



Guidelines for Practicing Applied Behavior Analysis During the COVID-19 Pandemic

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Disclaimers

The recommendations provided in this document

- are based on information that was available at the time of writing. Because conditions and public policies around the COVID-19 epidemic vary across locations, funders, and other dimensions and are likely to change rapidly, practitioners of applied behavior analysis (ABA) are strongly urged to check *reliable* sources of information that apply to the specific location(s) in which they are providing services at the particular time in question, and to do so frequently until after the pandemic abates.
- pertain mostly to public policies in the United States, though some may be adaptable to other locations.
- do not constitute legal advice or opinions, and do not substitute for or replace advice from qualified legal professionals.
- should not be construed as definitive answers to all questions about practicing ABA under the unprecedented conditions that have been created by the COVID-19 pandemic. APBA understands that ABA practitioners would prefer concrete, specific answers to many pressing questions, and wishes the organization could accommodate. Unfortunately, the many uncertainties about the virus and the course the pandemic may mean that conditions are likely to be fluid for some time to come. Those conditions exacerbate the difficulty of resolving ethical dilemmas, many of which are fraught with ambiguity and require careful consideration of complex factors that are specific to each situation. This document highlights some of those factors and offers suggestions and resources to aid each ABA practitioner in making the very difficult decisions they face.

Introduction

These guidelines represent an expansion of some information that was first presented on March 25, 2020 in a live webinar hosted by the Association of Professional Behavior Analysts (APBA), titled “Telepractice of ABA During the Pandemic: Working with Health Plans.” (To access a recording of that webinar, click [here](#)). They are meant to provide general answers to some of the most common questions that have been posed to APBA since the outset of the COVID-19 outbreak in North America, and a framework to assist ABA practitioners in making certain decisions about whether and how to provide services to clients in the context of the pandemic.

Information and recommendations are offered in these areas:

- I. Determining if ABA services are deemed “essential” under emergency governmental orders or regulations
- II. Identifying and complying with applicable behavior analyst licensure laws and rules, in particular those pertaining to telepractice (i.e., remote delivery of ABA services via telephonic, audio, and/or video technologies)
- III. Using professional standards to guide decision-making about delivering services to clients
- IV. Working with health plans and other third-party payers on the delivery of ABA services via telepractice

I. Determining if ABA services are “essential.”

In response to the spread of the novel coronavirus that causes COVID-19 infections, numerous governmental bodies are issuing emergency orders or regulations designed to protect the public and slow down the spread of the disease. They cover closures of schools and universities, certain businesses, and public places; “stay at home” or “shelter in place” provisions; and travel restrictions, among others. Those public policies are being issued by federal, state/provincial, county, and municipal authorities, and are changing rapidly as data on the spread and effects of COVID-19 accrue. Many of the policies include exemptions or exclusions for services, businesses, and activities that are defined as “essential” (or other wording to that effect) and so are required or allowed to continue while the emergency order or regulation is in effect.

Key points about the emergency government orders or regulations for ABA practitioners and agency owners are as follows:

- The definition of “essential” varies across jurisdictions and often across time.

- Categories of “essential” businesses, services, and workers also vary across jurisdictions and time. Some orders list and describe the applicable categories in considerable detail, while others are vague. Some categories that *may* encompass some ABA practitioners and agencies include healthcare providers or professionals and providers of behavioral or mental health, home health, day care, day treatment, rehabilitation, and residential services for people with developmental and other disorders, physical or medical disabilities, or seniors.
- Some categories of professionals, businesses, and services that are designated “essential” in emergency orders have specific definitions in state laws or regulations. Some orders, however, appear to broaden some definitions beyond the provisions of pre-existing laws and regulations.
- Some orders require or allow businesses or services to apply to the issuing governmental entity to be designated “essential.”

