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ATTN: NV Medicaid ABA Prior Authorizations

RE: Misapplication of Medical Necessity Criteria in Chapter 3700, Disallowing ADLs

To Whom It May Concern,

I am writing this letter due to a recent observed increase in the misapplication of the medical necessity criteria/excluded service provisions in chapter 3700 of the Nevada Medicaid Service Manual pertaining specifically to ADLs (activities of daily living/daily living skills). In what follows, I will demonstrate that services are being denied based on a misreading of chapter 3700. This misreading involves two major errors:

1. a component of a larger definition is taken out of context and applied as if it were a rule unto itself, and

2. references in support of targeting ADLs from elsewhere in the chapter are ignored.

On recent prior authorization requests for ABA services, requested treatment units have been denied with the following justification.

> ***The specific references that apply include 3704.2C.1 "Services which do not meet Nevada Medicaid medical necessity requirements," 3704.2C.7.a.1 "Shall be defined as care that is provided primarily to assist in the activities of daily living (ADLs) such as bathing, dressing, eating, and maintaining personal hygiene and safety,"***

The quotations above are taken out of context and the decontextualization has changed their meaning. The full section of MSM 3700 that lists non-covered services reads as follows:

NON-COVERED SERVICES

1. ***Services which do not meet Nevada Medicaid medical necessity requirements.***
2. Services used to reimburse a parent/guardian for participation in the treatment plan.
3. Services rendered by the parent/guardian.
4. Services that are duplicative services under an IFSP or an IEP.
5. Treatment whose purpose is vocationally or recreationally based.
6. Services, supplies or procedures performed in a non-conventional setting including but not limited to Resorts, Spas and Camps.
7. ***Custodial services:***
a. For the purpose of these provisions, custodial care:
1. Shall be defined as care that is provided primarily to assist in the activities of daily living (ADLs) such as bathing, dressing, eating, and maintaining personal hygiene and safety;
2. Is provided primarily for maintaining the recipient's or anyone else's safety; and
3. Could be provided by persons without professional skills or training.
8. Services not authorized by the QIO-like vendor if an authorization is required according to policy.
9. Respite services.
10. Child -care services.
11. Services for education.
12. Equine therapy.
13. Hippotherapy.
14. Phone consultation services.
15. Care coordination and treatment planning billed independently of direct service.
16. ABA services cannot be reimbursed on the same day as Basic Skills Training (BST) and Psychosocial Rehabilitation (PSR) as defined in MSM Chapter 400.

As you can see, the justification provided by reviewers for why services are not medically necessary and are non-covered, is item 1 (Services which do not meet Nevada Medicaid Medical Necessity Requirements) combined with the first part of a **multi-part** definition of (item 7) custodial care. The implication is that the definition of services which do not meet Nevada Medicaid Medical Necessity Requirements is contained in the first part of the 3-part definition of Custodial Services. In actuality, there are 16 distinct items on the list and the non-covered service of Custodial Services (item 7) is defined as meeting conditions 1, 2, **and** 3 (see above).

The non-covered service is not targeting activities of daily living, but rather, providing care that is strictly custodial in nature and could be provided by persons without professional skills or training. The non-covered

service is caretaking, not shaping behavior toward new skills. There is a distinct difference between dressing someone (custodial) and building the skill repertoire that allows them to dress independently (therapeutic intervention).

ADLs are, in fact, some of the most vital medically necessary skills that ABA can/should target (and is expected per chapter 3700). These are skills that, when missing from an individual's repertoire, have to be done by someone else, ensuring a need for lifelong custodial care. Using Applied Behavior Analysis to establish and maintain these skills toward independence requires proficiency, skill, data collection, and functional analysis that falls well outside the scope of what could be expected of someone without professional skills or training (part 3 of definition of custodial services).

