

JAN 19 2018

S.B. NO. 2496

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 department of
2 health, developmental disabilities division operates the
3 medicaid intellectual and developmental disabilities home and
4 community based services waiver, also known as the HCBS I/DD
5 waiver, on behalf of the Department of Health and Human
6 Services, MedQuest division. The HCBS I/DD waiver is provided
7 under section 1915(c) of the Social Security Act. The HCBS I/DD
8 waiver is reviewed and approved by the Centers for Medicare and
9 Medicaid Services and has many requirements to ensure the
10 appropriate and efficient provision of services and supports to
11 people with intellectual and developmental disabilities.

12 The legislature further finds that, for children who
13 qualify for a HCBS I/DD waiver who have an autism spectrum
14 disorder, the Centers for Medicare and Medicaid Services has
15 clarified that, per section 1905(a) of the Social Security Act,
16 services "recommended by a physician or other licensed
17 practitioner of the healing arts" for the treatment of autism



1 spectrum disorders must be provided through the child's medicaid
2 health plan through the early and periodic screening,
3 diagnostic, and treatment benefit, and cannot be provided as a
4 HCBS I/DD waiver service. This leaves a gap in coverage for
5 children with autism spectrum disorders who would be best served
6 under the HCBS I/DD waiver; this gap could be filled by
7 professionals who are exempt from behavior analyst licensure
8 requirements, who would fall outside the scope of the section
9 1905(a) requirement, which would let home-based applied behavior
10 analysis fall within the broad scope of the HCBS I/DD waiver.

11 The legislature further finds that the Centers for Medicare
12 and Medicaid Services requires the states to provide participant
13 safeguards that ensure the health, safety and rights of HCBS
14 I/DD waiver participants. The developmental disabilities
15 division has policies and procedures to ensure positive behavior
16 supports are used to proactively minimize challenging behaviors,
17 and to limit the use of restrictive procedures. The
18 developmental disabilities division conducts oversight and
19 continuous quality assurance to ensure safe and appropriate
20 practices including a behavioral review committee to review



1 quality of care for individuals who need supports to learn new
2 behaviors.

3 The legislature also finds that there is confusion in the
4 community as to the scope of the behavior analyst profession.
5 Different professionals use different titles and different
6 terminology to refer to themselves and what they do. The
7 legislature further finds that this confusion may be increased
8 based on the proposed expansion of waivers for licensing.

9 Therefore, the purpose of this Act is to:

- 10 (1) Allow children with autism spectrum disorders to
11 receive appropriate applied behavior analysis
12 treatment, while simultaneously providing safeguards
13 for consumer protection;
- 14 (2) Exempt from the licensure requirement for behavior
15 analysis certain individuals who implement applied
16 behavior analysis services or plans under the
17 oversight of a behavioral review committee or
18 psychologist; and
- 19 (3) Update and standardize the terminology used to refer
20 to behavior analysts.



1 SECTION 2. Section 465D-7, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§465D-7 Exemptions. (a) This chapter is not intended to
4 restrict the practice of other licensed or credentialed
5 practitioners practicing within their own recognized scopes of
6 practice and shall not apply to:

7 (1) An individual working within the scope of practice or
8 duties of another licensed profession that overlaps
9 with the practice of applied behavior analysis;
10 provided that the person does not purport to be a
11 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 by the
15 Behavior Analyst Certification Board and who practices
16 in accordance with the most recent supervisory and
17 ethical requirements adopted by the Behavior Analyst
18 Certification Board under the direction of a behavior
19 analyst licensed in this State;

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



1 medicaid home and community-based services waiver
2 program pursuant to section 1915(c) of the Social
3 Security Act; provided that a behavioral review
4 committee 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 3. Sections 465D-2, 465D-4, 465D-5, and 465D-11,
18 Hawaii Revised Statutes, are amended by substituting the phrase
19 "practice of applied behavior analysis" wherever the phrase
20 "practice of behavior analysis" appears, as the context
21 requires.



S.B. NO. 2496

1 SECTION 4. Section 465D-11, Hawaii Revised Statutes, is
2 amended by substituting the phrase "applied behavior analysis"
3 wherever the phrase "behavior analysis" appears, as the context
4 requires.

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

7 SECTION 6. This Act shall take effect upon its approval.
8

INTRODUCED BY: *Ronald H. Bell*



S.B. NO. 2496

Report Title:

Applied Behavior Analysis; Developmental Disabilities

Description:

Exempts from licensure requirements for behavior analysis certain individuals who implement applied behavior analysis services or plans under the oversight or direction of others. Updates and standardizes the terminology used to refer to behavior analysts.

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