IMPORTANT NOTES

- Even if specific terms like behavior analysis, ABA, Licensed Behavior Analysts, or Board Certified Behavior Analysts® do not appear in an emergency order, your services *may* fall into one of the “essential” categories.
- If your services are funded by a health plan (either commercial or public, such as Medicaid), you *may* fall in a category such as healthcare, mental health, or behavioral health provider. That may be true regardless of whether the health plan is billed by you, your employer, or a client who pays you privately.
- “Essential” is not the same as “medically necessary,” but note that *if the services you provide to a client are funded by a health plan, that is because they have been deemed medically necessary for that client. See section IV.*

Key determinations to be made by ABA practitioners and agency owners are

- Whether your services fall in any of the categories defined as “essential” in the order or regulation that is in effect ***in the location and at the time under consideration***. If that is not clear in the order, ask the governmental entity that issued the order to clarify, and consider consulting with a business, employment, or healthcare attorney who is knowledgeable about the applicable state laws and regulations.
- If your services are “essential,” whether the order specifies that they *must* continue during the pandemic, or they *may* – that is, continuing is allowed legally but is not mandated. Again, if that is not clear, consult the source and/or a knowledgeable attorney.
- Whether ABA services are excluded from the definition of “essential” services in the order. If they are and you think they should be included, ask your state behavior analysis

association to consider advocating with the entity that issued the order to have them added. APBA can help with those efforts.

- If you decide to continue providing services, whether they will be delivered
 - in person, in which case *you must implement the coronavirus mitigation strategies* that are recommended by the Centers for Disease Control (CDC) (www.cdc.gov) and/or local public health authorities;
 - remotely via phone, audio, and/or video technologies (termed telepractice or telehealth); or
 - some combination of the two.

II. Identifying and complying with behavior analyst licensure laws and rules or regulations

At this writing, laws to license professional practitioners of ABA are in effect in 30 U.S. states (the law that was adopted recently in New Jersey has not yet been implemented). Most are both practice and title acts; that is, they require a state-issued license to practice ABA professionally in that state *and* to use titles that are protected by the law, such as Licensed Behavior Analyst (for individuals with advanced degrees and often certification as a Board Certified Behavior Analyst®) and Licensed Assistant Behavior Analyst (for those with bachelor's degrees and often certification as a Board Certified Assistant Behavior Analyst®; not applicable in all states). Some laws are title acts only, but health plans and other payers within those states may require a license in order to be reimbursed for providing ABA services, even though it is not legally required in order to practice ABA. Although there are commonalities, other specific provisions vary across states.

Pandemic or not, if you deliver services to one or more clients who reside in a state with a behavior analyst licensure law – whether in person or remotely -- you must comply with that law and any rules or regulations that have been promulgated to implement the law. Because rules/regulations can change frequently, the best source of current requirements is the licensing board or other state regulatory entity that manages the licensure program. A link to the websites of those entities in the states with active behavior analyst licensure laws can be found at www.apbahome.net > Laws & Regulations > Licensure/Reg. of ABA Practitioners.

Key components of the licensure law and rules/regulations to check include

- Requirements for obtaining and maintaining a license
- The definition of the practice of ABA (sometimes referred to as the “scope of practice” of the licensed professionals) in the licensure law. Note especially any activities that are

explicitly not included in that scope, such as diagnosing disorders, administering psychological tests, engaging in psychotherapy or counseling, etc.)

- Any provisions for behavior analysts who are licensed in other states. Some laws require everyone who practices in the state to obtain a regular license. Others may offer a temporary or provisional license for licensees from other states who practice in the state on a time-limited basis, while still others exempt such individuals from obtaining any state license as long as they practice in the state for only a specified, limited amount of time.
- Whether telepractice is allowed and if so,
 - whether that applies only to Licensed Behavior Analysts or also to Licensed Assistant Behavior Analysts (where the latter applies)
 - any parameters, conditions, or special requirements for engaging in telepractice.

If telepractice of ABA is not allowed, is not specified in the licensure law or rules/regulations, or if that is unclear, check to see if another state authority (e.g., the governor, Department of Insurance, Department of Public Health) has issued an order to allow telepractice by certain professionals during the COVID-19 emergency. If so, and if the order includes Licensed Behavior Analysts and Licensed Assistant Behavior Analysts, it may supersede the licensure law or rules. Alternatively or additionally, APBA recommends that the state behavior analysis association advocate for the regulatory entity to issue an emergency guidance or rules to allow telepractice during the COVID-19 pandemic, and perhaps beyond. APBA can help with those efforts.

