
A BILL FOR AN ACT

RELATING TO THE PRACTICE OF BEHAVIOR ANALYSIS.

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

1 **PART I**

2 SECTION 1. The legislature finds that behavior analysis
3 means the design, implementation, and evaluation of
4 instructional and environmental modifications to produce
5 socially significant improvements in human behavior. The
6 practice of behavior analysis includes the empirical
7 identification of functional relations between behavior and
8 environmental factors, known as functional assessment and
9 analysis, as well as the use of contextual factors, motivating
10 operations, antecedent stimuli, positive reinforcement, and
11 other consequences to help individuals develop new behaviors,
12 increase or decrease existing behaviors, and display behaviors
13 under specific environmental conditions.

14 Act 199, Session Laws of Hawaii 2015, established the
15 behavior analyst program within the department of commerce and
16 consumer affairs and established licensing requirements for
17 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 part is to clarify the
13 provision of behavioral analysis services to students in public
14 schools.

15 SECTION 2. Section 465D-7, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) This chapter is not intended to restrict the practice
18 of other licensed or credentialed practitioners practicing
19 within their own recognized scopes of practice and shall not
20 apply to:



- 1 (1) An individual working within the scope of practice or
2 duties of another licensed profession that overlaps
3 with the practice of behavior analysis [~~provided that~~
4 ~~the person does not purport to be a behavior~~
5 ~~analyst,~~], including individuals directly supervised
6 by a licensed professional, such as unlicensed
7 master's level practitioners, students, and
8 postdoctoral fellows, who may train and supervise a
9 paraprofessional, direct support worker, or parent or
10 guardian in implementing an applied behavioral
11 analysis intervention; provided that the supervision
12 falls within that licensed professional's scope of
13 practice; provided further that the licensed
14 professional and the supervised individual shall not
15 use the title of "licensed behavior analyst";
- 16 (2) An individual who implements or designs applied
17 behavior analysis services and possesses board
18 certification as an assistant behavior analyst by the
19 Behavior Analyst Certification Board and who practices
20 in accordance with the most recent supervisory and
21 ethical requirements adopted by the Behavior Analyst



1 Certification Board under the direction of a behavior
2 analyst licensed in this State;

3 (3) An individual who directly implements applied behavior
4 analysis services and:

5 (A) Is credentialed as a registered behavior
6 technician by the Behavior Analyst Certification
7 Board, and is under the direction of a behavior
8 analyst licensed in this State;

9 (B) Is a direct support worker in a school setting
10 who ~~[provides autism treatment services pursuant~~
11 ~~to an individualized education plan]~~ directly
12 implements a behavior analysis program under the
13 supervision of a professional licensed in this
14 State to practice behavior analysis and does not
15 design intervention or assessment plans on or
16 before January 1, 2019; [+]or[+]

17 [+](C) [+] Is a direct support worker who provides medicaid
18 home and community-based services pursuant to
19 section 1915(c) of the Social Security Act on or
20 before January 1, 2019;



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

6 (4) A family member or legal guardian implementing an
7 applied behavior analysis plan and who acts under the
8 direction of a behavior analyst licensed in this
9 State;

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

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



1 instructor in a Behavior Analyst Certification Board-
2 approved course sequence; or

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

8 **PART II**

9 SECTION 3. The legislature finds that the department of
10 health, developmental disabilities division operates the
11 medicaid intellectual and developmental disabilities home and
12 community based services waiver, also known as the HCBS I/DD
13 waiver, on behalf of the department of human services, Med-Quest
14 division. The HCBS I/DD waiver, which is provided under section
15 1915(c) of the Social Security Act and reviewed and approved by
16 the federal Centers for Medicare and Medicaid Services, has many
17 requirements to ensure the appropriate and efficient provision
18 of services and supports to people with intellectual and
19 developmental disabilities.

