
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 many
9 requirements to ensure appropriate and efficient provision of
10 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 medicaid's 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 behavior analysis services only to adults with
4 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 for 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 and standardize the terminology used to refer
5 to behavior analysis and the practice of applied
6 behavior analysis;
- 7 (2) Broaden the exemption of certain individuals and
8 licensed or credentialed practitioners practicing
9 within their own recognized scopes of practice who are
10 exempt from chapter 465D, Hawaii Revised Statutes, the
11 behavior analysts law.

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

15 "Licensed behavior analyst" means a person:

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



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

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

20 "(a) Beginning on January 1, 2016, except as specifically
21 provided in this chapter, no person shall engage in the practice



1 of applied behavior analysis or use the title "licensed behavior
2 analyst" or "behavior analyst" without a valid license issued
3 pursuant to this chapter."

4 SECTION 4. Section 465D-5, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "[+]§465D-5[+] Powers and duties of the director. In
7 addition to any other powers and duties authorized by law, the
8 director shall have the powers and duties to:

- 9 (1) Grant, deny, renew, refuse to renew, restore,
10 terminate, reinstate, condition, restrict, suspend, or
11 revoke a license issued pursuant to this chapter;
- 12 (2) Grant permission to a person to engage in the practice
13 of applied behavior analysis and to use the title of
14 "licensed behavior analyst" or a description
15 indicating that the person is a licensed behavior
16 analyst in this State;
- 17 (3) Adopt, amend, or repeal rules pursuant to chapter 91
18 as the director finds necessary to carry out this
19 chapter;
- 20 (4) Administer, coordinate, and enforce this chapter;



1 (5) Discipline a licensed behavior analyst on grounds
2 specified by this chapter or chapter 436B or for any
3 violation of rules adopted by the director pursuant to
4 this chapter; and

5 (6) Refuse to license a person for failure to meet the
6 licensing requirements in this chapter or for any
7 reason specified by this chapter as grounds to
8 discipline a behavior analyst including but not
9 limited to violations of the Behavior Analyst
10 Certification Board's ethical guidelines for
11 responsible conduct."

12 SECTION 5. Section 465D-7, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "§465D-7 Exemptions. (a) This chapter is not intended to
15 restrict the practice of other licensed or credentialed
16 practitioners practicing within their own recognized scopes of
17 practice and shall not apply to:

18 (1) An individual working within the scope of practice or
19 duties of another licensed profession that overlaps
20 with the practice of applied behavior analysis[+
21 ~~provided that the person does not purport to be a~~



1 ~~behavior analyst,~~] including individuals directly
2 supervised by a licensed professional, such as
3 unlicensed master's level practitioners, students, and
4 postdoctoral fellows, who may train and supervise a
5 paraprofessional, direct support worker, or parent or
6 guardian in implementing an applied behavior analysis
7 intervention; provided that the supervision is within
8 that licensed professional's recognized scope of
9 practice; and provided further that the licensed
10 professional and the supervised individual shall not
11 use the title "licensed behavior analyst";

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



1 (3) An individual who designs or implements applied
2 behavior analysis services to participants in the
3 medicaid home and community-based services waiver
4 program pursuant to section 1915(c) of the Social
5 Security Act on or before January 1, 2024;

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

8 (A) Is credentialed as a ~~[registered]~~ behavior
9 technician by a nationally recognized training
10 organization or the Behavior Analyst
11 Certification Board, and is under the direction
12 of a licensed behavior analyst ~~[licensed in this~~
13 ~~State]~~ or licensed psychologist; or

14 (B) Is a direct support worker who provides autism
15 treatment services pursuant to an individualized
16 education plan on or before January 1, 2019;
17 ~~[(or]~~

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



1 provided that for purposes of this paragraph, "direct
2 support worker" means a teacher or paraprofessional
3 who directly implements intervention or assessment
4 plans under supervision and does not design
5 intervention or assessment plans;

6 ~~[(4)]~~ (5) A family member ~~[or]~~, legal guardian, or
7 caregiver implementing an applied behavior analysis
8 plan and who acts under the direction of a licensed
9 behavior analyst ~~[licensed in this State,]~~ or licensed
10 psychologist; provided that for the purposes of this
11 paragraph, "caregiver" means an individual who
12 provides habilitative services in an adult foster
13 home, developmental disabilities domiciliary home,
14 adult residential care home, expanded adult
15 residential care home, special treatment facility, or
16 therapeutic living program pursuant to the medicaid
17 home and community-based services waiver;