IMPORTANT NOTES

- If telepractice of ABA is permitted by state licensure laws/rules or orders issued by other state authorities, it will be necessary to check with each payer on exactly which services they approve for telepractice, and which providers can render and bill for those services. For commercial and private health plans, that must include verifying the CPT® and other billing codes and modifiers to be used for reporting ABA services delivered by telepractice. See the recorded APBA [webinar](#) on telepractice and www.abacodes.org for additional information.
- *Licensure rules/regulations change periodically under ordinary circumstances and may change frequently in response to the coronavirus crisis, so it is important to check directly with the regulatory entity in each state for updates rather than relying only on your reading of the licensure law or secondary sources.*

III. Using professional standards to guide decision-making

Professional practitioners who are credentialed by the Behavior Analyst Certification Board (BACB) are always required to comply with the *Professional and Ethical Compliance Code for Behavior Analysts* (referred to hereafter as Code). Registered Behavior Technicians™ must comply with the *RBT® Ethics Code*. Both are available at <https://www.bacb.com/ethics/>. Those ethics codes are incorporated into licensure laws or rules in a number of the 30 states that license behavior analysts, but some of those laws/rules include different or additional ethical and conduct standards that apply to licensees. Again, the licensing board or other regulatory entity that manages the licensing program in each state is the best source of such information.

In response to the current crisis, the BACB has issued *Ethical Guidance for ABA Providers During COVID-19 Pandemic* (<https://www.bacb.com/bacb-covid-19-updates/>). That guidance highlights **key components** of the Code that are particularly salient to ethical decision-making during the pandemic:

- Section 2.0 – Behavior analysts have a responsibility to operate in the best interest of clients.
- Section 2.04(d) – Behavior analysts put the client’s care above all others.
- Section 1.04(d) – Behavior analysts’ behavior conforms to the legal and ethical codes of the social and professional community of which they are members.
- Section 4.07(b) – If environmental conditions hinder implementation of the behavior-change program, behavior analysts seek to eliminate the environmental constraints, or identify in writing the obstacles to doing so.
- Section 2.15 – Interrupting or Discontinuing Services
 - (a) Behavior analysts act in the best interests of the client and supervisee to avoid interruption or disruption of service.
 - (b) Behavior analysts make reasonable and timely efforts for facilitating the continuation of behavior-analytic services in the event of unplanned interruptions (e.g., due to illness, impairment, unavailability, relocation, disruption of funding, disaster).

The following sections of the Code are also particularly relevant to the recommendations that follow:

- Section 1.01 – Behavior analysts rely on professionally derived knowledge based on science and behavior analysis when making scientific or professional judgments in human service provision...

- Section 1.02 – Boundaries of Competence
 - (a) All behavior analysts provide services... only within the boundaries of their competence, defined as being commensurate with their education, training, and supervised experience.
 - (b) Behavior analysts provide services...in new areas (e.g., populations, techniques, behaviors) only after first undertaking appropriate study, training, supervision, and/or consultation from persons who are competent in those areas.
- Section 2.06 – Maintaining Confidentiality
 - (a) Behavior analysts have a primary obligation and take reasonable precautions to protect the confidentiality of those with whom they work or consult...
- Section 3.03(a) – Behavior analysts must obtain the client’s written approval of the assessment procedures before implementing them.
- Section 4.02 – Behavior analysts involve the client in the planning of and consent for behavior-change programs.

Recommendations for decision-making during the COVID-19 emergency in light of the profession’s standards include:

- Comply with emergency orders and regulations issued by governmental entities in the location(s) where services are provided (see section I. Determining if ABA services are “essential”).
- If the applicable government order makes it optional for you to continue in-person services, then *for each client*, evaluate the likely harms of continuing services as they are vs. delivering services via telepractice vs. stopping services altogether (see the BACB’s Ethical Guidance).
- If the decision is made to deliver some or all services in person, implement virus mitigation and safety procedures recommended by the CDC and/or local public health authorities.
- If the decision is made to deliver some or all services via telepractice *and* that is allowed under applicable emergency orders or regulations, licensure laws/rules, and payer policies:
 - Check your professional liability or malpractice insurance policy to make sure telepractice is covered.
 - *Ensure that all staff who design, oversee, and deliver services to clients and/or caregivers via telepractice have the necessary skills.* Refer clients to other providers, consult with competent colleagues, or obtain training as necessary.

- Determine the ability of the client and/or caregivers to participate in services delivered remotely.
- Obtain written informed consent for services that will be delivered by telepractice, even if the payer does not require it.
- Use HIPAA-compliant technology to the greatest extent feasible.
 - On March 17 the U.S. Department of Health and Human Services issued a notification that covered healthcare providers *may* use certain non-HIPAA-compliant, non-public-facing technologies (e.g., some popular video chat apps) for the “good faith provision of telehealth” during the COVID-19 emergency (available at this [link](#)). If you use such technology, APBA recommends
 - Enabling all encryption and privacy features.
 - Including in your telepractice informed consent document the name of the app, privacy risks its use introduces, and steps you will take to protect the privacy of client health information.

