Insurance Coverage for Severe Behavior at Any Age

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How Big is the Problem?

• About 16 million people in the US have a developmental disability, and about 12.5% (2 million) display destructive behavior.

• Largest cause of institutionalization in the U.S.
What Exactly is the Problem?

“The sad irony is that getting reimbursed for services for a child with severe destructive behavior is more complex and challenging than treating the child’s behavior.”

Wayne Fisher, BCBA-D, Children’s Specialized Hospital-Rutgers University Center for Autism, Research, Education, and Services

“Getting coverage for severe behavior treatment should in some respects be easier than getting reimbursed for other autism interventions.”

Dan Unumb, J.D., President, Autism Legal Resource Center

Is the problem the lack of coverage or the lack of available treatment professionals/centers?
What Resources Exist?

Intensive Center-Based or Residential Treatment Programs for Adolescents or Adults with Autism in the United States

- Alpine Learning Group – New Jersey -- www.alpinelearninggroup.org
- BSTN: Behavioral Services of Tennessee -- www.bstn.org
- Center for Applied Behavior Analysis – California -- www.centerforaba.com
- Eden II Programs – New Jersey -- eden2.org
- Elijah – New York - www.eliija.org
- Erik’s Ranch – Montana, Minnesota -- www.eriks ranch.org
- Evergreen Center – Massachusetts -- www.evergreenctr.org/autism
- Kendall Center / Therapeutic Pathways – California -- www.tpathways.org
- Laurel Heights Hospital – Georgia -- laurelheightshospital.com/treatment-and-services/residential-treatment/
- LittleStar ABA Therapy – Indiana -- www.littlestaraba.org
- May Institute – Massachusetts -- www.mayinstitute.org
- Melmark – Massachusetts -- www.melmarkne.org
- Munroe Meyer Institute – Nebraska -- unmc.edu/mmi/departments/casd/index.html
- New England Center for Children – Massachusetts -- www.necc.org
- University of Iowa – Iowa -- uichildrens.org/medical-services/autism
- Virginia Institute of Autism – Virginia -- www.viaschool.org
CPT Codes for Severe Behavior

Behavior Identification Supporting Assessment (0362T).

- This code is used when two or more technicians, working under the direction of a qualified healthcare professional, implement one or more protocols the professional developed to assess the patient's severe destructive behavior. This code has four required components:
  - (a) the billing qualified healthcare professional must be onsite during the procedure;
  - (b) the professional directs a team of two or more technicians to conduct the procedure;
  - (c) the code is used exclusively with patients who display destructive behavior; and
  - (d) the procedure must be implemented in an environment that is customized to the patient's specific topographies of severe destructive behavior.

- Although the professional must be onsite during the procedure, the professional does not have to be face-to-face with the patient during the procedure. However, the professional must be able to respond immediately if the patient displays behavior that the technicians cannot safely manage. Finally, a customized environment is one that will ensure that professionals and technicians can maintain the safety of the patient, others, and the environment while implementing the procedure. The professional should conduct an assessment to evaluate a patient's safety risk, to determine the appropriateness of the target treatment environment, to identify any modifications to the treatment environment needed to maintain safety, and to describe session termination criteria. A customized environment for patients whose severe destructive behavior is likely to cause harm to the patient, others, or the environment likely is one that has padded treatment rooms and uniquely trained staff who regularly assess and treat severe destructive behavior. By contrast, patients whose destructive behavior does not pose a significant risk likely can be treated in the classroom or in the home, depending on the needed modifications (see Betz & Fisher, 2011 for a discussion of managing potential risks during a functional analysis).
CPT Codes for Severe Behavior

• *Temporary, Category III Codes*

• **Adaptive Behavior Treatment by Protocol (0373T).** This code is used when two or more technicians, working under the direction of a qualified healthcare professional, implement one or more protocols the professional developed to treat the patient’s destructive behavior. As described for code 0362T, a professional who is on site and available must direct the service, at least two technicians must implement the service, the service is for patients with destructive behavior, and the professional and technicians conduct the services in a customized environment. The professional should conduct the same safety assessment described above.
• Claim was that UBH violated its fiduciary duty and wrongfully denied claims by using its own guidelines instead of generally accepted standards of care.

