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PRESIDENT, ADVANCED BEHAVIORAL RESOURCES

OVERVIEW OF HB22-1260 ACCESS TO MEDICALLY NECESSARY SERVICES FOR STUDENTS

Thanks to the following people:

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OBJECTIVES

- Demonstrate an understanding of HB22-1260- Access to Medically Necessary Services for Students
- Be able to identify how to gain access to the school setting pursuant to HB-1260 and steps to take if access is denied.
- Be able to identify how to obtain third party funding for medically necessary care in school settings and steps to take if authorization is denied.
- Be able to identify the different ways a medical ABA provider can work in the school setting
- Be able to distinguish between the roles & responsibilities of medical providers and school providers

OVERVIEW OF HB22-1260 ACCESS TO MEDICALLY NECESSARY SERVICES FOR STUDENTS

BACKGROUND

- Children spend approximately one-third of their time in school settings. Some of those children require prescribed behavioral health therapy and treatment for other medical conditions in school as part of their overall treatment for a diagnosed medical condition. Autism Spectrum Disorder [ASD] is one common example of a diagnosis for which the prescription must occasionally occur at the school setting due to the clinical requirements of the diagnosis.

- Collaboration between school services and health care professionals to ensure timely access to necessary care is required to improve outcomes for children.

- To ensure treatment effectiveness and maximize functional outcomes, treatment may need to be delivered in a variety of settings including school and other community settings.

- To meet professional standards, treatment should occur in those settings settings that maximize treatment outcomes for the individual client.

The Problem

- Many Colorado children have not been able to access medically necessary care in school settings because schools have not allowed access to children's outside healthcare providers who provide treatment in other community settings and schools have not provided these services under IDEA because they have concluded they are not required to provide the child with a free and appropriate education as defined by IDEA.

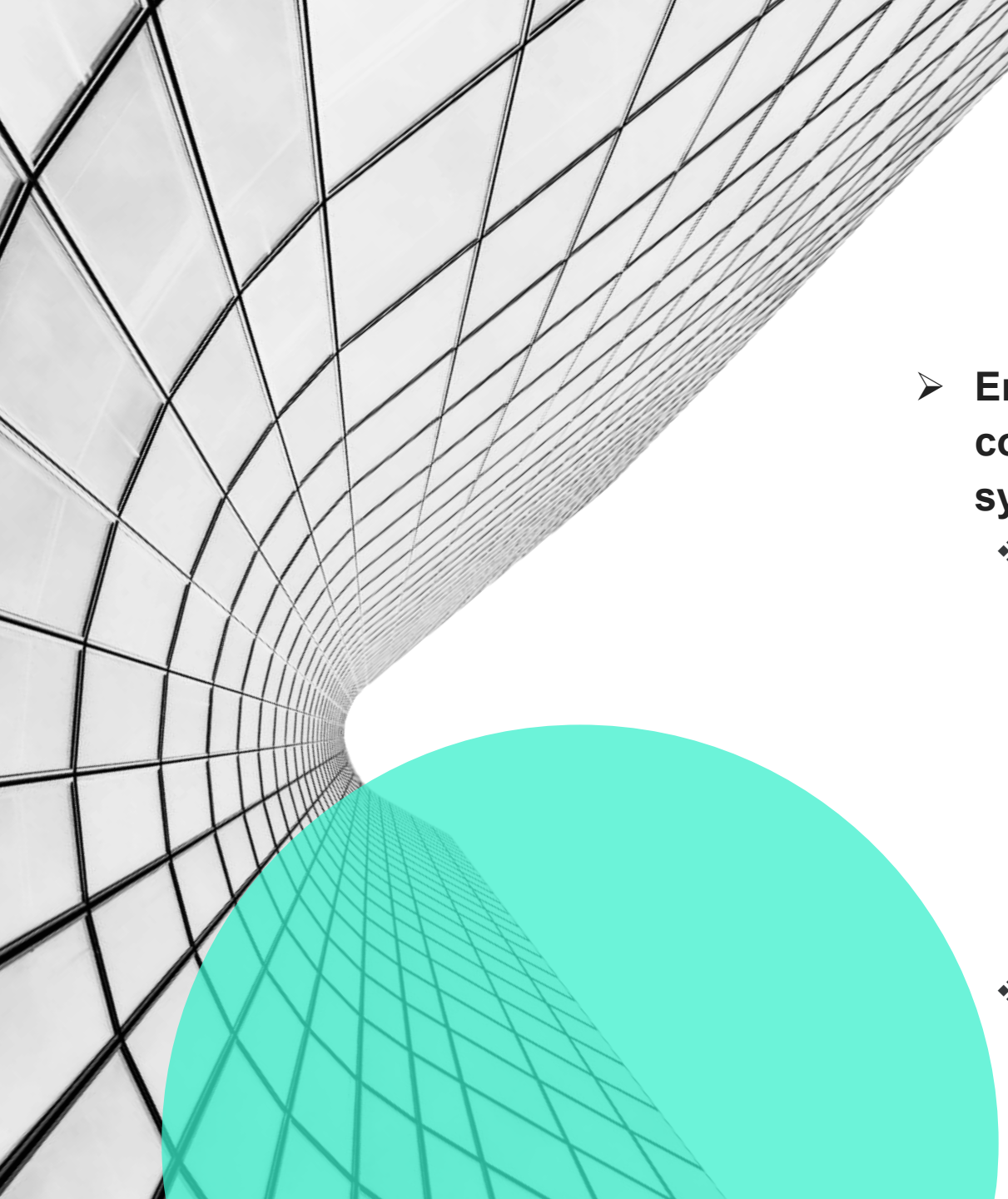
- As a result, families have had to choose between their child’s education and their medical needs. No family should have to make this decision. Each child should be given the opportunity to receive not only IDEA services for an appropriate education to achieve educational success but also the medical care they need to ameliorate all of their ASD based impairments and reach their maximum functional potential.

