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CATHERINE P. AWAKUNI COLÓN
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DEPUTY DIRECTOR

**PRESENTATION OF THE
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION**

TO THE HOUSE COMMITTEE ON HEALTH
AND
TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2016

Monday, March 21, 2016
2:30 p.m.

TESTIMONY ON SENATE BILL NO. 2670, RELATING TO BEHAVIOR ANALYSTS.

TO THE HONORABLE DELLA AU BELATTI, CHAIR,
TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,
AND MEMBERS OF THE COMMITTEES:

My name is Constance Cabral, Executive Officer of the Behavior Analyst Program within the Professional and Vocational Licensing Division, Department of Commerce and Consumer Affairs ("Department"). The Department appreciates the opportunity to testify in **support** of this Senate Bill.

Senate Bill No. 2670 simply proposes to reduce the current surcharge on the license and renewal fee for behavior analysts from \$100 to \$50.

On February 3, 2016, this measure was heard by the Senate Committee on Commerce, Consumer Protection, and Health and was passed unamended. On February 17, 2016, it was heard by the Senate Committee on Ways and Means and again was passed unamended.

Thank you for the opportunity to provide testimony on Senate Bill No. 2670, Relating to Behavior Analysts.



STATE OF HAWAII
STATE COUNCIL
ON DEVELOPMENTAL DISABILITIES
919 ALA MOANA BOULEVARD, ROOM 113
HONOLULU, HAWAII 96814
TELEPHONE: (808) 586-8100 FAX: (808) 586-7543
March 21, 2016

The Honorable Della Au Belatti, Chair
House Committee on Health
and
The Honorable Angus McKelvey
House Committee on Consumer Protection
and Commerce
Twenty-Eighth Legislature
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Dear Representatives Belatti and McKelvey, and Members of the Committees:

SUBJECT: SB 2670 - Relating to Behavior Analysts

The State Council on Developmental Disabilities (DD) **supports SB 2670 with proposed amendments**. The purpose of this measure is to reduce the surcharge on the license and renewal fee for behavior analysts from \$100 to \$50.

The Council respects the work of behavior analysts who provide services to persons with DD who have challenging behaviors. We appreciate the Legislature's commitment of this in the passage of Act 199, Session Laws of Hawaii 2015, which requires the licensing of behavior analysts beginning on January 1, 2016. Individuals who receive applied behavior analysis (ABA) should receive them from qualified providers who are licensed and trained.

However, we are aware as noted in the Department of Health's (DOH) testimony that based on a survey conducted by the DD Division, currently, there is no adequate workforce to provide necessary behavioral interventions for hundreds of individuals in the Medicaid Home and Community Based § 1915(c) waiver program. With Act 199/15 taking effect on January 1, 2016, DOH would not be able to meet the requirements of licensing of behavior analysts. The Council is concerned that a disruption in services for individuals who are currently receiving and benefiting from services to address their behavioral intervention plans by unlicensed providers would result in regression of any progress made.

The Honorable Della Au Belatti
The Honorable Angus McKelvey
Page 2
March 21, 2016

In an effort to address the above situation, the Council, DOH, and the Hawaii Association of Behavior Analysts worked together to draft the following proposed amendments for your consideration:

Page 2: Sub-Section (a)(3)
HRS § 465D-7(a):

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

- i. [~~is~~] Is credentialed as a registered behavior technician by the Behavior Analyst Certification Board, and is under the direction of a behavior analyst licensed in this State; or
- ii. Is a direct support worker who provides medicaid home and community-based services pursuant to §1915(c) of the Social Security Act on or before January 1, 2019.

For the purposes of this paragraph, "direct support worker" means a paraprofessional who directly implements intervention or assessment plans under supervision and does not design intervention or assessment plans.

The above proposed amendment is consistent with the proposed amendment offered by DOH. Thank you for the opportunity to submit testimony and for your consideration of the above proposed amendments.

