
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. Behavior analysis means the design,
2 implementation, and evaluation of instructional and
3 environmental modifications to produce socially significant
4 improvements in human behavior. The practice of behavior
5 analysis includes the empirical identification of functional
6 relations between behavior and environmental factors, known as
7 functional assessment and analysis, as well as the use of
8 contextual factors, motivating operations, antecedent stimuli,
9 positive reinforcement, and other consequences to help
10 individuals develop new behaviors, increase or decrease existing
11 behaviors, and display behaviors under specific environmental
12 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 students
11 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 potentially medicaid-
18 billable applied behavior analysis services to all
19 medicaid-eligible students diagnosed with autism
20 spectrum disorder within the department.



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

"(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 behavior analysis; provided that the person does not purport to be a behavior analyst;]~~

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

(2) An individual licensed in the State who practices psychology and their supervisees including individuals directly supervised by a licensed psychologist, such



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

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



1 the direction of a behavior analyst or psychologist
2 licensed in this State;

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

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

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

19 (B) Is a direct support worker in a school setting
20 who ~~[provides autism treatment services pursuant~~
21 ~~to an individualized education plan]~~ directly



1 implements a behavior analysis program under the
2 supervision of a professional licensed in this
3 State to practice behavior analysis intervention
4 or assessment plans on or before January 1, 2019;
5 [+]or[+]

6 ~~[-] (C) [+]~~ ~~Is a direct support worker who provides medicaid~~
7 ~~home and community based services pursuant to~~
8 ~~section 1915(c) of the Social Security Act on or~~
9 ~~before January 1, 2019,]~~ Is an individual who
10 works within the scope of practice or duties of
11 and is directly supervised by a licensed
12 psychologist; provided that the supervised
13 individual shall not use the title of "licensed
14 behavior analyst";

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

20 (6) An individual who designs or implements behavior
21 analysis services to participants in the medicaid home



1 and community-based service waiver program pursuant to
2 section 1915(c) of the Social Security Act on or
3 before January 1, 2024;

4 ~~[(4)]~~ (7) 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 or licensed psychologist ~~[licensed in~~
8 ~~this State]~~; provided that for the purposes of this
9 paragraph, "caregiver" means an individual who
10 provides habilitation 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 service waiver program;

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



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

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

16 (11) A teacher who is working in a school setting and
17 providing services related to a behavior analysis
18 program designed by a professional licensed to
19 practice behavior analysis in this State; provided
20 that teachers shall not be required to design behavior
21 analysis services for which they are not licensed."



1 SECTION 3. (a) The department of education shall create
2 an implementation plan for the delivery of potentially medicaid-
3 billable applied behavior analysis to all medicaid-eligible
4 students diagnosed with autism spectrum disorder within the
5 department.

6 (b) The department of education shall submit an initial
7 report to the legislature and board of education within ninety
8 days of the effective date of this Act; provided that the
9 initial report shall include clear objectives on staffing, data
10 collection and analysis, reporting and accountability, and any
11 other necessary points to effectuate the implementation plan
12 pursuant to subsection (a).

13 (c) After the submission of the initial report to the
14 legislature and board of education pursuant to subsection (b),
15 the department of education shall submit quarterly reports to
16 the legislature and board of education; provided that the
17 quarterly reports shall include the following:

18 (1) The number of students IDEA-eligible with autism
19 spectrum disorder;

20 (2) The number of students requiring applied behavior
21 analysis;



- 1 (3) Staffing updates and needs;
- 2 (4) Medicaid reimbursement schedules and amounts;
- 3 (5) Licensure updates; and
- 4 (6) Any other information pertinent to the implementation
- 5 of this Act.

6 SECTION 4. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 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 HD2)

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