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# A BILL FOR AN ACT

RELATING TO THE PRACTICE OF BEHAVIOR ANALYSIS.

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

1       SECTION 1. The legislature finds that behavior analysis  
2 means the design, implementation, and evaluation of  
3 instructional and environmental modifications to produce  
4 socially significant improvements in human behavior. The  
5 practice of behavior analysis includes the empirical  
6 identification of functional relations between behavior and  
7 environmental factors, known as functional assessment and  
8 analysis, as well as the use of contextual factors, motivating  
9 operations, antecedent stimuli, positive reinforcement, and  
10 other consequences to help individuals develop new behaviors,  
11 increase or decrease existing behaviors, and display behaviors  
12 under specific environmental conditions.

13       Act 199, Session Laws of Hawaii 2015, established the  
14 behavior analyst program within the department of commerce and  
15 consumer affairs and established licensing requirements for  
16 behavior analysts. Licensing of behavior analysis services was



1 made concurrent with mandated insurance coverage for diagnosis  
2 and treatment related to autism disorders.

3 Act 107, Session Laws of Hawaii 2016, temporarily exempted  
4 some practitioners from licensing requirements of the practice  
5 of behavior analysis, in particular, direct support workers who  
6 provide autism treatment services pursuant to an individualized  
7 education plan.

8 Many students enrolled in department of education schools  
9 would benefit from the expansion of behavior analysis services  
10 throughout Hawaii's public school system, including but not  
11 limited to students with autism disorders.

12 Accordingly, the purpose of this Act is to:

- 13 (1) Clarify the licensing exemptions for certain  
14 individuals under certain conditions who provide  
15 behavior analysis services; and
- 16 (2) Require the department of education to create and  
17 implement a plan to provide medicaid billable applied  
18 behavior analysis services to all students diagnosed  
19 with autism spectrum disorder within the department.

20 SECTION 2. Section 465D-7, Hawaii Revised Statutes, is  
21 amended by amending subsection (a) to read as follows:



1       "(a) This chapter is not intended to restrict the practice  
2 of other licensed or credentialed practitioners practicing  
3 within their own recognized scopes of practice and shall not  
4 apply to:

5       (1) ~~[An individual working within the scope of practice or  
6 duties of another licensed profession that overlaps  
7 with the practice of behavior analysis; provided that  
8 the person does not purport to be a behavior analyst;]~~

9       An individual licensed in the State who practices  
10       other professions and their supervisees; provided that  
11       behavior analysis is in the scope of practice of the  
12       profession's licensure law and the services provided  
13       are within the boundaries of the licensed  
14       professional's education, training, and competence;  
15       provided further that the individual does not purport  
16       to be a behavior analyst;

17       (2) An individual licensed in the State who practices  
18       psychology and their supervisees including individuals  
19       directly supervised by a licensed psychologist, such  
20       as: unlicensed master's level practitioners, students,  
21       and postdoctoral fellows, who may design behavior



1 analysis services as well as train and supervise a  
2 paraprofessional, direct support worker, or parent or  
3 guardian in implementing an applied behavioral  
4 analysis intervention; provided that the supervision  
5 falls within that licensed psychologist's scope of  
6 practice; provided that the behavior analysis services  
7 provided are within the boundaries of the licensed  
8 psychologist's education, training, and competence;  
9 provided further that the individual does not purport  
10 to be a licensed behavior analyst;

11 ~~[(+2)]~~ (3) An individual who implements or designs applied  
12 behavior analysis services and possesses board  
13 certification as an assistant behavior analyst from a  
14 nationally certifying agency or by the Behavior  
15 Analyst Certification Board and who practices in  
16 accordance with the most recent supervisory and  
17 ethical requirements adopted by the [Behavior Analyst  
18 Certification Board] national certifying agency under  
19 the direction of a behavior analyst or psychologist  
20 licensed in this State;



1       ~~[(3)]~~ (4) Someone who is working as a classroom teacher and  
2       is enrolled in a teacher preparation program working  
3       toward licensure, in a school setting who implements  
4       and does not design behavior analysis services in  
5       direct collaboration with a professional licensed to  
6       practice behavior analysis in the State; or a licensed  
7       special education teacher who, in a school setting,  
8       implements and designs behavior analysis services;