IV. Working with payers on delivery of ABA services via telepractice

Most of the information that follows pertains to ABA services that are covered by private or public health plans, but some may be applicable to other funding sources as well.

Payer policies

Many payers have adopted policies around telepractice of ABA during the COVID-19 emergency. Some of the initial policies have already been revised, and further revisions are likely to occur as the pandemic waxes and wanes in various locations. Some changes could occur rapidly and with little advance notice. Policies may vary substantially across payers and locations on dimensions like requirements for authorizations, contract amendments, client consents, session note and other documentation requirements for services delivered via telepractice, etc. Additionally, some policies that are developed during the emergency may remain in place after it subsides. *It is therefore very important for ABA providers to keep up to date with the telepractice policies of each payer with which they are credentialed during the pandemic and beyond. APBA recommends communicating directly with the payers rather than relying on information posted on social media or shared by other providers.*

Medical necessity

ABA services that were being reimbursed by health insurance prior to the COVID-19 outbreak were deemed medically necessary by appropriately qualified health care professionals, such as physicians or psychologists who diagnosed clients and behavior analysts who advocated for health plans to authorize medically necessary services for their clients. The pandemic does not

change that, but it does require many payers and ABA providers to reconsider what constitutes medically necessary services for each client and how those services are delivered.

“Medical necessity” is defined in various ways, and many payers have their own definitions and criteria. But generally speaking, medically necessary services are to ameliorate the symptoms and other effects of diagnosed conditions in order to enhance health and safety, improve overall functioning, and prevent deterioration and regression. For instance, the American Academy of Pediatrics (AAP) has defined medically necessary services for pediatric clients as ...health care interventions that are evidence based, evidence informed, or based on consensus advisory opinion and that are recommended by recognized health care professionals, such as the AAP, to promote optimal growth and development in a child and to prevent, detect, diagnose, treat, ameliorate, or palliate the effects of physical, congenital, developmental, behavioral, or mental conditions, injuries, or disabilities.” - [Essential Contractual Language for Medical Necessity in Children](#). *Pediatrics*, August 2013, 132(2) 398-401. Reaffirmed September 2017.

ABA services for people with disabilities or disorders that arise during development fit the AAP’s medical necessity criteria. That organization recommended ABA services in its [Clinical Report: Management of Children with Autism Spectrum Disorders](#) (*Pediatrics*, 2007: 120(5): 1162-1182, reaffirmed September 2010). So did the American Academy of Child and Adolescent Psychiatry in its [Practice Parameter for the Assessment and Treatment of Children and Adolescents with Autism Spectrum Disorder](#) (*Journal of the American Academy of Child & Adolescent Psychiatry*, February 2014: 53(2): 237-257). Many ABA procedures that are commonly used in autism intervention have also proved effective with other client populations. For some examples, see the APBA [white paper on identifying ABA interventions](#) and the fact sheets and videos at <https://www.bacb.com/about-behavior-analysis/>.

It is also important to note that the American Medical Association CPT® Editorial Panel’s approval of 8 CPT® codes for adaptive behavior (ABA) services at the Category I level signifies that the services represented by those codes are *proven clinically effective and widely accepted in the medical community*. *The code descriptors are not specific to any diagnosis or age*. Resources and other information from authors of the current code set can be found at www.abacodes.org. For specific information about using those codes to report services delivered via telepractice, see the recorded APBA [webinar](#) and this [document](#) from the Council of Autism Service Providers (CASP).

Key points to consider in determining the medical necessity of ABA services during the COVID-19 emergency – either in person (where safe, feasible, and/or required by government order), remotely by behavior analysts or RBTs, or by caregivers in a client’s environment with remote training and coaching from behavior analysts or RBTs -- are as follows:

- Many focused ABA interventions have proved effective for reducing maladaptive behaviors that put some clients and/or their caregivers at risk of illnesses or injuries that could require emergency, urgent care, or inpatient medical services – *services that*

may not be readily available during the pandemic. Examples include self-injury, aggression, property destruction, pica (ingesting inedible items), rumination, elopement (wandering), sleep disorders, and selective eating.