Coverage for Residential Care, Intensive Outpatient Care, Outpatient Care under Plan terms
Two Key Questions in Wit

• What are “generally accepted standards of care”?
  Generally accepted standards of care are the standards that have achieved widespread acceptance among behavioral health professionals.

• Do generally accepted standards of care exist in the substance use disorder community?
Court’s Liability Ruling

“The ASAM Criteria are the most widely accepted articulation of the generally accepted standards of care for how to conduct a comprehensive multidimensional assessment of a patient with substance related disorder, translate that into patient treatment needs and match those needs to the appropriate level of care.”
Generally-Accepted Standards

- Treat the **underlying condition**, not only current symptoms
- Treat **co-occurring** conditions
- Treat at the least intensive level of care that is **safe** and **effective**
- Err on the side of **caution**
- Effective treatment includes services to **maintain function**
- Determine **duration** based on individual needs
- Take unique needs of **children/adolescents** into account
- Make level of care decisions based on a **multidimensional assessment**
“[I]n every version of the Guidelines in the class period, and at every level of care that is at issue in this case, there is an excessive emphasis on addressing acute symptoms and stabilizing crises while ignoring the effective treatment of members’ underlying conditions.”
“[T]he defect is pervasive and results in a significantly narrower scope of coverage than is consistent with generally accepted standards of care.”
Court Ruling

“UBH has breached its fiduciary duty by violating its duty of loyalty, its duty of due care, and its duty to comply with plan terms by adopting Guidelines that are unreasonable and do not reflect generally accepted standards of care.”
Court Ruling

• UBH owed duty to administer plans solely in the interest of the participants. Promised to cover all care in accordance with generally accepted standards.

• Violated obligations by using guidelines more restrictive than generally accepted standards and prioritizing cost savings over members' interests.

• Court noted multiple sources for determining generally accepted standards of care, including:
  • peer-reviewed studies;
  • consensus guidelines from professional organizations (ex., American Association of Community Psychiatrists, American Academy of Child and Adolescent Psychiatry, APA)
  • guidelines and materials distributed by government agencies (ex., CMS).
Court Ruling

- Standards adopted and used by UBH were more restrictive than generally accepted standards.
  - Generally accepted standards include services to maintain functioning and prevent deterioration.
  - Multidimensional taking into account a wide range of patient information.
  - UBH standards placed excessive emphasis on acuity and crises stabilization.
  - UBH standards pushed patients to lower of care when safe to do so even if would be less effective.
- Care should not be denied on grounds that patient not responding to treatment where patient has potential to respond to treatment.
- UBH standards failed to take into account developmental state of children.
- Financial incentives “infected” Guideline development process
When Challenging a Denial of Care, Make Sure Appropriate Standards Were Used

• Fast-forward one year
• California Legislature
• Senate Bill 855
• September 25, 2020
SB 855 California

• 1374.721. (a) A health care service plan . . . shall base any medical necessity determination or the utilization review criteria . . . on current generally accepted standards of mental health and substance use disorder care.

• (b) In conducting utilization review . . . shall apply the criteria and guidelines set forth in the most recent versions of treatment criteria developed by the nonprofit professional association for the relevant clinical specialty.

• (c) In conducting utilization review . . . shall not apply different, additional, conflicting, or more restrictive utilization review criteria than the criteria and guidelines set forth in those sources.
Applied Behavior Analysis
Treatment of Autism:
Spectrum Disorder
Practice Guidelines for Healthcare Funders and Managers

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“The standards presented in this document reflect the consensus of a number of subject matter experts, but do not represent the only acceptable practice. . . . The document is based on the best available scientific evidence and expert clinical opinion regarding the use of ABA as a behavioral health treatment for individuals diagnosed with ASD. . . . These guidelines are written for healthcare funders and managers, such as insurance companies, government health programs, employers, among others. The guidelines may also be useful for consumers, service providers, and regulatory bodies.”
Forthcoming Resource

• Developing a Severe Behavior Program: A Toolkit
  • Wayne Fisher, Cathleen Piazza, Ashley Fuhrman - Rutgers