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(Title page)

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State of Connecticut
REGULATION
of

NAME OF AGENCY
Department of Social Services

Concerning

SUBJECT MATTER OF REGULATION
Requirements for Payment of Autism Spectrum Disorder Services[1]

Section 1. The Regulations of Connecticut State Agencies are amended by adding new sections 17b-262-1051 to 17b-262-1065, inclusive, as follows:

(NEW) Sec. 17b-262-1051. Scope

Sections 17b-262-1051 to 17b-262-1065, inclusive, of the Regulations of Connecticut State Agencies, set forth the Department of Social Services requirements governing payment for autism spectrum disorder services provided to Medicaid members under age twenty-one.

(NEW) Sec. 17b-262-1052. Definitions

As used in sections 17b-262-1051 to 17b-262-1065, inclusive, of the Regulations of Connecticut State Agencies:

(1) "Advanced practice registered nurse" or "APRN" means an individual licensed pursuant to section 20-94a of the Connecticut General Statutes and who provides services in accordance with such individual's scope of practice under state law;

(2) "Applied Behavior Analysis" or "ABA" means a behavioral treatment model that focuses on the careful assessment of behaviors and their underlying functions, examination of how the environment triggers and maintains behaviors and structured teaching of skills and positive behaviors. ABA is an empirical model that requires collecting and analyzing data to understand behaviors and chart progress. ABA includes a variety of individual interventions that can be selected and tailored as appropriate to each individual's needs;

(3) "ASD treatment services" means medically necessary interventions designed to treat individuals with ASD provided in accordance with section 17b-262-1058 of the Regulations of Connecticut State Agencies, including: (A) services identified as evidence-based by nationally recognized research reviews, (B) services identified as evidence-based by other nationally recognized substantial scientific and clinical evidence or (C) any other intervention supported by credible scientific or clinical evidence, as appropriate to each individual. ASD

[1] **NOTE**: **Proposed Regulation – Updated as of May 19, 2015**.

treatment services include a variety of behavioral interventions that meet the criteria in one or more of subparagraphs (A), (B) or (C) of this subdivision, such as evidence-based ABA interventions that meet the criteria in one or more of such subparagraphs;

(4) "ASD services" means the comprehensive diagnostic evaluation, behavior assessment, development of the behavioral plan of care and ASD treatment services;

(5) "Autism Spectrum Disorder" or "ASD" means a spectrum of neurodevelopmental conditions marked by challenges with social functioning, communication, restricted interests and repetitive behaviors and sensory processing and which are classified as ASD by the DSM;

(6) "Behavior assessment" means a clinical compilation of observational data, behavior rating scales, and reports from various sources such as schools, family, pediatricians and other sources designed to identify the member's current strengths and needs across developmental and behavioral domains and that is provided in accordance with subsection (b) of section 17b-262-1057 of the Regulations of Connecticut State Agencies;

(7) "Behavioral health clinic" has the same meaning as provided in section 17b-262-818 of the Regulations of Connecticut State Agencies;

(8) "Behavioral plan of care" means a detailed written plan of treatment services specifically tailored to address each individual's behavioral needs that contains the type, amount, frequency, setting and duration of services to be provided and the specific goals and objectives for each service and that is developed in accordance with subsection (c) of section 17b-262-1057 of the Regulations of Connecticut State Agencies;

(9) "Billing provider" means the physician, advanced practice registered nurse, physician assistant, psychologist, licensed clinical social worker, licensed professional counselor, licensed marital and family therapist, BCBA, practitioner group, behavioral health clinic, medical clinic or rehabilitation clinic that is (A) enrolled in Medicaid with a valid provider agreement on file with the department and (B) bills the department for ASD services performed by a performing provider affiliated with the billing provider or by a performing provider who is the same individual as the billing provider;

(10) "Board Certified Assistant Behavior Analyst" or "BCaBA" means an individual certified as a BCaBA by the Behavior Analyst Certification Board and who provides services under the supervision of a BCBA and in accordance with such individual's scope of practice;

(11) "Board Certified Behavior Analyst" or "BCBA" means an individual certified as a BCBA by the Behavior Analyst Certification Board and who provides services in accordance with such individual's scope of practice;

(12) "Border provider" has the same meaning as provided in section 17b-262-523 of the Regulations of Connecticut State Agencies;

(13) "Caregiver" means the member's parent, guardian or any other individual who is responsible for caring for a member at any time of the day or week, including, but not limited to, other family members taking care of the member, babysitters and child care workers;

(14) "Comprehensive diagnostic evaluation" means a neurodevelopmental assessment of cognitive, behavioral, emotional, adaptive and social functioning that is provided in accordance with subsection (c) of section 17b-262-1056 of the Regulations of Connecticut State Agencies;

(15) "Department" means the Department of Social Services or its agent;

(16) "DSM" or "Diagnostic and Statistical Manual of Mental Disorders" means the most current edition of the manual of mental disorders produced by the American Psychiatric Association;

(17) "Early and Periodic Screening, Diagnostic and Treatment special services" or "EPSDT special services" means services that are not otherwise covered under Medicaid but that are covered for Medicaid members under age twenty-one pursuant to 42 USC 1396d(r)(5) when the service is (A) medically necessary, (B) identified in an EPSDT screen as needed, (C) provided by a provider who is enrolled in Medicaid and (D) coverable by Medicaid under 42 USC 1396d(a);

(18) "Licensed clinical social worker" means an individual licensed pursuant to subsection (c) or subsection (e) of section 20-195n of the Connecticut General Statutes and who provides services in accordance with such individual's scope of practice under state law;

(19) "Licensed marital and family therapist" means an individual licensed pursuant to section 20-195c of the Connecticut General Statutes and who provides services in accordance with such individual's scope of practice under state law;

(20) "Licensed diagnostic practitioner" means an individual who is (A) a physician, advanced practice registered nurse, physician assistant, psychologist, licensed clinical social worker, licensed professional counselor or another category of practitioner licensed by the Department of Public Health in a medical or behavioral health field whose scope of practice includes diagnosing ASD and (B) provides services within such individual's scope of practice under state law;

(21) "Licensed professional counselor" means an individual licensed pursuant to sections 20-195cc and 20-195dd of the Connecticut General Statutes and who provides services in accordance with such individual's scope of practice under state law;

