



EXECUTIVE CHAMBERS  
HONOLULU

DAVID Y. IGE  
GOVERNOR

July 10, 2018

**GOV. MSG. NO. 1314**

The Honorable Ronald D. Kouchi,  
President  
and Members of the Senate  
Twenty-Ninth State Legislature  
State Capitol, Room 409  
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,  
Speaker and Members of the  
House of Representatives  
Twenty-Ninth State Legislature  
State Capitol, Room 431  
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 10, 2018, the following bill was signed into law:

HB2271 HD2 SD1 CD1

RELATING TO THE PRACTICE OF BEHAVIOR  
ANALYSIS  
**ACT 205 (18)**

Sincerely,

DAVID Y. IGE  
Governor, State of Hawai'i

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# A BILL FOR AN ACT

RELATING TO THE PRACTICE OF 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 many  
9 requirements to ensure appropriate and efficient provision of  
10 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 medicaid's early and periodic screening,  
17 diagnosis, and treatment benefit. Services cannot be provided  
18 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 legislature also finds that teachers are critical to  
4 ensuring student success. To that end, teachers are encouraged  
5 to continue to employ general classroom management techniques in  
6 classroom management plans, modifications of content, process,  
7 and product. However, a licensed behavior analyst or a licensed  
8 psychologist is required to conduct functional behavior  
9 assessments and to design and oversee applied behavior analysis  
10 services when what the classroom teacher is doing is not  
11 resulting in increased learning or improved behavior and the  
12 student's behavior impedes their learning or the learning of  
13 others. Teachers are not permitted to independently conduct  
14 functional behavior assessments, or to design, develop, or  
15 independently oversee applied behavior analysis services.

16 The use of functional behavior assessment is appropriate  
17 when the student's behavior impedes learning processes and the  
18 school team is considering the use of a behavior plan or other  
19 positive behavior supports. A functional behavior assessment is  
20 a results-oriented process that explicitly identifies  
21 challenging behaviors and how the behaviors may change across



1 time. At minimum, a functional behavior assessment must result  
2 in a summary statement that offers an operational definition of  
3 the problem behavior, describe the antecedents and maintaining  
4 consequences related to the problem likely to occur.

5 The purpose of this Act is to:

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

9 (2) Broaden the exemption of certain individuals and  
10 licensed or credentialed practitioners practicing  
11 within their own recognized scopes of practice from  
12 chapter 465D, Hawaii Revised Statutes, the behavior  
13 analysts law; and

14 (3) Require the department of education to create an  
15 implementation plan to seek reimbursement of any  
16 medicaid billable applied behavior analysis the  
17 department of education may provide to students  
18 diagnosed with autism spectrum disorder.

19 SECTION 2. Section 465-3, Hawaii Revised Statutes, is  
20 amended by amending subsection (a) to read as follows:

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



- 1 (1) Any person teaching, lecturing, consulting, or  
2 engaging in research in psychology insofar as the  
3 activities are performed as part of or are dependent  
4 upon employment in a college or university; provided  
5 that the person shall not engage in the practice of  
6 psychology outside the responsibilities of the  
7 person's employment;
- 8 (2) Any person who performs any, or any combination of the  
9 professional services defined as the practice of  
10 psychology under the direction of a licensed  
11 psychologist in accordance with rules adopted by the  
12 board; provided that the person may use the term  
13 "psychological assistant", but shall not identify the  
14 person's self as a psychologist or imply that the  
15 person is licensed to practice psychology;
- 16 (3) Any person employed by a local, state, or federal  
17 government agency in a school psychologist or  
18 psychological examiner position, or a position that  
19 does not involve diagnostic or treatment services, but  
20 only at those times when that person is carrying out  
21 the functions of such government employment;



- 1 (4) Any person who is a student of psychology, a  
2 psychological intern, or a resident in psychology  
3 preparing for the profession of psychology under  
4 supervision in a training institution or facility and  
5 who is designated by a title as "psychology trainee",  
6 "psychology student", "psychology intern", or  
7 "psychology resident", that indicates the person's  
8 training status; provided that the person shall not  
9 identify the person's self as a psychologist or imply  
10 that the person is licensed to practice psychology;
- 11 (5) Any person who is a member of another profession  
12 licensed under the laws of this jurisdiction to render  
13 or advertise services, including psychotherapy, within  
14 the scope of practice as defined in the statutes or  
15 rules regulating the person's professional practice;  
16 provided that, notwithstanding section 465-1, the  
17 person does not represent the person's self to be a  
18 psychologist or does not represent that the person is  
19 licensed to practice psychology;
- 20 (6) Any person who is a member of a mental health  
21 profession not requiring licensure; provided that the



1 person functions only within the person's professional  
2 capacities; and provided further that the person does  
3 not represent the person to be a psychologist, or the  
4 person's services as psychological;

5 (7) Any person who is a duly recognized member of the  
6 clergy; provided that the person functions only within  
7 the person's capacities as a member of the clergy; and  
8 provided further that the person does not represent  
9 the person to be a psychologist, or the person's  
10 services as psychological; [~~or~~]

11 (8) Any psychologist employed by the United States  
12 Department of Defense, while engaged in the discharge  
13 of the psychologist's official duty and providing  
14 direct telehealth support or services, as defined in  
15 section 431:10A-116.3, to neighbor island  
16 beneficiaries within a Hawaii National Guard armory on  
17 the island of Kauai, Hawaii, Molokai, or Maui;  
18 provided that the psychologist employed by the United  
19 States Department of Defense is credentialed by  
20 Tripler Army Medical Center [-]; or





1        (9) Any supervisee of a licensed psychologist as defined  
2                    in section 465D-7.