18 ~~[(5)]~~ (6) An individual who engages in the practice of
19 applied behavior analysis with nonhuman or nonpatient
20 clients or consumers including but not limited to



1 applied animal behaviorists and practitioners of
2 organizational behavior management;
3 ~~[(6)]~~ (7) A matriculated graduate student or postdoctoral
4 fellow whose activities are part of a defined applied
5 behavior analysis program of study, practicum, or
6 intensive practicum; provided that the student's or
7 fellow's activities or practice is directly supervised
8 by a licensed behavior analyst [~~licensed in this~~
9 ~~State]~~ or licensed psychologist or an instructor from
10 a nationally recognized training organization or in a
11 Behavior Analyst Certification Board-approved course
12 sequence; or

13 ~~[(7)]~~ (8) An individual pursuing experience in applied
14 behavior analysis consistent with the Behavior Analyst
15 Certification Board's experience requirements;
16 provided that the experience is supervised by a
17 behavior analyst licensed in this State.

18 (b) Nothing in this chapter shall be construed to prevent
19 any licensed psychologist from engaging in the practice of
20 applied behavior analysis in this State as long as the person is
21 not in any manner held out to the public as a "licensed behavior



1 analyst" [~~or "behavior analyst"~~] and the applied behavior
2 analysis services provided by the licensed psychologist are
3 within the licensed psychologist's recognized scope of
4 practice."

5 SECTION 6. Section 465D-11, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) In addition to any other acts or conditions provided
8 by law, the director may refuse to renew, reinstate, or restore
9 and may deny, revoke, suspend, or condition in any manner any
10 license for any one or more of the following acts or conditions
11 on the part of a licensee or license applicant:

12 (1) Failure to meet or to maintain the conditions and
13 requirements necessary to qualify for the granting of
14 a license;

15 (2) Engaging in false, fraudulent, or deceptive
16 advertising, or making untruthful or improbable
17 statements in advertising;

18 (3) Engaging in the practice of applied behavior analysis
19 while impaired by alcohol, drugs, physical disability,
20 or mental instability;



- 1 (4) Procuring through fraud, misrepresentation, or deceit
2 a license to engage in the practice of applied
3 behavior analysis;
- 4 (5) Aiding and abetting an unlicensed person to directly
5 or indirectly perform activities requiring a license
6 for the practice of applied behavior analysis;
- 7 (6) Engaging in professional misconduct, incompetence,
8 gross negligence, or manifest incapacity in the
9 practice of applied behavior analysis;
- 10 (7) Engaging in conduct or a practice contrary to
11 recognized standards of the most recent ethical
12 guidelines for the practice of applied behavior
13 analysis as adopted by the Behavior Analyst
14 Certification Board;
- 15 (8) Violating any condition or limitation imposed by the
16 director on a license to practice applied behavior
17 analysis;
- 18 (9) Engaging in the practice of applied behavior analysis
19 in a manner that causes injury to one or more members
20 of the public;



- 1 (10) Failing to comply with, observe, or adhere to any law
2 in a manner that causes the director to determine that
3 the applicant or holder is unfit to hold a license;
- 4 (11) Having a license revoked or suspended or other
5 disciplinary action by any state or federal agency for
6 any reason that is provided by the applicable
7 licensing laws or by this section;
- 8 (12) Having been convicted or pleaded nolo contendere to a
9 crime directly related to the qualifications,
10 functions, or duties of the practice of applied
11 behavior analysis;
- 12 (13) Failing to report in writing to the director any
13 disciplinary decision issued against the licensee or
14 applicant in another jurisdiction within thirty days
15 of the disciplinary decision;
- 16 (14) Failing to report in writing to the director the
17 Behavior Analyst Certification Board's revocation of
18 the certification of a licensee or applicant within
19 fifteen days of the revocation;
- 20 (15) Employing, whether gratuitously or for pay, any person
21 not licensed pursuant to this chapter to perform the



1 functions or duties of the practice of applied
2 behavior analysis; or
3 (16) Violating this chapter, chapter 436B, or any rule or
4 order of the director."

5 SECTION 7. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 8. This Act shall take effect on July 1, 3000.



Report Title:

Behavior Analysis; Developmental Disabilities; Medicaid; Waiver;
Applied Behavior Analysis; Autism Spectrum Disorder; Scope of
Practice

Description:

Clarifies and standardizes the terminology used to refer to
behavior analysis and the practice of applied behavior analysis.
Broadens and clarifies the exemption of licensed or credentialed
practitioners practicing within their own recognized scopes of
practice who are already exempt from the Behavior Analyst Law.
Effective 7/1/3000. (SD1)

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