(22) "Medicaid" means the program operated by the department pursuant to section 17b-260 of the Connecticut General Statutes and authorized by Title XIX of the Social Security Act;

(23) "Medicaid State Plan" means the current Medicaid plan established, submitted and maintained by the department and approved by the United States Centers for Medicare and Medicaid Services in accordance with 42 CFR 430, Subpart B;

(24) "Medical clinic" means a free-standing facility that: (A) is licensed as a clinic by the Department of Public Health; (B) provides medical care, services and supplies deemed by the department to be necessary for the prevention, diagnosis and treatment of illness, disease, injury or infirmity to an outpatient; and (C) is enrolled in Medicaid as a medical clinic;

(25) "Medical evaluation" means a review of the member's overall medical and physical health, hearing, speech, and vision, including relevant information that is provided in accordance with subsection (b) of section 17b-262-1056 of the Regulations of Connecticut State Agencies;

(26) "Medical necessity" or "medically necessary" has the same meaning as provided in section 17b-259b of the Connecticut General Statutes;

(27) "Member" means an individual eligible to receive services under Medicaid who is under age twenty-one;

(28) "Performing provider" means the BCBA, physician, advanced practice registered nurse, physician assistant, psychologist, licensed clinical social worker, licensed professional counselor or licensed marital and family therapist who: (A) is enrolled in Medicaid with a valid provider agreement on file with the department; (B) performs ASD services in accordance with sections 17b-262-1051 to 17b-262-1065, inclusive, of the Regulations of Connecticut State Agencies, including supervision of ASD treatment services performed by a technician; and (C) provides services within such individual's scope of practice;

(29) "Physician" means an individual licensed pursuant to section 20-13 of the Connecticut General Statutes and who provides services in accordance with such individual's scope of practice under state law;

(30) "Physician assistant" means an individual licensed pursuant to section 20-12b of the Connecticut General Statutes and who provides services in accordance with such individual's scope of practice under state law;

(31) "Prior authorization" means approval for the provision of a service or the delivery of goods from the department before the provider actually provides the service or delivers the goods;

(32) "Provider" means a billing provider or a performing provider;

(33) "Provider agreement" means the signed, written agreement between the department and the provider for enrollment in Medicaid;

(34) "Psychologist" means an individual licensed pursuant to section 20-188 or section 20-190 of the Connecticut General Statutes and who provides services in accordance with such individual's scope of practice under state law;

(35) "Registration" means the process of notifying the department of the initiation of service, including such information as required by the department;

(36) "Rehabilitation clinic" means an independent clinic that is: (A) accredited by The Joint Commission or the Commission on Accreditation of Rehabilitation Facilities, (B) established to furnish outpatient rehabilitation clinic services to injured or disabled members, (C) not part of or affiliated with a hospital and (D) enrolled in Medicaid as a rehabilitation clinic;

(37) "State Medicaid Manual" means the current manual established by the United States Centers for Medicare and Medicaid Services that provides guidance to state Medicaid agencies regarding the administration of the Medicaid program;

(38) "Technician" means an individual who provides ASD treatment services under the supervision of a performing provider who is qualified to supervise the technician within the performing provider's scope of practice, in accordance with section 17b-262-1058 of the Regulations of Connecticut State Agencies;

(39) "Usual and customary charge" means the amount that the billing provider charges for the specific service or procedure in the majority of non-Medicaid cases. If the billing provider varies the charges so that no one amount is charged for the specific services in the majority of cases, "usual and customary" means the median of the various charges for the service. Token charges for charity patients and other exceptional charges shall be excluded when calculating the usual and customary charge; and

(40) "Week" means a calendar week beginning on Sunday and ending on Saturday.

(NEW) Sec. 17b-262-1053. Provider Participation and Qualifications

(a) In order to enroll in Medicaid and receive payment from the department, performing providers and billing providers shall comply with sections 17b-262-522 to 17b-262-533, inclusive, and sections 17b-262-1051 to 17b-262-1065, inclusive, of the Regulations of Connecticut State Agencies and shall maintain their enrollment status pursuant to valid provider agreements on file with the department.

(b) The performing provider shall provide services within the provider's scope of practice under state law and shall comply with all applicable federal and state requirements, including, but not limited to, the applicable provisions of 42 CFR 440 and the department's regulations applicable to the provider.

(c) Performing providers and billing providers shall meet the applicable minimum qualifications in order to provide ASD services as set forth in sections 17b-262-1056 to 17b-262-1058, inclusive, of the Regulations of Connecticut State Agencies.

(d) Performing providers shall enroll in Medicaid as performing providers and billing providers shall enroll in Medicaid as billing providers, as directed by the department.

(e) Behavioral health clinics, rehabilitation clinics and medical clinics may bill for ASD services only if such services (A) are performed by performing providers affiliated with the clinic who meet applicable minimum provider qualifications and (B) comply with applicable requirements, including sections 17b-262-1051 to 17b-262-1065, inclusive, of the Regulations of Connecticut State Agencies and the provisions of 42 CFR 440 applicable to the particular service.

(f) In accordance with their professional judgment and applicable professional guidelines, performing providers shall refer members for other services in addition to ASD services as appropriate for each member's needs and shall coordinate services and treatment with other providers as appropriate in each circumstance, including referrals and coordination regarding non-ASD services.

(g) Border providers may perform ASD services to the same extent as providers in Connecticut, so long as they comply with all applicable requirements, including sections 17b-262-1051 to 17b-262-1065, inclusive, of the Regulations of Connecticut State Agencies and all applicable licensing and other requirements in each state in which they provide ASD services.

(h) The department may take such actions as are necessary to monitor and maintain the quality of ASD services, such as reviewing and monitoring services provided and documentation of services provided. The department may also take such actions as are necessary to ensure that providers comply with applicable statutes and regulations. The department's actions to maintain quality and ensure compliance with applicable requirements may include, but are not limited to, providing education and other supports to the provider, restricting categories of services that a provider is authorized to provide, denying requests to provide services, terminating a provider's enrollment in accordance with applicable requirements and recovering or recouping funds paid to the provider.

(NEW) Sec. 17b-262-1054. Eligibility

The department pays each billing provider for ASD services provided to each member who needs such services and for whom such services are medically necessary, subject to applicable requirements.