HB22-1260 Ensures that Children Can have Access to Their Prescribed Medically Necessary Care

- No later than July 1, 2023, the act requires each administrative unit to adopt a policy that addresses how a student who has a prescription from a qualified health-care provider for medically necessary treatment receives such treatment in the school setting as required by applicable federal and state laws. The act requires the administrative unit to make the policy publicly available on the administrative unit's website and available to the student's parent or legal guardian upon request.
- Beginning July 1, 2024, and each July thereafter, the act requires each administrative unit to compile and provide to the department of education (department) the total number of requests for access to a student by a private health-care specialist and whether the access was authorized or denied.
- Beginning January 2025, and each January thereafter, the act requires the department to make the information reported available on the department's website and report the information to specified committees of the general assembly.

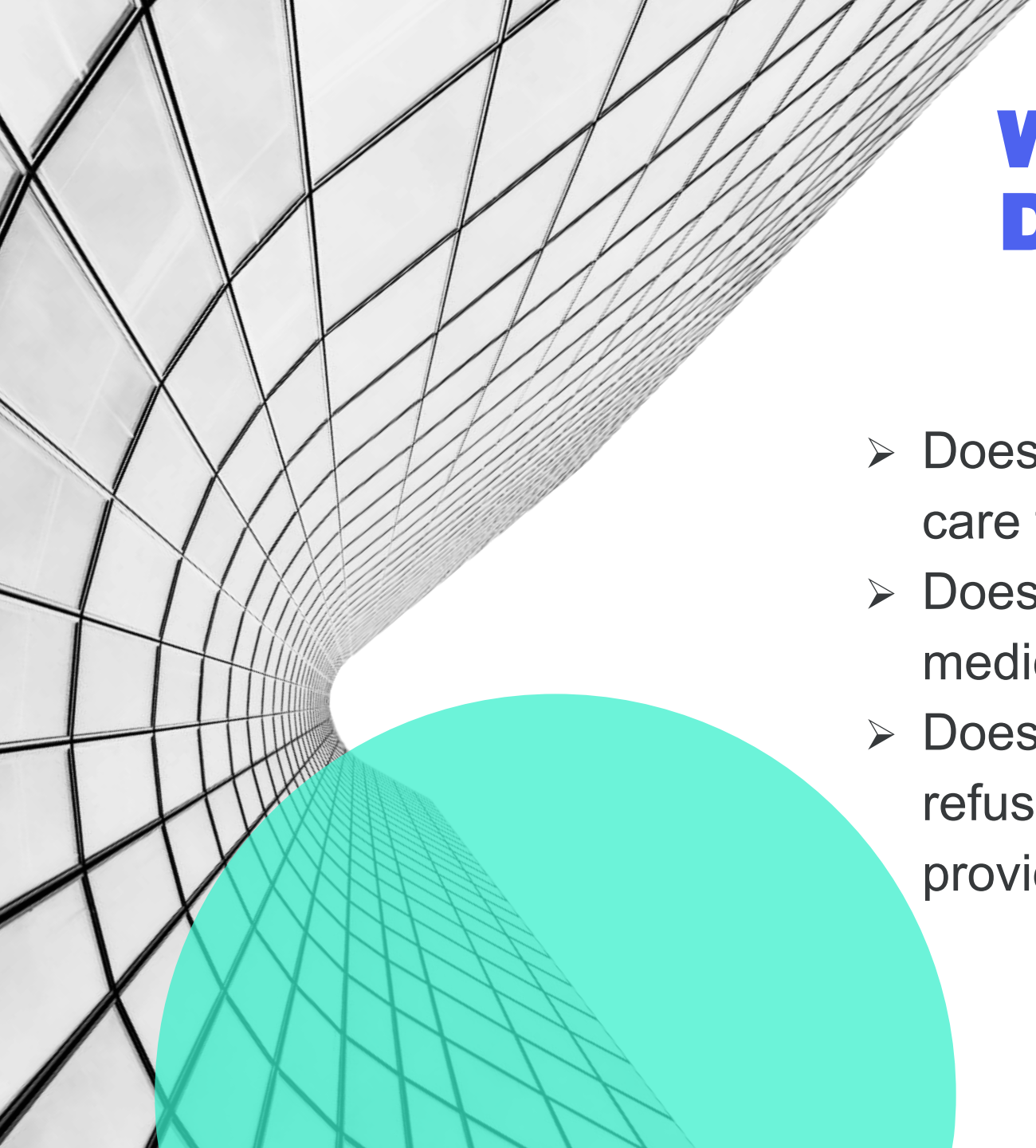
WHAT HB1260 DOES

- **Allow children reasonable accommodations to access third-party-funded healthcare to get the care they need in schools**.
  - Students with problematic behaviors will have access to additional supports in school.
  - Having healthier kids will reduce costs to schools long term.
  - Schools will be able to retain essential control through the "reasonable accommodation" standard.
  - Children will no longer be shut out from medically necessary care.



WHAT HB1260 DOES(cont'd)

- **Ensure healthcare insurers, including Medicaid, cover costs of ameliorating medical symptomatology rather than schools**.
  - Some schools participate in the School Health Services Program. However, that program places the onus of medical treatment on the school itself resulting in a fiscal burden that adds to the stressors for an already strained system. Additionally, not all schools participate resulting in inequitable access to medical services across the state.
  - HB22-1260 provides a solution that offers protections to the school system while allowing the child access to life-enhancing treatments funded by their insurance plan.