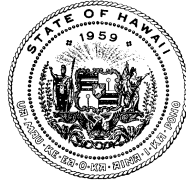
Sincerely,



Waynette K.Y. Cabral, MSW
Executive Administrator



Josephine C. Woll
Chair



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
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Testimony in SUPPORT of SB 2670
Relating to Behavior Analysts

REPRESENTATIVE DELLA BELATTI, CHAIR
HOUSE COMMITTEE ON HEALTH
REPRESENTATIVE ANGUS McKELVEY, CHAIR
HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Hearing Date: 3/21/2016

Room Number: 325

1 **Fiscal Implications:** None.

2 **Department Testimony:** The purpose of this measure is to decrease the behavior analyst
3 licensing surcharge from \$100 to \$50.

4 The Department respectfully requests amendments to this measure.

5 The Department supports the work of behavior analysts and behavior paraprofessionals,
6 who provide Developmental Disabilities Medicaid §1915(c) waiver services to those with
7 challenging behaviors.

8 **Justification:** Act 199, Session Laws of Hawaii (2015), codified as Hawaii Revised Statutes
9 (HRS) chapter 465D, requires the licensing of behavior analysts. HRS § 465D-2 broadly defines
10 the term “practice of behavior analysis” to include the implementation of behavior plans. HRS §
11 465D-7(a)(3) currently provides a licensing exemption to registered behavior technicians (RBT)
12 who are credentialed by the Behavior Analysis Certification Board and acting under the direction
13 of a licensed behavior analyst.

14 The behavior analyst is responsible for the design and development of the behavior plan,
15 which is usually implemented by paraprofessional staff.

16 Based on concerns from provider agencies and behavior analysts who are reluctant or
17 will not train paraprofessional staff who are not credentialed as an RBT, the Department
18 conducted a survey to measure current workforce capacity and the number of participants in the

1 Developmental Disabilities Medicaid §1915(c) waiver that may be impacted. Of the 33 provider
2 agencies serving 343 waiver participants who currently have a formal behavior plan developed
3 by a behavior specialist, only five agencies have staff who are licensed as a behavior analyst or
4 credentialed as an RBT. The Department has concluded that there is insufficient workforce to
5 provide necessary behavioral interventions for hundreds of waiver participants, including those
6 with serious behavioral challenges that place them at risk for self-harm or harm to others.

7 In addition to these critical services, the Department is very concerned about any service
8 disruptions that may occur to those who need behavioral interventions and the likelihood of
9 regression of any gains that have been made.

10 The Department is committed to ensuring quality services are provided by trained staff,
11 but there are insufficient number of RBT-credential paraprofessional staff in the State today. It
12 will take time to build a sufficient workforce of paraprofessionals to implement behavior plans.

13 The Department has collaborated with the Hawaii Association of Behavior Analysts
14 (HABA) to draft suggested amendments that are intended to address the above situation. The
15 Department is committed to developing the adequate workforce and is willing to work with
16 HABA to ensure that quality services are provided to Medicaid waiver participants.

17 **Offered Amendments:** The Department respectfully requests the following amendment to
18 HRS § 465D-7(a):

- 19 (3) An individual who directly implements applied behavior analysis services, and:
20 i. ~~[is]~~ Is credentialed as a registered behavior technician by the Behavior
21 Analyst Certification Board, and is under the direction of a behavior
22 analyst licensed in this State; or
23 ii. Is a direct support worker who provides medicaid home and community-
24 based services pursuant to §1915(c) of the Social Security Act on or
25 before January 1, 2019.

26 For the purposes of this paragraph, “direct support worker” means a paraprofessional
27 who directly implements intervention or assessment plans under supervision and does
28 not design intervention or assessment plans.

1 The Department also respectfully requests an effective date for the above section that is
2 retroactive to January 1, 2016, and a sunset date for this section as January 1, 2019.