(NEW) Sec. 17b-262-1055. Services Covered and Limitations – General Provisions

(a) The department shall pay only for medically necessary ASD services in accordance with sections 17b-262-1051 to 17b-262-1065, inclusive, of the Regulations of Connecticut State Agencies.

(b) The following limits apply to covered services:

(1) Prior authorization is required for all comprehensive diagnostic evaluations and all ASD treatment services, except as otherwise specifically provided in writing by the department. Registration is required for all behavior assessments unless a requested behavior assessment meets specified thresholds or attributes for which prior authorization is required, in which case prior authorization is required for such behavior assessment.

(2) The provider shall meet all applicable provider qualifications and other requirements before performing a service.

(3) The member's total ASD treatment services actually received from all sources may only be the amount medically necessary for the member in accordance with the behavioral plan of care.

(NEW) Sec. 17b-262-1056. Medical Evaluation and Comprehensive Diagnostic Evaluations

(a) The medical evaluation and the comprehensive diagnostic evaluation shall comply with all federal and state statutes and regulations applicable to the provider who is performing such evaluation.

(b) Medical Evaluation.

(1) The medical evaluation is necessary to rule out medical or behavioral conditions other than ASD, including conditions that may have behavioral implications and conditions that may co-occur with ASD. The medical evaluation should screen individuals for ASD and, if appropriate, should include a validated ASD screening tool. If appropriate based on the provider's clinical judgment, the provider should refer a member who screened positive for ASD to receive a comprehensive diagnostic evaluation.

(2) Provider Qualifications. Medical evaluations shall be provided by a physician, APRN or physician assistant.

(3) The member shall receive a medical evaluation or an update thereto not more than twelve months before the department receives (A) the initial prior authorization request for a comprehensive diagnostic evaluation, (B) the initial registration or prior

authorization request, as applicable, for a behavior assessment and (C) the initial prior authorization request for ASD treatment services. The provider shall include documentation of the medical evaluation in the prior authorization request for ASD treatment services in accordance with subdivision (3) of subsection (d) of section 17b-262-1060 of the Regulations of Connecticut State Agencies.

(c) Comprehensive Diagnostic Evaluation.

(1) The provider performing the comprehensive diagnostic evaluation shall use validated evaluation tools and shall review the most current available medical evaluation. After performing the comprehensive diagnostic evaluation, the licensed diagnostic practitioner who meets the qualifications described in this subsection shall, based on the licensed diagnostic practitioner's clinical judgment, determine the member's diagnosis and, if appropriate, make general recommendations regarding appropriate ASD treatment services and describe any such recommendations in the evaluation report.

(2) If the member did not previously receive an ASD screening using a validated ASD screening tool performed by a licensed diagnostic practitioner, the performing provider should begin the comprehensive diagnostic evaluation by using a validated ASD screening tool.

(3) If the licensed diagnostic practitioner diagnoses the member with ASD based on the comprehensive diagnostic evaluation and the member has not yet received a behavior assessment within the past six months, the practitioner shall refer the member for a behavior assessment or an update to a previous behavior assessment if clinically appropriate based on the practitioner's clinical judgment.

(4) Provider Qualifications. Comprehensive diagnostic evaluations shall be performed by a licensed diagnostic practitioner who:

(A) Is working within such practitioner's scope of practice to diagnose ASD;

(B) Has training, experience or expertise in ASD; and

(C) Is proficient in diagnosing ASD.

(5) The member shall receive a comprehensive diagnostic evaluation, regardless of the payer of such evaluation, before receiving ASD treatment services, which shall be documented in the prior authorization request for ASD treatment services in accordance with subdivision (3) of subsection (d) of section 17b-262-1060 of the Regulations of Connecticut State Agencies. The comprehensive diagnostic evaluation shall occur in one of the two following ways:

(A) It is performed or updated not more than thirty-six months before the department receives the initial prior authorization request for ASD treatment services, regardless of the source of reimbursement for the evaluation. The comprehensive diagnostic evaluation need not be repeated thereafter except as medically necessary, such as if there is an indication that the member's diagnosis has changed substantially; or

(B) If the member received a documented comprehensive diagnostic evaluation from a licensed diagnostic practitioner who substantially meets the qualifications described in this subsection that was performed or updated more than thirty-six months before the department receives a prior authorization for ASD treatment services, such diagnosis may be confirmed in writing by a licensed diagnostic practitioner who meets the qualifications described in this subsection or by any physician, APRN or physician assistant. Such confirmation shall occur not more than twelve months before the department receives the initial prior authorization request for ASD treatment services, provided that such confirmation need not be repeated thereafter unless it is medically necessary.

(NEW) Sec. 17b-262-1057. Behavior Assessment and Development of Behavioral Plan of Care

(a) The behavior assessment and development of the behavioral plan of care shall comply with 42 C.F.R. 440.130(c) and any other applicable federal Medicaid requirements, including, but not limited to, section 4385 of the State Medicaid Manual or any successor sections.

(b) Behavior Assessment.

(1) As part of performing the behavior assessment, a provider who meets the qualifications in subsection (d) of this section shall determine and recommend which specific ASD treatment services would be most appropriate for the member.

(2) The behavior assessment shall include a validated assessment tool or instrument and can include direct observational assessment, observation, record review, data collection and analysis. The behavior assessment is not required to repeat elements that were already performed as part of the comprehensive diagnostic evaluation.

(3) The behavior assessment shall include the member's current level of functioning using a validated data collection instrument or tool.

(4) The provider shall perform or update the behavior assessment not more than six months before the department receives the initial prior authorization request for ASD treatment services or more recently as clinically appropriate for a member's individual circumstances, which shall be documented in the prior authorization request for ASD treatment services in accordance with subdivision (3) of subsection (d) of section 17b-

262-1060 of the Regulations of Connecticut State Agencies. The provider shall review and, as necessary, update the behavior assessment on an ongoing basis throughout the time period when the member receives ASD treatment services at least every six months or more frequently as necessary. The performing provider shall document each such periodic review and update of the behavior assessment in the member's clinical records.

(c) Development of Behavioral Plan of Care.

