
A BILL FOR AN ACT

RELATING TO BEHAVIOR ANALYSIS.

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

1 SECTION 1. The legislature finds that the department of
2 health, developmental disabilities division operates the
3 medicaid intellectual and developmental disabilities home and
4 community based services waiver, also known as the HCBS I/DD
5 waiver, on behalf of the department of human services, Med-Quest
6 division. The HCBS I/DD waiver, which is provided under section
7 1915(c) of the Social Security Act and reviewed and approved by
8 the federal Centers for Medicare and Medicaid Services, has many
9 requirements to ensure the appropriate and efficient provision
10 of services and supports to people with intellectual and
11 developmental disabilities.

12 The legislature further finds that, for children who
13 qualify for a HCBS I/DD waiver who have an autism spectrum
14 disorder, the Centers for Medicare and Medicaid Services has
15 clarified that, per section 1905(a) of the Social Security Act,
16 services "recommended by a physician or other licensed
17 practitioner of the healing arts" for the treatment of autism



1 spectrum disorders must be provided through the child's medicaid
2 health plan through the early and periodic screening,
3 diagnostic, and treatment benefit, and cannot be provided as a
4 HCBS I/DD waiver service. This leaves a gap in coverage for
5 adults with autism spectrum disorders who would be best served
6 under the HCBS I/DD waiver. This gap could be filled by
7 professionals who are exempt from behavior analyst licensure
8 requirements and fall outside the scope of the section 1905(a)
9 requirement, which would allow certain individuals who implement
10 applied behavior analysis services or plans under the oversight
11 of others to provide appropriate treatment to adults with autism
12 spectrum disorders in accordance with the HCBS I/DD waiver.

13 The legislature additionally finds that the Centers for
14 Medicare and Medicaid Services requires the states to provide
15 participant safeguards that ensure the health, safety, and
16 rights of HCBS I/DD waiver participants. The developmental
17 disabilities division has policies and procedures to ensure
18 positive behavior supports are used to proactively minimize
19 challenging behaviors and to limit the use of restrictive
20 procedures. The developmental disabilities division also
21 conducts oversight and continuous quality assurance to ensure



1 safe and appropriate practices including a behavioral review
2 committee to review quality of care for individuals who need
3 supports to learn new behaviors.

4 The legislature also finds that there is confusion in the
5 community as to the scope of the behavior analyst profession.
6 Different professionals use different titles and different
7 terminology to refer to themselves and what they do. The
8 legislature further finds that this confusion may be increased
9 based on the proposed expansion of waivers for licensing.

10 Therefore, the purpose of this Act is to:

- 11 (1) Allow adults with autism spectrum disorders to receive
12 appropriate applied behavior analysis treatment, while
13 simultaneously providing safeguards for consumer
14 protection;
- 15 (2) Exempt from the licensure requirement for behavior
16 analysts certain individuals who implement applied
17 behavior analysis services or plans to adult
18 participants in the HCBS I/DD waiver program on or
19 before January 1, 2024, or under the direction of a
20 licensed behavior analyst or Hawaii-licensed
21 psychologist; and



1 (3) Update and standardize the terminology used to refer
2 to behavior analysts.

3 SECTION 2. Section 465D-7, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§465D-7 Exemptions. (a) This chapter is not intended to
6 restrict the practice of other licensed or credentialed
7 practitioners practicing within their own recognized scopes of
8 practice and shall not apply to:

9 (1) An individual working within the scope of practice or
10 duties of another licensed profession that overlaps
11 with the practice of applied behavior analysis
12 [~~provided that the person does not purport to be a~~
13 ~~behavior analyst;~~], including individuals such as
14 unlicensed master's level practitioners, students, and
15 postdoctoral fellows, directly supervised by a
16 licensed professional, who may train and supervise a
17 paraprofessional, direct support worker, or parent or
18 guardian in implementing an applied behavior analysis
19 intervention; provided that the supervision is within
20 that licensed professional's scope of practice;
21 provided further that the licensed professional and



1 the supervised individual shall not use the title of
2 "licensed behavior analyst";