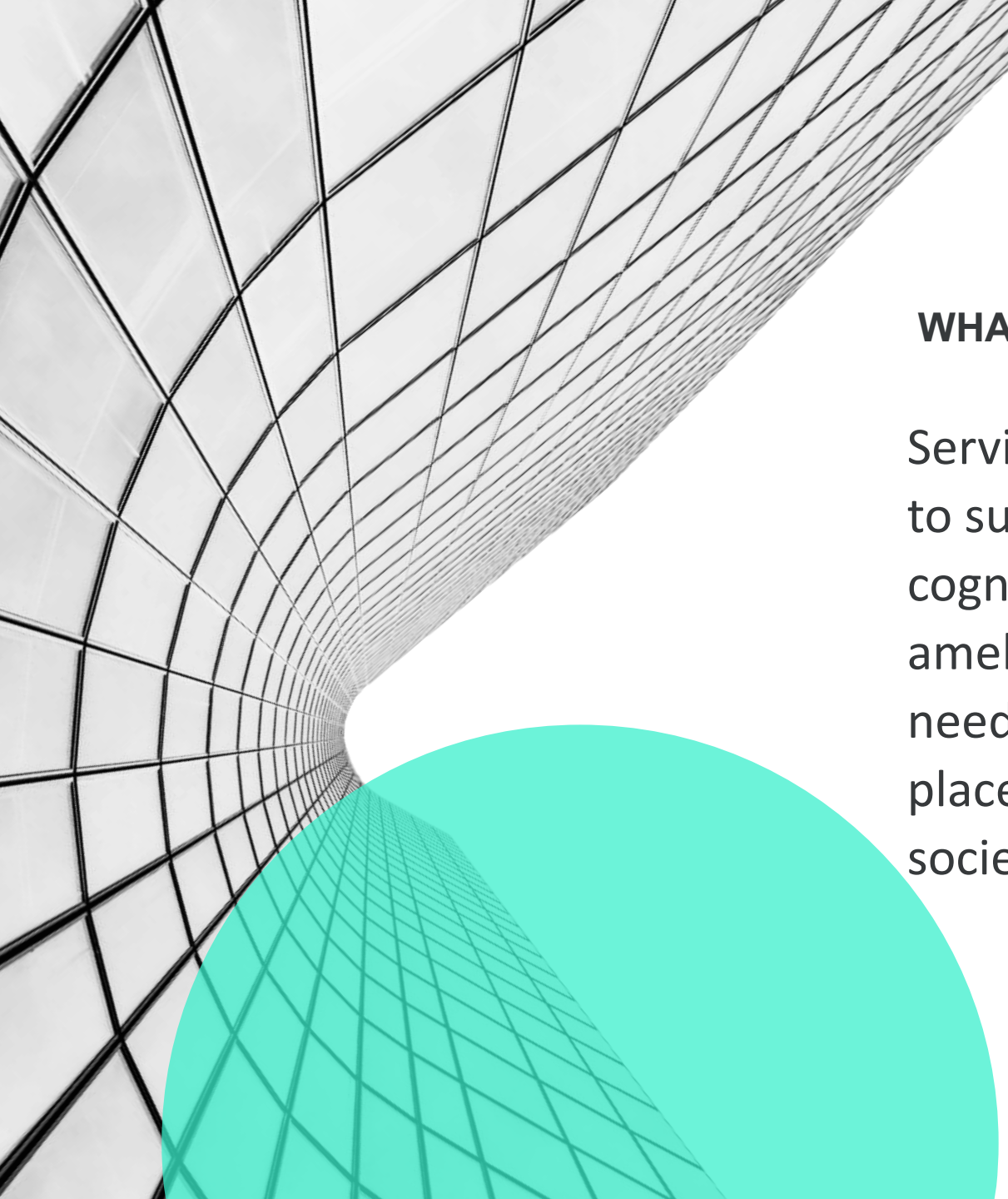
WHAT HB22-1260 DOES NOT DO

- Does not require schools to pay for medical care for students.
- Does not require (or allow) schools to make medical necessity determinations.
- Does not allow schools to have a policy refusing to allow in outside healthcare providers

A WORD ABOUT FUNDING

- **Commercial Insurance**
  - Generally, has a duty by statute and contract to provide medically necessary ABA. This includes medically necessary ABA in school settings as well as other commercial settings.
  - Complaints can be made to DORA (fully funded) or USDOL (self-funded) where a funder attempts to limit coverage of medically necessary care in school settings.
- **Medicaid**
  - School Health Services program may provide some medically necessary care but it is discretionary and limited in a variety of ways and cannot circumscribe Medicaid's obligation to ensure that all medically necessary care in the school setting is actually provided to the child.
  - In those instances where available SHS services are insufficient to meet a child's needs, prior authorization of services by outside providers should still be sought as a required service under Medicaid's EPSDT obligation (42 U.S.C. § 1396d(r)(5)).