20 The legislature further finds that, for children who
21 qualify for a HCBS I/DD waiver who have an autism spectrum



1 disorder, the Centers for Medicare and Medicaid Services has
2 clarified that, per section 1905(a) of the Social Security Act,
3 services "recommended by a physician or other licensed
4 practitioner of the healing arts" for the treatment of autism
5 spectrum disorders must be provided through the child's medicaid
6 health plan through the early and periodic screening,
7 diagnostic, and treatment benefit, and cannot be provided as a
8 HCBS I/DD waiver service. This leaves a gap in coverage for
9 adults with autism spectrum disorders who would be best served
10 under the HCBS I/DD waiver. This gap could be filled by
11 professionals who are exempt from behavior analyst licensure
12 requirements and fall outside the scope of the section 1905(a)
13 requirement, which would allow certain individuals who implement
14 applied behavior analysis services or plans under the oversight
15 of others to provide appropriate treatment to adults with autism
16 spectrum disorders in accordance with the HCBS I/DD waiver.

17 The legislature additionally finds that the Centers for
18 Medicare and Medicaid Services requires the states to provide
19 participant safeguards that ensure the health, safety, and
20 rights of HCBS I/DD waiver participants. The developmental
21 disabilities division has policies and procedures to ensure



1 positive behavior supports are used to proactively minimize
2 challenging behaviors and to limit the use of restrictive
3 procedures. The developmental disabilities division also
4 conducts oversight and continuous quality assurance to ensure
5 safe and appropriate practices including a behavioral review
6 committee to review quality of care for individuals who need
7 supports to learn new behaviors.

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

14 Therefore, the purpose of this part is to:

- 15 (1) Allow adults with autism spectrum disorders to receive
16 appropriate applied behavior analysis treatment, while
17 simultaneously providing safeguards for consumer
18 protection;
- 19 (2) Exempt from the licensure requirement for behavior
20 analysts certain individuals who implement applied
21 behavior analysis services or plans to adult



1 participants in the HCBS I/DD waiver program on or
2 before January 1, 2024, or under the direction of a
3 licensed behavior analyst or Hawaii-licensed
4 psychologist; and

5 (3) Update and standardize the terminology used to refer
6 to behavior analysts.

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

9 "§465D-7 Exemptions. (a) This chapter is not intended to
10 restrict the practice of other licensed or credentialed
11 practitioners practicing within their own recognized scopes of
12 practice and shall not apply to:

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

18 (2) An individual who implements or designs applied
19 behavior analysis services and possesses board
20 certification as an assistant behavior analyst by the
21 Behavior Analyst Certification Board and who practices



1 in accordance with the most recent supervisory and
2 ethical requirements adopted by the Behavior Analyst
3 Certification Board under the direction of a licensed
4 behavior analyst [~~licensed in this State~~];

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

10 [~~(3)~~] (4) An individual who directly implements applied
11 behavior analysis services and:

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

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

19 [~~or~~]

20 [~~(C)~~] ~~Is a direct support worker who provides medicaid~~
21 ~~home and community based services pursuant to~~



1 ~~section 1915(c) of the Social Security Act on or~~
2 ~~before January 1, 2019;~~]

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

8 [~~(4)~~] (5) A family member [øæ], legal guardian, or
9 caregiver implementing an applied behavior analysis
10 plan and who acts under the direction of a licensed
11 behavior analyst [~~licensed in this State;~~] or Hawaii-
12 licensed psychologist; provided that for the purposes
13 of this paragraph, "caregiver" means an individual who
14 provides habilitative services in an adult foster
15 home, developmental disabilities domiciliary home,
16 adult residential care home, expanded adult
17 residential care home, special treatment facility, or
18 therapeutic living program, pursuant to the medicaid
19 home and community-based services waiver program
20 authorized by section 1915(c) of the Social Security
21 Act;



- 1 [~~5~~] (6) An individual who engages in the practice of
2 applied behavior analysis with nonhuman or nonpatient
3 clients or consumers including but not limited to
4 applied animal behaviorists and practitioners of
5 organizational behavior management;
- 6 [~~6~~] (7) A matriculated graduate student or postdoctoral
7 fellow whose activities are part of a defined applied
8 behavior analysis program of study, practicum, or
9 intensive practicum; provided that the student's or
10 fellow's activities or practice is directly supervised
11 by a licensed behavior analyst [~~licensed in this~~
12 ~~State~~] or an instructor in a Behavior Analyst
13 Certification Board-approved course sequence; or
- 14 [~~7~~] (8) An individual pursuing experience in applied
15 behavior analysis consistent with the Behavior Analyst
16 Certification Board's experience requirements;
17 provided that the experience is supervised by a
18 licensed behavior analyst [~~licensed in this State~~].
- 19 (b) Nothing in this chapter shall be construed to prevent
20 any licensed psychologist from engaging in the practice of
21 applied behavior analysis in this State as long as the [~~person~~]



