CMS Applied Behavior Analysis Toolkit: Regulatory and Enforcement Implications for Health Care Practitioners

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On August 4, 2026, the Centers for Medicare & Medicaid Services (CMS) released its 174-page Applied Behavior Analysis (ABA) Toolkit directed at state Medicaid and Children's Health Insurance Program (CHIP) agencies. While the toolkit does not impose binding federal requirements or establish a uniform regulatory framework for ABA services, its issuance carries significant implications for health care regulatory practice. This article examines the toolkit's substance, the broader federal enforcement posture driving its release, and the state-level regulatory developments that practitioners should anticipate when advising ABA providers, managed care organizations, and investors in the behavioral health space.

The ABA Toolkit: Substance and Regulatory Significance

CMS frames the toolkit as a response to rapid growth in ABA utilization and expenditures. The agency notes that the number of children diagnosed with autism spectrum disorder (ASD) receiving ABA services grew 189% over four years, while spending grew 421% during the same period—a disparity CMS characterizes as warranting heightened oversight.

The toolkit does not endorse a particular clinical modality or coverage approach. Instead, it functions as a menu of regulatory options for state agencies, addressing benefit design, coverage parameters, provider enrollment and credentialing standards, and utilization management controls. From a compliance standpoint, the most salient sections relate to documentation flags CMS identifies as potentially indicative of improper billing: overlapping treatment sessions, excessive service hours, reevaluations lacking evidence of clinical progress, and insufficient parent or caregiver engagement. These indicators substantially mirror findings from prior Department of Health and Human Services (HHS) Office of Inspector General (OIG) investigations into ABA billing patterns, suggesting that CMS views these as established indicia of fraud risk rather than novel enforcement theories.

For practitioners advising ABA providers, the toolkit should be understood as a roadmap for state enforcement priorities. Although non-binding, it signals CMS' intent to condition its oversight and compliance posture around these identified risk areas. States seeking to avoid federal payment deferrals or enhanced scrutiny will likely align their program integrity activities with the toolkit's framework.

Federal Enforcement Context

The toolkit does not exist in isolation. CMS has markedly shifted its enforcement posture from retrospective disallowance of federal matching funds toward proactive payment interventions. On July 21, 2026, CMS deferred $1 billion in Medicaid payments to Minnesota and California upon identifying "high-risk" claims, requiring states to substantiate the veracity of flagged claims before funds are released. This approach represents a departure from traditional Medicaid oversight and raises due process considerations that practitioners should be prepared to address on behalf of state agency and provider clients.

CMS has also urged states to revalidate Medicaid providers and demanded information regarding state plans to address identified fraud. The HHS OIG has announced reviews of state Medicaid Fraud Control Units (MFCUs) ahead of annual recertification cycles, with at least one state having additional MFCU funding denied. These actions collectively signal an enforcement environment in which state agencies themselves face federal accountability pressures that will inevitably flow downstream to providers.

Congressional activity reinforces this trajectory. The House Committee on Energy and Commerce and Committee on Education and the Workforce have launched investigations seeking information from states and individuals regarding Medicaid program integrity safeguards, including specific focus on ABA services. Given the committees' jurisdictional authority over Medicare, Medicaid, and employer-sponsored insurance—including subpoena power—practitioners should counsel clients to anticipate and prepare for potential congressional inquiries alongside agency-level enforcement actions.

With the November 3, 2026, midterm elections concentrating congressional attention and limiting remaining legislative days, HHS-led administrative initiatives will likely continue as the primary vehicle for advancing the administration's waste, fraud, and abuse agenda through year's end.

State–Level Regulatory Developments

States are already acting—some in response to federal enforcement pressure, others as they reassess financial solvency following Medicaid reimbursement changes enacted in the One Big Beautiful Bill Act (H.R. 1). Several material developments warrant practitioner attention:

- **Rate and reimbursement restructuring.** In 2026, Georgia, Indiana, Michigan, Nebraska, New York, North Carolina, and Vermont modified their ABA rate structures and reimbursement models. Practitioners advising providers should review updated fee schedules and assess whether existing contractual arrangements with managed care organizations remain viable under revised payment parameters.
- **Enrollment moratoria.** New York Medicaid instituted a six-month moratorium on new ABA enrollments and changes of ownership—a tool that directly affects transaction timelines and deal

structuring for investors and acquirors in the behavioral health space.

- **Practice ownership requirements.** Illinois updated its ABA licensure laws to require that ABA practices be owned by licensed providers and established penalties for non-licensee control over such practices, effective January 2027. This development has direct implications for management services organization (MSO) structures, dental/behavioral support organization (DSO/BSO) models, and private equity platform investments in ABA. Practitioners should expect other states to consider similar restrictions, and ownership structuring advice should account for this regulatory trend.

Practical Considerations for Health Care Counsel

The convergence of federal enforcement activity, the ABA Toolkit's release, and state regulatory action creates several areas of heightened advisory need:

1. **Compliance program reassessment.** Clients operating ABA programs should evaluate documentation practices, billing procedures, and supervision protocols against the toolkit's identified risk indicators. Proactive self-audits addressing overlapping services, service hour documentation, and caregiver engagement records will position providers favorably in the event of a pre-payment review or MFCU referral.
2. **Transaction diligence.** For M&A practitioners, the current environment requires enhanced diligence into ABA targets' billing patterns, claims data, corporate practice compliance, and enrollment status in states with active moratoria or revalidation requirements. Representations and warranties should be tailored to address the specific risk indicators identified in the toolkit.
3. **Corporate structure and ownership.** The Illinois ownership law and anticipated activity in other states require practitioners to reassess MSO, BSO, and other management structures commonly used in private equity-backed ABA platforms. Restructuring advice should account for both current requirements and the likely direction of regulatory travel.
4. **State advocacy and rulemaking engagement.** As states implement toolkit-aligned policy changes through regulation, state plan amendments, or managed care contract modifications, practitioners representing provider associations and major ABA operators should engage in notice-and-comment processes and legislative advocacy to shape workable compliance frameworks.

Conclusion

The ABA Toolkit is best understood not as a standalone guidance document but as one element of a coordinated federal and state enforcement realignment targeting behavioral health services. Health care counsel should advise clients to treat the toolkit's identified risk indicators as de facto compliance benchmarks, prepare for accelerated state-level regulatory changes, and build enforcement readiness into both ongoing operations and transaction planning.

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