

HB2657 HD1

Measure Title: RELATING TO BEHAVIOR ANALYSIS.

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)

Companion:

Package: None

Current Referral: CPH

Introducer(s): BELATTI, MIZUNO



DAVID Y. IGE
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PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Thursday, March 22, 2018
9:15 a.m.

TESTIMONY ON HOUSE BILL NO. 2657, H.D. 1, RELATING TO BEHAVIOR ANALYSIS.

TO THE HONORABLE ROSALYN BAKER, CHAIR, AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs (“Department”) appreciates the opportunity to testify on H.B. 2657, H.D. 1, Relating to Behavior Analysis. My name is Daria Loy-Goto, and I am the Complaints and Enforcement Officer for the Department’s Regulated Industries Complaints Office (“RICO”). RICO takes no position on this bill and offers the following comments relating to enforcement.

H.B. 2657, H.D. 1 amends the law that regulates the practice of behavior analysis. H.D. 1 amends Hawaii Revised Statutes (“HRS”) section 465D-7 to exempt the following individuals from the licensing requirements of behavior analysis on page 5, lines 11-21:

“[I]ndividuals directly supervised by a licensed professional, such as unlicensed master’s level practitioners, students, and postdoctoral fellows, who may train and supervise a paraprofessional, direct support worker, or parent or guardian in implementing an applied behavior analysis intervention; provided that the supervision is within that licensed

professional's recognized scope of practice; and provided further that the licensed professional and the supervised individual shall not use the title "licensed behavior analyst"[.]"

RICO requests clarification on which licensed professionals would be included in "licensed professional" in HRS section 465D-7(a)(1) on page 5, lines 12, 18, and 20.

Thank you for the opportunity to testify on H.B. 2657, H.D. 1. I am available to answer any questions the Committee may have.

**PRESENTATION OF THE
BOARD OF PSYCHOLOGY**

TO THE SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Thursday, March 22, 2018
9:15 a.m.

WRITTEN TESTIMONY ONLY

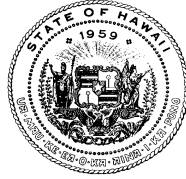
**TESTIMONY ON HOUSE BILL NO. 2657, H.D. 1, RELATING TO BEHAVIOR
ANALYSIS.**

TO THE HONORABLE ROSALYN H. BAKER, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is May Ferrer, and I am the Executive Officer of the Hawaii Board of Psychology ("Board"). Thank you for the opportunity to testify on H.B. 2656, H.D. 1, Relating to Behavior Analysis. At its meeting on February 16, 2018, the Board expressed its support of this measure.

H.B. 2657, H.D. 1 clarifies the scope of practice of behavior analysis to mean the practice of applied behavior analysis. Additionally, this bill 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.

Thank you for the opportunity to provide written testimony on H.B. 2657, H.D. 1.



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**Testimony in SUPPORT of HB2657 HD1
RELATING TO BEHAVIOR ANALYSIS**

SENATOR ROSALYN H. BAKER, CHAIR
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION & HEALTH

Hearing Date: March 22, 2018

Room Number: 229

1 **Fiscal Implications:** None.

2 **Department Testimony:**

3 The Department of Health (DOH) strongly supports HB2657 HD1 RELATING TO
4 BEHAVIOR ANALYSIS. The DOH-Developmental Disabilities Division (DDD) operates
5 Hawaii's §1915(c) Medicaid Intellectual and Developmental Disabilities (I/DD) Home and
6 Community-Based Services Waiver on behalf of the Department of Human Services,
7 MedQUEST Division. DOH-DDD is committed to raising the quality of behavioral
8 interventions. We are committed to using Licensed Behavior Analysts (LBAs) and Licensed
9 Psychologists working within their respective scopes of practice when an adult participant of
10 the I/DD waiver needs a formal Functional Behavioral Analysis and oversight for the
11 implementation of a Behavior Support Plan. However, elements of the current statute are
12 impacting provision and access to behavior analytic services for adults in the waiver.

13 Please note that for children in any §1915(c) waiver who have Autism Spectrum
14 Disorders (ASD), the Centers for Medicare and Medicaid Services (CMS) has clarified that
15 services for the treatment of ASD must be provided through the child's Medicaid health plan
16 through their Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit, and
17 **cannot** be provided as a Medicaid Waiver service. Therefore, the provision of behavior analysis
18 in the I/DD waiver is only for adults, and most often for people with entrenched and challenging
19 behaviors that include self-harm and aggression toward others.

1 A primary issue in §465D-2, HRS, is the broad definition of the practice of behavior
2 analysis. While the intent of the Legislature was to establish standards for the licensing of
3 behavior analysts to address autism, the broad definition is being interpreted to mean that even
4 simple behavioral interventions, including for adults without autism, require a licensed behavior
5 analyst. There is a lack of workforce of LBAs in Hawaii, and a shortage of LBAs to supervise
6 Registered Behavior Technician (RBT) training hours. These factors, coupled with the fact that
7 most LBAs provide services to children with autism primarily in office-based settings, are
8 limiting access to behavioral analysis services for adults in the waiver who have high-end
9 behaviors that require staff-intensive approaches, and who access their services in homes and in
10 the community. They require implementation of services by teams of people that include a mix
11 of RBTs and trained direct support workers often for many hours during the day and night.