1 licensed psychologist is not in any manner held out to the
2 public as a "licensed behavior analyst" or "behavior analyst"
3 and the behavior analysis services provided by the licensed
4 psychologist are within the licensed psychologist's recognized
5 scope of practice."

6 SECTION 5. Sections 465D-2, 465D-4, 465D-5, and 465D-11,
7 Hawaii Revised Statutes, are amended by substituting the phrase
8 "practice of applied behavior analysis" wherever the phrase
9 "practice of behavior analysis" appears, as the context
10 requires.

11 SECTION 6. Section 465D-11, Hawaii Revised Statutes, is
12 amended by substituting the phrase "applied behavior analysis"
13 wherever the phrase "behavior analysis" appears, as the context
14 requires.

15 **PART III**

16 SECTION 7. The legislature finds that behavior analysis
17 means the design, implementation, and evaluation of
18 instructional and environmental modifications to produce
19 socially significant improvements in human behavior. The
20 practice of behavior analysis includes the empirical
21 identification of functional relations between behavior and



1 environmental factors, known as functional assessment and
2 analysis, as well as the use of contextual factors, motivating
3 operations, antecedent stimuli, positive reinforcement, and
4 other consequences to help individuals develop new behaviors,
5 increase or decrease existing behaviors, and display behaviors
6 under specific environmental conditions.

7 Act 199, Session Laws of Hawaii 2015, established the
8 behavior analyst program within the department of commerce and
9 consumer affairs and established licensing requirements for
10 behavior analysts. Licensing of behavior analysis services was
11 made concurrent with mandated insurance coverage for diagnosis
12 and treatment related to autism disorders.

13 Act 107, Session Laws of Hawaii 2016, temporarily exempted
14 some practitioners from licensing requirements of the practice
15 of behavior analysis, in particular, direct support workers who
16 provide autism treatment services pursuant to an individualized
17 education plan.

18 Many students enrolled in department of education schools
19 would benefit from the expansion of behavior analysis services
20 throughout Hawaii's public school system, including but not
21 limited to students with autism disorders.



1 Accordingly, the purpose of this part is to:

- 2 (1) Clarify the licensing exemptions for certain
3 individuals under certain conditions who provide
4 behavior analysis services; and
- 5 (2) Require the department of education to create and
6 implement a plan to provide medicaid billable applied
7 behavior analysis services to all students diagnosed
8 with autism spectrum disorder within the department.

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

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

- 12 (1) Any person teaching, lecturing, consulting, or
13 engaging in research in psychology insofar as the
14 activities are performed as part of or are dependent
15 upon employment in a college or university; provided
16 that the person shall not engage in the practice of
17 psychology outside the responsibilities of the
18 person's employment;
- 19 (2) Any person who performs any, or any combination of the
20 professional services defined as the practice of
21 psychology under the direction of a licensed



1 psychologist in accordance with rules adopted by the
2 board; provided that the person may use the term
3 "psychological assistant", but shall not identify the
4 person's self as a psychologist or imply that the
5 person is licensed to practice psychology;

6 (3) Any person employed by a local, state, or federal
7 government agency in a school psychologist or
8 psychological examiner position, or a position that
9 does not involve diagnostic or treatment services, but
10 only at those times when that person is carrying out
11 the functions of such government employment;

12 (4) Any person who is a student of psychology, a
13 psychological intern, or a resident in psychology
14 preparing for the profession of psychology under
15 supervision in a training institution or facility and
16 who is designated by a title as "psychology trainee",
17 "psychology student", "psychology intern", or
18 "psychology resident", that indicates the person's
19 training status; provided that the person shall not
20 identify the person's self as a psychologist or imply
21 that the person is licensed to practice psychology;



