

**DEPARTMENT OF COMMERCE****United States Patent and Trademark Office**

[Docket No. PTO-P-2014-0032]

**Request for Comments on Virtual Marking****AGENCY:** United States Patent and Trademark Office, Commerce.**ACTION:** Request for comments.

**SUMMARY:** The United States Patent and Trademark Office (USPTO) is seeking public comment on virtual marking, which was provided for by the Leahy-Smith America Invents Act (AIA) as an alternative to physically marking patented articles as a means to provide notice to the public that such articles are subject to patent protection.

The AIA requires that the Director of the USPTO prepare, not later than three years from the date of enactment of the AIA, a report of: The effectiveness of virtual marking as an alternative to the physical marking of articles; whether such virtual marking has limited or improved the ability of the general public to access information about patents; and any legal issues or deficiencies that arise from such virtual marking.

**DATES:** To be assured of consideration, written comments must be received on or before July 16, 2014.

**ADDRESSES:** Written comments should be sent by email to [virtualmarking@uspto.gov](mailto:virtualmarking@uspto.gov). Comments also may be submitted by postal mail addressed to: Mail Stop OPIA, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, ATTN: Soma Saha. Although comments may be submitted by postal mail, the USPTO prefers to receive comments via email.

Comments will be made publicly available after the comment period via the USPTO Internet Web site (address: <http://www.uspto.gov>). As such, information that is not desired to be made public, such as an address or telephone number, should not be included in the comments. The USPTO does not intend to respond to individual comments.

**FOR FURTHER INFORMATION CONTACT:** Soma Saha or Marina Lamm at the Office of Policy and International Affairs, by telephone at (571) 272-9300, by email at [virtualmarking@uspto.gov](mailto:virtualmarking@uspto.gov), or by postal mail addressed to: Mail Stop OPIA, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450, ATTN: Soma Saha.

**SUPPLEMENTARY INFORMATION:** United States patent law provides that marking

a product with a patent number gives the public notice of a patent. Under 35 U.S.C. 287(a), if a patented product is not marked with the patent number by the patent owner, damages for infringement will be limited to the time period after the patent owner gives actual notice to an alleged infringer.

Section 16 of the AIA provides a new way to comply with the requirements for patent marking by allowing patentees to mark their products virtually rather than physically. Instead of printing the actual patent number on the product, businesses can display the term "patent" or "pat." along with an accompanying URL address of a Web site where the actual patent number will be located.

Section 16 of the AIA also requires the Director of the USPTO to prepare a report for Congress analyzing:

- (A) The effectiveness of "virtual marking" as an alternative to the physical marking of articles;
- (B) whether such virtual marking has limited or improved the ability of the general public to access information about patents;
- (C) the legal issues, if any, that arise from such virtual marking; and
- (D) the deficiencies, if any, of such virtual marking.

The report is due to Congress not later than three years after the date of enactment of the AIA, which is September 16, 2014.

Interested members of the public are invited to submit written comments they deem relevant to the above-mentioned issues. The USPTO would particularly welcome observations and comments on any of the following topics:

1. Experiences with creating and maintaining adequate and effective virtual marking Web sites;
2. effectiveness of virtual marking, including experiences using virtual marking Web sites to locate relevant patent information;
3. challenges presented by virtual marking in providing sufficient notice to the public, including sufficiently associating patent numbers with the corresponding product within the virtual marking Web site;
4. economic impacts of virtual marking, including costs differences between physical marking and virtual marking;
5. advantages and disadvantages of virtual marking in comparison with physical marking;
6. identification of other practical or legal concerns with virtual marking; and
7. any other issues or experiences regarding virtual marking.

Commenters are requested to include information identifying how they are

impacted by virtual marking, e.g., whether they are patent owners, licensees, or any other type of user, business, or manufacturer.

Dated: June 11, 2014.

**Michelle K. Lee,**

*Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.*

[FR Doc. 2014-14044 Filed 6-13-14; 8:45 am]

**BILLING CODE 3510-16-P**

**DEPARTMENT OF DEFENSE****Office of the Secretary****Comprehensive Autism Care Demonstration**

**AGENCY:** Department of Defense.

**ACTION:** Notice of a comprehensive demonstration project for all Applied Behavior Analysis (ABA), including the tiered-model of ABA, for all TRICARE beneficiaries with Autism Spectrum Disorder (ASD).