DIFFERENCES BETWEEN SERVICES IN SCHOOL AND MEDICALLY NECESSARY ABA SERVICES



WHAT ARE MEDICALLY NECESSARY TREATMENTS?

Services typically prescribed by a child's pediatrician to support growth developmentally, socially, cognitively, affectively, and physically while ameliorating risks to safety. In short, the skills kids need to access the world so they may find their place, hold a job, and navigate relationships and society.

WHAT IS MEDICAL NECESSITY?

Most insurers use a definition tracking the American Medical Association's definition.

Health care services or products that a prudent physician would provide to a patient for the purpose of preventing, diagnosing or treating an illness. injury, disease or its symptoms in a manner that is:

- **(a) in accordance with generally accepted standards of medical practice;**
- **(b) clinically appropriate in terms of type, frequency, extent, site, and duration; and**
- **(c) not primarily for the economic benefit of the health plans and purchasers or for the convenience of the patient, treating physician, or other health care provider.**

The American Academy of Pediatrics recommends for children medical necessity be broadly defined to include health care interventions recommended by health care professionals to prevent, detect, diagnose, treat, ameliorate, or palliate the effects of physical, genetic, congenital, developmental, behavioral, or mental conditions, injuries, or disabilities.

Medicaid uses a definition similar to the AMAs with the caveat that the definition cannot be applied restrictively in a manner that would limit care to children under 21 as required by the broad EPSDT “correct or ameliorate” standard. 42 U.S.C. §1396d(r)(5). Care that is coverable as medical assistance, including ABA, must be provided when, where, and to the extent necessary based on individualized determinations of necessity regardless of whether it is currently included the state’s Medicaid State Plan

MEDICAL NECESSITY

Key points:

- Treatment addresses all impairing deficits and conditions resulting from the diagnosed medical condition For ASD includes social, communication and behavioral impairments.
- Treatment is delivered based on a maximizing standard
- Treatment is delivered in a client relationship based on healthcare professional standards of care (see CASP Practice Guidelines)
- Funders will not cover outside health care providers to provide educational services provided by schools or related services already being provided by schools .

Funders will authorize treatment set forth in a treatment plan including:

1. Treatment Dosage (hours per week)
2. Programs selected matching the child's needs and problem behaviors
3. Goals created from review of recent assessments and diagnostic reports (curriculum-based assessments and standardized assessments)
4. Ongoing request include progress made with past service and other indicia of need and effectiveness

Medical Necessity Can Only Be Determined by a Qualified Healthcare Practitioner

- HB22-1260 states that the medical necessity determination is made by the child's qualified healthcare provider and this recommendation is then presented to the school on behalf of the child seeking access for his or her healthcare provider. Colo. Rev. Stat. §§ 22-20-121 (1)(a) and (2)(a).

- Upon being presented with the supported request, the school is to engage in investigation and an iterative process with the parent and provider(s) as needed to determine how the request can be reasonably accommodated. In connection with this, the school may invite the private health-care specialist who ordered or recommended the medically necessary treatment as well as the healthcare specialist who will administer the treatment (if different) to meet.

The Iterative Process to Determine Access

- The school must make reasonable modifications to school policies if needed to ensure this access. The school is allowed to impose reasonable non discriminatory conditions on access such as background checks and insurance requirements.

- The school does retain various legal defenses under the ADA if it is truly unable to provide the requested access after engaging in the iterative process.

