

ACT 123

S.B. NO. 2670

A Bill for an Act Relating to Behavior Analysts.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that licensure for the practice of behavior analysis in Hawaii is needed for the public's health, safety, and welfare. Act 199, Session Laws of Hawaii 2015, codified as chapter 465D, Hawaii Revised Statutes, established standards for the licensing of behavior analysts to address the present and critical need to ensure that persons requiring diagnosis and treatment for autism receive the care they need. Act 199 recognized that behavior analysts and the practice of behavior analysis should be subject to regulation and control to protect the public from unqualified practitioners and from unprofessional conduct. Additionally, health insurance plans in the State will only provide reimbursement for services from behavior analysts who are licensed in the State. The legislature finds that licensure of behavior analysts is necessary for both client protection and access to services.

Current licensure requirements exempt registered and credentialed behavior technician paraprofessionals who, under the direction of a licensed behavior analyst implement behavior plans designed and developed by the licensed behavioral analyst. The legislature finds that there are currently more than three hundred individuals in the State who receive behavior intervention services from paraprofessional providers who implement behavior plans developed by behavioral specialists through the State's Developmental Disabilities Medicaid Waiver program. While ensuring the provision of quality services by properly trained providers is of the utmost importance, the State's current credentialed workforce is inadequate to meet present needs. If current, non-credentialed providers are unable to continue to serve their clients, hundreds of Medicaid waiver recipients will face withdrawal of care and may become at-risk for self-harm or harm to others.

Thus, policies that ensure that a qualified workforce can continue to provide necessary behavior interventions for Medicaid waiver recipients while simultaneously facilitating efforts to build an adequate workforce of credentialed paraprofessionals and licensed professionals to implement behavior plans are imperative.

Initial costs for behavior analyst licensure and annual fees to maintain this license can total over \$1,000, which can be a significant expenditure for behavior analysts, many of whom are paid hourly with minimal benefits. Reducing the surcharge on the license and renewal fee will ease the financial burden of behavior analyst licensing, thereby encouraging the licensure of behavior analysts and increasing the number of licensed behavior analysts available to the public.

The purpose of this Act is to ensure that behavioral services continue to be available for clients who depend on them while facilitating the long-term development of an adequate professional and paraprofessional workforce by:

- (1) Reducing the surcharge for behavior analyst licensing from \$100 to \$50; and
- (2) Enabling the continued availability of necessary behavior intervention services for Medicaid waiver recipients.

SECTION 2. Section 465D-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Upon issuance of a new license and at each license renewal period, each behavior analyst shall pay, in addition to a license fee or renewal fee, a surcharge of [~~\$100,~~] \$50, which shall be maintained in a separate account within the compliance resolution fund established pursuant to section 26-9(o). At the end of each quarter, the moneys contained in the separate account established pursuant to this section shall be transferred to the compliance resolution fund until such time that the total transferred amounts equal the amount appropriated in section 5 of Act 199, Session Laws of Hawaii 2015. Thereafter, no surcharge shall be assessed, and any funds in excess of the amount appropriated in section 5 of Act 199, Session Laws of Hawaii 2015, shall be deposited into the compliance resolution fund.”

SECTION 3. 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 healthcare 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;
- (2) An individual who implements or designs applied behavior analysis services and possesses board certification as an assistant behavior analyst by the Behavior Analyst Certification Board and who practices in accordance with the most recent supervisory and ethical requirements adopted by the Behavior Analyst Certification Board under the direction of a behavior analyst licensed in this State;
- (3) An individual who directly implements applied behavior analysis services [~~is~~] and:
 - (A) Is credentialed as a registered behavior technician by the Behavior Analyst Certification Board, and is under the direction of a behavior analyst licensed in this State; or
 - (B) Is a direct support worker who provides medicaid home and community-based services pursuant to section 1915(c) of the Social Security Act on or before January 1, 2019;

For purposes of this paragraph, “direct support worker” means a paraprofessional who directly implements intervention or assess-

ment plans under supervision and does not design intervention or assessment plans;

- (4) A family member implementing an applied behavior analysis plan within the home who acts under the direction of a behavior analyst licensed in this State;
- (5) An individual who engages in the practice of behavior analysis with nonhuman or nonpatient clients or consumers including but not limited to applied animal behaviorists and practitioners of organizational behavior management;
- (6) A matriculated graduate student or postdoctoral fellow whose activities are part of a defined behavior analysis program of study, practicum, or intensive practicum; provided that the student's or fellow's activities or practice is directly supervised by a behavior analyst licensed in this State or an instructor in a Behavior Analyst Certification Board-approved course sequence; or
- (7) An individual pursuing experience in behavior analysis consistent with the Behavior Analyst Certification Board's experience requirements; provided that the experience is supervised by a behavior analyst licensed in this State."

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

SECTION 5. This Act shall take effect upon its approval; provided that section 3 shall apply retroactive to January 1, 2016.

(Approved June 22, 2016.)