**SUMMARY:** This notice is to advise interested parties of a Military Health System (MHS) demonstration project entitled Comprehensive Autism Care Demonstration ("Autism Care Demonstration"). The purpose of the Autism Care Demonstration is to further analyze and evaluate the appropriateness of the ABA tiered-delivery model under TRICARE in light of current and anticipated Behavior Analyst Certification Board (BCBA) Guidelines. Currently, there are no established uniform ABA coverage standards in the United States. Therefore, the demonstration seeks to determine the appropriate provider qualifications for the proper diagnosis of ASD and the provision of ABA, assess the feasibility and advisability of establishing a beneficiary cost share for the treatment of ASD, and develop more efficient and appropriate means of increasing access and delivering ABA services under TRICARE while creating a viable economic model and maintaining administrative simplicity.

Faced with various temporary authorities and the resulting complexity of the current interim TRICARE policies concerning coverage of ABA for ASD, the Department will create a new comprehensive Autism Care Demonstration providing all TRICARE-covered ABA under one new demonstration. This will encompass ABA services that recently have been provided under a patchwork of the TRICARE Basic Program (*i.e.*, the medical benefits authorized under

Section 199.4 of title 32, Code of Federal Regulations), the Extended Care Health Option (ECHO) Autism Demonstration (*i.e.*, the supplemental ABA benefits authorized for certain active duty family members under Section 199.5 of title 32, Code of Federal Regulations), and the ABA Pilot (*i.e.*, the supplemental ABA benefits authorized for certain non-active duty family members—including retiree dependents and others—under Section 705 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013). It will preserve most of the terms and conditions of coverage under that patchwork, incorporating some lessons learned. Coverage of ABA and related services under this new demonstration will apply comprehensively to all TRICARE eligible beneficiaries with a diagnosis of ASD. Eligible beneficiaries” include dependents of active duty, retired, TRICARE-eligible Reserve Component, and certain other non-active duty members. Because there has been insufficient time to accomplish the congressional intent behind Section 705 of the FY13 NDAA, reconcile the various temporary authorities, and address the resulting complexity of the current interim TRICARE policies concerning coverage of ABA for ASD, this demonstration will consolidate TRICARE coverage of ABA based on the Department’s demonstration authority in section 1092 of title 10, U.S. Code. The overarching goal is to analyze, evaluate, and compare the quality, efficiency, convenience and cost effectiveness of those autism-related services that do not constitute the proven medical care provided under the medical benefit coverage requirements that govern the TRICARE Basic Program.

**DATES:** Effective Date: July 25, 2014. This demonstration authority will remain in effect until December 31, 2018.

**ADDRESSES:** Defense Health Agency, Health Plan Execution and Operations, 7700 Arlington Boulevard, Suite 5101, Falls Church, Virginia 22042.

**FOR FURTHER INFORMATION CONTACT:** For questions pertaining to this demonstration, please contact Mr. Richard Hart at (703) 681–0047.

**SUPPLEMENTARY INFORMATION:**

**A. Background Regarding the Autism Care Demonstration**

Autism Spectrum Disorder (ASD) affects essential human behaviors such as social interaction, the ability to communicate ideas and feelings, imagination, and the establishment of relationships with others. The TRICARE Basic Program offers a comprehensive

health benefit offering a full array of medically necessary services to address the needs of all TRICARE beneficiaries with an ASD diagnosis. TRICARE’s Basic Program provides occupational therapy (OT) to treat deficits and promote the development of self-care skills; physical therapy (PT) to treat motor skill deficiencies and promote coordination; speech and language pathology therapy (SLP) to treat deficits in speech and language development and promote communication skills; psychiatry, psychology and therapists to address psychopharmacological needs, psychotherapy, and psychological testing. Additionally, the full range of medical specialties to address the medical conditions common to this population are covered.

Applied Behavior Analysis (ABA) is the design, implementation, and evaluation of environmental modifications to produce socially significant modification in human behavior. ABA is based on the principle that an individual’s behavior is determined by past and current environmental events in conjunction with organic variables such as the individual’s genetic endowment and ongoing physiological variables. ABA, by certified behavior analysts, focuses on treating behavioral difficulties by changing an individual’s environment (*i.e.*, shaping behavior patterns through reinforcement and consequences). ABA is delivered optimally when family members/caregivers participate by consistently reinforcing the ABA interventions in the home setting in accordance with the prescribed treatment plan developed by the behavior analyst.

