working so hard on the Applied Behavior Analysis.

Ms. Foster – Closed the Public Hearing for the SPA on Intensive Behavior Intervention – Applied Behavior Analysis (ABA) changes.

4. Discussion of Amendments to the State Plan for Medicaid Services and Solicitation of Public Comments

Subject: Intensive Behavior Intervention – ABA Rate Methodology

Ms. Tiffany Lewis:

In accordance with guidance CIB 07-07-2014, states must allow for medically necessary diagnostic and treatment services for children with autism to include intensive behavior intervention services under the State Plan. This SPA details the rate methodology used to reimburse for those ABA services.

Estimated change in annual aggregate expenditures:

SFY 2016	Increase of \$14,206,060.
SFY 2017	Increase of \$28,412,122.

The effective date of change is January 1, 2016.

After the last public workshop, the policy staff went back and reviewed two codes that were in question from providers. We have now added and included in the rate methodology reimbursement rates for S5110 and S5110 with the modifier HQ for the Board Certified Assistant Behavior Analyst (BCaBA) level of services. The final Registered Behavioral Therapist (RBT) rates were determined using several variables including average wage information for allowing normal business costs such as Federal Insurance Contributions Act (FICA), healthcare costs, sick leave, vacation allowances, Federal Unemployment Tax Act (FUTA), Medicare, Workmen's Comp, State Unemployment Tax Act (SUTA), Modified Business Tax, indirect costs which include non-billable time, some supervision costs and staff meetings, documentation and travel, as well as allowing annual cost for training and certification, and allowing a productivity adjustment. The methodology combined these costs to create the final RBT rate which is paid consistently across all allowable RBT codes. It is also important to note that Nevada Medicaid is governed by the Centers for Medicare and Medicaid Services (CMS) and is required to

follow the Office of Management and Budget (OMB) guidelines with regard to acceptable indirect and non-billable services. The Division of Health Care Financing and Policy (DHCFP) held three Public Workshops regarding rates and the fee schedule was revised five times. The RBT rates in question started at \$20.20 per hour in version two and evolved to \$29.61 by version five, which included the certification and training cost to the rate.

On Attachment 4.19-B, Page 1b (Continued), remove Certified Autism Behavior Interventionist (CABI) as it will be ending on January 1, 2016.

At the conclusion of Ms. Lewis's presentation, Ms. Foster asked Ms. Aiello, Deputy Administrator, and Mr. Faircloth, SDAG, if they had any questions or comments.

Ms. Aiello's Comments:

- No Comment, but the Division did receive letters or e-mails on public comment from the following:

Lita Piffero (Attachment A)	Adela Garcia De Lopez (Attachment B)
Dana and Carissa Cassadore (Attachment C)	Christine Kramar (Attachment D)
Korri Ward (Attachment E)	Cindy Huebner (Attachment F)
Parisa H. Khassto (Attachment G)	Regina Wilson (Attachment H)
Erik Lovaas (Attachment I)	Justin Kryiannis (Attachment J)
Brittany Bates (Attachment K)	Alexa Tow (Attachment L)
Christian (Attachment M)	Adian (Attachment N)
Joshua Vears (Attachment O)	Ernest Neill (Attachment P)
Sheila Neill (Attachment Q)	Dr. Marc Tedoff (Attachment R)
Cheri Scott (Attachment S)	Diana Espinoza (Attachment T)
Robert Satmary (Attachment U)	Jonathan Still, MD (Attachment V)
Dr. Shannon Crozier (Attachment W)	Desiree Espinoza, (Attachment X)
Brian Patchett (Attachment Y)	

Please see attached letters/e-mails.

