

Ethical Dilemmas with CPT Code Billing for ABA Services



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GOT ETHICS ?

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GOT ETHICS ?

Qualifies for Ethics CE Credits

- Effective July 1, 2008 BACB initially required 3 Type 2 hours required in Ethics (and professional issues)
- Currently, 4 hours are required and professional issues no longer allowed under Ethics
- Acceptable ethics content is behavior-analytic in nature and covers ethical issues in behavior analysis practice or research.
- Ethics content should incorporate the BACB's [Ethics requirements](#).
- Billing fraud is one of the biggest ethical concerns facing behavior analysts

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GOT ETHICS ?

Objectives

- Participants will describe how the current BACB Professional and Ethical Compliance Code applies to providing and billing for ABA services
- Participants will describe key components of HIPAA and HITECH and how they relate to providing and billing for ABA services
- Participants will describe relevant policies from the Centers for Medicaid and Medicare
- Participants will describe the relevant CPT coding rules that apply
- Participants will describe the appropriate use of new and old CPT codes
- Participants will identify strategies for prevention of billing fraud

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Agenda GOT ETHICS ?

1. What must you know as a BCBA?
2. The Code
3. HIPAA and HITECH
4. CMS Rules
5. New Codes (ABAI and AMA documents)
6. Old Codes
7. Software to Assist You
8. Strategies for Preventing Fraud
9. Questions and Discussion Throughout

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My Favorite Ethics Source GOT ETHICS ?

- Bailey, J.S. & Burch, M. R. (2005). Ethics for behavior analysts: A practical guide for responsible conduct. Lawrence Erlbaum Associates: Mahwah, New Jersey.
- 2nd edition (2011)
- Third Edition (2016)

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1.04 Integrity GOT ETHICS ?

- (a) Behavior analysts are truthful and honest and arrange the environment to promote truthful and honest behavior in others
- (b) Behavior analysts do not implement contingencies that would cause others to engage in fraudulent, illegal, or unethical conduct
- (c) Behavior analysts follow through on obligations, and contractual and professional commitments with high quality work and refrain from making professional commitments they cannot keep

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1.05 Professional & Scientific Relationships GOT ETHICS ?

- (a) Behavior analysts provide behavior-analytic services only in the context of a defined, professional, or scientific relationship or role.
- No drive-by ABA!

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1.06 Multiple Relationships and Conflicts of Interest GOT ETHICS ?

- (a) Due to the potentially harmful effects of multiple relationships, behavior analysts avoid multiple relationships.
- (b) Behavior analysts must always be sensitive to the potentially harmful effects of multiple relationships. If behavior analysts find that, due to unforeseen factors, a multiple relationship has arisen, they seek to resolve it.
- (c) Behavior analysts recognize and inform clients and supervisees about the potential harmful effects of multiple relationships.
- (d) Behavior analysts do not accept any gifts from or give any gifts to clients because this constitutes a multiple relationship.

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1.0 Responsible Conduct GOT ETHICS ?

- 1.07 Exploitative Relationships. RBT

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2.0 Responsibility to Clients GOT ETHICS ?

- 2.01 Accepting Clients. ([definition of client](#))
- 2.02 Responsibility. RBT
- 2.03 Consultation
 - (a) Behavior analysts arrange for appropriate consultations and referrals based principally on the best interests of their clients, with appropriate consent, and subject to other relevant considerations, including applicable law and contractual obligations.

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Responsibility to Clients GOT ETHICS ?

- 2.04 Third-Party Involvement in Services
 - Clarify the nature of services at the outset
 - Clarify the nature of the relationship with each party and any potential conflicts
 - If a risk exists for conflicting roles, clarify, keep everyone informed, and resolve
 - Providing services to minors or protected populations (keep parents/guardians informed)
 - Put the client's care above all others

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Responsibility to Clients GOT ETHICS ?

- 2.05 (a) The rights of the client are paramount and behavior analysts support clients' legal rights and prerogatives
- 2.06 Maintaining Confidentiality
- 2.07 Maintaining Records
- 2.09 Disclosures
- 2.10 Documenting professional work & research
- 2.11 Records and fees

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Responsibility to Clients GOT ETHICS ?