To date, the Department has not considered ABA to be medical in nature. As such, coverage of ABA as a medical treatment for ASD had been excluded from the TRICARE Basic Program and covered only for Active Duty Family Members (ADFMs) enrolled in the Extended Care Health Option (ECHO) until recent litigation and legislation provided temporary extension of some ABA under the Basic Program and expansion of additional services to other beneficiaries. However, ABA services are perceived as helpful by parents and some providers for the developmental trajectory of children with ASD. Although there is still a paucity of conclusive clinical evidence in that regard, there is growing support in the field of developmental pediatric medicine for the view that ABA will at some point emerge as a medically necessary treatment for ASD. However further assessment is needed to determine the appropriate

characterization of ABA as an educational service or medical treatment, and the parameters for how ABA should be provided.

The provision of ABA as an intervention is still in its infancy. Although the Behavior Analyst Certification Board (BACB) has established national guidelines for behavior analysts, they have yet to issue national certification standards for the ABA “Tutors” or “Behavioral Technicians” who interact with ASD-diagnosed beneficiaries for multiple hours per day. Furthermore, only nine states currently license the behavior analysts who evaluate, develop treatment plans, and supervise delivery of ABA interventions for ASD-diagnosed beneficiaries, and their national certification standards are in the process of evolving. Additionally, the American Medical Association (AMA) has just recently developed Category III Current Procedure Terminology (CPT) codes (*i.e.*, a temporary set of codes for emerging technologies, services, and procedures) for ABA, which are not yet implemented and that will influence how ABA encounters are classified and reimbursed in the future.

Over the course of the ABA Pilot, TRICARE has been engaging with various stakeholders regarding TRICARE’s coverage of ABA for ASD. Included in these groups have been participants from various national provider organizations, families of children with ASD, military providers who treat ASD, military beneficiary-related associations, and ASD advocacy groups. Feedback received regarding the ABA Pilot addressed issues including: The autonomy of BCBA’s in formulating and implementing ABA treatment plans; the appropriate use of standardized testing to assess progress; appropriate procedures to ensure valid diagnosis of ASD; how to best transition care from the ECHO Autism Demonstration to the ABA Pilot when a beneficiary’s sponsor retires from active duty; and the nature of discharge criteria that should be applied to ABA interventions. Based on the extensive and helpful feedback, the Department adjusted the ABA Pilot to implement lessons learned to date. For example, administration of the Autism Diagnostic Observation Scale, second edition (ADOS–2), was changed to being required only at the beginning of enrollment in the ABA Pilot, and the requirement for a repeat ADOS–2 was dropped for waiver requests for continued ABA beyond two years. To ensure continuity of care during transition periods, ADFMs enrolled in the ECHO Autism Demonstration who

transition to retiree dependent status were allowed direct entry into the ABA Pilot, and a one-year grace period was granted to allow sufficient time to meet the ABA Pilot's diagnosis, referral and assessment requirements. However, additional evaluation is needed beyond the one-year ABA Pilot period to: (a) Evaluate the adequacy of procedure changes made to date concerning coverage provided to non-ADFM as well as implement additional planned adjustments, and (b) test the acceptance and applicability of the ABA coverage requirements and procedures developed for the ABA Pilot for the larger ADFM beneficiary population currently receiving ABA services under the ECHO Autism Demonstration, and (c) compare options for treating ASD under the TRICARE Basic Program generally. Under the new comprehensive Autism Care Demonstration, the Department will further evaluate the delivery of ABA services and integrate feedback from groups on the ABA tiered-delivery model to include the provision of ABA core services such as the initial ABA assessment, the initial ABA Treatment Plan (TP), the delivery of ABA specialized interventions, repeat ABA assessments, and ABA TP updates. The Department now seeks to transition that temporary patchwork structure into a more comprehensive program that will better support analysis and comparisons of the most appropriate standards, procedures and protocols for the delivery and financing of ABA services under TRICARE.