Mr. Faircloth's Comments:

- No Comment

Public Comments

- Mr. Dan Unumb of Autism Speaks is concerned that based on the national perspective, the RBT rate does not appear to include the indirect supervision costs that are professionally required of BCBA's and RBT. There is a reference to supervision and some supervision costs, but it does not appear to encompass those required elements that delivering an ABA program, only direct, face to face supervision up to a certain point. This is critical because Nevada has adopted the AMA T codes, and unlike the H codes, the T codes don't have a separate code for those supervision costs, rather be the intent of those codes is set forth in the CPT assistant and other documentation that those costs are to be baked into the direct treatment rate and that will result in a higher rate to cover those costs. That's the entire conception of the AMA codes which are referenced in some of the written comments. Not taking into account those codes reach into an inadequately

low rate and necessary critical components that are not covered. With respect to the rate methodology itself, the DHCFP states that the ABA coverage provider qualification rates vary greatly as do those for private insurer's is not always comparable as apples to apples, but his concern is it that it appears the DHCFP go on to proceed to use broad national average wage rates which are probably apples to orange services and appear to ignore the more on point rates of other medicating PFT coverage, which typically are higher. In terms of the actual data to the extent we have it, he knows, for example, there is a reference to Easter Seals. The actual added issue in Easter Seals is for a health aide in a school setting and there is no reference to BCBA's or ABA's in that add. There is data from the website pay scale which uses a median but there is no crosscheck with a mean or average for those figures. Also the underlying adds includes things like Catholic Charities adds, charitable organizations and educational institutions. They have other funding that will support and supplement costs and therefore lead to different wage rates. The Catholic Charities are first with their treatment program in a therapeutic classroom. That is based in Washington State. Washington State Medicaid EPSTD coverage has a Behavioral Therapist rate at \$44.00 per hour. There is also a reference to Therapeutic Alliance in Virginia. Virginia's Medicaid EPSTD rate is \$60.00 per hour. Alaska is also referenced and they are in the process of developing their SPA and have not yet factored their EPSTD rate. Data from the website "Glass Door" refers to Applied Behavioral Analysis in California. California's Medicaid EPSTD rate is \$52.49 in their largest MCO. On the job stat data, it appears that the DHCFP have ignored the higher rate of ABA home based therapists which is higher than the rate sighted. The learning path data simply refers back to the pay scale data. If we look at the actual on point data from other states, particularly in Medicaid EPSTD state plan services, we come up with a mean of \$47.00 per hour with a median of \$50.00 per hour. If some of the states that have waiver based rates that are currently in the EPSTD services but are in the process of losing those rates are used and need a mean change, but only slightly. For example, Florida is taking into account the mean is \$45.00 per hour and the average is \$49.00 per hour. The same thing in South Carolina taking into account the mean is \$43.00 per hour with a median of \$49.00 per hour. He would urge the agency to take a look at those other states in setting its rates and not rely on just generic wage scale rates which may be apples to oranges and probably no doubt are in setting these rates it is critical that the rates are set appropriately to ensure that there is quality of care and access to care. Both of those would be compromised by inadequate rates. He understands that we received extensive testimony from the providers and hopefully we will hear more today about the particular cost structure they face in Nevada and what is a reasonable rate in which they can do business and thereby ensure access to care for all children in Nevada. The other detailed information that he has seen in written comments but not his expertise, but is unsure if the others will be participating, would encompass mileage and travel time, scheduling operations managers, and general supplies, applying those costs at least in the case of one of the written submissions we will be receiving will actually rate that \$29.61 proposed rate to the neighborhood \$46.00. He is urging the DHCFP to take a look at the information that is provided. Thank you for the opportunity to present these comments. Also, please see attached submitted comments. (Attachment Z)

- Mr. Charles Marriott has concerns with the rate methodology. The Nevada base wage before adding in all the components has determined to be \$17.33 per hour for candidates with a high school diploma and 40 hours of training. I agree completely with this. For the mere requirements of 40 hours of training and a high school diploma, this would be a very fair wage. However, to participate in the Medicaid program, one must be credentialed as an RBT – a Registered Behavior Technician. To obtain an RBT credential, one must pass a rigorous performance-based competency assessment administered by a board certified practitioner and effective December

12, 2015 must pass a national examination. You have determined the pay rate using the requirements that are wholly insufficient to your very own requirements to participate in the 2016 program. An RBT credential is required and therefore only number representative of the RTB credential should have been included and that is just not the case. Job Stats, one of DHCFP's own references, including to all the other references that were disclosed that he checked made absolutely no mention of the RBT credential, made no mention of the BABC, no mention of the competency assessment, and made no mention of a national examination. The range of pay rates for an in-home ABA therapist according to Job Stat, which is one of the references, is \$12.55 an hour up to \$31.31. This is the base pay rates. This number is already higher than the number that DHCFP came up with of \$17.33. The average of \$19.00 that they determined within that range of \$12.55 to \$31.00. He must stress again it does not control for positions that require the RBT credential. Pay rates for positions that do not require the RBT credential are absolutely included in these numbers, these calculations that have been referenced. That number will undoubtedly increase and increase significantly if only RBT positions are included. He believes there will be about a 50% pass rate on the National Examination. Also will not be taking any new Medicaid clients.