(1) After performing the behavior assessment, a performing provider who meets the qualifications in subsection (d) of this section shall develop the behavioral plan of care based on the results of the behavior assessment. In most circumstances, the same performing provider who performed the behavior assessment should develop the behavioral plan of care.

(2) The behavioral plan of care shall include at least the following elements: measurable goals and expected outcomes to determine if treatment services are effective; specific description of the recommended amount, type, frequency, setting and duration of ASD treatment services; and amount and type of ongoing caregiver participation in the ASD treatment services necessary to maximize the clinical success and quality of the services.

(3) The performing provider shall develop or update the behavioral plan of care not more than 120 days before the department receives the initial prior authorization request for ASD treatment services or more recently as clinically appropriate for a member's individual circumstances, which shall be documented in the prior authorization request for ASD treatment services in accordance with subdivision (3) of subsection (d) of section 17b-262-1060 of the Regulations of Connecticut State Agencies. The performing provider shall review and, as necessary, update the behavioral plan of care on an ongoing basis throughout the time period when the member receives ASD treatment services and at least every ninety days or more frequently as necessary.

(d) Provider Qualifications. Behavior assessments and development of behavioral plans of care shall be performed by a performing provider qualified to perform behavior assessments and develop behavioral plans of care, each of whom shall have specialized training, experience or expertise in ASD services and, except as otherwise provided in subdivision (5) of this subsection, shall also meet or exceed the following minimum qualifications:

(1) Continuing Education. Sufficient continuing education in ASD services to maintain competency in providing ASD services, which may be continuing education sufficient to maintain the performing provider's applicable license or certification.

(2) Professional Experience. Two years of full-time equivalent work experience in providing ASD services, one year of which shall occur after the individual received

the graduate degree and all additional required education that made the individual eligible for applicable licensure or certification.

(3) Supervised Professional Experience. One year of supervised professional experience in performing ASD services, which may be peer supervision and shall:

(A) Be under a BCBA, physician, advanced practice registered nurse, physician assistant, psychologist, licensed clinical social worker, licensed professional counselor or licensed marital and family therapist who (i) works within such individual's scope of practice, (ii) is qualified to supervise the performing provider, (iii) has experience in providing applicable ASD services and (iv) already meets the requirements of this subsection before providing supervised experience; and

(B) Occur after the individual receives the graduate degree and all additional required education that made the individual eligible for applicable licensure or certification, which may overlap with the time period of professional experience described in subdivision (2) of this subsection.

(4) Credentialed by the Department of Developmental Services. Effective January 1, 2015, in order to provide a behavior assessment and develop a behavioral plan of care, a BCBA shall first be credentialed by the Department of Developmental Services as meeting the requirements of this subsection and any other qualifications necessary to be a qualified provider of ASD services. Effective January 1, 2016, in order to provide a behavior assessment and develop a behavioral plan of care, all performing providers shall first be credentialed by the Department of Developmental Services as meeting the requirements of this subsection and any other qualifications necessary to be a qualified provider of ASD services.

(5) Notwithstanding subdivisions (1) to (4), inclusive, of this subsection, on a case-by-case basis, the department, in consultation with the Department of Developmental Services, may deem that a performing provider meets the requirements of this subsection even if the provider does not actually meet all of the specific requirements of this subsection, but only if the provider demonstrates substantial documented expertise and experience in providing ASD services that occurred after the provider received the applicable license or certification and that the department, in consultation with the Department of Developmental Services, determines are sufficient qualifications necessary for the provider to be a qualified provider of ASD services. The department, in consultation with the Department of Developmental Services, may impose reasonable requirements as a condition of approval of a provider's qualifications pursuant to this subsection.

(NEW) Sec. 17b-262-1058. ASD Treatment Services and Supervision of BCaBAs and Technicians

(a) ASD treatment services shall comply with 42 C.F.R. 440.130(c) and any other applicable federal Medicaid requirements, including, but not limited to, section 4385 of the State Medicaid Manual or any successor sections.

(b) Requirements for ASD Treatment Services.

(1) The performing provider shall: (A) supervise and take full professional responsibility for all ASD treatment services; (B) ensure that all ASD treatment services are provided within the performing provider's expertise and scope of practice; and (C) provide and select ASD treatment services in accordance with the behavioral plan of care and the provider's clinical judgment as appropriate to each member's needs.

(2) The performing provider shall review and, as necessary, update the behavioral plan of care as medically necessary on an ongoing basis based on data collected by the provider and as otherwise necessary to meet the member's needs, in accordance with subdivision (3) of subsection (c) of section 17b-262-1057 of the Regulations of Connecticut State Agencies. ASD treatment services are generally designed to be delivered in the member's home or other appropriate community settings, as specified in the behavioral plan of care.

(3) Not less than forty-five days after initiating ASD treatment services for a member, the performing provider shall submit baseline data describing the member's level of performance on various tasks to the department for review.

(c) Participation by Caregiver in ASD Treatment Services.

(1) Based on the performing provider's clinical judgment, a caregiver shall participate in ASD treatment sessions in a manner specified in the behavioral plan of care that is sufficient to be effective in maximizing the quality and clinical effectiveness of the services, as tailored to the needs of each member.

(2) In general, the amount and manner of caregiver participation may vary based on generally accepted recommendations for caregiver participation for each applicable modality of ASD treatment services. Overall, caregiver participation may be more significant for younger children or children with higher levels of need, as specified in each member's behavioral plan of care.

(3) The caregiver's participation in ASD treatment sessions shall include training of the caregiver for the benefit of the member in order to enable the caregiver to reinforce the ASD treatment services for the member in a clinically effective manner.

(4) The performing provider shall document the recommended type and extent of caregiver participation in the behavioral plan of care and shall explain how such participation will ensure the quality and clinical effectiveness of the services.

(5) The performing provider shall document the caregiver's participation in ASD treatment sessions in the treatment notes, including the caregiver's name and relationship to the member, date, time, extent and type of participation.

(d) Presence or Availability of Caregiver. In order to ensure that the ASD treatment services are coverable under the Medicaid State Plan pursuant to 42 USC 1396d(a) and do not include services not coverable under 42 USC 1396d(a) such as child care, respite, or related services, as well as to ensure the clinical success of the services, when services are being provided in the home, a caregiver shall be present or available at all times in or around the home in order to care for members under age eighteen, even when the caregiver is not participating in the services. For services provided outside of the home, a caregiver shall be present or available as necessary based on the performing provider's clinical judgment.