This transition includes moving ABA temporarily added in 2012 to the TRICARE Basic Program into the Autism Care Demonstration, but without substantively changing the coverage. This is supported by the Department's interim coverage determination of June 28, 2013, which reaffirmed that available evidence does not support coverage under the TRICARE Basic Program, but deferred any change during the term of the NDAA–2013 ABA Pilot, which has a statutory end date of one year from the implementation date: July 24, 2014. In connection with the National Defense Authorization Act for Fiscal Year 2014, Congress considered but did not enact any changes in TRICARE ASD or ABA coverage and did not extend the ABA Pilot. Based on the Department's ongoing need to further analyze, compare and evaluate the nature and options for treating ASD, the Department will transition of all current ABA to the new Autism Care Demonstration to allow the Department to further analyze, compare, evaluate, and refine the procedures and protocols

concerning the provision of ABA services and the ABA tiered delivery model.

The end result of this transition is that with very minimal change, all ABA currently provided under the patchwork combination of ECHO, the ECHO Demonstration, and the NDAA–2013 ABA Pilot will now be provided under the comprehensive Autism Care Demonstration through 2018. At that time, the interim coverage determination will be reassessed based on accumulated TRICARE experience and any other pertinent new information.

## **B. Description of the Autism Care Demonstration**

The Department's continued evaluation of ABA for ASD must be accomplished while ensuring continuity of care for children currently receiving ABA and those who will be diagnosed with ASD and then seek treatment. Specific Autism Care Demonstration goals include:

1. Further analyzing and evaluating the appropriateness of the ABA tiered-delivery model under TRICARE generally in light of current and future Behavior Analyst Certification Board (BACB) Guidelines;
2. Determining the appropriate provider qualifications for the proper diagnosis of ASD and the provision of ABA, and assessing the added value of ABA Tutors, or Behavioral Technicians, beyond ABA provided by BCBA's;
3. Assessing, across the three TRICARE regions, the ASD beneficiary characteristics associated with full utilization of the ABA tiered-delivery model versus utilization of BCBA services only or non-utilization of any ABA services, and isolating factors contributing to significant variation across TRICARE regions in delivery of ABA;
4. Determining what beneficiary age groups utilize and benefit most from ABA interventions;
5. Assessing the relationship between receipt of ABA services and utilization of established medical interventions for children with ASD, such as speech and language pathology (SLP) therapy, occupational therapy (OT), physical therapy (PT), and pharmacotherapy; and
6. Assessing of the feasibility and advisability of establishing a beneficiary cost share for the treatment of ASD.

The Autism Care Demonstration will offer comprehensive ABA for all TRICARE eligible beneficiaries with an ASD when diagnosed by an appropriate provider. Under the Autism Care Demonstration, a Board Certified Behavior Analyst (BCBA) or Board

Certified Behavior Analyst–Doctorate (BCBA–D) referred to as an “ABA Supervisor” will plan, deliver and/or supervise an ABA program. The BCBA or BCBA–D is supported by Board Certified Assistant Behavior Analysts (BCaBA) and/or paraprofessional Behavioral Technicians who work one-on-one with the beneficiary with ASD in the home and community setting to implement the ABA intervention protocol designed, monitored and supervised by the BCBA or the BCBA–D. A BCaBA and/or Behavioral Technician working within the scope of their training, practice, and competence may assist the BCBA or BCBA–D in various roles and responsibilities as determined appropriate by the BCBA or BCBA–D and delegated to the BCaBA and/or Behavioral Technician, and consistent with the BACB Guidelines (2012) and BACB certification requirements. As such, the Autism Care Demonstration will specifically require that BCaBAs and Behavioral Technicians work under the supervision of a BCBA or BCBA–D. ABA delivered solely by BCBA's or BCBA–Ds is also covered by the Autism Care Demonstration and will provide a comparative assessment of providing ABA services delivered solely by master's level providers or under the ABA tiered delivery model in terms of access, quality, and cost. The Department will also compare naturally occurring utilization data of PT, OT, SLP and pharmacotherapy services without ABA to those also receiving ABA sole provider and tiered model services.