3 (2) An individual who implements or designs applied
4 behavior analysis services and possesses board
5 certification as an assistant behavior analyst by the
6 Behavior Analyst Certification Board and who practices
7 in accordance with the most recent supervisory and
8 ethical requirements adopted by the Behavior Analyst
9 Certification Board under the direction of a licensed
10 behavior analyst [~~licensed in this State~~];

11 (3) An individual who designs or implements applied
12 behavior analysis services to participants in the
13 medicaid home and community-based services waiver
14 program pursuant to section 1915(c) of the Social
15 Security Act on or before January 1, 2024;

16 [~~(3)~~] (4) An individual who directly implements applied
17 behavior analysis services and:

18 (A) Is credentialed as a registered behavior
19 technician by the Behavior Analyst Certification
20 Board, and is under the direction of a licensed
21 behavior analyst [~~licensed in this State~~]; or



1 (B) Is a direct support worker who provides autism
2 treatment services pursuant to an individualized
3 education plan on or before January 1, 2019;

4 [~~for~~

5 ~~[(C)] Is a direct support worker who provides medicaid~~
6 ~~home and community based services pursuant to~~
7 ~~section 1915(c) of the Social Security Act on or~~
8 ~~before January 1, 2019;]~~

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

14 [~~(4)~~] (5) A family member [~~or~~], legal guardian, or
15 caregiver implementing an applied behavior analysis
16 plan and who acts under the direction of a licensed
17 behavior analyst [~~licensed in this State;~~] or Hawaii-
18 licensed psychologist; provided that for the purposes
19 of this paragraph, "caregiver" means an individual who
20 provides habilitative services in an adult foster
21 home, developmental disabilities domiciliary home,



1 adult residential care home, expanded adult
2 residential care home, special treatment facility, or
3 therapeutic living program, pursuant to the medicaid
4 home and community-based services waiver program
5 authorized by section 1915(c) of the Social Security
6 Act;

7 [~~(5)~~] (6) An individual who engages in the practice of
8 applied behavior analysis with nonhuman or nonpatient
9 clients or consumers including but not limited to
10 applied animal behaviorists and practitioners of
11 organizational behavior management;

12 [~~(6)~~] (7) A matriculated graduate student or postdoctoral
13 fellow whose activities are part of a defined applied
14 behavior analysis program of study, practicum, or
15 intensive practicum; provided that the student's or
16 fellow's activities or practice is directly supervised
17 by a licensed behavior analyst [~~licensed in this~~
18 ~~State~~] or an instructor in a Behavior Analyst
19 Certification Board-approved course sequence; or

20 [~~(7)~~] (8) An individual pursuing experience in applied
21 behavior analysis consistent with the Behavior Analyst



1 Certification Board's experience requirements;
2 provided that the experience is supervised by a
3 licensed behavior analyst [~~licensed in this State~~].

4 (b) Nothing in this chapter shall be construed to prevent
5 any licensed psychologist from engaging in the practice of
6 applied behavior analysis in this State as long as the [person]
7 licensed psychologist is not in any manner held out to the
8 public as a "licensed behavior analyst" or "behavior analyst"
9 and the behavior analysis services provided by the licensed
10 psychologist are within the licensed psychologist's recognized
11 scope of practice."

12 SECTION 3. Sections 465D-2, 465D-4, 465D-5, and 465D-11,
13 Hawaii Revised Statutes, are amended by substituting the phrase
14 "practice of applied behavior analysis" wherever the phrase
15 "practice of behavior analysis" appears, as the context
16 requires.

17 SECTION 4. Section 465D-11, Hawaii Revised Statutes, is
18 amended by substituting the phrase "applied behavior analysis"
19 wherever the phrase "behavior analysis" appears, as the context
20 requires.



1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect on July 1, 3000.



Report Title:

Applied Behavior Analysis; Developmental Disabilities

Description:

Allows adults with autism spectrum disorders to receive appropriate applied behavior analysis treatment, while simultaneously providing safeguards for consumer protection. Exempts from licensure requirements for behavior analysis certain individuals who implement applied behavior analysis services or plans under the oversight or direction of others. Updates and standardizes the terminology used to refer to behavior analysts. (SB2496 HD1)

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