

---

---

# A BILL FOR AN ACT

RELATING TO BEHAVIOR ANALYSIS.

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

1       SECTION 1. The legislature finds that the State's  
2       department of health developmental disabilities division  
3       operates the medicaid intellectual and developmental  
4       disabilities home and community-based services waiver under the  
5       medicaid services section 1915(c) of the Social Security Act  
6       (HCBS I/DD waiver). The HCBS I/DD waiver is reviewed and  
7       approved by the United States Department of Health and Human  
8       Services Centers for Medicare and Medicaid Services, and has  
9       many requirements to ensure appropriate and efficient provision  
10      of services and supports to people with intellectual and  
11      developmental disabilities.

12       For children in the HCBS I/DD waiver who have an autism  
13      spectrum disorder, the Centers for Medicare and Medicaid  
14      Services has clarified that services for the treatment of autism  
15      spectrum disorder must be provided through the child's medicaid  
16      health plan through the medicaid early and periodic screening,  
17      diagnosis, and treatment benefit. Services cannot be provided



1 under waiver services pursuant to section 1915(c) of the Social  
2 Security Act. Therefore, the developmental disabilities  
3 division provides behavioral analysis services only to adults  
4 with behavioral challenges and only in home and community based  
5 settings.

6 The legislature further finds that the Centers for Medicare  
7 and Medicaid Services requires states to provide participant  
8 safeguards that ensure the health, safety, and rights of HCBS  
9 I/DD waiver participants. The State developmental disabilities  
10 division has policies and procedures to ensure that positive  
11 behavior supports are used to proactively minimize challenging  
12 behaviors, and define and limit the use of restrictive  
13 procedures. The developmental disabilities division also  
14 conducts oversight and continuous quality assurance to ensure  
15 safe and appropriate practices that include a behavior review  
16 committee to review quality of care for individuals who need  
17 supports to learn new behaviors.

18 Amending the exemptions for participants in the medicaid  
19 intellectual and developmental disabilities waiver will ensure  
20 that a qualified workforce can continue to provide necessary  
21 behavior interventions while simultaneously facilitating efforts



1 to build an adequate workforce for clients who depend on these  
2 services.

3 The purpose of this Act is to:

- 4 (1) Clarify the scope of practice of behavior analysis to  
5 mean the practice of applied behavior analysis; and  
6 (2) Broaden the exemption of licensed or credentialed  
7 practitioners practicing within their own recognized  
8 scopes of practice who are exempt from chapter 465D,  
9 Hawaii Revised Statutes, behavior analysts law.

10 SECTION 2. Section 465D-2, Hawaii Revised Statutes, is  
11 amended by amending the definitions of "licensed behavior  
12 analyst" and "practice of behavior analysis" to read as follows:

13 "Licensed behavior analyst" means a person:

- 14 (1) Who engages in the practice of applied behavior  
15 analysis and uses the title of licensed behavior  
16 analyst;  
17 (2) Who has been issued a license under this chapter; and  
18 (3) Whose license is in effect and not revoked, suspended,  
19 or encumbered.

20 "Practice of applied behavior analysis" means the design,  
21 implementation, and evaluation of instructional and



1 environmental modifications to produce socially significant  
2 improvements in human behavior. Practice of applied behavior  
3 analysis includes the empirical identification of functional  
4 relations between behavior and environmental factors, known as  
5 functional assessment and analysis. Practice of applied  
6 behavior analysis also includes the use of contextual factors,  
7 motivating operations, antecedent stimuli, positive  
8 reinforcement, and other consequences to help people develop new  
9 behaviors, increase or decrease existing behaviors, and emit  
10 behaviors under specific environmental conditions. Practice of  
11 behavior analysis expressly excludes psychological testing,  
12 diagnosis of a mental or physical disorder, neuropsychology,  
13 psychotherapy, cognitive therapy, sex therapy, psychoanalysis,  
14 hypnotherapy, and long-term counseling as treatment modalities."