- 2.12 Contracts, Fees, and Financial Arrangements
- Signed contract
- Specify compensation and billing arrangement
- Fee practices
- Revisit funding with client if it changes
 - Insurance policies are ever changing!

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2.13 Accuracy in Billing GOT ETHICS ?

- Behavior analysts accurately state the nature of the services provided, the fees or charges, the identity of the provider, relevant outcomes, and other required descriptive data.

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Ethical Violations by Others and Risk of Harm GOT ETHICS ?

- (a) If behavior analysts believe there may be a legal or ethical violation, they first determine whether there is potential for harm, a possible legal violation, a mandatory-reporting condition, or an agency, organization, or regulatory requirement addressing the violation.
- (b) If a client's legal rights are being violated, or if there is the potential for harm, behavior analysts must take the necessary action to protect the client, including, but not limited to, contacting relevant authorities, following organizational policies, and consulting with appropriate professionals, and documenting their efforts to address the matter.
- (c) If an informal resolution appears appropriate, and would not violate any confidentiality rights, behavior analysts attempt to resolve the issue by bringing it to the attention of that individual and documenting their efforts to address the matter. If the matter is not resolved, behavior analysts report the matter to the appropriate authority (e.g., employer, supervisor, regulatory authority).
- (d) If the matter meets the reporting requirements of the BACB, behavior analysts submit a formal complaint to the BACB. (See also, 10.02 Timely Responding, Reporting, and Updating of Information Provided to the BACB)

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HIPAA & HITECH GOT ETHICS ?

- Health Insurance Portability and Accountability Act of 1996
- The Health Information Technology for Economic and Clinical Health (HITECH) Act, enacted as part of the American Recovery and Reinvestment Act of 2009
 - Penalties and enforcement

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Who is Covered GOT ETHICS ?

- Health Care Plans
- Clearinghouses
- Any health care provider who transmits health information in electronic form in connection with transactions (billing, authorizations, etc)

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Protected Health Information (PHI) GOT ETHICS ?

- The Privacy Rule protects all "individually identifiable health information" held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral

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Permitted Uses and Disclosures GOT ETHICS ?

1. Individual (or guardian)
2. Treatment, Payment, Healthcare
3. Approved Use (e.g., pharmacy)
4. Incidental Use
5. Public Interest
6. Limited Data Set

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Authorized Uses GOT ETHICS ?

- Written consent

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Notices GOT ETHICS ?

- Each covered entity, with certain exceptions, must provide a notice of its privacy practices
- A covered health care provider with a direct treatment relationship with individuals must make a good faith effort to obtain written acknowledgement from patients of receipt of the privacy practices notice.

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Other Notices GOT ETHICS ?

- Access
- Amendment
- Disclosure Accounting
- Restriction Request
- Confidential Communications Requirements

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HIPAA Security Rule GOT ETHICS ?

- How "we" must protect privacy
- Applies to Electronic PHI
- We must:
 1. Ensure confidentiality
 2. Protect against threats or hazards
 3. Protect against disclosures
 4. Ensure compliance by employees

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Hi Tech GOT ETHICS ?

- Enforceability
- Also applies to business associates (e.g., cleaning crew)
- Increased the penalties from \$100 per violation to \$50,000 maximum

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4 Categories GOT ETHICS ?

- Did not know (\$100-\$50,000 per incident)
- Reasonable Cause (\$1,000-\$50,000)
- Willful Neglect-Corrected (\$10,000-\$50,000)
- Willful Neglect-Not Corrected (\$50,000)

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Different confidentiality rules apply

Billing School Districts?

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Getting Started to Bill Insurance GOT ETHICS ?

- NPI Number
- CAQH Registry
- Getting "in network"
- State by state
- Sometimes region by region
- State funding opportunities
 - Waivers
 - Grants
 - Other funding

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CMS Rules GOT ETHICS ?

- <https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/index.html>

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CMS Rounding Rules GOT ETHICS ?