3 Thank you for the opportunity to testify on this measure.



Keiki Educational Consultants, Inc.

61-280 Kamehameha Highway, Haleiwa, HI 96712 – (808) 298-2658

COMMITTEE ON HEALTH

Representative Della Au Belatti, Chair

Representative Richard P. Creagan, Vice Chair

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Representative Angus L. K. McKelvey, Chair

Representative Justin H. Woodson, Vice Chair

Monday, March 21, 2016, 2:30 pm

State Capitol, Conference Room 325

415 South Beretania Street

SUPPORT SB2670

Honorable Chair Belatti, Chair McKelvey, Vice Chair Creagan, Vice Chair Woodson, and members of the committees,

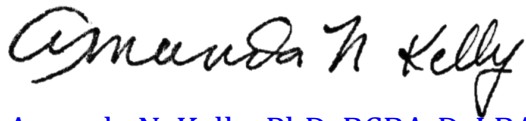
My name is Amanda N. Kelly, PhD, BCBA-D, LBA. I have been working with children with autism and related abilities for over 16 years and am currently practicing as a Hawaii licensed behavior analyst (LBA).

I am submitting testimony in SUPPORT OF SB2670. Thank you for the opportunity to submit testimony today in SUPPPORT of SB2670. I support any state department that acts in good faith to support the needs of individuals in their department receiving behavior analysis services and recognizes that departments may need assistance to improve services.

On behalf of HABA, I have been involved in collaborating with the Department of Health-Developmental Disabilities Division (DDD) to ensure Developmental Disabilities Medicaid §1915(c) waiver participants have access to needed services. Discussions with the Department (DOH-DD) have been cooperative and productive. The Department has demonstrated through their actions that they are committed to ensuring quality services are provided by trained staff and are working to develop an adequate workforce.

At this time, the Department does not have an adequate workforce and therefore needs time to build capacity. I support their intentions to improve services and build capacity and will continue to work with the Department to ensure that quality services are provided to Medicaid waiver participants. Please refer to the amended language submitted on behalf of HABA for suggestions. I am in support of the HABA (ABA provider association) and DOH-DDD proposed amendments.

Respectfully submitted,

A handwritten signature in black ink that reads "Amanda N. Kelly". The signature is written in a cursive style with a large initial 'A' and a distinct 'N'.

[Amanda N. Kelly, PhD, BCBA-D, LBA](#)

Executive Director, Keiki Educational Consultants

PH (808) 298-2658 / F (808) 441-0944



Monday, March 21, 2016

COMMITTEE ON HEALTH

Representative Della Au Belatti, Chair

Representative Richard P. Creagan, Vice Chair

COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Representative Angus L. K. McKelvey, Chair

Representative Justin H. Woodson, Vice Chair

2:30 pm

Conference Room 325

State Capitol

415 South Beretania Street

Testimony in SUPPORT of SB2670-related to behavior analysts

Honorable Chair Belatti, Chair McKelvey, Vice Chair Creagan, Vice Chair Woodson, and members of the committees,

Thank you for the opportunity to submit testimony today in **SUPPPORT of SB2670**. HABA is willing to support any state department that acts in good faith to support the needs of individuals in their department receiving behavior analysis services and recognizes that departments may need assistance to improve services. As such, HABA has been collaborating with the Department of Health-Developmental Disabilities Division (DDD) to ensure Developmental Disabilities Medicaid §1915(c) waiver participants have access to needed services.