(e) Provider Qualifications. In order to provide and supervise ASD treatment services, the provider shall meet at least the same minimum provider qualifications required for behavior assessments and development of behavioral plans of care, as set forth in subsection (d) of section 17b-262-1057 of the Regulations of Connecticut State Agencies.

(f) BCaBA and Technician Qualifications. A BCaBA or technician shall meet at least the following minimum qualifications in order to perform ASD treatment services under the performing provider's supervision:

(1) Education and Experience.

(A) Be a BCaBA with one year of full-time equivalent experience providing ASD treatment services. Such experience may occur at any time, including before, during or after receiving the BCaBA credential or any combination thereof;

(B) Have a bachelor's degree from an accredited college or university in a behavioral health field, behavior analysis or a related field, plus one year of full-time equivalent experience providing ASD treatment services. Such experience may occur at any time, including before, during or after receiving the bachelor's degree or any combination thereof; or

(C) Have an associate's degree or an equivalent number of credit hours with a passing grade from an accredited college or university in a behavioral health field, behavior analysis or a related field, plus two years of full-time equivalent experience providing ASD treatment services. Such experience may occur at any time, including before, during or after receiving the associate's degree or any combination thereof.

(2) The performing provider shall maintain a written professional development plan on file for each BCaBA and technician. Each BCaBA or technician shall receive not less than six hours within the previous year of documented training in ASD services in a manner sufficient to maintain competency in providing ASD treatment services. Such training may include in-house training and may overlap with any continuing education required for the BCaBA or technician to maintain any applicable license, certification or other credential. The performing provider shall maintain documentation regarding the type, topic, duration, and instructor of training, such as a certificate of participation.

(g) Performing Provider's Supervision of BCaBAs and Technicians. The performing provider shall supervise and take professional responsibility for all ASD services performed by the technician or BCaBA. Such supervision shall:

(1) Be one-on-one with the performing provider and the BCaBA or technician. The performing provider shall document the supervision on an ongoing basis, including the time, location, format and topics discussed.

(2) On an ongoing basis, equal at least ten percent of the amount of hours that the BCaBA or technician is providing ASD treatment services to each member.

(3) Include, on a regular basis, the provider directly observing the BCaBA or technician providing services to the member. The performing provider may bill the department and be reimbursed for observation and direction of the BCaBA or technician only when: (A) the performing provider is in the same location as the member and the BCaBA or technician and (B) the observation and direction is for the member's benefit.

(NEW) Sec. 17b-262-1059. Services Not Covered

The department shall not pay a billing provider for any of the following:

(1) Any procedure or service of an unproven, experimental, cosmetic or research nature; any service that is not medically necessary for a member; or services not directly related to the member's diagnosis, symptoms or medical history;

(2) Cancelled services or appointments not kept;

(3) Any services, treatment or items for which the provider does not usually charge;

(4) Any services provided to a member that would duplicate services being received concurrently from any other source in excess of the services that are medically necessary for the member, regardless of the source of payment;

(5) Any service requiring prior authorization for which the provider did not obtain prior authorization before performing the service;

(6) Any service requiring registration for which registration was not performed in accordance with applicable requirements;

(7) Services that are solely educational, vocational, recreational, or social;

(8) Services that are related solely to specific employment opportunities, work skills, work settings or academic skills that are not medically necessary;

(9) Services that are not coverable within the Medicaid State Plan pursuant to 42 USC 1396d(a), such as respite care, child care or other custodial services; or

(10) Information or services provided to a member by a provider in any setting other than face-to-face, except as otherwise specifically authorized in writing by the department.

(NEW) Sec. 17b-262-1060. Prior Authorization

(a) Except as otherwise specifically stated in writing by the department, prior authorization is required for all comprehensive diagnostic evaluations and all ASD treatment services. Registration is required for all behavior assessments unless the requested services meet thresholds or attributes for which prior authorization is required, in which case prior authorization is required. Prior authorization is also required for:

(1) EPSDT special services; and

(2) Any procedure or service that is not listed on the department's fee schedule.

(b) The department, in its sole discretion, shall determine what information is necessary to approve a prior authorization request. Prior authorization does not guarantee payment unless all other requirements for payment are met.

(c) The provider shall attach a prescription from a licensed diagnostic practitioner and all necessary documentation of medical necessity to each prior authorization request for EPSDT special services. The provider may attach a physical or electronic copy of the prescription from the licensed diagnostic practitioner to the prior authorization request in lieu of the actual signature of the licensed diagnostic practitioner on the prior authorization request form. The provider shall keep the original prescription on file, which is subject to the department's review.

(d) The provider shall submit each prior authorization request signed by the performing provider, in a form and manner required by the department for each category of ASD services and shall include sufficient documentation of medical necessity, as determined by the department, and shall include at least the following:

(1) Comprehensive Diagnostic Evaluations. Prior authorization requests for comprehensive diagnostic evaluations shall include documentation sufficient for the department to determine if such evaluation is medically necessary, as determined by the department.

(2) Behavior Assessments. Registration for behavior assessments shall include such information as required by the department to monitor the service and determine if prior authorization is required. If prior authorization is required for a requested behavior assessment, the provider shall include such additional documentation or information necessary for the department to determine if the behavior assessment is medically necessary, as determined by the department.

(3) ASD Treatment Services. Prior authorization requests for ASD treatment services shall include the following documents:

(A) Medical evaluation, which shall comply with subsection (b) of section 17b-262-1056 of the Regulations of Connecticut State Agencies;

(B) Comprehensive diagnostic evaluation, which shall comply with subsection (c) of section 17b-262-1056 of the Regulations of Connecticut State Agencies;

(C) Behavior assessment, which shall comply with subsection (b) of section 17b-262-1057 of the Regulations of Connecticut State Agencies;

(D) Behavioral plan of care, which shall comply with subsection (c) of section 17b-262-1057 of the Regulations of Connecticut State Agencies;

(E) Documents necessary to establish that the requested ASD treatment services are coverable under the Medicaid State Plan pursuant to 42 USC 1396d(a);

(F) Documents necessary to establish that the requested ASD treatment services do not duplicate actual services being received from any other source in excess of services that are medically necessary for the member; and

(G) Any other necessary information, documents or both, as determined by the department.

