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Agency of Human Services

MEMORANDUM

To: Senator Jeanette K. White, Chair, Senate Committee on Government Operations

From: Steven M. Costantino, Commissioner of the Department of Vermont Health Access 

Cc: Hal Cohen, Secretary, Agency of Human Services

Date: April 14, 2015

Re: Licensure for Behavior Analysts

This memo is to express the Department of Vermont Health Access’s support of S.136, an act relating to licensing and regulating applied behavior analysts and their assistants.

Background:

In 2012, the Vermont General Assembly passed Act 158 to expand coverage for diagnosis and treatment of early childhood developmental disorders, including autism spectrum disorders (ASD). The act requires that Medicaid and private health insurance plans cover evidence-based diagnosis and treatment of early childhood developmental disorders, including applied behavior analysis supervised by a nationally board-certified behavior analyst (ABA), for children birth to age twenty-one. As defined in Act 158, “‘applied behavior analysis’ means the design, implementation and evaluation of environmental modifications using behavioral stimuli and consequences to produce socially significant improvement in human behavior. The term includes direct observation, measurement, and functional analysis of the relationship between environment and behavior.”¹

Why Licensure is needed for Behavior Analysts:

Public Safety:

Requiring licensure for behavior analysts is particularly important due to the nature of their services and the vulnerable population they serve. ABA often appropriately requires physical holds and restraints in order to control aggressive or self-injurious behavior. When working with a vulnerable population that is characterized by challenged communication and is commonly accompanied by physical behaviors, it is vital to public safety that provider ethics and clinical treatment be regulated and monitored.

Without licensure, parents are left without a concrete way to distinguish a qualified provider from one who is not. In desperation to get treatment for their child, some parents might seek out any willing ABA provider and may not have the means or education necessary to ensure the provider is competent to carry out ABA services.

Currently, the nationally recognized Behavior Analyst Certification Board offers certification for behavior analysts, but they do not have the time, resources and legal authority to provide the necessary ethical oversight at the local

¹ <http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=08&Chapter=107&Section=04088i>

level to protect the public. Therefore, the designation of “Board Certified Behavior Analyst,” without the regulatory oversight granted through state licensure, does not provide necessary safeguards to identify or deter malpractice. In contrast, the Office of Professional Regulation (OPR) develops standards for professional competency, promulgates rules and regulations, adjudicates complaints against professionals and, when necessary, imposes disciplinary sanctions. The regulation of professions through licensure helps to assure competency.

OPR is explicitly tasked with the regulation of professions in order to promote public health, safety and welfare and to protect the public from the unprofessional, improper, unauthorized or unqualified practice of services. The unregulated practice of behavior analysts working with one of Vermont’s most vulnerable populations, children with autism spectrum disorders, provides ample opportunity to harm and puts the health and safety of children and their families at an elevated and unnecessary level of risk. Professional licensure would provide families and health insurance plans with a tool to assure that behavior analysts are competent to practice, and would serve as an essential safeguard in the event of professional malpractice.

Expanded Access:

Without licensure, Medicaid will face significant challenges expanding ABA services beyond the existing designated agency network. The current Medicaid network of ABA providers available through the DAs is inadequate to meet the needs of children and families. Currently, only four of the ten DAs in Vermont have capacity to provide ABA services to Vermonters, while several more are working to build a workforce that will take years before it can adequately serve all the needs of Vermont children and families. Families are not able to wait years for a service where effectiveness is decreased as a child ages. Providing licensure for ABA providers will allow Medicaid and commercial insurers to open the doors to increase ABA access to families in need this year.

Potential to reduce the cost shift occurring from commercials to Medicaid:

Vermont Medicaid has heard through testimony, the DAs, families and advocates that commercial insurers are not sufficiently providing ABA coverage to children in need. Medicaid is bearing an unfair share of ABA costs. As the payer of last resort, Medicaid pays for services not covered by supplemental insurer. While ACT 158 requires insurers to cover ABA services, unlicensed providers have been a significant obstacle in ensuring insurance coverage for commercial insurers and Medicaid alike. Where Medicaid is able to pay for ABA services provided by unlicensed providers in the DAs, some DAs have had difficulty billing commercial insurers. DVHA has heard first hand from families and advocates that families have chosen to drop commercial coverage entirely in order to receive ABA services through the DAs, paid for by Medicaid. Not only does this impact Medicaid’s budget around costly ABA services, but also most other medical services in which Medicaid is the payer of last resort. Providing licensure to behavior analysts and assistant behavior analysts removes the barrier to enrollment and reimbursement by commercial insurers and will eliminate families’ incentive to drop commercial coverage in order to have Medicaid as primary.

CMS SPA Approval:

The State cannot expand Medicaid coverage for ABA without an approved State Plan Amendment to add behavioral analysts as Medicaid reimbursable providers. At this time, CMS has limited approval for Medicaid coverage of behavior analysts to only three states under the federal authority for “Other Licensed Practitioner Services,” and has not approved any State Plan Amendments for unlicensed Board Certified Behavior Analysts. Pursuing CMS approval for unlicensed providers is an unproven path that will at best extend the timeline for receiving federal authority and require significantly greater staff resources.