12 DOH also supports HB2657 HD1 because it will ensure Hawaii's compliance with the
13 I/DD waiver, including its numerous requirements for quality assurance, participant safeguards,
14 and protecting the rights of waiver participants. DDD has developed the operational policies and
15 procedures necessary for oversight of behavioral practices, including positive behavioral
16 supports, restrictive interventions, adverse event reporting, and a behavior support review
17 committee. Provider agencies are required to maintain an active nationally-recognized behavior
18 support program. Further, the I/DD waiver requires the state to maintain an adequate provider
19 pool to address the needs of participants.

20 Specifically, DOH supports the amendments to Chapter 465-D, HRS, as stated in
21 HB2657 HD1 for the following reasons:

- 22 1) **Adds the term “applied” to “behavioral analysis”** throughout the statute
23 where it is missing, to have consistency of terms, and distinguishing simple analysis for
24 understanding functions of behaviors and implementing routine interventions with those
25 functions that only a licensed person can perform;
- 26 2) **Adds an exemption for five years for individuals who design or implement**
27 **behavior analytic services for participants of Waiver.** DDD has access to LBAs

1 through a service called Training and Consultation and has strong quality oversight of
2 behavioral practices as mentioned earlier. As such, this amendment to Chapter 465D,
3 HRS, will mitigate for the broad definition of practice of behavior analysis for a period
4 of time, and allow DOH-DDD to manage the utilization of behavioral services for cases
5 where the design and implementation requires a LBA. Without this exemption, LBAs
6 are far less likely to work with our population, and access to this critically needed
7 service will continue to be limited; and

8 3) **Adds an exemption for Caregivers.** Caregivers are not expressly included in
9 the exemptions listed in §465D-7, HRS. Currently, a “family member” is exempt from
10 licensing under §465D-7(a)(4), HRS. DOH seeks an amendment for caregivers as stated
11 in HB2657 HD1, the same as the family exemption in the current statute. Without this
12 exemption, by January 2019, any caregiver reinforcing behaviors in homes must first
13 become an RBT by obtaining the credential from the Behavior Analyst Certification
14 Board. This will likely disrupt placements for waiver participants as most caregivers will
15 not choose to go through the extensive process to become an RBT.

16 **Offered Amendments:** The DOH offers the following amendments to HB2657 HD1:

17 **Amend Section 5 on page 7, line 18:**

18 Page 10 Line 5 (Section C(7) of the bill) regarding an exemption for caregivers, DOH
19 respectfully requests changing the word “rehabilitation” to “habilitation”. The service
20 provided under the Medicaid I/DD 1915(c) waiver are habilitative in nature, and
21 rehabilitation is the incorrect description of these services.
22

23 Thank you very much for the opportunity to testify.
24



STATE OF HAWAII
STATE COUNCIL
ON DEVELOPMENTAL DISABILITIES
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March 22, 2018

The Honorable Rosalyn Baker, Chair
Senate Committee on Commerce, Consumer Protection
and Health
Twenty-Ninth Legislature
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Dear Senator Baker and Members of the Committees:

SUBJECT: HB 2657 HD1 - Relating to Behavior Analysis

The State Council on Developmental Disabilities **supports HB 2657 HD1**. This measure clarifies the scope of practice of behavior analysis.

In the 1990's when Waimano Training School and Hospital was closing, the success of integrating hundreds of people with DD and challenging behaviors was due to the training individuals had from the psychologist and the treatment guidelines of the Department of Health Developmental Disabilities Division.

Staff and individuals with DD, including Autism, benefitted from the professional support of a psychologist, a recreational therapist, speech therapist, occupational therapist, physical therapist, an ophthalmologist, and an audiologist. The Council interviewed many families of individuals considered "high-end behavior" that were successfully integrated into the community. Every family member and individual credited the professional support of the above-mentioned disciplines for their success.

The Department of Health, Developmental Disabilities Division (DOH/DDD) is responsible for developing the operational policies and procedures necessary for oversight of behavioral practices, including positive behavioral supports, restrictive interventions, adverse event reporting, and a behavior support review committee to support the behavioral needs of individuals with intellectual/developmental disabilities.

As such, the Council respectfully requests that the DOH/DDD be referred to for any proposed amendments with clarifying the definition of the practice of behavior analysis.

Thank you for the opportunity to submit testimony in **support of HB 2657 HD1**.

Sincerely,

Daintry Bartoldus
Executive Administrator



An Independent Licensee of the Blue Cross and Blue Shield Association

March 22, 2018

The Honorable Rosalyn H. Baker, Chair
The Honorable Jill N. Tokuda, Vice Chair
Senate Committee on Commerce, Consumer Protection, and Health

Re: HB 2657, HD1 – Relating to Health Insurance

Dear Chair Baker, Vice Chair Tokuda, and Committee Members:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on HB 2657, HD1 which, among other things, seeks to clarify the scope of practice of behavior analysis to mean the practice of applied behavior analysis, and broadens the exemption of licensed or credentialed practitioners practicing within their own recognized scopes of practice who are already exempt from the Behavior Analyst Law, to include participants in the Medicaid Intellectual and Developmental Disabilities Home and Community-Based Waiver.