- <https://www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/downloads/R2121CP.pdf>

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CMS 1500 GOT ETHICS ?

- The most important form
- <https://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/Downloads/CMS1500.pdf>

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A Walk Through History GOT ETHICS ?

- The way it used to be
- Insurance legislation
- Each carrier developed codes
- 2014 AMA developed T codes
- Carriers began moving over to T codes
- UBH still uses H codes

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T Codes GOT ETHICS ?

- ABAI documents
- AMA documents
- Trainings, meetings, conferences, reading

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T Codes GOT ETHICS ?

- Assessment
 1. Behavior Identification
 2. Follow Along (probe)
 3. Functional analysis

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T Code Numbers GOT ETHICS ?

- Assessment
 1. Behavior Identification 0359T
 2. Observational Follow Up 0360T (first 30 min)
 3. Observational Follow Up 0361T (additional 30 min)
 4. Exposure Behavioral Follow Up (Functional Analysis) (first 30 min)
 5. Exposure Behavioral Follow Up (Functional analysis) (additional 30 min)

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T Codes GOT ETHICS ?

- Treatment
 1. Treatment by protocol
 2. Group Treatment by protocol
 3. Functional Analysis/Component Analysis

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T Code Numbers GOT ETHICS ?

- Treatment
 1. Treatment by protocol (0364T & 0365T)
 2. Group Treatment by protocol (0366T & 0367T)
 3. Functional Analysis/Component Analysis (0373T and 0374T)

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T Codes GOT ETHICS ?

- BCBA Activities
 1. Assessment & Treatment Planning
 2. Developing & Modifying Treatment
 3. Family Guidance
 4. Group Family Guidance
 5. Social Skills

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T Codes with Numbers GOT ETHICS ?

- BCBA Activities
 1. Assessment (0359T, 0360T, 0361T)
 2. Developing & Modifying Treatment (0368T & 0369T)
 3. Family Guidance (0370T)
 4. Group Family Guidance (0371T)
 5. Social Skills (0372T)

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<http://www.dodig.mil/pubs/documents/DODIG-2017-064.pdf>

DOD Report

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Missy's Observed Ethical Issues GOT ETHICS ?

- Listening to people on Facebook
 - Instead.....go to the original source
- Billing for BCaBA as the Qualified Practitioner
 - Read the contract with carrier
 - Does not follow CPT definitions
 - Know state law for license if it exists
 - It does, however, follow the crosswalk definition
- Billing for indirect time
 - Follow the 8 minute rule
 - Use remaining time for paperwork
 - TRAIN staff to follow the rules

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Old Codes (H Codes?) GOT ETHICS ?

- H0046
- H0031
- H0032
- H2012
- H2019
- G 9012

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Software GOT ETHICS ?

- Too many to list!

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Factors to Consider GOT ETHICS ?

- Does it play nicely with others?
 - Google?
 - Quickbooks?
 - Gateway (or other clearinghouse)
- Does it have fingerprinting?
- Locking capability
- Attestation capability
- GPS capability
- Appropriate rounding or non-rounding
- Appropriate certifications for the service

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Factors to Consider GOT ETHICS ?

- "Bundling" of codes
- Start and stop time
- Session notes
- Other relevant paperwork

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Steps We Take GOT ETHICS ?

- On site rendering
- Therapist signature
- Parent signature
- Locking & attesting 2 times per month
- Verifying 2 times per month with service logs
- Parents sign service logs
- Supervisor lock
- Cross checking of time cards when appropriate

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Steps We Take GOT ETHICS ?

- Supervisor note
- Therapist note on data sheet regarding supervisor
- BCBA monitoring by senior staff
 - Monitor for billables
 - Monitor for clinicals

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Strategies for Prevention GOT ETHICS ?

1. HIPAA Training
 1. Keep your mouth shut
 2. Avoid social media
 3. Need to Know
 4. Written Consent (at all times!)
 5. Risk Analysis (not the one described by Bailey and Burch)

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Strategies for Prevention GOT ETHICS ?

2. Training Attestation
3. Ethics Cases each month
4. Mentor meetings
5. Quality control

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