- 1 (5) Any person who is a member of another profession
2 licensed under the laws of this jurisdiction to render
3 or advertise services, including psychotherapy, within
4 the scope of practice as defined in the statutes or
5 rules regulating the person's professional practice;
6 provided that, notwithstanding section 465-1, the
7 person does not represent the person's self to be a
8 psychologist or does not represent that the person is
9 licensed to practice psychology;
- 10 (6) Any person who is a member of a mental health
11 profession not requiring licensure; provided that the
12 person functions only within the person's professional
13 capacities; and provided further that the person does
14 not represent the person to be a psychologist, or the
15 person's services as psychological;
- 16 (7) Any person who is a duly recognized member of the
17 clergy; provided that the person functions only within
18 the person's capacities as a member of the clergy; and
19 provided further that the person does not represent
20 the person to be a psychologist, or the person's
21 services as psychological; [øæ]



- 1 (8) Any psychologist employed by the United States
2 Department of Defense, while engaged in the discharge
3 of the psychologist's official duty and providing
4 direct telehealth support or services, as defined in
5 section 431:10A-116.3, to neighbor island
6 beneficiaries within a Hawaii National Guard armory on
7 the island of Kauai, Hawaii, Molokai, or Maui;
8 provided that the psychologist employed by the United
9 States Department of Defense is credentialed by
10 Tripler Army Medical Center[-]; or
11 (9) Any direct support worker as defined in section
12 465D-7, who provides autism treatment services
13 pursuant to an individualized education plan and is
14 under the direction of a psychologist licensed in the
15 State."

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

18 "(a) This chapter is not intended to restrict the practice
19 of other licensed or credentialed practitioners practicing
20 within their own recognized scopes of practice and shall not
21 apply to:



- 1 (1) ~~[An individual working within the scope of practice or~~
2 ~~duties of another licensed profession that overlaps~~
3 ~~with the practice of behavior analysis; provided that~~
4 ~~the person does not purport to be a behavior analyst;]~~
5 An individual licensed in the State who practices
6 other professions and their supervisees; provided that
7 behavior analysis is in the scope of practice of the
8 profession's licensure law and the services provided
9 are within the boundaries of the licensed
10 professional's education, training, and competence;
11 provided further that the individual does not purport
12 to be a behavior analyst;
13 (2) An individual licensed in the State who practices
14 psychology and their supervisees; provided that
15 behavior analysis is in the scope of practice of the
16 psychology licensure law and the behavior analysis
17 services provided are within the boundaries of the
18 licensed psychologist's education, training, and
19 competence; provided further that the individual does
20 not purport to be a behavior analyst;



- 1 [~~2~~] (3) An individual who implements or designs [~~applied~~]
2 behavior analysis services and possesses board
3 certification as an assistant behavior analyst by the
4 Behavior Analyst Certification Board and who practices
5 in accordance with the most recent supervisory and
6 ethical requirements adopted by the Behavior Analyst
7 Certification Board under the direction of a behavior
8 analyst licensed in this State;
- 9 [~~3~~] (4) A licensed classroom teacher, or someone who is
10 working as a classroom teacher and is enrolled in a
11 teacher preparation program working toward licensure,
12 in a school setting who implements and does not design
13 behavior analysis services in direct collaboration
14 with a professional licensed to practice behavior
15 analysis in the State;
- 16 (5) An individual who directly implements [~~applied~~] and
17 does not design 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 behavior
21 analyst licensed in this State;



1 (B) Is a direct support worker in a school setting
2 who [~~provides autism treatment services pursuant~~
3 ~~to an individualized education plan~~] directly
4 implements a behavior analysis program under the
5 supervision of a professional licensed in this
6 State to practice behavior analysis intervention
7 or assessment plans on or before January 1, 2019;
8 [+]or[+]