HMSA appreciates the intent of this measure to increase access to ABA services in our state. At the request of legislators last year, HMSA started working with the psychologist community to create a pilot program to recognize and reimburse psychologists providing ABA services to our members. We are moving forward with the pilot, and hope to have feedback to Legislators and other stakeholders on the outcome of the program. That being said, we do have concerns with HB 2657, HD1.

In particular, we have concerns with Section 4(a)(1) which would significantly expand the supervisory responsibilities of unlicensed individuals delivering ABA services. While we understand the need to expand access to services, we are concerned that this level of expansion could compromise the quality of care being delivered. For this reason, we prefer the language reflected in SB 2496, SD1.

Thank you for allowing us to provide comments on HB 2657, HD1.

Sincerely,

Pono Chong
Vice-President, Government Relations

HB-2657-HD-1

Submitted on: 3/20/2018 9:21:48 AM

Testimony for CPH on 3/22/2018 9:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Kristen Koba-Burdt	Testifying for Aloha Behavioral Associates	Support	No

Comments:

I support the intention of this bill to allow DOH-DDD additional time in exemption (3); however, I respectfully request the language of this bill be amended in exemption (1) as the current language does not protect consumers. I support the suggested amendments submitted by HABA.

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Federal ID

99-0108896

To: Senator Rosalyn H. Baker, Chair
Senator Jill N. Tokuda, Vice Chair
Committee on Commerce, Consumer Protection, and Health

Hearing Date: March 22, 2018, 9:15 am, Room 229

RE: **Testimony in support of HB 2657 HD1**
Relating to Behavior Analysis

The Arc of Kona supports HB2657 HD1 relating to behavior analysis which seeks to amend portions of HRS 465-D and clarify the scope of practice and licensure requirements for individuals who provide behavior analysis services.

We understand the concerns that underlie HRS 465-D and, while we agree that the licensing of BCBAs is important and that they serve an important role, it is our belief that HRS 465-D, as written, is too broad and requires clarification. Furthermore, we believe the requirement that every individual providing Direct Services to individuals with Behavior Support Plans (BSPs) become a certified Registered Behavior Technician (RBT) is also too broadly defined and, in most cases, unnecessary in the environment that services for adults with Intellectual/Developmental Disabilities (I/DD) are provided.

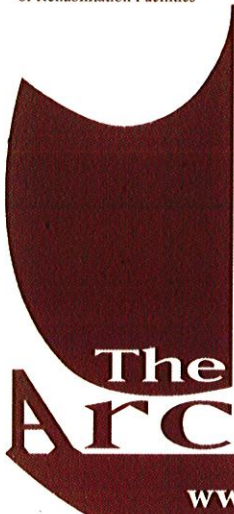
The Arc of Kona serves adults with I/DD who may or may not have a diagnosis of autism. Many of the individuals we serve have behavioral challenges at times that call for simple supports and encouragement such as re-direction and positive feedback as opposed to complex responses and interventions associated with behavior support plans.

Nearly one half of our Direct Support staff have been with the Arc of Kona for 10 or more years, most of whom do not possess a degree, nor do they have the time, resources, and in some cases the capacity to obtain RBT certification. They do, however, absolutely possess the compassion and dedication to our participants that are of paramount importance to providing quality services. In many cases their relationships with our participants are long-standing and very deep which is also crucial to our participants' well-being.

United
Way



carf
Commission on Accreditation
of Rehabilitation Facilities



www.arcofkona.org

"Expanding the Possibilities"
"Ho'o Nui Ka Hiki"

Additionally, staff undergo rigorous training on a regular basis and are provided appropriate oversight to ensure proper care.

Given the current language of HRS 465-D, the Arc of Kona would need to certify most, if not all, direct support staff as RBT's. This requirement would place an undue hardship on our staff and organization. Many of our Direct Support staff may choose to exit the agency instead of pursuing this certification resulting in an interruption of services and most importantly compromise the physical and emotional well-being of the individuals we serve.

The Arc of Kona strongly supports HB 2657 HD1.

Thank you for the opportunity to provide testimony.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Michele L. Ku', with a large, sweeping flourish at the end.

Michele L. Ku
President and Chief Executive Officer



COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

Rep. Rosalyn, H. Baker, Chair
Senator Jill N. Tokuda, Vice Chair

Thursday, March 22, 2018, 9:15 AM
Conference Room 299, State Capitol

Comments on SB 2496 Relating to Behavior Analysis

The Hawai'i Association for Behavior Analysis (HABA) would like to send a sincere mahalo to our legislators for listening to families, supporting teachers, and believing in our keiki. We are in support of providing quality services to our consumers and maintaining the protections afforded (in HRS 465-D) to the public, as well as our profession. HABA has worked diligently with community members to identify language other stakeholders can stand behind; to include the Department of Health - Development Disabilities Division (DOH-DDD), the Hawai'i State Teachers Association (HSTA), Hawai'i Disability Rights Center (HDRC), and our consumers-- who have submitted over 250 pieces of testimony this session for bills pertaining to the practice of behavior analysis. HABA and the DOH have agreed to partner on trainings and dissemination of information to providers, case managers, and consumers. However, the language in the current bill is too broad and exposes clients to extreme risk of being managed by people without proper training and credentials in behavior analysis, outside of DOH-DDD cases. While we appreciate the discussion and the opportunity to testify today, we feel that SB2496 HD1 has become bogged down with confusing and contradictory language. We respectfully request that the Committee Chair, Vice Chair and committee members not advance this bill forward. If the committee decides to move this measure forward, we respectfully ask that you consider reverting to the language of SB 2925 SD1.