(e) Pursuant to 42 CFR 440.130(c), prior authorization requests for ASD treatment services and registration for behavior assessments (or, if applicable, prior authorization requests for behavior assessments) shall include documentation that a licensed diagnostic practitioner recommends the requested services. If the comprehensive diagnostic evaluation report is signed by a licensed diagnostic practitioner and recommends services consistent with the requested behavior assessment or ASD treatment services, as applicable, then such report is the licensed diagnostic practitioner’s recommendation of the services.

(f) ASD treatment services may be authorized for successive six month periods if medically necessary or a shorter period of time if appropriate for a member's unique circumstances, including a detailed review of progress every twelve months.

(NEW) Sec. 17b-262-1061. Billing Procedures

(a) The billing provider shall submit claims electronically or on the department's designated form and shall include all information required by the department to process the claim for payment.

(b) The billing provider shall bill its usual and customary charge for the services provided.

(NEW) Sec. 17b-262-1062. Payment

(a) The Department shall pay the billing provider the lowest of:

(1) The amount in the department's fee schedule;

(2) The lowest applicable Medicare rate;

(3) The amount billed by the billing provider;

(4) The billing provider's usual and customary charge; or

(5) The lowest price charged or accepted by the billing provider from any person or entity for the same or substantially similar services, except that, subject to the department's approval, a billing provider may occasionally charge or accept a lesser amount based on a showing by the billing provider of financial hardship to an individual without affecting the amount paid by the department for the same or substantially similar goods or services.

(b) Payment Limitations

(1) The department shall reimburse the billing provider only when all applicable requirements, including sections 17b-262-1051 to 17b-262-1065, inclusive, of the Regulations of Connecticut State Agencies have been met.

(2) Only the billing provider may bill and receive payment from the department for ASD services. No BCaBA or technician may bill or receive payment from the department for ASD services.

(NEW) Sec. 17b-262-1063. Documentation

(a) The provider shall document all services provided in a form and manner specified by the department and shall include sufficient information to demonstrate that each service complies with applicable requirements.

(b) The provider shall maintain documentation of compliance with all applicable requirements, including provider qualifications.

(c) Each provider shall maintain a specific record for all services provided to each member, including, but not limited, to:

(1) Member's name, address, birth date and Medicaid identification number;

(2) For ASD treatment services, the behavioral plan of care, including all updates and related information and documents and copies of all other relevant documents that establish the medical necessity of such services, including, but not limited to, the medical evaluation, comprehensive diagnostic evaluation, behavior assessment and any other relevant documents;

(3) A clinical progress note for each ASD treatment service rendered. The technician shall sign all clinical progress notes. In addition, the performing provider shall also sign all clinical progress notes where the performing provider was observing or supervising a service. Clinical progress notes shall include:

(A) Types of ASD treatment services provided;

(B) Date and time of treatment;

(C) Length of time for each treatment;

(D) The location or site at which the treatment was rendered, including the type of setting where the treatment was rendered;

(E) Which individuals participated in the treatment services; and

(F) Which individuals were present in the location where the ASD treatment services were provided.

(d) The provider shall maintain all required documentation in its original form or a secured electronic format for five years or longer as required by applicable statutes or regulations and subject to the department's review. In the event of a dispute concerning a service provided between the provider, member, department or a third party, the provider shall maintain all

required documentation until the end of the dispute, five years or the length of time required by statute or regulation, whichever is longest.

(e) If the provider fails to maintain all required documentation, including, but not limited to, required documentation regarding services provided and provider qualifications, the department may disallow and recover any amounts that it has paid to the provider for which the required documentation is not maintained or not provided to the department upon request.

(f) The department may audit all relevant records and documentation and take any other appropriate quality assurance measures it deems necessary to assure compliance with regulatory and statutory requirements.

(g) The department may require providers to submit documentation necessary for rate-setting purposes, such as cost reports.

(NEW) Sec. 17b-262-1064. Reserved

(NEW) Sec. 17b-262-1065. Reserved

Section 2. Section 17b-262-348 of the Regulations of Connecticut State Agencies is amended by adding a new subsection (s) as follows:

(s) Autism Spectrum Disorder Services. In order to provide and be reimbursed by the department for autism spectrum disorder services as described in sections 17b-262-1051 to 17b-262-1065, inclusive, of the Regulations of Connecticut State Agencies, the provider shall comply with sections 17b-262-1051 to 17b-262-1065, inclusive, of the Regulations of Connecticut State Agencies and shall also comply with the department's enrollment and billing procedures for such services. Notwithstanding any requirement to the contrary in sections 17b-262-337 to 17b-262-349, inclusive, of the Regulations of Connecticut State Agencies, the provider may bill for autism spectrum disorder services performed by a non-licensed individual who is being supervised by the provider, in accordance with sections 17b-262-1051 to 17b-262-1065 of the Regulations of Connecticut State Agencies.

Section 3. Section 17b-262-462 of the Regulations of Connecticut State Agencies is amended by adding a new subsection (k) as follows:

(k) Autism Spectrum Disorder Services. In order to provide and be reimbursed by the department for autism spectrum disorder services as described in sections 17b-262-1051 to 17b-262-1065, inclusive, of the Regulations of Connecticut State Agencies, the psychiatrist shall comply with sections 17b-262-1051 to 17b-262-1065, inclusive, of the Regulations of Connecticut State Agencies and shall also comply with the department's enrollment and billing procedures for such services. Notwithstanding any requirement to the contrary in sections 17b-262-452 to 17b-262-463, inclusive, of the Regulations of Connecticut State Agencies, the psychiatrist

may bill for autism spectrum disorder services performed by a non-licensed individual who is being supervised by the psychiatrist, in accordance with sections 17b-262-1051 to 17b-262-1065 of the Regulations of Connecticut State Agencies.