9 [+](C)[+] ~~Is a direct support worker who provides medicaid~~
10 ~~home and community based services pursuant to~~
11 ~~section 1915(c) of the Social Security Act on or~~
12 ~~before January 1, 2019;]~~ Is an individual who
13 works within the scope of practice or duties of
14 and is directly supervised by a licensed
15 psychologist; provided that the supervised
16 individual shall not use the title of "licensed
17 behavior analyst";

18 provided that for purposes of this paragraph, "direct
19 support worker" means a [~~teacher or~~] paraprofessional
20 [~~who directly implements intervention or assessment~~



1 ~~plans under supervision and does not design~~
2 ~~intervention or assessment plans];~~

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

8 ~~[-4-]~~ (7) A family member [or], legal guardian, or
9 caregiver implementing [an applied] a behavior
10 analysis plan and who acts under the direction of a
11 licensed behavior analyst [licensed in this State];
12 provided that for the purposes of this paragraph,
13 "caregiver" means an individual who provides
14 rehabilitative services in an adult foster home,
15 developmental disabilities domiciliary home, adult
16 residential care home, expanded adult residential care
17 home, special treatment facility, or therapeutic
18 living program pursuant to the medicaid home and
19 community-based service waiver program;

20 ~~[-5-]~~ (8) An individual who engages in the practice of
21 behavior analysis with nonhuman or nonpatient clients



1 or consumers including but not limited to applied
2 animal behaviorists and practitioners of
3 organizational behavior management;

4 ~~[(6)]~~ (9) A matriculated graduate student or postdoctoral
5 fellow whose activities are part of a defined behavior
6 analysis program of study, practicum, or intensive
7 practicum; provided that the student's or fellow's
8 activities or practice is directly supervised by a
9 behavior analyst licensed in this State or an
10 instructor in a Behavior Analyst Certification ~~[Board-~~
11 ~~approved]~~ Board-verified course sequence; or

12 ~~[(7)]~~ (10) An individual pursuing experience in behavior
13 analysis consistent with the Behavior Analyst
14 Certification Board's experience requirements;
15 provided that the experience is supervised by a
16 behavior analyst licensed in this State."

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



1 (b) The department of education shall submit an initial
2 report to the legislature and board of education within ninety
3 days of the effective date of this Act; provided that the
4 initial report shall include clear objectives on staffing, data
5 collection and analysis, reporting and accountability, and any
6 other necessary points to effectuate the implementation plan
7 pursuant to subsection (a).

8 (c) After the submission of the initial report to the
9 legislature and board of education pursuant to subsection (b),
10 the department of education shall submit quarterly reports to
11 the legislature and board of education; provided that the
12 quarterly reports shall include the following:

- 13 (1) The number of students diagnosed with autism spectrum
14 disorder;
- 15 (2) The number of students with autism spectrum disorder
16 as part of their individualized education plan;
- 17 (3) The number of students requiring applied behavior
18 analysis;
- 19 (4) Staffing updates and needs;
- 20 (5) Medicaid reimbursement schedules and amounts;
- 21 (6) Licensure updates; and



1 (7) Any other information pertinent to the implementation
2 of this part.

3 **PART IV**

4 SECTION 11. The legislature finds that the State's
5 department of health developmental disabilities division
6 operates the medicaid intellectual and developmental
7 disabilities home and community-based services waiver under the
8 medicaid services section 1915(c) of the Social Security Act
9 (HCBS I/DD waiver). The HCBS I/DD waiver is reviewed and
10 approved by the United States Department of Health and Human
11 Services Centers for Medicare and Medicaid Services and has many
12 requirements to ensure appropriate and efficient provision of
13 services and supports to people with intellectual and
14 developmental disabilities.

15 For children in the HCBS I/DD waiver who have an autism
16 spectrum disorder, the Centers for Medicare and Medicaid
17 Services has clarified that services for the treatment of autism
18 spectrum disorder must be provided through the child's medicaid
19 health plan through medicaid's early and periodic screening,
20 diagnosis, and treatment benefit. Services cannot be provided
21 under waiver services pursuant to section 1915(c) of the Social



1 Security Act. Therefore, the developmental disabilities
2 division provides behavior analysis services only to adults with
3 behavioral challenges and only in home and community-based
4 settings.