Mahalo,
Kathleen Penland, M. Ed. BCBA, LBA
President, Hawai'i Association for Behavior Analysis

Kathleen Penland

A BILL FOR AN ACT

RELATING TO THE PRACTICE OF BEHAVIOR ANALYSIS.

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

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

Act 199, Session Laws of Hawaii 2015, established the behavior analyst program within the department of commerce and consumer affairs and established licensing requirements for behavior

concurrent with mandated insurance coverage for diagnosis and treatment related to autism disorders.

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

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

Accordingly, the purpose of this Act is to:

- (1) Clarify the licensing exemptions for certain individuals under certain conditions who provide behavior analysis services; and
- (2) Require 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.

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

"(a) This chapter shall not apply to:

- (1) Any person teaching, lecturing, consulting, or engaging in research in psychology insofar as the activities are performed as part of or are dependent upon employment in a college or university; provided that the person shall not engage in the practice of psychology outside the responsibilities of

(2) Any person who performs any, or any combination of the professional services defined as the practice of psychology under the direction of a licensed psychologist in accordance with rules adopted by the board; provided that the person may use the term "psychological assistant", but shall not identify the person's self as a psychologist or imply that the person is licensed to practice psychology;

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

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

(5) Any person who is a member of another profession licensed under the laws of this jurisdiction to render or advertise services, including psychotherapy, within the scope of practice as defined in the statutes or rules regulating the person's professional practice; provided that, notwithstanding section 465-1, the person does not represent the person's self to be a psychologist or does not represent that the person is licensed to practice psychology;

(6) Any person who is a member of a mental health profession not requiring licensure; provided that the person functions only within the person's professional capacities; and provided further that the person does not represent the person to be a psychologist, or the person's services as psychological;

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

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

(9) Any direct support worker as defined in section 465D-7, who provides autism treatment services pursuant to an individualized education plan and is under the direction of a psychologist licensed in the State."

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 practitioners practicing within their own recognized scopes of practice and 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;]~~ An individual licensed in the State who practices other professions and their supervisees; provided that behavior analysis is in the scope of practice of the profession's licensure law and the services provided are within the boundaries of the licensed professional's education, training, and competence; provided further that the individual does not purport to be a behavior analyst;

(2) An individual licensed in the State who practices psychology and their supervisees; provided that behavior analysis is in the scope of practice of the psychology licensure law and the behavior analysis services provided are within the boundaries of the licensed psychologist's education, training, and competence; provided further that the individual does not purport to be a behavior analyst;

~~(2)~~ (3) 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)]~~ (4) A licensed classroom teacher, or someone who is working as a classroom teacher and is enrolled in a teacher preparation program working toward licensure, in a school setting who implements and does not design behavior analysis services in direct collaboration with a professional licensed to practice behavior analysis in the State;

(5) An individual who directly implements ~~[applied]~~ and does not design behavior analysis services and:

(A) 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;

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

~~[+] (C) [+~~ ~~Is a direct support worker who provides medicaid home and community-based services pursuant to section 1915(c) of the Social Security Act on or before January 1, 2019;~~ Is an individual who works within the scope of practice or duties of and is directly supervised by a licensed psychologist; provided that

"licensed behavior analyst";

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

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

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

~~[(5)]~~ (8). 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)]~~ (9). 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]~~ Board-verified course sequence; or

~~[(7)]~~ (10). 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 4. (a) The department of education shall create an implementation plan for the delivery of medicaid billable applied behavior analysis to all students diagnosed with autism spectrum disorder within the department.

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

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

- (1) The number of students diagnosed with autism spectrum disorder;
- (2) The number of students with autism spectrum disorder as part of their individualized education plan;
- (3) The number of students requiring applied behavior analysis;
- (4) Staffing updates and needs;
- (5) Medicaid reimbursement schedules and amounts;
- (6) Licensure updates; and
- (7) Any other information pertinent to the implementation of this Act.

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

SECTION 6. This Act shall take effect upon its approval.

Report Title:

Practice of Behavior Analysis; Exemptions; Department of Education;
Applied Behavior Analysis; Implementation Plan; Reporting

Description:

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. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



Hawai'i Psychological Association

For a Healthy Hawai'i

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COMMITTEE ON COMMERCE, CONSUMER PROTECTION, & HEALTH

Senator Roslyn Baker, Chair
Senator Jill Tokuda, Vice Chair

Thursday, March 22, 2018, 9:15am

Conference Room 229, State Capitol, 415 South Beretania Street

Strong Support of HB 2657_HD1 with Amendments RELATING TO BEHAVIOR ANALYSIS

The Hawai'i Psychological Association (HPA) strongly supports House Bill 2657_ HD1 which incorporates amendments recommended by the association. The HPA and the American Psychological Association (APA) continue to have two major concerns about various behavior analysis legislation. Specifically, we are concerned that the language in Act 199 and subsequent related legislation, applying to treatment services for autism and the licensure of Board Certified Behavior Analysts (BCBAs):

1. unintentionally restricted well-qualified professionals from providing services to children with autism and other behavioral challenges; and
2. unintentionally provided an inappropriate monopoly for one certifying agency, the Behavior Analyst Certification Board.

