



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

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; [~~e~~]

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

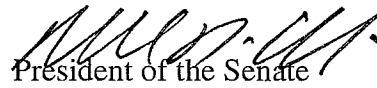



Brian L. Takeshita
Chief Clerk
House of Representatives

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