To ensure continuity of ABA care for all beneficiaries, the Autism Care Demonstration will be implemented in a phased approach to transition from those coverage rules that currently exist under the patchwork of programs to the new consolidated Autism Care Demonstration as all actions necessary to start services under the Autism Care Demonstration are completed (*i.e.*, development of proposed policy language, funding, publication of policy manuals, and contract modifications). The Department will commence ABA coverage under the Autism Care Demonstration model by July 25, 2014, the statutory end date of the current ABA Pilot, with all beneficiaries transitioned from their current ABA coverage model to the new consolidated Autism Care Demonstration not later than December 31, 2014. Only ABA will be transitioned to the new consolidated Autism Care Demonstration. All medically necessary services that address the needs of TRICARE

beneficiaries with an ASD diagnosis (e.g., SLP, OT, PT, pharmacotherapy, etc.) will otherwise continue under the TRICARE Basic Program. Additionally, the full range of medical specialties to diagnose and treat medical conditions covered in accordance with the regulations governing TRICARE Basic Program benefits.

Likewise, the ECHO program as currently outlined in Section 199.5 of title 32, Code of Federal Regulations remains otherwise unaffected. ECHO-registered active duty family members will continue to receive all services and supplies determined by the Department to assist in reducing the disabling effects of an ECHO-eligible dependent's qualifying conditions, except for the changes concerning coverage of ABA that will be implemented in the new comprehensive Autism Care Demonstration noted above. Participation in the Autism Care Demonstration by ADFMs requires registration in ECHO and shall constitute participation in ECHO for purposes of ECHO registered beneficiary eligibility for other ECHO services (e.g., respite care). By linking registration in ECHO, the Department can ensure these beneficiaries continue to receive all services and supplies determined by the Department to assist in reducing the disabling effects of an ECHO-eligible dependent's qualifying conditions such as respite care, durable equipment, and additional PT, OT and SLP services available under ECHO.

Supplemental ABA benefits authorized for certain non-ADFM— including retiree dependents and others—under Section 705 of NDAA—2013 shall be likewise transitioned from the one-year ABA Pilot to the new Autism Care Demonstration. During the transition period of the remainder of 2014, the regional contractors will work with beneficiaries with ASD to ensure smooth transitions to avoid disruptions in ABA.

The Autism Care Demonstration will authorize TRICARE reimbursement of the following ABA to TRICARE eligible beneficiaries with an ASD diagnosed by an appropriate provider: An initial beneficiary ABA assessment, to include administration of appropriate diagnostic tests, and a functional behavioral assessment and analysis; development of an ABA Treatment Plan (TP) with goals and objectives of behavior modification and specific-evidenced based interventions; one-on-one ABA interventions and assessments in accordance with the treatment plan goals and objectives; and periodic ABA TP updates that reflect re-assessment of the beneficiary's progress toward

meeting treatment goals and objectives specified in the ABA TP.

### C. Providers Under the Autism Care Demonstration

TRICARE coverage of ABA under the Autism Care Demonstration will require a diagnosis of ASD rendered by an appropriate provider. For purposes of the Autism Care Demonstration, ASD shall only be diagnosed by certain TRICARE-authorized physician Primary Care Managers (P-PCMs) or by a specialized ASD provider. TRICARE authorized P-PCMs for the purposes of the diagnosis of ASD for coverage under the Autism Care Demonstration include: TRICARE authorized family practice, internal medicine and pediatric physicians, whether they work in the purchased care or direct care system. TRICARE authorized specialty ASD providers include: TRICARE authorized physicians board-certified or board-eligible in behavioral developmental pediatrics, neurodevelopmental pediatrics, and pediatric neurology or adult or child psychiatry; or doctoral-level licensed clinical psychologists. Other PCMs, including Nurse Practitioners (NPs) and Physician Assistants (PAs), or other providers not having the qualifications described above, are not ASD diagnosing providers for Autism Care Demonstration purposes. In cases where a beneficiary does not have a P-PCM (such as when assigned to a NP or PA), the ASD diagnosis may be rendered by a TRICARE authorized physician in any of the disciplines described above under P-PCM, or by a TRICARE authorized specialty ASD provider.