CONCERN 1: HPA is therefore particularly supportive of HD1 amendments to Section 4.(a)(1) on Page 6 Lines 9 through 21 that clarify that other qualified professionals can provide treatment services for autism. **We respectfully ask that the current HD1 language in this section be passed by this committee without further amendment.**

CONCERN 2: To avoid an inappropriate monopoly we would like to propose amendments to the following four (4) sections:

Section 4.(a)(2) starting on Page 6 Lines 1 through 8:

An individual who implements or designs applied behavior analysis services and possesses board certification as an assistant behavior analyst from a nationally certifying agency or by the Behavior Analyst Certification Board and who practices in accordance with the most recent supervisory and ethical requirements adopted by the national certifying agency ~~the Behavior Analyst Certification Board~~ under the direction of a behavior analyst or psychologist licensed in this State;

Section 4(a)(4)(A) on Page 6 Lines 16 through 19:

Is credentialed as a ~~registered~~ behavior technician by a nationally recognized organization or the Behavior Analyst Certification Board, and is under the direction of a behavior analyst or psychologist licensed in this State; or

Section 4(a)(7) on Page 8 Lines 8 through 15:

A matriculated graduate student or postdoctoral fellow whose activities are part of a defined applied 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 or psychologist licensed in this State or an instructor from a nationally recognized training organization or in a Behavior Analyst Certification Board-approved course sequence; or

Section 4(b) on Page 9 Lines 1 through 7:

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

Our final proposed amendment above to strike the term "behavior analyst" addresses our concern that, as currently written, this section unnecessarily restricts licensed psychologists who are highly trained in, and qualified to provide, behavior analysis to refer to themselves as behavior analyst when they in fact may be.

Please see the attached document from the American Psychological Association Practice Organization: "Statement on Behavior Analysis and Behavior Analysts" and the second attached document from the American Psychological Association on: "Applied Behavior Analysis" which both serve to further support the position that Behavior Analysis is a long practiced discipline within psychology. The support for these behavioral approaches being voiced by parents in connection with this and other related bills serves to emphasize the effectiveness of this approach, originally developed by and still practiced by many psychologists. The specific degree or certification held by the practitioner does not alter this. Psychologists are not claiming to have a monopoly on these practices, although we pioneered them – we simply do not want to be forced to give up useful technologies that are needed by our keiki and families because a relatively young profession has developed this particular technical expertise.

Thank you for this opportunity to provide comments and proposed amendments to HB 2657_HD1 which clarify psychologists' scope of practice and prevent an unnecessary narrowing of the behavioral health workforce within the school setting.

Tanya Gamby, Ph.D.
President, Hawai'i Psychological Association



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Statement on Behavior Analysis and Behavior Analysts

The APAPO Board approved the following “Statement on Behavior Analysis and Behavior Analysts” at its February 2012 meeting:

Psychologists have a long history of developing and implementing effective services, including behavior analysis, for individuals with autism spectrum disorders and their families. Licensed psychologists with competence in behavior analysis are qualified to independently provide and to supervise the provision of behavior analytic services. Therefore, qualified licensed psychologists should be allowed to provide behavior analysis and to call the services they provide “behavior analysis” or “applied behavior analysis” without obtaining additional credentials or licensure. Other professionals who provide behavior analysis should be required by law or regulation to demonstrate education, training and supervision appropriate to a defined scope of practice and to the needs of the jurisdiction. The APAPO Board supports advocacy to ensure that any legislation or regulations regarding behavior analysts or the practice of behavior analysis contain provisions to protect consumers by ensuring that they receive services by appropriately qualified professionals. Further, the APAPO Board recommends that, to the extent that behavior analysts are regulated separately by state law, the benefits of regulation under the state board of psychology should be considered.

The APAPO Board position is supported by two APA policy documents, the [APA Model Act for State Licensure](#) (PDF, 111KB) and the [APA Ethical Principles of Psychologists and Code of Conduct](#). Specifically, section B.3 of the Model Act includes “behavior analysis and therapy” within the definition of the practice of psychology; and Ethics Code Standard 2 requires that “psychologists provide services, teach, and conduct research with populations and in areas only within the boundaries of their competence.”

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Applied Behavior Analysis

Adopted as APA Policy by APA Council of Representatives in February 2017

The principles of applied behavior analysis (also known as behavior modification and learning theory), developed and researched by psychology and competently applied in the treatment of various disorders based on that research, is clearly within the scope of the discipline of psychology and is an integral part of the discipline of psychology. Across the United States, applied behavior analysis is taught as a core skill in applied and health psychology programs. As such, the American Psychological Association (APA) affirms that the practice and supervision of applied behavior analysis are well-grounded in psychological science and evidence-based practice. APA also affirms that applied behavior analysis represents the applied form of behavior analysis which is included in the definition of the “Practice of Psychology” section of the APA Model Act for State Licensure of Psychologists. Therefore, APA asserts that the practice and supervision of applied behavior analysis is appropriately established within the scope of the discipline of psychology.