- The CDC identifies “...neurological and neurologic and neurodevelopment conditions [including disorders of the brain,...intellectual disability, moderate to severe developmental delay]” as “...underlying medical conditions that may increase the risk of serious COVID-19 for individuals of any age.” That encompasses clients who exhibit behavioral excesses and deficits that likely *increase their risk of contracting COVID-19 and/or make it difficult to test and treat them for the disease.* Those risks could be mitigated directly with ABA interventions that have proved effective for
 - building adaptive behaviors such as communication skills (e.g., reporting symptoms, requesting help); personal hygiene skills (handwashing, using hand sanitizer, bathing, toileting, coughing and sneezing into sleeve or tissue, disposing of potentially contaminated clothing and tissues); social distancing; cooperating with medical procedures; hydrating; taking medications.
 - reducing maladaptive behaviors such as pica, biting (self or others), spitting, mouthing hands and objects, licking surfaces, touching face.
- Substantial research shows that many caregivers of individuals with the conditions identified by the CDC report high levels of stress under ordinary circumstances. That is very likely to be exacerbated by the effects of the COVID-19 pandemic, making many caregivers more susceptible to that disease as well as other physical and behavioral health problems. ABA providers can potentially alleviate some of their stress by
 - Engaging clients in interventions delivered by a behavior analyst or RBT.
 - Training caregivers to implement interventions for reducing a client’s maladaptive behaviors and building or maintaining adaptive skills.
 - Helping caregivers create and implement daily routines with clients. For some that could include doing or helping with household chores, which would enable the client to develop or practice skills that enhance their independent functioning while also reducing the caregiver’s workload.
 - Identifying and removing items in the environment that may jeopardize a client’s safety (e.g., cleaning and disinfecting solutions and wipes, poisons, sharp objects, weapons, pica items).
 - Planning to resume services after the pandemic abates.

ABA procedures that are potentially appropriate for telepractice (provided that the practitioners and clients involved have the necessary skills) include, but are not limited to,

- Direct observation and recording of behaviors and environmental events
- Task analysis
- Reinforcement
- Video prompting
- Video modeling
- Behavioral skills training for interventionists, including caregivers

- Functional analysis
- Functional communication training
- Habit reversal
- Activity schedules as described in McClannahan, L.E. & Krantz, P.J. (1999) *Activity schedules for children with autism: Teaching independent behavior*. Bethesda, MD: Woodbine House and numerous published studies
- Scripts and script fading as described in McClannahan, L.E., & Krantz, P.J. (2005). *Teaching conversation to children with autism: Scripts and script fading*. Bethesda, MD: Woodbine House and numerous published studies

Although research on the implementation of some of the foregoing via telepractice is limited, there is at least preliminary evidence for some (see the CASP [document](#)). The substantial evidence of the efficacy of those and many other ABA procedures when implemented in person makes their delivery via telepractice evidence-informed, at a minimum. The same is likely true of many medical and other services that are being authorized for telepractice during the COVID-19 emergency.

For ABA services that are delivered via telepractice, providers should follow professional standards and best practices and customize the services to the strengths, needs, and preferences of each client and their caregivers as well as the skills and resources of the provider. Records of prior assessments and treatment, caregiver interviews, and direct observation of behavior/environment interactions should be used to evaluate the client's skills in engaging in services delivered remotely. As described previously, special circumstances created by the COVID-19 pandemic should be considered in selecting treatment targets. Clients and caregivers should be involved in prioritizing targets and procedures that will help keep the client and others as safe and healthy as possible while also reducing stress. If modifications to an existing treatment plan are required, providers should work with payers to get expedited approval of new or amended plans as well as instructions regarding any changes in billing codes, modifiers, or documentation requirements for services delivered via telepractice.

About the Association of Professional Behavior Analysts

The Association of Professional Behavior Analysts (APBA) is a 501(c)(6) nonprofit membership organization whose mission is to promote and advance the science-based practice of applied behavior analysis (ABA). APBA carries out that mission by advocating for public policies and informing, supporting, and protecting practitioners and consumers. Memberships are available for Behavior Analyst Certification Board certificants, Registered Behavior Technicians, professionals in other fields, consumers, and students. Dues are reasonable, and members are eligible for many benefits. For details, please see Membership at www.apbahome.net.

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