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# 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 human services, Med-Quest  
6 division. The HCBS I/DD waiver, which is provided under section  
7 1915(c) of the Social Security Act and reviewed and approved by  
8 the federal Centers for Medicare and Medicaid Services, has many  
9 requirements to ensure the appropriate and efficient provision  
10 of services and supports to people with intellectual and  
11 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 adults 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 and fall outside the scope of the section 1905(a)  
9 requirement, which would allow certain individuals who implement  
10 applied behavior analysis services or plans under the oversight  
11 of others to provide appropriate treatment to adults with autism  
12 spectrum disorders in accordance with the HCBS I/DD waiver.

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



1 safe and appropriate practices including a behavioral review  
2 committee to review quality of care for individuals who need  
3 supports to learn new behaviors.

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

10 Therefore, the purpose of this Act is to:

11 (1) Allow adults with autism spectrum disorders to receive  
12 appropriate applied behavior analysis treatment, while  
13 simultaneously providing safeguards for consumer  
14 protection;

15 (2) Exempt from the licensure requirement for behavior  
16 analysts certain individuals who implement applied  
17 behavior analysis services or plans to adult  
18 participants in the HCBS I/DD waiver program on or  
19 before January 1, 2024, or under the direction of a  
20 licensed behavior analyst or Hawaii-licensed  
21 psychologist; and



1 (3) Update and standardize the terminology used to refer  
2 to behavior analysts.

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

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

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

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



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 the Behavior Analyst Certification  
10            Board, and is under the direction of a licensed  
11            behavior analyst [~~licensed in this State~~]; or

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

15            [~~or~~]

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

20        provided that for purposes of this paragraph, "direct  
21        support worker" means a teacher or paraprofessional



1 who directly implements intervention or assessment  
2 plans under supervision and does not design  
3 intervention or assessment plans;

4 ~~[(4)]~~ (5) A family member ~~[or]~~, legal guardian, or  
5 caregiver implementing an applied behavior analysis  
6 plan and who acts under the direction of a licensed  
7 behavior analyst ~~[licensed in this State,]~~ or Hawaii-  
8 licensed psychologist; provided that for the purposes  
9 of this paragraph, "caregiver" means an individual who  
10 provides habilitative services in an adult foster  
11 home, developmental disabilities domiciliary home,  
12 adult residential care home, expanded adult  
13 residential care home, special treatment facility, or  
14 therapeutic living program, pursuant to the medicaid  
15 home and community-based services waiver program  
16 authorized by section 1915(c) of the Social Security  
17 Act;

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 an instructor in a Behavior Analyst  
10 Certification Board-approved course sequence; or

11 ~~[(7)]~~ (8) An individual pursuing experience in applied  
12 behavior analysis consistent with the Behavior Analyst  
13 Certification Board's experience requirements;  
14 provided that the experience is supervised by a  
15 licensed behavior analyst [~~licensed in this State~~].

16 (b) Nothing in this chapter shall be construed to prevent  
17 any licensed psychologist from engaging in the practice of  
18 applied behavior analysis in this State as long as the [~~person~~]  
19 licensed psychologist is not in any manner held out to the  
20 public as a "licensed behavior analyst" or "behavior analyst"  
21 and the behavior analysis services provided by the licensed



1 psychologist are within the licensed psychologist's recognized  
2 scope of practice."

3 SECTION 3. Sections 465D-2, 465D-4, 465D-5, and 465D-11,  
4 Hawaii Revised Statutes, are amended by substituting the phrase  
5 "practice of applied behavior analysis" wherever the phrase  
6 "practice of behavior analysis" appears, as the context  
7 requires.

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

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

14 SECTION 6. This Act shall take effect upon its approval.

15



**Report Title:**

Applied Behavior Analysis; Developmental Disabilities

**Description:**

Allows adults with autism spectrum disorders to receive appropriate applied behavior analysis treatment, while simultaneously providing safeguards for consumer protection. 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. (SD1)

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