Suggested Citation

American Psychological Association. (2017). *APA Policy: Applied Behavior Analysis*. Retrieved from: <http://www.apa.org/about/policy/applied-behavior-analysis.aspx>

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HB-2657-HD-1

Submitted on: 3/20/2018 7:02:53 PM

Testimony for CPH on 3/22/2018 9:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jeanette White	Individual	Oppose	No

Comments:

HB-2657-HD-1

Submitted on: 3/20/2018 10:50:17 PM

Testimony for CPH on 3/22/2018 9:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Linda Hufano	Individual	Support	No

Comments:

I strongly support HB2657_HD1 with the amendments proposed by the Hawaii Psychological Association. This bill clarifies that psychologists and other qualified professionals whose scope of practice includes Applied Behavior Analysis will be able to continue to design and supervise others in implementing ABA programs for eligible service recipients.

No qualified professional or paraprofessional should be excluded from the workforce. To my knowledge, no other state requires its direct support workers to be RBT's. This would create an unfair monopoly for the board that certifies them. It also bears noting that per their certifying board, the BACB, LBA's are not restricted to supervising RBT's; they can supervise other nationally certified direct support workers as well as state-contracted direct support workers who meet state agency standards but are not nationally certified. The RBT certification is costly, relatively new, and there is no proof that it leads to better outcomes. Surely there are other ways direct support workers can demonstrate competence in implementing behavioral interventions with consumers, observation/assessment, or similar oversights.

Thank you for the opportunity to submit testimony.

Linda Hufano, Ph.D., Licensed Psychologist

My son is a smart, energetic, loving seven year old first grader at Waiialua Elementary in the Central District. Before my son started Kindergarten, in August of 2016, I told the school we needed help, and I wanted them to evaluate him. They didn't. We evaluated him at our own expense and by September of 2016 he had a diagnosis of Autism and ADHD. By December of the same year a mood disorder was added to the list. I immediately took the diagnosis to the school and asked them, again, to evaluate him so he could begin receiving services. They didn't. I told them about behaviors that we had concerns about, and the principal of the school said that since they didn't see those behaviors at school, they couldn't help us with them. During this time, my son was being kept back from recess due to his behavior, he was given multiple detentions, had to eat lunch alone or with the principal, was being sent to the counselor and the principal for behavior issues, and having trouble daily in class.

After Christmas Break my son was suspended twice for behaviors directly related to his disability, that we had already been telling the school about the entire year. So they had previously told us that since they didn't see the behaviors at school they couldn't help us. Then when they started seeing them, their answer was to suspend him. I again asked for help. The principal repeatedly said that we, as his parents, gave our son everything he wanted at home, what he really needed was a backstop of discipline, and they would provide that at school. The principal clearly does not understand children with disabilities. For the rest of the year our son was pulled into the office for unspecified amounts of time multiple times a week. The school refused to keep track of how often he was pulled out of class and rarely told me when it happened.

At the end of the school year, 2017, we met again with the school and I asked again for our son to be evaluated. Again we were told no. I asked about extended school year and they told me our son didn't qualify. I said I was going to enroll him in Summer Fun at the Rec Center next door and I was worried about how he would do since most of the summer was unstructured time, and this is when he usually had the most trouble. The principal said the school based Behavior Health Specialist would be available to check in on him over the summer. Part way through the summer, the Summer Fun Director contacted me and told me that my son would not be able to come back without a 1:1. I contacted my private ABA provider (who we had finally started receiving services through) and the school, asking for help. The ABA provider was able to send a Registered Behavior Technician (RBT) with my son, and the principal emailed back and said he himself would be available to check on my son.

During breakfast the next time my son went to Summer Fun, he had a rough time with a transition and needed a break so his RBT was allowing him to cool down at a separate table in the cafeteria. It was during this break that the principal took it upon himself to "check" on my son. According to the RBT, he approached my son already angry. He proceeded to yell at my son and pound his fists on the table. All of this happened while my 6 year old autistic son sat with his head down and his arms around his legs. My BCBA (supervisor to the RBT) and the Director of the Rec Center approached the cafeteria at this time, and could hear the principal yelling from

outside. The RBT didn't know what to do, since the principal was the perpetrator, and neither did the Director of the Rec Center. My BCBA however, approached the principal and stood very close to him while he yelled until he noticed her and stood up. At which time, he told her very angrily that "Jaxon needs to learn that he'll get his way when I get MINE!" She proceeded to try and "talk him down" and get my son away from him. When I later questioned my son about the incident he curled up in a fetal position and said he had been really scared.

