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# A BILL FOR AN ACT

RELATING TO BEHAVIOR ANALYSIS SERVICES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that applied behavior  
2 analysis is a well-established framework for the treatment of  
3 autism spectrum disorder. Research has shown that intensive  
4 early applied behavior analysis intervention before the age of  
5 six is critical for the future of children with autism.

6           The legislature further finds that the existing law  
7 regulating behavior analysts expressly states that the law is  
8 not intended to restrict the practice of other licensed or  
9 credentialed practitioners practicing within their own  
10 recognized scopes of practice. However, there are concerns that  
11 the law has been interpreted in a way that restricts the ability  
12 of students and psychological assistants, who are under the  
13 supervision of a licensed psychologist, to provide behavioral  
14 interventions. Limiting the ability of otherwise qualified  
15 professionals, acting within their scope of practice, to provide  
16 and supervise applied behavior analysis unnecessarily restricts  
17 access to the services of these licensed professionals and the



1 individuals working under their supervision. The legislature  
2 notes that the scope of practice for psychologists under chapter  
3 465, Hawaii Revised Statutes, expressly includes behavior  
4 analysis and therapy. The scope of practice for psychologists  
5 also recognizes the ability of psychologists to supervise  
6 others.

7 The legislature concludes that clarifying certain aspects  
8 of the behavior analyst law, including who can implement  
9 behavior analysis services while under supervision, will ensure  
10 that the State has an adequate workforce of trained  
11 professionals and paraprofessionals who can continue to provide  
12 comprehensive behavior analysis services for the treatment of  
13 autism spectrum disorder.

14 The purpose of this Act is to clarify certain elements of  
15 the behavior analyst law, including:

- 16 (1) Clarifying the definition of "practice of behavior  
17 analysis";
- 18 (2) Clarifying which individuals may implement behavior  
19 analysis services, including individuals who are  
20 supervised by a licensed professional working within  
21 that licensed professional's recognized scope of



1 practice, when that scope of practice overlaps with  
 2 the practice of behavior analysis; and  
 3 (3) Exempting from licensure caregivers who implement an  
 4 applied behavior analysis plan and act under the  
 5 direction of a licensed behavior analyst or other  
 6 licensed professional authorized to practice behavior  
 7 analysis.

8 SECTION 2. Section 465D-2, Hawaii Revised Statutes, is  
 9 amended by amending the definition of "practice of behavior  
 10 analysis" to read as follows:

11 ""Practice of behavior analysis" means the [~~design~~];

12 (1) Design, implementation, and evaluation of  
 13 instructional and environmental modifications to  
 14 produce socially significant improvements in human  
 15 behavior[~~. Practice of behavior analysis includes the~~  
 16 ~~empirical~~];

17 (2) Empirical identification of functional relations  
 18 between behavior and environmental factors, known as  
 19 functional assessment and analysis[~~. Practiee of~~  
 20 ~~behavior analysis also includes the use~~]; and



1        (3) Use of contextual factors, motivating operations,  
2            antecedent stimuli, positive reinforcement, and other  
3            consequences to help people develop new behaviors,  
4            increase or decrease existing behaviors, and emit  
5            behaviors under specific environmental conditions.

6 Practice of behavior analysis expressly excludes psychological  
7 testing, diagnosis of a mental or physical disorder,  
8 neuropsychology, psychotherapy, cognitive therapy, sex therapy,  
9 psychoanalysis, hypnotherapy, and long-term counseling as  
10 treatment modalities. Practice of behavior analysis also  
11 excludes the use of the behavioral techniques specified in  
12 paragraph (3) that are used solely as treatment modalities."