5 The legislature further finds that the Centers for Medicare
6 and Medicaid Services requires states to provide participant
7 safeguards that ensure the health, safety, and rights of HCBS
8 I/DD waiver participants. The state developmental disabilities
9 division has policies and procedures to ensure that positive
10 behavior supports are used to proactively minimize challenging
11 behaviors, and define and limit the use of restrictive
12 procedures. The developmental disabilities division also
13 conducts oversight for continuous quality assurance to ensure
14 safe and appropriate practices that include a behavior review
15 committee to review quality of care for individuals who need
16 supports to learn new behaviors.

17 Amending the exemptions for participants in the medicaid
18 intellectual and developmental disabilities waiver will ensure
19 that a qualified workforce can continue to provide necessary
20 behavior interventions while simultaneously facilitating efforts



1 to build an adequate workforce for clients who depend on these
2 services.

3 The purpose of this part is to:

4 (1) Clarify and standardize the terminology used to refer
5 to behavior analysis and the practice of applied
6 behavior analysis; and

7 (2) Broaden the exemption of certain individuals and
8 licensed or credentialed practitioners practicing
9 within their own recognized scopes of practice who are
10 exempt from chapter 465D, Hawaii Revised Statutes, the
11 behavior analysts law.

12 SECTION 12. Section 465D-2, Hawaii Revised Statutes, is
13 amended by amending the definitions of "licensed behavior
14 analyst" and "practice of behavior analysis" to read as follows:

15 "Licensed behavior analyst" means a person:

16 (1) Who engages in the practice of applied behavior
17 analysis and uses the title of licensed behavior
18 analyst;

19 (2) Who has been issued a license under this chapter; and

20 (3) Whose license is in effect and not revoked, suspended,
21 or encumbered.



1 "Practice of applied behavior analysis" means the design,
2 implementation, and evaluation of instructional and
3 environmental modifications to produce socially significant
4 improvements in human behavior. Practice of applied behavior
5 analysis includes the empirical identification of functional
6 relations between behavior and environmental factors, known as
7 functional assessment and analysis. Practice of applied
8 behavior analysis also includes the use of contextual factors,
9 motivating operations, antecedent stimuli, positive
10 reinforcement, and other consequences to help people develop new
11 behaviors, increase or decrease existing behaviors, and emit
12 behaviors under specific environmental conditions. Practice of
13 applied behavior analysis expressly excludes psychological
14 testing, diagnosis of a mental or physical disorder,
15 neuropsychology, psychotherapy, cognitive therapy, sex therapy,
16 psychoanalysis, hypnotherapy, and long-term counseling as
17 treatment modalities."

18 SECTION 13. Section 465D-4, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) Beginning on January 1, 2016, except as specifically
21 provided in this chapter, no person shall engage in the practice



1 of applied behavior analysis or use the title "licensed behavior
2 analyst" or "behavior analyst" without a valid license issued
3 pursuant to this chapter."

4 SECTION 14. Section 465D-5, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "[+]§465D-5[+] **Powers and duties of the director.** In
7 addition to any other powers and duties authorized by law, the
8 director shall have the powers and duties to:

- 9 (1) Grant, deny, renew, refuse to renew, restore,
10 terminate, reinstate, condition, restrict, suspend, or
11 revoke a license issued pursuant to this chapter;
- 12 (2) Grant permission to a person to engage in the practice
13 of applied behavior analysis and to use the title of
14 "licensed behavior analyst" or a description
15 indicating that the person is a licensed behavior
16 analyst in this State;
- 17 (3) Adopt, amend, or repeal rules pursuant to chapter 91
18 as the director finds necessary to carry out this
19 chapter;
- 20 (4) Administer, coordinate, and enforce this chapter;



1 (5) Discipline a licensed behavior analyst on grounds
2 specified by this chapter or chapter 436B or for any
3 violation of rules adopted by the director pursuant to
4 this chapter; and

5 (6) Refuse to license a person for failure to meet the
6 licensing requirements in this chapter or for any
7 reason specified by this chapter as grounds to
8 discipline a behavior analyst including but not
9 limited to violations of the Behavior Analyst
10 Certification Board's ethical guidelines for
11 responsible conduct."