15 SECTION 3. Section 465D-4, Hawaii Revised Statutes, is  
16 amended by amending subsection (a) to read as follows:

17 "(a) Beginning on January 1, 2016, except as specifically  
18 provided in this chapter, no person shall engage in the practice  
19 of applied behavior analysis or use the title "licensed behavior  
20 analyst" or "behavior analyst" without a valid license issued  
21 pursuant to this chapter."



SECTION 4. Section 465D-7, Hawaii Revised Statutes, is amended to read as follows:

"§465D-7 Exemptions. (a) This chapter is not intended to restrict the practice of other licensed or credentialed practitioners practicing within their own recognized scopes of practice and shall not apply to:

(1) An individual working within the scope of practice or duties of another licensed profession that overlaps with the practice of applied behavior analysis; provided that the person does not purport to be a licensed behavior analyst;

(2) An individual who implements or designs applied behavior analysis services and possesses board certification as an assistant behavior analyst by the Behavior Analyst Certification Board and who practices in accordance with the most recent supervisory and ethical requirements adopted by the Behavior Analyst Certification Board under the direction of a behavior analyst licensed in this State;

(3) An individual who designs or implements applied behavior analysis services to participants in the



1        medicaid home and community-based services waiver  
2        pursuant to section 1915(c) of the Social Security  
3        Act, provided that a behavioral review committee  
4        provides quality assurance and oversight;

5        ~~[(3)]~~ (4) An individual who directly implements applied  
6        behavior analysis services and:

7            (A) Is credentialed as a registered behavior  
8            technician by the Behavior Analyst Certification  
9            Board, and is under the direction of a behavior  
10          analyst licensed in this State; or

11          (B) Is a direct support worker who provides autism  
12          treatment services pursuant to an individualized  
13          education plan on or before January 1, 2019;

14          ~~[(C)]~~

15          ~~[(C)] Is a direct support worker who provides medicaid~~  
16          ~~home and community-based services pursuant to~~  
17          ~~section 1915(c) of the Social Security Act on or~~  
18          ~~before January 1, 2019,]~~

19        provided that for purposes of this paragraph, "direct  
20        support worker" means a teacher or paraprofessional  
21        who directly implements intervention or assessment



1 plans under supervision and does not design

2 intervention or assessment plans;

3 ~~[(4)]~~ (5) A family member ~~[or]~~, legal guardian, or

4 caregiver implementing an applied behavior analysis

5 plan and who acts under the direction of a licensed

6 behavior analyst ~~[licensed in this State;]~~ or licensed

7 psychologist as long as the person is not in any

8 manner held out to the public as a "licensed behavior

9 analyst" or "behavior analyst" and the behavior

10 analysis services provided by the licensed

11 psychologist are within the licensed psychologist's

12 recognized scope of practice;

13 ~~[(5)]~~ (6) An individual who engages in the practice of

14 applied behavior analysis with nonhuman or nonpatient

15 clients or consumers including but not limited to

16 applied animal behaviorists and practitioners of

17 organizational behavior management;

18 ~~[(6)]~~ (7) A matriculated graduate student or postdoctoral

19 fellow whose activities are part of a defined applied

20 behavior analysis program of study, practicum, or

21 intensive practicum; provided that the student's or



1            fellow's activities or practice is directly supervised  
2            by a behavior analyst licensed in this State or an  
3            instructor in a Behavior Analyst Certification Board-  
4            approved course sequence; or

5        [~~(7)~~] (8)    An individual pursuing experience in applied  
6            behavior analysis consistent with the Behavior Analyst  
7            Certification Board's experience requirements;  
8            provided that the experience is supervised by a  
9            behavior analyst licensed in this State.