The minimal educational level required for an ABA Supervisor under the Autism Care Demonstration's tiered model, and consistent with the BACB Guidelines (2012), is the master's degree. Both BCBA's and BCBA-Ds have a scope of practice at the full clinical level, which enables them to perform full ASD assessments, develop treatment plans, reassessments and updates, and supervise the BCBA's and paraprofessional Behavioral Technician staff working under them. Although TRICARE previously authorized BCBA's to practice independently under ECHO and the ECHO Autism Demonstration, those provisions predated the more recent BACB Guidelines (2012). Therefore, BCBA's must be supervised by BCBA's or BCBA-Ds under the Autism Care Demonstration. BCBA's have a scope of practice that allows them to assist the BCBA or BCBA-D in clinical support and case management activities, to include assisting in the supervision of the

Behavioral Technicians and the training of TRICARE eligible family members to implement ABA interventions in accordance with the ABA TP. However, under the BACB Guidelines, BCBA's may not practice independently of the supervision of a BCBA or BCBA-D, and TRICARE may not cost-share on claims for services provided to TRICARE beneficiaries submitted for unsupervised services of a BCBA.

Behavioral Technicians are paraprofessionals who meet the educational requirements established by the Department, which follow current BACB Guidelines for Behavioral Technician certification (2014). Under the Autism Care Demonstration, Behavioral Technicians will require one hour of direct supervision for every ten hours of ABA therapy interventions provided. A Behavioral Technician may not conduct the ABA assessment, or establish a child's ABA TP. TRICARE may not cost-share on claims for services provided to TRICARE beneficiaries submitted for unsupervised services of Behavioral Technicians.

### D. Referral and Authorization

After a TRICARE eligible beneficiary is diagnosed with an ASD by an appropriate diagnosing provider (as discussed above), a referral with the supporting diagnosis must be submitted by the TRICARE-authorized physician Primary Care Manager (P-PCM) or specialized ASD provider who rendered the diagnosis to the regional contractor. Other PCMs, including NPs and PAs, or other providers not having the qualifications of an appropriate provider described above, may not refer beneficiaries for ABA. Upon receipt, the regional contractor shall issue a timely authorization for ABA under the Autism Care Demonstration for one year from a TRICARE authorized BCBA or BCBA-D including a referral for diagnostic testing as needed. That authorization will enable each beneficiary with ASD to seek developmentally appropriate ABA from any TRICARE authorized BCBA or BCBA-D. The provision of ABA by a BCBA or BCBA-D under the Autism Care Demonstration shall include the elements of a full ASD assessment discussed in paragraph B above. Prior to the expiration of each one-year authorization period for ABA under the Autism Care Demonstration, the BCBA or BCBA-D shall request re-authorization from the regional contractor based on documented appropriateness of continued ABA, which shall include an updated ABA TP. Discharge criteria to guide regional medical directors in determining if/

when ABA is no longer appropriate for a particular beneficiary shall include the following factors: No measurable progress made toward meeting goals identified on the ABA TP after successive progress review periods and repeated modifications to the treatment plan; ABA TP gains are not generalizable or durable over time and do not transfer to the larger community setting (to include school) after successive progress review periods and repeated modifications to the treatment plan; the patient can no longer participate in ABA (due to medical problems, family problems or other factors that prohibit participation); the patient has met ABA TP goals and is no longer in need of ABA; and loss of eligibility for TRICARE benefits as defined in 32 C.F.R. 199.3.

#### **E. Testing and Assessment**

For any beneficiary whose ASD diagnosis was not made by an authorized specialty ASD provider as defined above, diagnostic assessment using the Autism Diagnostic Observation Schedule, Second Edition (ADOS-2) is required within the first year of ABA to confirm the diagnosis of ASD. For assessment of clinical progress, BCBA's supervising provision of ABA for beneficiaries must ensure that appropriate, individualized assessment of progress toward behavioral targets and goals is documented weekly and reviewed by the BCBA or BCBA-D on at least a monthly basis. Progress can be presented either in graphic form, and/or using standardized assessment measures (e.g., the Assessment of Basic Language and Learning Skills-Revised [ABLLS-R] or the Verbal Behavior Milestones Assessment and Placement Program [VB-MAPP], administered every 6 months). The assessment method selected should be consistent (i.e., administered at baseline and follow-up) for the entire episode of care. Annual standardized assessment of adaptive functioning using the Vineland Adaptive Behavior Scales, Second Edition (Vineland-II) is covered, but not required. Documentation of clinical progress must be submitted with the treatment plan annually to the referring provider and the regional contractor for continued authorization of ABA.