12 SECTION 15. Section 465D-7, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§465D-7 Exemptions.** (a) This chapter is not intended to
15 restrict the practice of other licensed or credentialed
16 practitioners practicing within their own recognized scopes of
17 practice and shall not apply to:

18 (1) An individual working within the scope of practice or
19 duties of another licensed profession that overlaps
20 with the practice of applied behavior analysis[+
21 ~~provided that the person does not purport to be a~~



1 ~~behavior analyst,]~~ including individuals directly
2 supervised by a licensed professional, such as
3 unlicensed master's level practitioners, students, and
4 postdoctoral fellows, who may train and supervise a
5 paraprofessional, direct support worker, or parent or
6 guardian in implementing an applied behavior analysis
7 intervention; provided that the supervision is within
8 that licensed professional's recognized scope of
9 practice; and provided further that the licensed
10 professional and the supervised individual shall not
11 use the title "licensed behavior analyst";

- 12 (2) An individual who implements or designs applied
13 behavior analysis services and possesses board
14 certification as an assistant behavior analyst from a
15 national certifying agency or by the Behavior Analyst
16 Certification Board and who practices in accordance
17 with the most recent supervisory and ethical
18 requirements adopted by the [~~Behavior Analyst~~
19 ~~Certification Board~~] national certifying agency under
20 the direction of a licensed behavior analyst [~~licensed~~
21 ~~in this State;~~] or licensed psychologist;



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

6 [~~(3)~~] (4) An individual who directly implements applied
 7 behavior analysis services and:

8 (A) Is credentialed as a [~~registered~~] behavior
 9 technician by a nationally recognized training
 10 organization or the Behavior Analyst
 11 Certification Board, and is under the direction
 12 of a licensed behavior analyst [~~licensed in this~~
 13 State;] or licensed psychologist; or

14 (B) Is a direct support worker who provides autism
 15 treatment services pursuant to an individualized
 16 education plan on or before January 1, 2019;
 17 [~~for~~]

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



1 provided that for purposes of this paragraph, "direct
2 support worker" means a teacher or paraprofessional
3 who directly implements intervention or assessment
4 plans under supervision and does not design
5 intervention or assessment plans;

6 ~~[(4)]~~ (5) A family member ~~[or]~~, legal guardian, or
7 caregiver implementing an applied behavior analysis
8 plan and who acts under the direction of a licensed
9 behavior analyst ~~[licensed in this State,]~~ or licensed
10 psychologist; provided that for the purposes of this
11 paragraph, "caregiver" means an individual who
12 provides habilitative services in an adult foster
13 home, developmental disabilities domiciliary home,
14 adult residential care home, expanded adult
15 residential care home, special treatment facility, or
16 therapeutic living program pursuant to the medicaid
17 home and community-based services waiver;

18 ~~[(5)]~~ (6) An individual who engages in the practice of
19 applied behavior analysis with nonhuman or nonpatient
20 clients or consumers including but not limited to



1 applied animal behaviorists and practitioners of
2 organizational behavior management;

3 ~~[(6)]~~ (7) A matriculated graduate student or postdoctoral
4 fellow whose activities are part of a defined applied
5 behavior analysis program of study, practicum, or
6 intensive practicum; provided that the student's or
7 fellow's activities or practice is directly supervised
8 by a licensed behavior analyst [~~licensed in this~~
9 ~~State~~] or licensed psychologist or an instructor from
10 a nationally recognized training organization or in a
11 Behavior Analyst Certification Board-approved course
12 sequence; or

13 ~~[(7)]~~ (8) An individual pursuing experience in applied
14 behavior analysis consistent with the Behavior Analyst
15 Certification Board's experience requirements;
16 provided that the experience is supervised by a
17 behavior analyst licensed in this State.

18 (b) Nothing in this chapter shall be construed to prevent
19 any licensed psychologist from engaging in the practice of
20 applied behavior analysis in this State as long as the person is
21 not in any manner held out to the public as a "licensed behavior



1 analyst" [~~or "behavior analyst"~~] and the applied behavior
2 analysis services provided by the licensed psychologist are
3 within the licensed psychologist's recognized scope of
4 practice."

