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# A BILL FOR AN ACT

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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 465-3, Hawaii Revised Statutes, is  
21 amended by amending subsection (a) to read as follows:



1       "(a) This chapter shall not apply to:

2       (1) Any person teaching, lecturing, consulting, or  
3       engaging in research in psychology insofar as the  
4       activities are performed as part of or are dependent  
5       upon employment in a college or university; provided  
6       that the person shall not engage in the practice of  
7       psychology outside the responsibilities of the  
8       person's employment;

9       (2) Any person who performs any, or any combination of the  
10      professional services defined as the practice of  
11      psychology under the direction of a licensed  
12      psychologist in accordance with rules adopted by the  
13      board; provided that the person may use the term  
14      "psychological assistant", but shall not identify the  
15      person's self as a psychologist or imply that the  
16      person is licensed to practice psychology;

17      (3) Any person employed by a local, state, or federal  
18      government agency in a school psychologist or  
19      psychological examiner position, or a position that  
20      does not involve diagnostic or treatment services, but



1           only at those times when that person is carrying out  
2           the functions of such government employment;

3       (4) Any person who is a student of psychology, a  
4           psychological intern, or a resident in psychology  
5           preparing for the profession of psychology under  
6           supervision in a training institution or facility and  
7           who is designated by a title as "psychology trainee",  
8           "psychology student", "psychology intern", or  
9           "psychology resident", that indicates the person's  
10          training status; provided that the person shall not  
11          identify the person's self as a psychologist or imply  
12          that the person is licensed to practice psychology;

13       (5) Any person who is a member of another profession  
14          licensed under the laws of this jurisdiction to render  
15          or advertise services, including psychotherapy, within  
16          the scope of practice as defined in the statutes or  
17          rules regulating the person's professional practice;  
18          provided that, notwithstanding section 465-1, the  
19          person does not represent the person's self to be a  
20          psychologist or does not represent that the person is  
21          licensed to practice psychology;



1 (6) Any person who is a member of a mental health  
2 profession not requiring licensure; provided that the  
3 person functions only within the person's professional  
4 capacities; and provided further that the person does  
5 not represent the person to be a psychologist, or the  
6 person's services as psychological;

7 (7) Any person who is a duly recognized member of the  
8 clergy; provided that the person functions only within  
9 the person's capacities as a member of the clergy; and  
10 provided further that the person does not represent  
11 the person to be a psychologist, or the person's  
12 services as psychological; [ex]

13 (8) Any psychologist employed by the United States  
14 Department of Defense, while engaged in the discharge  
15 of the psychologist's official duty and providing  
16 direct telehealth support or services, as defined in  
17 section 431:10A-116.3, to neighbor island  
18 beneficiaries within a Hawaii National Guard armory on  
19 the island of Kauai, Hawaii, Molokai, or Maui;  
20 provided that the psychologist employed by the United



1 States Department of Defense is credentialed by

2 Tripler Army Medical Center[-]; or

3 (9) Any direct support worker as defined in section

4 465D-7, who provides autism treatment services

5 pursuant to an individualized education plan and is

6 under the direction of a psychologist licensed in the

7 State."

8 SECTION 3. Section 465D-7, Hawaii Revised Statutes, is  
9 amended by amending subsection (a) to read as follows:

10 "(a) This chapter is not intended to restrict the practice  
11 of other licensed or credentialed practitioners practicing  
12 within their own recognized scopes of practice and shall not  
13 apply to:

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

18 An individual licensed in the State who practices  
19 other professions and their supervisees; provided that  
20 behavior analysis is in the scope of practice of the  
21 profession's licensure law and the services provided



1 are within the boundaries of the licensed  
2 professional's education, training, and competence;  
3 provided further that the individual does not purport  
4 to be a behavior analyst;

5 (2) An individual licensed in the State who practices  
6 psychology and their supervisees; provided that  
7 behavior analysis is in the scope of practice of the  
8 psychology licensure law and the behavior analysis  
9 services provided are within the boundaries of the  
10 licensed psychologist's education, training, and  
11 competence; provided further that the individual does  
12 not purport to be a 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 by the  
16 Behavior Analyst Certification Board and who practices  
17 in accordance with the most recent supervisory and  
18 ethical requirements adopted by the Behavior Analyst  
19 Certification Board under the direction of a behavior  
20 analyst licensed in this State;



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

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

10       (A) Is credentialed as a registered behavior  
11       technician by the Behavior Analyst Certification  
12       Board, and is under the direction of a behavior  
13       analyst licensed in this State;

14       (B) Is a direct support worker in a school setting  
15       who ~~[provides autism treatment services pursuant~~  
16       ~~to an individualized education plan]~~ directly  
17       implements a behavior analysis program under the  
18       supervision of a professional licensed in this  
19       State to practice behavior analysis intervention  
20       or assessment plans on or before January 1, 2019;

21       ~~[+]~~ or ~~[+]~~





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

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

15       (6) An individual who designs or implements behavior  
16       analysis services to participants in the medicaid home  
17       and community-based service waiver program pursuant to  
18       section 1915(c) of the Social Security Act on or  
19       before January 1, 2024;

20       ~~[(4)]~~ (7) A family member [or], legal guardian, or  
21       caregiver implementing [an applied] a behavior



1 analysis plan and who acts under the direction of a  
2 licensed behavior analyst [~~licensed in this State~~];  
3 provided that for the purposes of this paragraph,  
4 "caregiver" means an individual who provides  
5 rehabilitative services in an adult foster home,  
6 developmental disabilities domiciliary home, adult  
7 residential care home, expanded adult residential care  
8 home, special treatment facility, or therapeutic  
9 living program pursuant to the medicaid home and  
10 community-based service waiver program;

11 ~~[(+5)]~~ (8) An individual who engages in the practice of  
12 behavior analysis with nonhuman or nonpatient clients  
13 or consumers including but not limited to applied  
14 animal behaviorists and practitioners of  
15 organizational behavior management;

16 ~~[(+6)]~~ (9) A matriculated graduate student or postdoctoral  
17 fellow whose activities are part of a defined behavior  
18 analysis program of study, practicum, or intensive  
19 practicum; provided that the student's or fellow's  
20 activities or practice is directly supervised by a  
21 behavior analyst licensed in this State or an



1 instructor in a Behavior Analyst Certification [~~Board-~~  
2 ~~approved~~] Board-verified course sequence; or

3 [~~(7)~~] (10) An individual pursuing experience in behavior  
4 analysis consistent with the Behavior Analyst  
5 Certification Board's experience requirements;  
6 provided that the experience is supervised by a  
7 behavior analyst licensed in this State."

8 SECTION 4. (a) The department of education shall create  
9 an implementation plan for the delivery of medicaid billable  
10 applied behavior analysis to all students diagnosed with autism  
11 spectrum disorder within the department.

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

19 (c) After the submission of the initial report to the  
20 legislature and board of education pursuant to subsection (b),  
21 the department of education shall submit quarterly reports to



1 the legislature and board of education; provided that the  
2 quarterly reports shall include the following:

- 3 (1) The number of students diagnosed with autism spectrum  
4 disorder;
- 5 (2) The number of students with autism spectrum disorder  
6 as part of their individualized education plan;
- 7 (3) The number of students requiring applied behavior  
8 analysis;
- 9 (4) Staffing updates and needs;
- 10 (5) Medicaid reimbursement schedules and amounts;
- 11 (6) Licensure updates; and
- 12 (7) Any other information pertinent to the implementation  
13 of this Act.

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

16 SECTION 6. This Act shall take effect upon its approval.  
17



**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.  
(SD1)

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