

STAND. COM. REP. NO.

622

Honolulu, Hawaii

MAR 02 2017

RE: S.B. No. 739
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawaii

Sir:

Your Committee on Commerce, Consumer Protection, and Health,
to which was referred S.B. No. 739 entitled:

"A BILL FOR AN ACT RELATING TO BEHAVIOR ANALYSIS SERVICES,"

begs leave to report as follows:

The purpose and intent of this measure is to expand treatment capacity of behavior analysis services by allowing individuals with certain certifications and under supervision to implement behavior analysis services.

Your Committee received testimony in support of this measure from the State Council on Developmental Disabilities; Behavioral Intervention Certification Council; Hawai'i Psychological Association; Hawaii Association of Marriage and Family Therapists; Center for Autism and Related Disorders; Autism Behavior Services, Inc.; and sixty individuals. Your Committee received testimony in opposition to this measure from the Association of Professional Behavior Analysts, Hawai'i Association for Behavior Analysis, Hawaii Disability Rights Center, Autism Society of Hawaii, Hawaii State Teachers Association, and over one hundred eighty individuals. Your Committee received comments on this measure from the Department of Health, Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs, Hawaii Medical Service Association, Qualified Applied Behavior Analysis Credentialing Board, Lovaas Institute, and one individual.



Your Committee finds that applied behavior analysis is a well-established framework for the treatment of autism spectrum disorder. Research has shown that intensive, early applied behavior analysis intervention before the age of six is critical for the future of children with autism. Your Committee further finds that section 465D-7, Hawaii Revised Statutes, expressly states that the existing law regulating behavior analysts is not intended to restrict the practice of other licensed or credentialed practitioners practicing within their own recognized scopes of practice. However, according to testimony received by your Committee, the law has been interpreted in a way that prohibits students and psychological assistants, who are under the supervision of a licensed psychologist, to provide behavioral interventions. Your Committee has also heard testimony that the certifying agency for behavior analysts in Hawaii requires psychologists to be board certified in behavioral and cognitive psychology by the American Board of Professional Psychology, a board certification that has not been widely adopted by psychologists, and tested in applied behavior analysis. In effect, this has restricted the ability of licensed psychologists to supervise individuals who implement applied behavior analysis services.

Your Committee additionally finds that limiting the ability of otherwise qualified professionals, acting within their scope of practice, to provide and supervise applied behavior analysis unnecessarily restricts access to these licensed professionals and the individuals working under their supervision. Your Committee notes that the scope of practice for psychologists under chapter 465, Hawaii Revised Statutes, expressly includes behavior analysis and therapy. The scope of practice for psychologists also recognizes the ability of psychologists to supervise others. Amendments to this measure are therefore necessary to clarify that psychologists' scope of practice includes the supervision of behavioral interventions.

Your Committee also finds that existing law exempts a family member or legal guardian from the licensing requirements when these individuals are implementing an applied behavior analysis plan under the direction of a licensed behavior analyst. However, this exemption does not expressly exempt caregivers, who may have individuals living in their homes, from the licensing or



certification requirement. Your Committee has also heard testimony expressing concern that existing law includes teachers in the definition of "direct support worker", and although some teachers are certified to perform behavioral analysis, the majority are not certified or licensed to do so. Finally, your Committee notes that the definition of "practice of behavior analysis" under chapter 465D, Hawaii Revised Statutes, is broadly defined, which has implications for even simple behavioral interventions that are routinely implemented for individuals with intellectual and developmental disabilities. Amendments to address these concerns are therefore needed.

Accordingly, your Committee has amended this measure by:

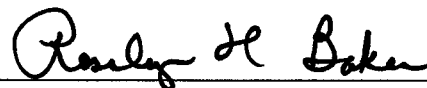
- (1) Amending the definition of "practice of behavior analysis" to exclude certain behavioral techniques used solely as treatment modalities;
- (2) Clarifying the exemptions from the licensure requirements for the practice of behavior analysis, including:
 - (A) Exempting individuals supervised by a licensed professional working within that licensed professional's recognized scope of practice, when that scope of practice overlaps with the practice of behavior analysis, so long as the individual and licensed professional do not use the title "licensed behavior analyst" or "behavior analyst";
 - (B) Removing references to individuals who directly implement applied behavior analysis services and who are credentialed by the Behavioral Intervention Certification Council or Qualified Applied Behavior Analysis credentialing board;
 - (C) Requiring licensed or credentialed professionals to attest to and maintain responsibility for the training and qualifications of an individual who is providing supervised applied behavior analysis services;



- (D) Removing a reference to a direct support worker being a teacher or paraprofessional who directly implements intervention or assessment plans under supervision; and
 - (E) Exempting from licensure a caregiver who implements an applied behavior analysis plan and acts under the direction of a licensed behavior analyst or licensed professional authorized to practice behavior analysis;
- (3) Inserting an effective date of July 1, 2050, to encourage further discussion;
 - (4) Inserting a purpose section; and
 - (5) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 739, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 739, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Commerce, Consumer
Protection, and Health,



ROSALYN H. BAKER, Chair