MAIN POINTS

MEDICALLY NECESSARY SERVICES

- Not just ABA. This is for all services that can and should be provided in schools but are often not. This includes private speech, OT, Feeding programs, or other medically necessary services

DOES COST THE SCHOOLS ANY MONEY?

- Funds for services provided in the schools would be paid by private insurance or other funding. NOT THE SCHOOL

DOESN'T MY CHILD'S IEP, THROUGH IDEA, ALREADY PROVIDE THIS

- Not always. If the IEP system works, this law allows for that. But often the IEP system does not work or is not applicable. This law is founded, not on IDEA, but on 504 and ADA.

SCHOOL BOARD POLICIES

- A major part of they law is that each school district must have a policy describing how their students will receive these services **IN THE SCHOOL SETTING.**
- “No later than July 1, 2023, each administrative unit shall adopt a policy that addresses how a student who has a prescription from a qualified health-care provider for medically necessary treatment receives such treatment in the school setting as required by applicable federal and state laws, including section 504 of the federal "rehabilitation act of 1973"and the "Americans With Disabilities Act of 1990”

…… text from HB 22-1260

What Do I Do If My School District Does Not Have a Policy?

1. Bring to the attention of the Colorado Association for Behavior Analysis (COABA) School Subcommittee
   a. Email Stephanie Voss @ StephanieV@cfcico.com
   b. Fill out the COABA School Reporting Form https://forms.gle/vDA4jZcXDhLbELER8
2. The failure of the school district to have a policy does not prevent the family from proceeding with the request for access.

What to do if the school district denies the Medical Necessity request?

1. Get the denial in writing!
2. Bring to the attention of the Colorado Association for Behavior Analysis (COABA) School Subcommittee
   a. Email Stephanie Voss @ StephanieV@cfcico.com
   b. Fill out our COABA School Reporting Form https://forms.gle/vDA4jZcXDhLbELER8
3. If families want to pursue, have them fill out a CDE State Complaint form
   a. https://www.cde.state.co.us/spedlaw/model-state-complaint-form-english.
4. You may also have a basis for filing complaints with the U.S. Department of Justice and the U.S. Department of Education for civil rights violations and a right to bring an action in federal court for ADA violations without having to exhaust IDEA procedures.

Can the school provide Medically Necessary ABA services?

Things to Consider:

1. Can the school district provide the full medically necessary treatment dosage directed to all medically necessary treatment targets in a manner coordinated with the child's overall treatment program?
2. Can the district BCBA provide the adequate supervision to the BT or RBT and meet all other requirements for delivering care in accordance with medical standards?
3. Is the services provided in school covering all 7 dimensions of ABA?
4. Where do medical ABA services go? IEP, 504, IHP, Supplemental?

What to do if Primary Insurance and/or Medicaid says no to funding and no SHS funding available?

1. Get the denial in writing!
2. Bring to the attention of The Colorado Association for Behavior Analysis (COABA) School Subcommittee
    1. Email Stephanie Voss @ StephanieV@cfcico.com
    2. Fill out our COABA School Reporting Form https://forms.gle/vDA4jZcXDhLbELER8
3. Review Materials on COABA's website for filing complaints with applicable regulators.

What to do if the client gets a truancy notice and has medical necessity reasons on file with the school?

1. Should not be happening at all. This should be an excused absence.

2. If families want to pursue, have them fill out a CDE State Complaint form
    a. https://www.cde.state.co.us/spedlaw/model-state-complaint-form-english

MUCH NEEDED DATA

- **Another important major part of this law is that school districts must report data on the implementation of this law.**

Beginning July 1, 2024, and each July 1 thereafter, each administrative unit shall compile and provide to the department of education the **total number of requests for access to a student by a private health-care specialist pursuant to this section and whether the access was authorized or denied.**

Beginning January 2025, and each January thereafter, the Department of Education shall make the information reported, on the department's website and report the information to the house of representatives education committee and the senate education committee,