- Ms. Lynise Kryk of the LOVAAS Center submitted her comments in writing – please see attached. (Attachment AA)
- Dr. Ken MacAleese with Advanced Child Behavior Solutions came to Nevada to pursue his graduate degree and continues to make Nevada his home. He has been President of the Nevada Association of Behavior Analysts twice and has been a provider for over 15 years. He has received some numbers for the base rate that has been spoken about, but feels that they do not have all the numbers, that they have not been made available to the public yet. (A copy of the methodology was sent to Dr. MacAleese after the meeting.) He then spoke about Code Utilization from their own medical billing company. Please see the attached copy of the said e-mail. He suggested that the DHCFP lower some rates in order to increase this important rate. Dr. MacAleese also reiterated Mr. Marriott's comments and stated that there is no work force; he believes that there are less than 100 RBT's in the state. It takes two to three to staff a team, possibly up to five for younger children who need 30 to 40 hours of treatment. We do not have enough to staff it. If our State Plan is going to pay \$30, other states are paying \$40 - \$50, which states are going to be able to provide, attract and retain professionals in this area. He stated that the Nevada Commission in a five year plan to the Governor and the Governor's own office have generated a circumstance so we can get ourselves out of the hole and be leaders in the state. To do that we have to maintain our competitive status with other states. (Attachment BB)
- Ms. Michelle Scott-Lewing of the Autism Coalition of Nevada stated that the lifetime expenses involved in caring for an individual with autism is \$2.4 million. If you take an average of 1,900 children in the State of Nevada that need those services, based on the current rates, we are unable to help 25% of them. That would be \$1.14 billion dollars for the State of Nevada to have to pay out to care for those individuals who get missed in the process. Ms. Scott-Lewing continued on to reiterate what was said by Mr. Marriott and Dr. MacAleese. I have been able to take care of my son who has autism, he is 15 and I have calculated that I have spent about \$500,000 so far and I have been able to do that so when I think about the parents that cannot and I think about the progress that my son has made and yet the progress that he still needs to make, where he is at right now and how he is suffering daily with his disabilities, this is an urgency. We have a problem here in Nevada. We need to fix it and appreciate it so much the amount of money that has been set aside thinking that this is going to help, but please reconsider that amount and think

about the long term effects that this will have on the State of Nevada if we don't do it now and the long term effects it will have on the children and those individuals and what their quality of life will be like.