The BCBA came over to my house immediately after the incident, told me how out of control the principal had been, and talk with me for approximately 2 hours while I tried to figure out what to do. I stopped sending my son to summer fun so the principal couldn't have access to him anymore, and I immediately applied for a Geographic Exception so my son could go to Haleiwa Elementary, but that was denied. I called the police and they sent an officer to my house. I told him everything that had happened. He was absolutely dumbfounded that this was happening to my little autistic 6 year old. He told me that I needed to file a complaint with the superintendent of our district and that he would go talk to the principal himself. He called me immediately after speaking with the principal and he told me that the principal was not apologetic at all, and that he told the police officer that my son wasn't getting any discipline at home so the principal would provide that at school. He felt that the principal was very arrogant and not fit to be around children.

I called that day and filed a complaint with Central District. It took the investigator MONTHS to compile the "evidence" which consisted of my testimony, the testimony of my BCBA and the Director of the Rec Center, and the testimony of the principal. It took MONTHS to do this. I had to call over and over again, and I even went down to the Central District office to try and find out what was going on in person. I approached the complex area superintendent (CAS) at several community meetings trying to figure out if there was any progress in the investigation. During this time, I was forced to send my son back to Waiialua Elementary, under the supervision of the principal, even though I felt unsafe doing so. I asked again for my son to be evaluated and they again told me no. Also during this time, HMSA offered to fund ABA therapy in the school setting, and I offered to pay the co-pay's, making it free to the school. I mentioned this to the team on multiple occasions. Essentially they laughed at me every time, even though many of the accommodations they were suggesting for my son were rooted in applied behavior analysis. I got a lawyer and filed for Due Process.

In order to avoid Due Process, the school FINALLY agreed to begin the initial evaluation process after more than a year of asking. Also during this time, my son had several incidents at school, two of which resulted in suspensions. All the incidents were issues directly related to his disability. After the evaluation process was complete we had an eligibility meeting. After meeting for more than six hours, Jaxon was finally found eligible under multiple categories with a unanimous vote of the team members. After a year of intense therapy and medication, all of which we provided outside of school time, and at our own expense, he has made tremendous progress, and his team STILL found him eligible.

Shortly after my son was found eligible, the CAS let me know what he had completed the investigation into the incident with the principal and he found that the principal had not violated anything in the code of conduct and was absolutely without fault. The complex are superintendent feels that the principal at Waialua Elementary was completely justified in approaching my autistic 6 year old, who was sitting quietly with his RBT, and proceeding to yell at him and pound his fists on the table. I happen to disagree. In fact, I don't believe this man is fit to be around children. But apparently these are the types of administrators the DOE wants.

My son has been discriminated against by an administration who clearly doesn't understand children with special needs, and my son has been denied access to a free and appropriate public education by the people who are supposed to be helping him thrive, despite his disabilities.

I've been told by an Autism Consulting Teacher, who has since been dropped from our team for unrelated ethical violations on our case, that I HAVE TO medicate my child. I've been told by the Vice Principal that it's "really weird" how my son doesn't seem to understand that he's done something wrong, EVEN THOUGH she knows he has autism and that's a classic symptom. My sons teacher has told him that he'll make poor decisions his whole life and that he'll never make it to second grade, even though he's already passing all the academic qualifications to do so. I've had another ACT attend multiple team meetings, without being invited or knowing ANYTHING about my son, and had her angrily assert her opinions in a very threatening manner. I've been told by the Principal that my sons only problem is that we don't discipline him at home so they're going to do that at school. The principal has also said that Autism diagnoses are handed out like candy and they're meaningless. I've also been told by my sons team that despite his Autism diagnosis, and agreeing as a team that his Autism affects multiple areas of his ability to access his education, that he doesn't qualify for Autism through the DOE because he's verbal. If that doesn't show a complete lack of knowledge on the subject, I don't know what does.

My son is only 7 years old. He is only in first grade. We have only just begun this journey. What we have experienced is NOT unique. We are NOT an isolated case. What we are is evidence of a broken system. My son is currently suffering, and he's not the only one. Please, please, please help our kids. We need Behavior Analysts in the schools. I don't understand how ANYONE can say that people who work with children couldn't benefit from additional training. That's all were looking for is for people who work with kids like my son to have the porper training to do so! The current system is broken and the kids are the ones who suffer. Please don't let this continue.

I am in support of HABA and any and all comments and amendments they suggest as I believe they represent the needs of our community.

HB-2657-HD-1

Submitted on: 3/20/2018 11:12:55 PM

Testimony for CPH on 3/22/2018 9:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard J. Kravetz	Testifying for Alaka'i Na Keiki, Inc.	Support	No

Comments:

I am a behaviorally-trained psychologist with over 30 years experience training and supervising professionals and paraprofessionals to design and implement ABA programs for persons with autism and other developmental disabilities.

i strongly support HB2657_HD1 with amendments proposed by Hawaii Psychological Association. This bill clarifies that psychologists and other licensed or credentialed professionals whose scope of practice overlaps with behavior analysis can continue to design and supervise others in implementing ABA programs.

The Hawaii workforce needs all qualified professionals and direct support workers; restricting the pool to LBA's and RBT's would deprive consumers of needed services.

i am concerned that experienced, competent direct support workers may be rified if they don't obtain national certification. RBT certification is new, and there is no research that shows that it results in better outcomes for consumers. In fact, many of the top researchers and providers of ABA have questioned the generic training that doesn't differentiate between the early intervention procedures for children under six and the needs of adults with severe autism/developmental disabilities.