Section 4. Section 17b-262-477 of the Regulations of Connecticut State Agencies is amended by adding a new subsection (d) as follows:

(d) Autism Spectrum Disorder Services. In order to provide and be reimbursed by the department for autism spectrum disorder services as described in sections 17b-262-1051 to 17b-262-1065, inclusive, of the Regulations of Connecticut State Agencies, the psychologist shall comply with sections 17b-262-1051 to 17b-262-1065, inclusive, of the Regulations of Connecticut State Agencies and shall also comply with the department's enrollment and billing procedures for such services. Notwithstanding any requirement to the contrary in section 17b-262-477 of the Regulations of Connecticut State Agencies, the psychologist may bill for autism spectrum disorder services performed by a non-licensed individual who is being supervised by the psychologist, in accordance with sections 17b-262-1051 to 17b-262-1065 of the Regulations of Connecticut State Agencies.

Section 5. Section 17b-262-617 of the Regulations of Connecticut State Agencies is amended by adding a new subsection (m) as follows:

(m) Autism Spectrum Disorder Services. In order to provide and be reimbursed by the department for autism spectrum disorder services as described in sections 17b-262-1051 to 17b-262-1065, inclusive, of the Regulations of Connecticut State Agencies, the provider shall comply with sections 17b-262-1051 to 17b-262-1065, inclusive, of the Regulations of Connecticut State Agencies and shall also comply with the department's enrollment and billing procedures for such services. Notwithstanding any requirement to the contrary in sections 17b-262-607 to 17b-262-618, inclusive, of the Regulations of Connecticut State Agencies, the provider may bill for autism spectrum disorder services performed by a non-licensed individual who is being supervised by the provider, in accordance with sections 17b-262-1051 to 17b-262-1065 of the Regulations of Connecticut State Agencies.

Section 6. Section 17b-262-827 of the Regulations of Connecticut State Agencies is amended by adding a new subsection (i) as follows:

(i) Autism Spectrum Disorder Services. In order to provide and be reimbursed by the department for autism spectrum disorder services as described in sections 17b-262-1051 to 17b-262-1065, inclusive, of the Regulations of Connecticut State Agencies, the provider shall comply with sections 17b-262-1051 to 17b-262-1065, inclusive, of the Regulations of Connecticut State Agencies and shall also comply with the department's enrollment and billing procedures for such services.

Section 7. Section 17b-262-924 of the Regulations of Connecticut State Agencies is amended by adding a new subsection (c) as follows:

(c) Autism Spectrum Disorder Services. In order to provide and be reimbursed by the department for autism spectrum disorder services as described in sections 17b-262-1051 to 17b-262-1065, inclusive, of the Regulations of Connecticut State Agencies, the provider shall comply with sections 17b-262-1051 to 17b-262-1065, inclusive, of the Regulations of Connecticut State Agencies and shall also comply with the department's enrollment and billing procedures for such services. Notwithstanding any requirement to the contrary in section 17b-262-918 of the Regulations of Connecticut State Agencies, the provider may bill for autism spectrum disorder services performed by a non-licensed individual who is being supervised by the provider, in accordance with sections 17b-262-1051 to 17b-262-1065 of the Regulations of Connecticut State Agencies.

Section 8. Section 171.2 of the department's Medical Services Policy is amended by adding a new subsection (J) as follows:

J. Autism Spectrum Disorder Services. In order to provide and be reimbursed by the department for autism spectrum disorder services as described in sections 17b-262-1051 to 17b-262-1065, inclusive, of the Regulations of Connecticut State Agencies, rehabilitation clinics shall comply with sections 17b-262-1051 to 17b-262-1065, inclusive, of the Regulations of Connecticut State Agencies and shall also comply with the department's enrollment and billing procedures for such services. Notwithstanding any requirement to the contrary in section 171.2 of the department's Medical Services Policy, rehabilitation clinics may bill for autism spectrum disorder services performed by a non-licensed individual who is being supervised by the provider, in accordance with sections 17b-262-1051 to 17b-262-1065 of the Regulations of Connecticut State Agencies.

Section 9. Section 171.4 of the department's Medical Services Policy is amended by adding a new subsection (J) as follows:

J. Autism Spectrum Disorder Services. In order to provide and be reimbursed by the department for autism spectrum disorder services as described in sections 17b-262-1051 to 17b-262-1065, inclusive, of the Regulations of Connecticut State Agencies, medical clinics shall comply with sections 17b-262-1051 to 17b-262-1065, inclusive, of the Regulations of Connecticut State Agencies and shall also comply with the department's enrollment and billing procedures for such services. Notwithstanding any requirement to the contrary in section 171.2 of the department's Medical Services Policy, medical clinics may bill for autism spectrum disorder services performed by a non-licensed individual who is being supervised by the provider, in accordance with sections 17b-262-1051 to 17b-262-1065 of the Regulations of Connecticut State Agencies.

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(Statement of Purpose page)

Statement of Purpose

Pursuant to CGS Section 4-170(b)(3), "Each proposed regulation shall have a statement of its purpose following the final section of the regulation." Enter the statement here.

The purpose of the regulation is to establish new requirements governing payment for ASD services, including the comprehensive diagnostic evaluation, behavior assessment, development of the behavioral plan of care and ASD treatment services.

(A) The problems, issues or circumstances that the regulation proposes to address: On July 7, 2014, the U.S. Centers for Medicare and Medicaid Services issued an Informational Bulletin explaining that a variety of medically necessary ASD services are coverable within the Medicaid State Plan pursuant to 42 USC 1396d(a) and are therefore required to be covered for all Medicaid members under age twenty-one pursuant to the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) services requirements set forth in 42 USC 1396(d)(r)(5). In accordance with that CMS guidance, this regulation is necessary to implement payment for ASD services pursuant to EPSDT. These regulations also establish rules to expand medically necessary ASD services for Medicaid members under age twenty-one, which is particularly important as the prevalence of ASD has been rising and earlier treatment is generally more effective. Because the treatment services described in this regulation are primarily designed to be delivered in the home and in community-based settings, this regulation also helps increase the opportunities for care in home and community-based settings. Finally, this regulation establishes rules to help ensure that ASD services are high quality, carefully tailored to each member's unique needs based on a behavioral plan of care, and are provided by qualified providers.

(B) The main provisions of the regulation: (1) Define necessary terms; (2) describe the services covered, service limitations, required provider qualifications and services not covered; (3) describe prior authorization requirements; (4) identify billing and payment rules; (5) describe documentation requirements; and (6) add necessary cross-references in the regulations and medical services policies of appropriate provider types.