10        (b)    Nothing in this chapter shall be construed to prevent  
11        any licensed psychologist from engaging in the practice of  
12        applied behavior analysis in this State as long as the person is  
13        not in any manner held out to the public as a "licensed behavior  
14        analyst" or "behavior analyst" and the behavior analysis  
15        services provided by the licensed psychologist are within the  
16        licensed psychologist's recognized scope of practice."

17        SECTION 5.    Section 465D-11, Hawaii Revised Statutes, is  
18        amended by amending subsection (a) to read as follows:

19        "(a)    In addition to any other acts or conditions provided  
20        by law, the director may refuse to renew, reinstate, or restore  
21        and may deny, revoke, suspend, or condition in any manner any





1 license for any one or more of the following acts or conditions  
2 on the part of a licensee or license applicant:

3 (1) Failure to meet or to maintain the conditions and  
4 requirements necessary to qualify for the granting of  
5 a license;

6 (2) Engaging in false, fraudulent, or deceptive  
7 advertising, or making untruthful or improbable  
8 statements in advertising;

9 (3) Engaging in the practice of applied behavior analysis  
10 while impaired by alcohol, drugs, physical disability,  
11 or mental instability;

12 (4) Procuring through fraud, misrepresentation, or deceit  
13 a license to engage in the practice of applied  
14 behavior analysis;

15 (5) Aiding and abetting an unlicensed person to directly  
16 or indirectly perform activities requiring a license  
17 for the practice of applied behavior analysis;

18 (6) Engaging in professional misconduct, incompetence,  
19 gross negligence, or manifest incapacity in the  
20 practice of applied behavior analysis;



- 1           (7) Engaging in conduct or a practice contrary to  
2           recognized standards of the most recent ethical  
3           guidelines for the practice of applied behavior  
4           analysis as adopted by the Behavior Analyst  
5           Certification Board;
- 6           (8) Violating any condition or limitation imposed by the  
7           director on a license to practice applied behavior  
8           analysis;
- 9           (9) Engaging in the practice of applied behavior analysis  
10          in a manner that causes injury to one or more members  
11          of the public;
- 12          (10) Failing to comply with, observe, or adhere to any law  
13          in a manner that causes the director to determine that  
14          the applicant or holder is unfit to hold a license;
- 15          (11) Having a license revoked or suspended or other  
16          disciplinary action by any state or federal agency for  
17          any reason that is provided by the applicable  
18          licensing laws or by this section;
- 19          (12) Having been convicted or pleaded nolo contendere to a  
20          crime directly related to the qualifications,



1 functions, or duties of the practice of applied  
2 behavior analysis;

3 (13) Failing to report in writing to the director any  
4 disciplinary decision issued against the licensee or  
5 applicant in another jurisdiction within thirty days  
6 of the disciplinary decision;

7 (14) Failing to report in writing to the director the  
8 Behavior Analyst Certification Board's revocation of  
9 the certification of a licensee or applicant within  
10 fifteen days of the revocation;

11 (15) Employing, whether gratuitously or for pay, any person  
12 not licensed pursuant to this chapter to perform the  
13 functions or duties of the practice of applied  
14 behavior analysis; or

15 (16) Violating this chapter, chapter 436B, or any rule or  
16 order of the director."

17 SECTION 6. Statutory material to be repealed is bracketed  
18 and stricken. New statutory material is underscored.

19 SECTION 7. This Act shall take effect upon its approval.  
20

INTRODUCED BY:

*Debra A. Aletti*  
*John M. [Signature]*



# H.B. NO. 2657

**Report Title:**

Medicaid; Developmental Disabilities; Waiver; Applied Behavior Analysis; Autism Spectrum Disorder

**Description:**

Clarifies the scope of practice of behavior analysis to mean the practice of applied behavior analysis. Broadens the exemption of licensed or credentialed practitioners practicing within their own recognized scopes of practice who are already exempt from the Behavior Analyst Law, to include participants in the Medicaid Intellectual and Developmental Disabilities Home and Community-Based Waiver.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