School Provider Roles + Possible Overlaps

COMMON SCHOOL PROVIDER ROLES

- **Special Education Teacher:** sometimes called a case manager; responsible for the IEP goals, progress monitoring, training paraeducators; can also conduct an FBA if trained
- **Paraeducator:** works directly with a student, supports classroom management, or supports multiple students within one program
- **School Psychologist:** conducts cognitive assessments; sometimes academic assessments; is able to conduct an FBA and can write a BIP

RELATED SERVICE PROVIDERS

- Occupational therapist
- Speech therapist
- Physical therapist
- Vision specialist
- Audiologist
- Adaptive PE teacher

COMMON OVERLAPS W/BCBA ROLE

Speech Therapist (SLP)

-Teaching communication skills (i.e. VB-MAPP style targets)

-Social skills

-Device use

Occupational Therapist (OT)

-Accessing break spaces

-Handwriting (motor skill vs desire)

-Fine motor tasks (motor skill vs desire)

-Sensory overlaps with behavior

-Device use

School Psychologist

-Teaching regulation skills

-Social groups

ROLES WITH TWO BCBAS

School and Private Provider

COMPARISON OVERVIEW

Private Provider BCBA

- Medical ABA is to **remediate symptoms of diagnoses** that interfere with the child's ability to independently function across settings.
- Medical ABA treatment involves utilizing all seven dimensions of applied behavior analysis as evaluated and monitored by a Qualified Healthcare Professional in order to remediate symptoms of the individual's diagnosis.

School Based BCBA

- Educational ABA focuses on the application of behavior analytic principles to allow for access to a free and appropriate public education
- Educational ABA can be the strict application of behavior analysis, or professional practice guided by the science of behavior analysis, depending on the situation

Overlaps

Medical BCBA

-tolerance training
-desensitization training
-systematic shaping procedures

-school readiness (attending)
-joining a group
-joint-attention goals
-social skills
-transitions between activities or across the school
-functional communication training
-goals around persistence
-hygiene (transition programs)
-job skills
-verbal behavior goals

School BCBA

-academic goals (i.e. math, reading and writing section of VB-MAPP)
-precision teaching (i.e. handwriting, reading, math fluency)

RESOURCES

Who to ask for help?

WHO TO CONTACT AND WHEN?

- Colorado Association for Behavior Analysis (www.coaba.org)
  - ✓ COABA Public Policy Committee website: https://coaba.org/about/public-policy-committee
  - ✓ Email COABA Public Policy Committee: coabapublicpolicy@gmail.com
- Kelly Tousley, Experience with Rural School Districts (kellytousley@coautism.com)
- Kate Loving, Experience with Colorado Department of Education (kloving@joshuaschool.org)
- Dan Unumb, Esq. (Autism Legal Resource Center)
  - ✓ Experience with all things autism and relevant legal issues
  - ✓ ALRC website: https://www.autismlegalresourcecenter.com/contact/
- Center of Autism Service Providers (https://www.casproviders.org)
  - ✓ National Voice for Autism Service Providers
  - ✓ CASP website: https://www.casproviders.org/contact-us
- Local School Districts
  - ✓ Be your own advocate, reach out and get their policies!

SCHOOL REPORTING FORMS

COABA School Reporting Form (HB22-1260)