(C) The legal effects of the regulation, including all of the ways that the regulation would change existing regulations or other laws: The proposed regulation establishes rules governing payment for ASD services, including adding cross-references in the regulations and medical services policies of appropriate provider types.

R-39 Rev. 02/2012
(Certification page—see Instructions on back)

CERTIFICATION

This certification statement must be completed in full, including items 3 and 4, if they are applicable.

1) I hereby certify that the above *(check one)* ☒ Regulations ☐ Emergency Regulations

2) **are** *(check all that apply)* ☒ adopted ☒ amended ☐ repealed **by this agency pursuant to the following authority(ies):** *(complete all that apply)*

a. Connecticut General Statutes section(s) 17b-3, 17b-10 and 17b-262.

b. Public Act Number(s) _____.
(Provide public act number(s) if the act has not yet been codified in the Connecticut General Statutes.)

3) And I further certify that notice of intent to adopt, amend or repeal said regulations was published in the *Connecticut Law Journal* on _____;
(Insert date of notice publication if publication was required by CGS Section 4-168.)

4) And that a public hearing regarding the proposed regulations was held on _____**;**
(Insert date(s) of public hearing(s) held pursuant to CGS Section 4-168(a)(7), if any, or pursuant to other applicable statute.)

5) **And that said regulations are EFFECTIVE** *(check one, and complete as applicable)*

☒ When filed with the Secretary of the State

OR ☐ on *(insert date)* _____

DATE	**SIGNED** ***(Head of Board, Agency or Commission)***	OFFICIAL TITLE, DULY AUTHORIZED
TBD		Commissioner

APPROVED *by the* ***Attorney General*** *as to legal sufficiency in accordance with CGS Section 4-169, as amended*

DATE	SIGNED *(Attorney General or AG's designated representative)*	OFFICIAL TITLE, DULY AUTHORIZED

Proposed regulations are ***DEEMED APPROVED*** *by the Attorney General in accordance with CGS Section 4-169, as amended, if the attorney General fails to give notice to the agency of any legal insufficiency within thirty (30) days of the receipt of the proposed regulation.*

(For Regulation Review Committee Use ONLY)

☐ Approved ☐ Rejected without prejudice

☐ Approved with technical corrections ☐ Disapproved in part, *(Indicate Section Numbers disapproved only)*

☐ Deemed approved pursuant to CGS Section 4-170(c)

By the Legislative Regulation Review Committee in accordance with CGS Section 4-170, as amended	DATE	SIGNED *(Administrator, Legislative Regulation Review Committee)*

Two certified copies received and filed and one such copy forwarded to the Commission on Official Legal Publications in accordance with CGS Section 4-172, as amended.

DATE	SIGNED *(Secretary of the State)*	BY

(For Secretary of the State Use ONLY)

R-39 Rev. 02/2012
(Instructions page)

GENERAL INSTRUCTIONS

1. All regulations proposed for adoption, amendment or repeal, *except* emergency regulations, must be presented to the Attorney General for his/her determination of legal sufficiency. (See CGS Section 4-169.)

2. After approval by the Attorney General, the original and one electronic copy (in Word format) of all regulations proposed for adoption, amendment or repeal must be presented to the Legislative Regulation Review Committee for its action. (See CGS Sections 4-168 and 4-170 as amended by Public Act 11-150, Sections 18 and 19.)

3. Each proposed regulation section must include the appropriate regulation section number and a section heading. (See CGS Section 4-172.)

4. New language added to an existing regulation must be in underlining or CAPITAL LETTERS, as determined by the Regulation Review Committee. (See CGS 4-170(b).)

5. Existing language to be deleted must be enclosed in brackets [ ]. (See CGS 4-170(b).)

6. A completely new regulation or a new section of an existing regulation must be preceded by the word "(NEW)" in capital letters. (See CGS Section 4-170(b).)

7. The proposed regulation must have a statement of its purpose following the final section of the regulation. (See CGS Section 4-170(b).)

8. The Certification Statement portion of the form must be completed, including all applicable information regarding *Connecticut Law Journal* notice publication date(s) and public hearing(s). (See more specific instructions below.)

9. Additional information regarding rules and procedures of the Legislative Regulation Review Committee can be found on the Committee's web site: http://www.cga.ct.gov/rr/ .

10. A copy of the Legislative Commissioners' Regulations Drafting Manual is located on the LCO website at http://www.cga.ct.gov/lco/pdfs/Regulations_Drafting_Manual.pdf.

CERTIFICATION STATEMENT INSTRUCTIONS
(Numbers below correspond to the numbered sections of the statement)

1. Indicate whether the regulation is a regular or an emergency regulation adopted under the provisions of CGS Section 4-168(f).

2. a) Indicate whether the regulations contains newly adopted sections, amendments to existing sections, and/or repeals existing sections. Check all cases that apply.

   b) Indicate the specific legal authority that authorizes or requires adoption, amendment or repeal of the regulation. If the relevant public act has been codified in the most current biennial edition of the *Connecticut General Statutes*, indicate the relevant statute number(s) instead of the public act number. If the public act has not yet been codified, indicate the relevant public act number.

3. Except for emergency regulations adopted under CGS 4-168(f), and technical amendments to an existing regulation adopted under CGS 4-168(g), an agency must publish notice of its intent to adopt a regulation in the *Connecticut Law Journal*. Enter the date of notice publication.

4. CGS Section 4-168(a)(7) prescribes requirements for the holding of an agency public hearing regarding proposed regulations. Enter the date(s) of the hearing(s) held under that section, if any; also enter the date(s) of any hearing(s) the agency was required to hold under the provisions of any other law.

5. As applicable, enter the effective date of the regulation here, or indicate that it is effective upon filing with the Secretary of the State. Please note the information below.

   Regulations are effective upon filing with the Secretary of the State or at a later specified date. See CGS Section 4-172(b) which provides that each regulation is effective upon filing, or, if a later date is required by statute or specified in the regulation, the later date is the effective date. An effective date may not precede the effective date of the public act requiring or permitting the regulation. Emergency regulations are effective immediately upon filing with the Secretary of the State, or at a stated date less than twenty days thereafter.