#### **F. ABA Provided Under the TRICARE Overseas Program (TOP)**

ABA shall only be authorized under the TOP for ABA provided directly by either a BCBA or BCBA-D in countries that have BCBA and BCBA-Ds certified by the BACB. The TOP contractor will verify compliance with all requirements

outlined in the Autism Care Demonstration. European and other international providers certified by the BACB as a BCBA or BCBA-D are TRICARE authorized providers of direct ABA for the overseas program. BCaBAs are not independent TRICARE authorized providers of ABA for the overseas program, regardless of their status in their host nation, nor are their services as part of the tiered model authorized overseas. Likewise, Behavioral Technicians are not authorized to provide ABA overseas. In situations where there are no BCBA or BCBA-Ds certified by the BACB within the TRICARE specialty care access standards in the host nation, TRICARE may not cost-share ABA under the Autism Care Demonstration, or otherwise.

#### **G. Cost-Sharing**

Under the Autism Care Demonstration, the Department will implement beneficiary cost-sharing requirements that will not be subject to an annual cap. For ABA provided by a BCBA or BCBA-D, beneficiary cost sharing will be equal to the cost sharing applicable to services under the TRICARE Basic Program. TRICARE Standard program deductible and cost-share amounts are defined in 32 C.F.R. 199.4. TRICARE Extra program deductible and cost-share amounts are defined in 32 C.F.R. 199.17. TRICARE Prime program enrollment fees and copayments are defined under the Uniform Health Maintenance Organization (HMO) Benefit Schedule of Charges in 32 C.F.R. 199.18. For information on fees for Prime enrollees choosing to receive care under the Point of Service (POS) option, refer to 32 CFR 199.17.

For ABA provided by a BCaBA and/or Behavioral Technicians under the supervision of a BCBA or BCBA-D, the sponsor/beneficiary cost-share for active duty family members every month in which ABA benefits are received shall be equal to the monthly ECHO fee as required 32 CFR 199.5 and set forth in TRICARE Policy Manual, Chapter 9, Section 16.1. Registration in ECHO for active duty family members and payment of the monthly ECHO cost-share satisfies the monthly Autism Care Demonstration cost share for ABA provided by a BCaBA and/or Behavioral Technicians. Non-active duty cost sharing for ABA provided by a BCaBA and/or Behavioral Technicians will be 10%, as it has been under the ABA Pilot. These cost sharing requirements will continue to be outside the TRICARE Basic Program catastrophic cap.

#### **H. ABA Provider Reimbursement**

Revised reimbursement rates and claims processes will be developed and implemented as appropriate for TRICARE cost-sharing of ABA under the Autism Care Demonstration. These revised billing codes and procedures will be disseminated with publication of the TRICARE policy manual changes regarding provision of ABA. Only BCBA's and BCBA-Ds may submit claims and receive TRICARE reimbursement for ABA under the Autism Care Demonstration.

#### **I. Program Integrity and Oversight**

A utilization review process will be established for the Autism Care Demonstration to provide quality oversight of ABA cost-shared by TRICARE and to ensure developmentally appropriate ABA is provided to all eligible TRICARE beneficiaries with ASD. A component of Autism Care Demonstration oversight will address methods to identify ABA overutilization or other forms of misuse. Clinical requirements are specified for documentation on the initial ABA TP and ABA TP updates. The TRICARE Quality Monitoring Contractor (TQMC) shall perform random record review for coding compliance and quality monitoring of the ABA TP every 180 days. TQMC findings of improper coding compliance shall be reported to the regional contractor in accordance with the TRICARE Operations Manual, Chapter 13. This is essential to maximizing access to the limited number of behavior analysts available to assist those beneficiaries with ASD.

#### **J. Communications**

The DHA will educate beneficiaries, providers, and other stakeholders about this change through multiple communications channels, including: Traditional media; social media; internet content; provider education; outreach to beneficiary organizations, advocacy groups, and other stakeholders; printed materials; customer service updates; and subscriber emails.

