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

12 For children in the HCBS I/DD waiver who have an autism
13 spectrum disorder, the Centers for Medicare and Medicaid
14 Services has clarified that services for the treatment of autism
15 spectrum disorder must be provided through the child's medicaid
16 health plan through the medicaid early and periodic screening,
17 diagnosis, and treatment benefit. Services cannot be provided



1 under waiver services pursuant to section 1915(c) of the Social
2 Security Act. Therefore, the developmental disabilities
3 division provides behavior analysis services only to adults with
4 behavioral challenges and only in home and community based
5 settings.

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

18 Amending the exemptions for participants in the medicaid
19 intellectual and developmental disabilities waiver will ensure
20 that a qualified workforce can continue to provide necessary
21 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 Act is to:

- 4 (1) Clarify the scope of practice of behavior analysis to
- 5 mean the practice of applied behavior analysis; and
- 6 (2) Broaden the exemption of licensed or credentialed
- 7 practitioners practicing within their own recognized
- 8 scopes of practice who are exempt from chapter 465D,
- 9 Hawaii Revised Statutes, behavior analysts law.

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

13 "Licensed behavior analyst" means a person:

- 14 (1) Who engages in the practice of applied behavior
- 15 analysis and uses the title of licensed behavior
- 16 analyst;
- 17 (2) Who has been issued a license under this chapter; and
- 18 (3) Whose license is in effect and not revoked, suspended,
- 19 or encumbered.

20 "Practice of applied behavior analysis" means the design,
21 implementation, and evaluation of instructional and



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

15 SECTION 3. Section 465D-4, Hawaii Revised Statutes, is
 16 amended by amending subsection (a) to read as follows:

17 "(a) Beginning on January 1, 2016, except as specifically
 18 provided in this chapter, no person shall engage in the practice
 19 of applied behavior analysis or use the title "licensed behavior
 20 analyst" or "behavior analyst" without a valid license issued
 21 pursuant to this chapter."



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

3 "§465D-7 Exemptions. (a) This chapter is not intended to
4 restrict the practice of other licensed or credentialed
5 practitioners practicing within their own recognized scopes of
6 practice and shall not apply to:

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



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

14 [~~3~~] (4) An individual who directly implements applied
 15 behavior analysis services and:
 16 (A) Is credentialed as a registered behavior
 17 technician by the Behavior Analyst Certification
 18 Board, and is under the direction of a behavior
 19 analyst licensed in this State; or
 20 (B) Is a direct support worker who provides autism
 21 treatment services pursuant to an individualized



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

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

12 ~~[(4)]~~ (5) A family member [or], legal guardian, or
 13 caregiver implementing an applied behavior analysis
 14 plan and who acts under the direction of a licensed
 15 behavior analyst [licensed in this State;] or licensed
 16 psychologist; provided that for the purposes of this
 17 paragraph, "caregiver" means an individual who
 18 provides rehabilitative services in an adult foster
 19 home, developmental disabilities domiciliary home,
 20 adult residential care home, expanded adult
 21 residential care home, special treatment facility, or



1 therapeutic living program pursuant to the medicaid
2 home and community-based service waiver;
3 ~~[(5)]~~ (6) An individual who engages in the practice of
4 applied behavior analysis with nonhuman or nonpatient
5 clients or consumers including but not limited to
6 applied animal behaviorists and practitioners of
7 organizational behavior management;
8 ~~[(6)]~~ (7) A matriculated graduate student or postdoctoral
9 fellow whose activities are part of a defined applied
10 behavior analysis program of study, practicum, or
11 intensive practicum; provided that the student's or
12 fellow's activities or practice is directly supervised
13 by a behavior analyst licensed in this State or an
14 instructor in a Behavior Analyst Certification Board-
15 approved course sequence; or
16 ~~[(7)]~~ (8) An individual pursuing experience in applied
17 behavior analysis consistent with the Behavior Analyst
18 Certification Board's experience requirements;
19 provided that the experience is supervised by a
20 behavior analyst licensed in this State.



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

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

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

15 (1) Failure to meet or to maintain the conditions and
16 requirements necessary to qualify for the granting of
17 a license;

18 (2) Engaging in false, fraudulent, or deceptive
19 advertising, or making untruthful or improbable
20 statements in advertising;



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



- 1 (9) Engaging in the practice of applied behavior analysis
2 in a manner that causes injury to one or more members
3 of the public;
- 4 (10) Failing to comply with, observe, or adhere to any law
5 in a manner that causes the director to determine that
6 the applicant or holder is unfit to hold a license;
- 7 (11) Having a license revoked or suspended or other
8 disciplinary action by any state or federal agency for
9 any reason that is provided by the applicable
10 licensing laws or by this section;
- 11 (12) Having been convicted or pleaded nolo contendere to a
12 crime directly related to the qualifications,
13 functions, or duties of the practice of applied
14 behavior analysis;
- 15 (13) Failing to report in writing to the director any
16 disciplinary decision issued against the licensee or
17 applicant in another jurisdiction within thirty days
18 of the disciplinary decision;
- 19 (14) Failing to report in writing to the director the
20 Behavior Analyst Certification Board's revocation of



- 1 the certification of a licensee or applicant within
- 2 fifteen days of the revocation;
- 3 (15) Employing, whether gratuitously or for pay, any person
- 4 not licensed pursuant to this chapter to perform the
- 5 functions or duties of the practice of applied
- 6 behavior analysis; or
- 7 (16) Violating this chapter, chapter 436B, or any rule or
- 8 order of the director."

9 SECTION 6. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 7. This Act shall take effect on July 1, 3000.



Report Title:

Medicaid; Developmental Disabilities; Waiver; Applied Behavior Analysis; Autism Spectrum Disorder

Description:

Clarifies the scope of practice of behavior analysis to mean 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. (HB2657 HD1)

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