13        SECTION 3. Section 465D-7, Hawaii Revised Statutes, is  
14 amended by amending subsection (a) to read as follows:

15        "(a) This chapter is not intended to restrict the practice  
16 of other licensed or credentialed practitioners practicing  
17 within their own recognized scopes of practice and shall not  
18 apply to:

19        (1) An individual working within the scope of practice or  
20 duties of another licensed profession that overlaps  
21 with the practice of behavior analysis [~~provided that~~



1 ~~the person does not purport to be a behavior~~  
2 ~~analyst,~~ ], including individuals supervised by a  
3 licensed professional, such as paraprofessionals,  
4 unlicensed professionals, students, and parents;  
5 provided that the supervision is within that licensed  
6 professional's recognized scope of practice; and  
7 provided further that the licensed professional and  
8 the supervised individual shall not use the title of  
9 "licensed behavior analyst" or "behavior analyst";

10 (2) An individual who implements or designs applied  
11 behavior analysis services and possesses board  
12 certification [~~as an assistant behavior analyst by the~~  
13 ~~Behavior Analyst Certification Board~~] from a national  
14 certifying agency and who practices in accordance with  
15 the most recent supervisory and ethical requirements  
16 adopted by [~~the Behavior Analyst Certification Board~~]  
17 the national certifying agency under the direction of  
18 a behavior analyst licensed in this State;

19 (3) An individual who directly implements applied behavior  
20 analysis services under the supervision of a licensed



1 professional whose scope of practice overlaps with the  
2 practice of behavior analysis and:

3 (A) Is credentialed as a registered behavior  
4 technician [~~by the Behavior Analyst Certification~~  
5 ~~Board,~~] or possesses board certification from a  
6 national certifying agency and is under the  
7 direction of a [behavior analyst] professional  
8 licensed to practice behavior analysis in this  
9 State[;]

10 ~~(B) Is a direct support worker who provides autism~~  
11 ~~treatment services pursuant to an individualized~~  
12 ~~education plan on or before January 1, 2019;~~  
13 ~~[or]~~ and acting within the scope of that  
14 licensure;

15 (B) Is an individual who provides applied behavior  
16 analysis services under the supervision of a  
17 licensed or credentialed practitioner working  
18 within that practitioner's recognized scope of  
19 practice; provided that the licensed or  
20 credentialed practitioner maintains  
21 responsibility for and attests to the training



1                   and qualifications of the individual who is  
2                   providing the supervised applied behavior  
3                   analysis services; or

4           [+] (C) [+] Is a direct support worker who provides medicaid  
5                   home and community-based services pursuant to  
6                   section 1915(c) of the Social Security Act on or  
7                   before January 1, 2019;

8           ~~[provided that for purposes of this paragraph, "direct~~  
9           ~~support worker" means a teacher or paraprofessional~~  
10           ~~who directly implements intervention or assessment~~  
11           ~~plans under supervision and does not design~~  
12           ~~intervention or assessment plans;]~~

13           (4) A family member ~~[or]~~, legal guardian, or caregiver  
14                   implementing an applied behavior analysis plan and who  
15                   acts under the direction of a licensed behavior  
16                   analyst or licensed ~~[in this State;]~~ professional who  
17                   is authorized to practice behavioral analysis;

18           (5) An individual who engages in the practice of behavior  
19                   analysis with nonhuman or nonpatient clients or  
20                   consumers including but not limited to applied animal



- 1 behaviorists and practitioners of organizational  
2 behavior management;
- 3 (6) A matriculated graduate student or postdoctoral fellow  
4 whose activities are part of a defined behavior  
5 analysis program of study, practicum, or intensive  
6 practicum; provided that the student's or fellow's  
7 activities or practice is directly supervised by a  
8 behavior analyst licensed in this State or an  
9 instructor in a [~~Behavior Analyst Certification Board-~~  
10 ~~approved~~] course sequence [~~+~~] approved by a national  
11 certifying agency; or
- 12 (7) An individual pursuing experience in behavior analysis  
13 consistent with the [~~Behavior Analyst Certification~~  
14 ~~Board's~~] experience requirements [~~+~~] of a national  
15 certifying agency; provided that the experience is  
16 supervised by a behavior analyst licensed in this  
17 State."

18 SECTION 4. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.

20 SECTION 5. This Act shall take effect on July 1, 3000.



**Report Title:**

Behavior Analysis; Licensure; Certification; Supervision

**Description:**

Clarifies the scope of practice of behavior analysis. Clarifies who may provide behavior analysis and applied behavior analysis services regardless of licensure status, including licensed individuals working within an overlapping scope of practice, individuals supervised by a licensed professional of an overlapping scope of practice, and caregivers. (HB2143 HD1)

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