Thank you doe the opportunity to provide testimony.

Richard J. Kravetz, PhD, Licensed Psychologist

HB-2657-HD-1

Submitted on: 3/21/2018 8:30:59 AM

Testimony for CPH on 3/22/2018 9:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Amanda N Kelly	Individual	Comments	No

Comments:

Aloha Chair, Vice Chair and members of the committee:

Thank you for working so dilligently this legislative session to bring community stakeholders together to discuss the status of applied behavior analysis (ABA) services in our state. I know firsthand that representatives from DOH-DDD and HABA have met, and are in agreement, with the intention to allow 1915c waiver service providers to continue to develop a workforce for ABA services for adults in our state.

The language in the current bill is concerning and if implemented, as is, poses a significant threat to consumer protection. Language, which explictly carves out psychologists and their supervisees, has been drafted and has been shared with committee members. It is my hope that if you choose to advance this bill, you will look carefully at the language submitted by HABA (and passed by this committee) in SB2925 SD1.

Mahalo nui loa,

Amanda N Kelly, PhD, BCBA-D, LBA

HB-2657-HD-1

Submitted on: 3/21/2018 10:41:08 AM

Testimony for CPH on 3/22/2018 9:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Sakuda	Individual	Oppose	No

Comments:

Hi my name is Lisa, and I am writing to you to inform you that I am against you allowing teachings to write a functional behavior assessment and behavior support plan. They should be written by a Licensed Behavior Analyst. Last school year (2016-2017) I worked as a Paraprofessional Tutor in one of your DOE elementary school. I worked with a first grader who was diagnosed with Autism and ADHD. He resided in the general education classroom. I enjoyed working him but getting him to complete his work throughout the school day was a big challenge. In the beginning of the school year he would have verbal outbursts when he did not want to complete his work, toward the ending of the school year he began to be aggressive (pushing, pointing his finger in my face, getting close to my face to yell, grabbing my wrists). I saw the struggle the General Ed. teacher and Special Ed. Teacher had. Although the G.E. teacher has worked with children with autism before, the strategies that she used with her previous student did not work with him. The Sped. Teacher provided some strategies but it was not working. The G.E. teacher felt pressured to make sure the student was completing all his work and test, so that she could report her test scores. He was struggling to keep up with the work. The Sped teacher said that we could modify his work (less work for him to do), he still struggled to complete it. These teachers were struggling to find a solution to help the student. The Behavior Health Specialist did not provide solution. And when they called upon the Autism Consultant Specialist, the strategies she provided, I was already implementing with the student. She did not offer me anymore solution, and she did not come back for follow ups.

Although these teachers see the student about 7 hours a day, 5 days a week, it does not make them qualified to write up a behavior plan or write up an FBA. So, because teacher spends majority of the time with the student, and knows the student the best, are you saying that s/he can be their speech therapist, or they occupational therapist? No, the DOE has speech therapist, and occupational therapist to work with the children. Why is ABA different? Why can we not hire an LBA to write up a FBA and BSP for the child? Why can't we bring in a specialist to work with the child, or work with the teachers, so they can help the child. Our teachers signed up to TEACH, so let them worry about educating our children. Let the LBA take care of writing the FBA and BSP. Let us think what is best for the child and the peers in their classroom. No matter how dedicated, and caring the teacher is, does not mean s/he knows how to implement applied behavior analysis without the support of an LBA.

HB-2657-HD-1

Submitted on: 3/22/2018 7:38:22 AM

Testimony for CPH on 3/22/2018 9:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lisa Sakuda	Individual	Oppose	No

Comments:

I am oppose to having this bill pass. As a former preschool teacher, 6 years as a lead, and 3 years as a student aide. I would not not feel confident in designing and implementing applied behavior analysis in the classroom without the help of a Board Cerified Behavior Analysts. Although I was with my students 5 days a week, 8 hours a day, it does not make me qualified to design ABA services, nor make me qualified to conduct and complete a Functional Behavior Assessment. I would not feel confident in completing one. I knew each and every one of my students. Just because we know the students, does not mean that we should practice outside of our scope of field. If we are thinking of what is best for each and every one of them, we should do the right think, and let the Licensed Behavior Analysts complete FBA and work together with the teacher and the students team to help provide ABA services. We signed up to educate the students, so let us teachers worry about teaching, and give us the support we need to do so. Each one of the team members (teacher, LBA, SSC, etc...) and bring something to the table, which in return could be a really great outcome to the student if we all work together. If we have one goal in mind, we should always think about the student and the peers in their classroom.

HB-2657-HD-1

Submitted on: 3/22/2018 8:31:42 AM

Testimony for CPH on 3/22/2018 9:15:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Gerilyn Pinnow	Individual	Oppose	No

Comments:

Good Morning,

I am in opposition of this bill as written because as a parent of a child with Autism we know this is a specialized therapy. We need to maintain professional standards. I have been advocating for access, consistency, and professional oversight of services for our autism community. Please refer back to your bill you graciously submitted for our children. I like the language put forth by Senators Kidani and Baker in SB2925 SD1. Thank you Senator Baker and Committee for continuing to help our autism community,

With much respect,

Gerilyn Pinnow M.Ed.

(Luke's Mom)