
A BILL FOR AN ACT

RELATING TO BEHAVIOR ANALYSIS SERVICES.

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

1 SECTION 1. The legislature finds that applied behavior
2 analysis is a well-established framework for the treatment of
3 autism spectrum disorder. Research has shown that intensive
4 early applied behavior analysis intervention before the age of
5 six is critical for the future of children with autism.

6 The legislature further finds that the existing law
7 regulating behavior analysts expressly states that the law is
8 not intended to restrict the practice of other licensed or
9 credentialed practitioners practicing within their own
10 recognized scopes of practice. However, there are concerns that
11 the law has been interpreted in a way that prohibits students
12 and psychological assistants, who are under the supervision of a
13 licensed psychologist, to provide behavioral interventions.
14 Limiting the ability of otherwise qualified professionals,
15 acting within their scope of practice, to provide and supervise
16 applied behavior analysis unnecessarily restricts access to
17 these licensed professionals and the individuals working under



1 their supervision. The legislature notes that the scope of
2 practice for psychologists under chapter 465, Hawaii Revised
3 Statutes, expressly includes behavior analysis and therapy. The
4 scope of practice for psychologists also recognizes the ability
5 of psychologists to supervise others.

6 The legislature concludes that clarifying certain aspects
7 of the behavior analysts law, including who can implement
8 behavior analysis services while under supervision, will ensure
9 that the State has an adequate workforce of trained
10 professionals and paraprofessionals who can continue to provide
11 comprehensive behavior analysis services for the treatment of
12 autism spectrum disorder.

13 The purpose of this Act is to clarify certain elements of
14 the behavior analyst law, including:

15 (1) Clarifying the definition of "practice of behavior
16 analysis";

17 (2) Clarifying the individuals who may implement behavior
18 analysis services, including individuals who are
19 supervised by a licensed professional working within
20 that licensed professional's recognized scope of



1 practice, when that scope of practice overlaps with
2 the practice of behavior analysis; and
3 (3) Exempting from licensure caregivers who implement an
4 applied behavior analysis plan and act under the
5 direction of a licensed behavior analyst or licensed
6 professional authorized to practice behavior analysis.

7 SECTION 2. Section 465D-2, Hawaii Revised Statutes, is
8 amended by amending the definition of "practice of behavior
9 analysis" to read as follows:

10 "Practice of behavior analysis" means the [~~design~~]:

11 (1) Design, implementation, and evaluation of
12 instructional and environmental modifications to
13 produce socially significant improvements in human
14 behavior. [~~Practice of behavior analysis includes the~~
15 ~~empirical~~];

16 (2) Empirical identification of functional relations
17 between behavior and environmental factors, known as
18 functional assessment and analysis [~~Practice of~~
19 ~~behavior analysis also includes the use~~]; and

20 (3) Use of contextual factors, motivating operations,
21 antecedent stimuli, positive reinforcement, and other



1 consequences to help people develop new behaviors,
2 increase or decrease existing behaviors, and emit
3 behaviors under specific environmental conditions.
4 Practice of behavior analysis expressly excludes psychological
5 testing, diagnosis of a mental or physical disorder,
6 neuropsychology, psychotherapy, cognitive therapy, sex therapy,
7 psychoanalysis, hypnotherapy, and long-term counseling as
8 treatment modalities. Practice of behavior analysis also
9 excludes the use of the behavioral techniques specified in
10 paragraph (3) that are used solely as treatment modalities."

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

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

17 (1) An individual working within the scope of practice or
18 duties of another licensed profession that overlaps
19 with the practice of behavior analysis[~~; provided that~~
20 ~~the person does not purport to be a behavior~~
21 ~~analyst;~~], including individuals supervised by the



- 1 licensed professional, such as paraprofessionals,
2 unlicensed professionals, students, and parents;
3 provided that the supervision is within that licensed
4 professional's recognized scope of practice; provided
5 further that the licensed professional and the
6 supervised individual shall not use the title of
7 "licensed behavior analyst" or "behavior analyst";
- 8 (2) An individual who implements or designs applied
9 behavior analysis services and possesses board
10 certification [~~as an assistant behavior analyst by the~~
11 ~~Behavior Analyst Certification Board~~] from a national
12 certifying agency and who practices in accordance with
13 the most recent supervisory and ethical requirements
14 adopted by [~~the Behavior Analyst Certification Board~~]
15 a national certifying agency under the direction of a
16 behavior analyst licensed in this State;
- 17 (3) An individual who directly implements applied behavior
18 analysis services under the supervision of a licensed
19 professional whose scope of practice overlaps with the
20 practice of behavior analysis and:



- 1 (A) [~~Is credentialed as a registered behavior~~
2 ~~technician by~~] Possesses board certification from
3 the Behavior Analyst Certification Board,
4 and is under the direction of a [behavior
5 analyst] professional licensed in this State[+]
- 6 ~~(B) Is a direct support worker who provides autism~~
7 ~~treatment services pursuant to an individualized~~
8 ~~education plan on or before January 1, 2019;~~
9 ~~{or}]~~ and acting within the scope of that
10 licensure;
- 11 (B) Is an individual who provides applied behavior
12 analysis services under the supervision of a
13 licensed or credentialed practitioner working
14 within that practitioner's recognized scope of
15 practice; provided that the licensed or
16 credentialed practitioner maintains
17 responsibility for and attests to the training
18 and qualifications of the individual who is
19 providing the supervised applied behavior
20 analysis services; 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;

5 ~~[provided that for purposes of this paragraph, "direct~~
6 ~~support worker" means a teacher or paraprofessional~~
7 ~~who directly implements intervention or assessment~~
8 ~~plans under supervision and does not design~~
9 ~~intervention or assessment plans;]~~

10 (4) A family member ~~[or]~~, legal guardian, or caregiver
11 implementing an applied behavior analysis plan and who
12 acts under the direction of a licensed behavior
13 analyst or licensed ~~[in this State;]~~ professional who
14 is authorized to practice behavioral analysis;

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

20 (6) A matriculated graduate student or postdoctoral fellow
21 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 licensed in this State or an
5 instructor in a Behavior Analyst Certification Board-
6 approved course sequence; or

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

12 SECTION 4. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 5. This Act shall take effect on July 1, 2050.



Report Title:

Behavior Analysts; Licensure; Certification; Supervision;
Applied Behavior Analysis; Exemptions

Description:

Clarifies certain elements of the behavior analyst law, including: clarifying the definition of "practice of behavior analysis"; clarifying the individuals who may implement behavior analysis services, including individuals who are supervised by a licensed professional working within that licensed professional's recognized scope of practice, when that scope of practice overlaps with the practice of behavior analysis; and exempting caregivers from the licensure requirements for behavior analysts. Effective 7/1/2050. (SD1)

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