Justification: Our discussions with the Department (DOH-DD) have been cooperative and productive. The Department has demonstrated through their actions that they are committed to ensuring quality services are provided by trained staff and are working to develop an adequate workforce. At this time, the Department does not have an adequate workforce and therefore needs time to build capacity. HABA supports their intentions to improve services and build capacity and will continue to work with the Department to ensure that quality services are provided to Medicaid waiver participants. In collaboration, HABA and DOH-DDD have come to agreement on requested possible amendments to allow the Department time to build capacity

for direct support workers to become registered behavior technicians (RBT) with a sunset date of January 1, 2019. HABA respectfully offers the below possible amendments for further refinement:

Possible Amendments

SECTION 3. Section 465D-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) This chapter is not intended to restrict the practice of other licensed or credentialed ~~healthcare~~ practitioners, practicing within their own recognized scopes of practice, and ~~therefore~~ shall not apply to:

- (1) An individual working within the scope of practice ~~or duties~~ of another licensed profession that overlaps with the practice of behavior analysis; provided that the person does not purport to be a behavior analyst;
- (2) An individual who implements or designs applied behavior analysis services and possesses board certification as an assistant behavior analyst by the Behavior Analyst Certification Board and who practices in accordance with the most recent supervisory and ethical requirements adopted by the Behavior Analyst Certification Board under the direction of a behavior analyst licensed in this State;
- (3) An individual who directly implements applied behavior analysis services, and:
 - i. ~~[is]~~ Is credentialed as a registered behavior technician by the Behavior Analyst Certification

Board, and is under the direction of a behavior analyst licensed in this State; or

- ii. Is a direct support worker who provides medicaid home and community-based services pursuant to §1915(c) of the Social Security Act on or before January 1, 2019, who acts under the direction of a behavior analyst licensed in this State.

For the purposes of this paragraph, "direct support worker" means a paraprofessional who directly implements intervention or assessment plans, under supervision and does not design intervention or assessment plans."

- (4) A family member or legal guardian implementing an applied behavior analysis plan, ~~within the home~~ who acts under the direction of a behavior analyst licensed in this State;
- (5) An individual who engages in the practice of behavior analysis with nonhuman or nonpatient clients or consumers including but not limited to applied animal behaviorists and practitioners of organizational behavior management;
- (6) A matriculated graduate student or postdoctoral fellow whose activities are part of a defined behavior analysis program of study, practicum, or intensive practicum; provided that the student's or fellow's activities or practice is directly supervised by a behavior analyst licensed in this State or an instructor in a Behavior Analyst Certification Board-approved course sequence; or

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

SECTION 5. This Act shall take effect on approval; provided that section 3 of this Act shall take effect on January 1, 2016, and shall be repealed on [January 1, 2019](#), and section 465D-7, Hawaii Revised Statutes, shall be reenacted in the form in which it read prior to the effective date of this Act.

Respectfully submitted,



Kristen Koba-Burdt, M.S., BCBA, LBA
President, Hawaii Association for Behavior Analysis (HABA)
president@hawaiiaba.org
Hawaiiaba.org

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 20, 2016 10:29 AM
To: HLTtestimony
Cc: starsister2000@yahoo.com
Subject: *Submitted testimony for SB2670 on Mar 21, 2016 14:30PM*

SB2670

Submitted on: 3/20/2016

Testimony for HLT/CPC on Mar 21, 2016 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Bonnie Koba	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Sent: Sunday, March 20, 2016 10:26 AM
To: HLTtestimony
Cc: bburdt3@gmail.com
Subject: *Submitted testimony for SB2670 on Mar 21, 2016 14:30PM*

SB2670

Submitted on: 3/20/2016

Testimony for HLT/CPC on Mar 21, 2016 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Brian Burdt	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
Sent: Friday, March 18, 2016 3:49 PM
To: HLTtestimony
Cc: louis@hawaiidisabilityrights.org
Subject: Submitted testimony for SB2670 on Mar 21, 2016 14:30PM

SB2670

Submitted on: 3/18/2016

Testimony for HLT/CPC on Mar 21, 2016 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Hawaii Disability Rights Center	Comments Only	Yes

Comments: We understand that this bill may be utilized as a vehicle to address issues pertaining to the Developmental Disabilities Division and the Medicaid Waiver. If we have an opportunity to see the proposed language, we will be in a position to offer more detailed comments at the hearing.

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