School Denial Survey

REFERENCES

- Antonitis, J. J. (1951). Response variability in the white rat during conditioning, extinction, and reconditioning. *Journal of Experimental Psychology, 42*(4), 273-281.
- Bouton, M. E. (2004). Context and Behavioral Processes in Extinction. *Learning and Memory, 11,* 485-494.
- Eisenberger, R., and Armeli, S. (1997). Can salient reward increase creative performance without reducing intrinsic creative interest? *Journal of Personality& Social Psychology, 72,* 704-714.
- Epstein, R. (1983). Resurgence of previously reinforced behavior during extinction. *Behavior Analysis Letters, 3,* 391-397.
- Epstein, R. (1985). Extinction-induced resurgence: Preliminary investigations and possible applications. *The Psychological Record, 35,* 143-153.
- Epstein, R., and Skinner, B. F. (1980). Resurgence of responding after the cessation of response independent reinforcement. *Proceedings of the National Academy of Sciences, U.S.A., 77,* 6251-6253.
- Denney, J., and Neuringer, A. (1998). Behavioral variability is controlled by discriminative stimuli. *Animal Learning and Behavior, 26 (2),* 154-162.
- Saldana,L., and Neuringer, A. (1999). Is instrumental variability abnormally high in children exhibiting ADHD and aggressive behavior? *Behavioural Brain Research, 94,* 51-59.

REFERENCES (CONT'D)

- Stokes, P. D., Mechner, F., and Balsam, P.O. (1999). Effects of different acquisition procedures on response variability. *Animal Learning and Behavior, 27,* 28-41.

- Schwartz, B. (1982a). Failure to produce response variability with reinforcement. *Journal of the Experimental Analysis of Behavior, 37,* 171-181.

- Schwartz, B. (1982b). Reinforcement-induced behavioral stereotypy: How not to teach people to discover rules. *Journal of Experimental Psychology: General, 111,* 23-59.

- Staddon, J.E.R., and Simmelhag, V. L. (1971). The 'superstition' experiment: A reexamination of its implications for the principles of adaptive behavior. *Psychological Review, 78,* 3-43.

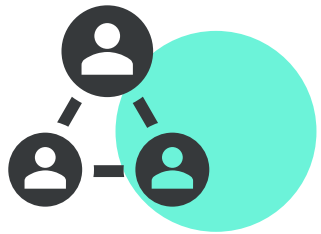
- Stokes, P. D. and Balsam, P. (2001). An optimal period for setting sustained variability levels. *Psychonomic Bulletin and Review, 8 (1),* 177-184.

- Todd, T. P., Winterbauer, N. E., and Bouton, M. E. (2012). Effects of the amount of acquisition and contextual generalization on the renewal of instrumental behavior after extinction. *Learning and Behavior, 40,* 145-157

HOW CAN YOU HELP

PROVIDE DATA ON IMPLEMENTATION

- Communicate to members of COABA's Public Policy Committee
  - ✓ coabapublicpolicy@gmail.com
- Things that are working
- Things that not working, especially schools not cooperating



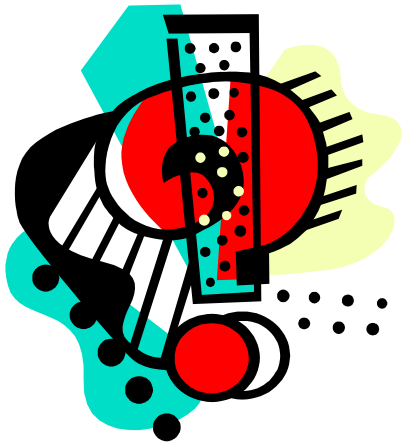
COMMUNICATE WITH LEGISLATORS

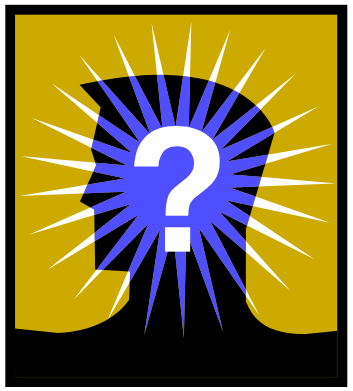
- Let you representatives know if there are issues
- Bill Sponsor:
  - ✓ Meg Froelich repfroelichhd3@gmail.com

COLLABORATE AND CULTIVATE RELATIONSHIPS WITH SCHOOL DISTRICTS

- Cultivate relationships with friendly school districts who see this a positive initiative
- Collaborate with providers and support personnel to help implement this law

QUESTIONS/COMMENTS





THANK YOU!

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