- Ms. Stephanie Hill came to the meeting with her son JC who at three years four months was diagnosed with on the spectrum on the severe end of moderately affected. He was on a trajectory to never speak. Because of the generosity ATAP monies and because of the home program, we were able to do the early intervention that we were so desperately in need of. We continue our ABA services with LOVAAS. Most people would not know that JC is affected unless they got into a more detailed discussion with him, but in truth he really is a miracle. In the summer of 2014 he had an 8 hour evaluation with Pediatric Neuropsychologist Dr. Julie Beasley who said he was a miracle. Ms. Hill went on to reiterate what was previously stated by Mr. Marriott, Dr. MacAleese, and others. It is a job for many of you, but it is my life and I will not go away. Not just because of my son who I will see graduate from high school and I will see him move on to be a successful adult, but I am as committed to those other children – it has been my life. She asked that the rate be reconsidered.
- Ms. Alicia Warner has submitted her comments in writing – please see attached. (Attachment CC)
- Mr. John Sasser is with the Legal Aid Center of Southern Nevada, Washoe Legal Services, and the Legislative Chair on the Nevada Commission on Services for People with Disabilities but is here today to speak for the kids and their parents. They feel like they are caught in the middle of a game of chicken. They are afraid that there aren't enough RBTs to handle it on January 1, 2016. Mr. Sasser then began to restate the comments that were said earlier by others. Please do everything you can to reconsider that rate. Copies of his comments are attached. (Attachment DD)
- Mr. James Ohrenschall, a member of the State Assembly, representing Assembly District 12 in Clark County. In the 2009 Session was the sponsor of Assembly Bill 162 which mandated most private insurance in Nevada had to cover children on the spectrum and is asking that the rate be reconsidered. Mr. Ohrenschall went on to reiterate what was previously stated. He hopes that this can be looked at again.
- Ms. Dana Aronsen, BCBA for Center for Autism & Related Disorders (CARD) read into record Ms. Julie Kornack, Senior Public Policy Analyst for CARD's, letter. Please see the attached letter. (Attachment EE)
- Ms. Barbara Buckley, former Speaker at Nevada State Assembly and Executive Director of the Legal Aid Center of Southern Nevada states that we are poised here today to breakdown another barrier facing children and families and that is not having Medicaid coverage to cover the therapy that we know will make such a tremendous difference in the lives of kids of fixed income families. If we create a program that does not serve these kids because the providers will not provide service, it is almost worse than not setting up a program at all because we are offering false hope. We have a chance to gather together and do this right. Let's take that chance together. Ms. Buckley then restated what had already been said by others earlier. Please reexamine this one small part of the program.
- Ms. Jennifer Strobel, Executive Director for Families for Effective Autism Treatment of Southern Nevada (FEAT), on behalf of 4,000 members. We get 100's of phone calls each month

by families trying to access quality ABA services for their son or daughter on the spectrum. Many of our parents have been waiting since October for Medicaid services, which have been delayed. FEAT is getting more phone calls about funding and how are they going to provide these quality services for their children. Many of our families have been on a wait list for over a year. As we all know that early intervention is key for best outcome. Many of our families cannot afford to pay out of pocket. Ms. Strobel wonders how many people making these decisions have a child on the spectrum and have had to pay out of pocket for services and wait for services. FEAT supports an increase in the proposed RBT rates and pleads that DHCFP reconsiders. Our children and families deserve more.

- Dr. Jessica Love is the Project and Research Coordinator of the UNLV Center for Autism Spectrum Disorders. Attached is a copy of Dr. Love's comments. (Attachment FF)
- Ms. Jan Crandy former Chair for the Commission on Autism Spectrum Disorders stated that in September the committee voted to send a letter that they had concerns about this rate. Children with insurance have access to quality providers. Children on Medicaid do not deserve any less quality of a provider. That is what is going to happen here with these rates. Ms. Crandy reiterated what was already spoken about earlier. No one is being greedy here. Providers are in business to make a profit. Please consider changing that rate. Kids with Medicaid deserve high quality treatment.
- Dr. Chris Holcomb said that he has seen lots of changes in the ABA community in the last 16 – 18 years since he has been in the Las Vegas Valley. He has been a Board Certified Behavioral Analyst since 2004 and he was one of maybe three in the valley. He has seen a lot of great changes, and it has been fantastic to watch the progression of growth to service our children with the disability of autism. Dr. Holcomb reiterated what was said earlier.
- Ms. Aiello announced that there is another hearing that we have to run for Medicaid Service Manual. If there are any additional public comments to be made, we will accept written comments to be submitted to the Agency by 5:00 pm Wednesday, October 21, 2015. The written comment should be sent to Robyn Heddy. We really need to move forward to the next public hearing.
- Ms. Lazarakis received many written comments from the audience in Las Vegas and will be submitting them on their behalf.

Ms. Foster asked Ms. Aiello, Deputy Administrator, and Mr. Faircloth, SDAG, if they had any questions or comments.

Ms. Aiello's Comments:

- No comments, but thank you.

Mr. Faircloth's Comments:

- No Comment

5. General Public Comments

- No Comments

There were no further comments and Ms. Foster adjourned the public hearing at 10:33 am.

**An Audio (CD) version of this meeting is available through the DHCFP Administration office. For more detailed information on any of the handouts, submittals, testimony and or comments please contact Robyn Heddy at Robyn.Heddy@dhefp.nv.gov or (775) 684-3678 with any questions.*