In addition to demonstrating that the justification used by reviewers was taken out of context, I feel it is important to also demonstrate that **there is support for prioritizing the targeting of ADLs**, within the very same MSM Chapter (3700) used as a justification for denying treatment for goals that target ADLs.

Please consider 3704.1: APPLIED BEHAVIOR ANALYSIS POLICY, which states:

> *Medicaid will reimburse for ABA rendered to Medicaid eligible individuals under age 21 years old in accordance with Early and Periodic Screening, Diagnostic and Treatment (EPSDT) coverage authority. The behavior intervention must be medically necessary (reference MSM Chapter 100) to* ***develop, maintain or restore to the maximum extent practical the functions of an individual with a diagnosis of ASD, FASD or other condition for which ABA is recognized as medically necessary.***

It is the responsibility of behavior analysts contracted with NV Medicaid to maintain or restore to the maximum extent practical the functions of individuals with qualifying diagnoses. This most assuredly includes functions of daily living that limit independence as well as access to the community. This is in line with the definition of medical necessity laid out in MSM Chapter 100 (referenced in 3704.1 above). The section of chapter 100 outlining medical necessity, MSM 103.1, reads as follows:

> *Medical Necessity is a health care service or product provided for under the Medicaid State Plan and is necessary and consistent with generally accepted professional standards to:*
>
> *1. diagnose, treat or prevent illness or disease;*
> *2.* ***regain functional capacity****; or*
> *3.* ***reduce or ameliorate effects of*** *an illness, injury, or* ***disability****.*

> *B. The determination of medical necessity is made on the basis of the individual case and takes into account:*
>
> *1. the type, frequency, extent, body site, and duration of treatment with scientifically based guidelines of national medical or health care coverage organizations or governmental agencies.*
> *2.* ***the level of service that can be safely and effectively furnished****, and* ***for which no equally effective*** *and more conservative or less costly treatment is available.*
> *3. that services are delivered in the setting that is clinically appropriate to the specific physical and mental/behavioral health care needs of the recipient.*
> *4. that services are* ***provided for medical or mental/behavioral reasons****, rather than for the convenience of the recipient, the recipient's caregiver, or the health care provider.*
>
> *C.* ***Medical necessity shall take into account the ability of the service to allow recipients to remain in a community-based setting, when such a setting is safe, and there is no less costly, more conservative or more effective setting.***

There is no equally effective or less costly treatment for individuals impaired by ASD, FASD, and other qualifying diagnoses for which ABA is considered medically necessary, than to utilize Applied Behavior Analysis to remediate skill deficits and increase independence. In fact, in MSM Chapter 3700 under COVERED SERVICES (3704.2A), there is an explanation of how skills should be prioritized when intervention hours are limited, under a Focused Delivery Model:

> *1. The appropriate target behaviors are prioritized.* ***When prioritizing multiple target areas, the following behaviors are considered:***
>
> > *a. Behaviors that may threaten* ***the health and safety of themselves or others****; and*
> > *b.* ***Absence of developmentally appropriate adaptive****, social* ***or functional skills****.*

Stated another way, activities of daily living (ADLs), many of which pertain to health and safety, and all of which are adaptive and/or functional, when absent from an individual's repertoire due to impairment associated with a qualifying diagnoses (ASD, FASD, etc.) should be ***prioritized*** over other skills in the development of an individualized ABA treatment plan. Thus, stating that goals focusing on ADLs are not medically necessary per chapter 3700 contradicts the very spirit of chapter 3700 and the benefits that it sets out to ensure for eligible Medicaid beneficiaries.

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The services that we provide are critically important for the children and young adults who receive them. In many cases, we are the provider of last resort, meaning that other interventions have been ineffective at establishing even the most basic skills that an individual needs. Denying services on the basis of a skill falling into a category of “activities of daily living” is contradictory to the guidance laid out in MSM chapter 3700 and I would strongly encourage a much closer reading and in-depth review of the MSM for reviewers prior to denying requested services on the basis of ADL goals.

Sincerely,

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