9       (5) An individual who directly implements ~~[applied]~~ and  
10      does not design behavior analysis services and:

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

17      (B) Is a direct support worker in a school setting  
18      who ~~[provides autism treatment services pursuant~~  
19      ~~to an individualized education plan]~~ directly  
20      implements a behavior analysis program under the  
21      supervision of a professional licensed in this



1 State to practice behavior analysis intervention  
2 or assessment plans on or before January 1, 2019;  
3 ~~[+]~~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;]~~ Is an individual who  
8 works within the scope of practice or duties of  
9 and is directly supervised by a licensed  
10 psychologist; provided that the supervised  
11 individual shall not use the title of "licensed  
12 behavior analyst";

13 provided that for purposes of this paragraph, "direct  
14 support worker" means a ~~[teacher or]~~ paraprofessional  
15 ~~[who directly implements intervention or assessment~~  
16 ~~plans under supervision and does not design~~  
17 ~~intervention or assessment plans];~~

18 (6) An individual who designs or implements behavior  
19 analysis services to participants in the medicaid home  
20 and community-based service waiver program pursuant to



1 section 1915(c) of the Social Security Act on or  
2 before January 1, 2024;

3 ~~[(4)]~~ (7) A family member [øx], legal guardian, or  
4 caregiver implementing an applied behavior analysis  
5 plan and who acts under the direction of a licensed  
6 behavior analyst or licensed psychologist [licensed in  
7 this State]; provided that for the purposes of this  
8 paragraph, "caregiver" means an individual who  
9 provides habilitation services in an adult foster  
10 home, developmental disabilities domiciliary home,  
11 adult residential care home, expanded adult  
12 residential care home, special treatment facility, or  
13 therapeutic living program pursuant to the medicaid  
14 home and community-based service waiver program;

15 ~~[(5)]~~ (8) An individual who engages in the practice of  
16 behavior analysis with nonhuman or nonpatient clients  
17 or consumers including but not limited to applied  
18 animal behaviorists and practitioners of  
19 organizational behavior management;

20 ~~[(6)]~~ (9) A matriculated graduate student or postdoctoral  
21 fellow whose activities are part of a defined behavior



1 analysis program of study, practicum, or intensive  
2 practicum; provided that the student's or fellow's  
3 activities or practice is directly supervised by a  
4 behavior analyst or psychologist licensed in this  
5 State or an instructor from a nationally recognized  
6 training organization or in a Behavior Analyst  
7 Certification [~~Board-approved~~] Board-verified course  
8 sequence; or

9 [~~(7)~~] (10) An individual pursuing experience in behavior  
10 analysis consistent with the Behavior Analyst  
11 Certification Board's experience requirements;  
12 provided that the experience is supervised by a  
13 behavior analyst licensed in this State."

14 SECTION 3. (a) The department of education shall create  
15 an implementation plan for the delivery of medicaid billable  
16 applied behavior analysis to all students diagnosed with autism  
17 spectrum disorder within the department.

18 (b) The department of education shall submit an initial  
19 report to the legislature and board of education within ninety  
20 days of the effective date of this Act; provided that the  
21 initial report shall include clear objectives on staffing, data





1 collection and analysis, reporting and accountability, and any  
2 other necessary points to effectuate the implementation plan  
3 pursuant to subsection (a).

4 (c) After the submission of the initial report to the  
5 legislature and board of education pursuant to subsection (b),  
6 the department of education shall submit quarterly reports to  
7 the legislature and board of education; provided that the  
8 quarterly reports shall include the following:

- 9 (1) The number of students IDEA eligible with autism  
10 spectrum disorder;  
11 (2) The number of students requiring applied behavior  
12 analysis;  
13 (3) Staffing updates and needs;  
14 (4) Medicaid reimbursement schedules and amounts;  
15 (5) Licensure updates; and  
16 (6) Any other information pertinent to the implementation  
17 of this Act.

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:**

Practice of Behavior Analysis; Exemptions; Department of Education; Applied Behavior Analysis; Implementation Plan; Reporting

**Description:**

Clarifies the licensing exemptions for certain individuals under certain conditions who provide behavior analysis services. Requires the Department of Education to create and implement a plan to provide Medicaid billable applied behavior analysis services to all students diagnosed with autism spectrum disorder within the Department. Establishes reporting requirements.  
(SB2925 HD1)

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