5 SECTION 16. Section 465D-11, Hawaii Revised Statutes, is
6 amended by amending subsection (a) to read as follows:

7 "(a) In addition to any other acts or conditions provided
8 by law, the director may refuse to renew, reinstate, or restore
9 and may deny, revoke, suspend, or condition in any manner any
10 license for any one or more of the following acts or conditions
11 on the part of a licensee or license applicant:

- 12 (1) Failure to meet or to maintain the conditions and
13 requirements necessary to qualify for the granting of
14 a license;
- 15 (2) Engaging in false, fraudulent, or deceptive
16 advertising, or making untruthful or improbable
17 statements in advertising;
- 18 (3) Engaging in the practice of applied behavior analysis
19 while impaired by alcohol, drugs, physical disability,
20 or mental instability;



- 1 (4) Procuring through fraud, misrepresentation, or deceit
2 a license to engage in the practice of applied
3 behavior analysis;
- 4 (5) Aiding and abetting an unlicensed person to directly
5 or indirectly perform activities requiring a license
6 for the practice of applied behavior analysis;
- 7 (6) Engaging in professional misconduct, incompetence,
8 gross negligence, or manifest incapacity in the
9 practice of applied behavior analysis;
- 10 (7) Engaging in conduct or a practice contrary to
11 recognized standards of the most recent ethical
12 guidelines for the practice of applied behavior
13 analysis as adopted by the Behavior Analyst
14 Certification Board;
- 15 (8) Violating any condition or limitation imposed by the
16 director on a license to practice applied behavior
17 analysis;
- 18 (9) Engaging in the practice of applied behavior analysis
19 in a manner that causes injury to one or more members
20 of the public;



- 1 (10) Failing to comply with, observe, or adhere to any law
2 in a manner that causes the director to determine that
3 the applicant or holder is unfit to hold a license;
- 4 (11) Having a license revoked or suspended or other
5 disciplinary action by any state or federal agency for
6 any reason that is provided by the applicable
7 licensing laws or by this section;
- 8 (12) Having been convicted or pleaded nolo contendere to a
9 crime directly related to the qualifications,
10 functions, or duties of the practice of applied
11 behavior analysis;
- 12 (13) Failing to report in writing to the director any
13 disciplinary decision issued against the licensee or
14 applicant in another jurisdiction within thirty days
15 of the disciplinary decision;
- 16 (14) Failing to report in writing to the director the
17 Behavior Analyst Certification Board's revocation of
18 the certification of a licensee or applicant within
19 fifteen days of the revocation;
- 20 (15) Employing, whether gratuitously or for pay, any person
21 not licensed pursuant to this chapter to perform the



1 functions or duties of the practice of applied
2 behavior analysis; or
3 (16) Violating this chapter, chapter 436B, or any rule or
4 order of the director."

5 **PART V**

6 SECTION 17. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 18. This Act shall take effect on July 1, 3000.



Report Title:

Practice of Behavior Analysis; School Setting; Applied Behavior Analysis; Developmental Disabilities; Department of Education; Applied Behavior Analysis; Implementation Plan; Reporting; Autism Spectrum Disorder; Scope of Practice; Medicaid

Description:

Part I: Clarifies the provision of behavioral analysis services to students in public schools. Part II: Allows adults with autism spectrum disorders to receive appropriate applied behavior analysis treatment, while simultaneously providing safeguards for consumer protection. Exempts from the licensure requirement for behavior analysts certain individuals who implement applied behavior analysis services or plans to adult participants in the HCBS I/DD waiver program on or before January 1, 2024, or under the direction of a licensed behavior analyst or Hawaii-licensed psychologist. Updates and standardizes the terminology used to refer to behavior analysts. Part III: 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. Part IV: Clarifies and standardizes the terminology used to refer to behavior analysis and the practice of applied behavior analysis. Broadens and clarifies the exemption of licensed or credentialed practitioners practicing within their own recognized scopes of practice who are already exempt from the Behavior Analyst Law. Effective 7/1/3000.
(SD1)

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