#### **K. Evaluation of the Autism Care Demonstration**

The Autism Care Demonstration will assist the Department in evaluating: The aspects of the ABA tiered-delivery model that are medical, educational, or other characterization; whether the provision of the ABA tiered-delivery model can effectively offset the difficulty parents have in using ABA interventions collaboratively, consistently, and intensely when interacting with their children who have

an ASD; whether the use of BCaBAs and Behavioral Technicians creates more cost-effective access to ABA based on the limited number of BCBAAs and BCBA-Ds, while maintaining the quality of ABA; the appropriateness of requirements for providers, referral, authorization, treatment planning, assessment, testing, reimbursement, cost-sharing, discharge planning, and oversight to increase access to ABA for TRICARE beneficiaries with an ASD, while ensuring appropriate progress and utilization.

To collect necessary data to achieve the goals outlined for the Autism Care Demonstration, two parental surveys will be administered: The first at the mid-period of the Autism Care Demonstration (2016) and a second upon its conclusion (2018). These parental surveys will contain questions regarding: The reasons why parents avail themselves of the ABA tiered-delivery model, BCBA-only ABA, or no ABA; the perceived impairment(s) of their child with ASD; their degree of difficulty in accessing ABA and other clinical services with ASD; and, their overall satisfaction and perceived benefit regarding the ABA services provided.

The Autism Care Demonstration will provide the Department the opportunity to continue evaluating the provision of ABA under TRICARE while avoiding disruption of potentially therapeutic ABA interventions that could greatly benefit TRICARE beneficiaries with ASD. This information will be essential for determining it and how ABA should be delivered under TRICARE if the clinical community and accumulated evidence clearly indicates that ABA is a reliably evidence-based medical intervention for the treatment of ASD.

Dated: June 11, 2014.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2014-14023 Filed 6-13-14; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID: DoD-2014-OS-0094]

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Inspector General, DoD.

**ACTION:** Notice to amend a System of Records.

**SUMMARY:** The Office of the Inspector General is amending a system of

records, CIG-24, entitled "Office Functional Files" in its existing inventory of record systems subject to the Privacy Act of 1974, as amended. The system's records are used to answer, evaluate, adjudicate, defend, prosecute, or settle claims, complaints, lawsuits, or criminal and civil investigations.

**DATES:** Comments will be accepted on or before July 16, 2014. This proposed action will be effective the day following the end of the comment period unless comments are received which result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

\* *Federal Rulemaking Portal:* <http://www.regulations.gov>.

Follow the instructions for submitting comments.

\* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350-3100.

*Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Mark Dorgan, DoD IG FOIA/Privacy Office, Department of Defense, Inspector General, 4800 Mark Center Drive, Alexandria, VA 22350-1500 or telephone: (703) 699-5680.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or from the Defense Privacy and Civil Liberties Office Web site at <http://dpclo.defense.gov/>.

The Office of the Secretary of Defense proposes to amend one system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: June 10, 2014.

**Aaron Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

### CIG-24

#### SYSTEM NAME:

Office Functional Files (June 16, 2006, 71 FR 34899)

#### CHANGES:

#### SYSTEM NAME:

Delete entry and replace with "Office of General Counsel Office Functional Files."

#### SYSTEM LOCATION:

Delete entry and replace with "Office of the General Counsel, Office of Inspector General, Department of Defense, 4800 Mark Center Drive, Suite 15K26, Alexandria, Virginia 22350-1500."

\* \* \* \* \*

#### CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Name, position description, grade, salary, work history, and complaint; case history files, copies of applicable law(s), working papers of attorneys, testimony of witnesses, background investigation materials, correspondence, damage reports, contracts, accident reports, pleadings, affidavits, estimates of repair costs, invoices, litigation reports, and financial data."

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "The Inspector General Act of 1978 (Pub. L. 95-452), as amended; DoD Directive 5106.1, Inspector General of the Department of Defense (IG DoD); 5 U.S.C. 301, Departmental Regulations; and DoD Directive 5145.4, Defense Legal Services Agency."

\* \* \* \* \*

#### STORAGE:

Delete entry and replace with "Paper records and electronic storage media."

#### RETRIEVABILITY:

Delete entry and replace with "Name of litigant or subject of record."

#### SAFEGUARDS:

Delete entry and replace with "Paper and automated records are stored in rooms with restricted access in a secure building. Access is limited to General Counsel staff in the performance of their official duties. Computer systems in which records reside are protected through the use of assigned user or identification(s) and multiple levels of passwords restricting access. A