3            SECTION 3. 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 behavior analysis; provided that~~  
12                    ~~the person does not purport to be a behavior analyst;]~~

13            (1) A licensed psychologist and any supervisee of the  
14                    licensed psychologist; provided that applied behavior  
15                    analysis services performed are within the boundaries  
16                    of the licensed psychologist's education, training,  
17                    and competence; provided further that neither the  
18                    licensed psychologist nor any supervisee of the  
19                    licensed psychologist purports to be a licensed  
20                    behavior analyst; and provided further that master's  
21                    level practitioners and postdoctoral fellows may



1 provide training and supervision to direct support  
2 workers, paraprofessionals, caregivers, parents and  
3 guardians in a manner and to the extent determined by  
4 the supervising licensed psychologist.

5 For purposes of this paragraph, "supervisee" means a  
6 master's level practitioner, postdoctoral fellow,  
7 direct support worker, paraprofessional, caregiver,  
8 parent or guardian who provides applied behavior  
9 analysis services;

10 (2) A licensed classroom teacher or an individual who is  
11 working as a classroom teacher and is enrolled in a  
12 teacher preparation program working towards licensure  
13 who implements but does not design applied behavior  
14 analysis services in a school setting in direct  
15 collaboration with a licensed behavior analyst or a  
16 licensed psychologist on or before July 1, 2019;

17 ~~[-2-]~~ (3) An individual who implements or designs applied  
18 behavior analysis services and possesses board  
19 certification as an assistant behavior analyst by the  
20 Behavior Analyst Certification Board and who practices  
21 in accordance with the most recent supervisory and



- 1 ethical requirements adopted by the Behavior Analyst  
2 Certification Board under the direction of a licensed  
3 behavior analyst [~~licensed in this State~~];
- 4 ~~[-3]~~ (4) An individual who directly implements applied  
5 behavior analysis services and:
- 6 (A) Is credentialed as a registered behavior  
7 technician by the Behavior Analyst Certification  
8 Board, and is under the direction of a licensed  
9 behavior analyst [~~licensed in this State~~]; or
- 10 (B) Is a direct support worker who [~~provides autism~~  
11 ~~treatment services pursuant to an individualized~~  
12 ~~education plan~~] directly implements an applied  
13 behavior analysis program under the supervision  
14 of a licensed behavior analysts or licensed  
15 psychologist on or before January 1, [~~2019~~]  
16 2020; [~~for~~
- 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)]~~ (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 Hawaii-  
10 licensed psychologist; provided that for the purposes  
11 of this 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 program  
18 authorized by section 1915(c) of the Social Security  
19 Act;

20 ~~[(5)]~~ (6) An individual who designs or implements applied  
21 behavior analysis services to participants in the



1           medicaid home and community-based service waiver  
2           program pursuant to section 1915(c) of the Social  
3           Security Act on or before January 1, 2024;

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

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

19           ~~[(7)]~~ (9) An individual pursuing experience in applied  
20           behavior analysis consistent with the Behavior Analyst  
21           Certification Board's experience requirements;



1 provided that the experience is supervised by a  
2 licensed behavior analyst [~~licensed in this State~~].

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

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

16 SECTION 5. Section 465D-11, Hawaii Revised Statutes, is  
17 amended by substituting the phrase "applied behavior analysis"  
18 wherever the phrase "behavior analysis" appears, as the context  
19 requires.

20 SECTION 6. (a) The department of education shall create an  
21 implementation plan to seek reimbursement of any medicaid



1 billable applied behavior analysis the department of education  
2 may provide to students diagnosed with autism spectrum disorder.

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

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

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



- 1 (5) Medicaid reimbursement schedules and amounts;
- 2 (6) Licensure updates; and
- 3 (7) Any other information pertinent to the implementation
- 4 of this Act.

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

7 SECTION 8. This Act shall take effect upon its approval.

APPROVED this 10 day of JUL , 2018



GOVERNOR OF THE STATE OF HAWAII





HB No. 2271, HD 2, SD 1, CD 1


THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 1, 2018  
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Twenty-Ninth Legislature of the State of Hawaii, Regular Session of 2018.



Scott K. Saiki  
Speaker  
House of Representatives

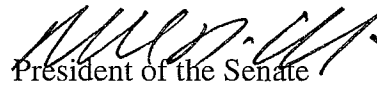



Brian L. Takeshita  
Chief Clerk  
House of Representatives

**THE SENATE OF THE STATE OF HAWAI'I**

Date: May 1, 2018  
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the  
Senate of the Twenty-ninth Legislature of the State of Hawai'i, Regular Session of 2018.

  
President of the Senate

  
Clerk of the Senate