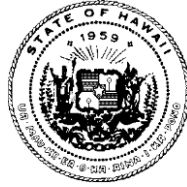


DAVID Y. IGE
GOVERNOR



PANKAJ BHANOT
DIRECTOR

CATHY BETTS
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 26, 2018

TO: The Honorable Representative Sylvia Luke, Chair
House Committee on Finance

FROM: Pankaj Bhanot, Director

SUBJECT: **HB 2657 HD1 – RELATING TO BEHAVIOR ANALYSIS**

Hearing: Tuesday, February 27, 12:00 p.m.
Conference Room 308, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent and supports the measure.

PURPOSE: The purpose of the bill is 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 exempt from the Behavior Analyst Law.

The Department of Health's (DOH)-Developmental Disabilities Division (DDD) operates Hawaii's Medicaid Intellectual and Developmental Disabilities (I/DD) Home and Community-Based Services Waiver on behalf of our DHS Med-QUEST Division. We agree with DDD that we all seek strong behavioral health services for both our children and adult beneficiaries. However, elements of the current statute are impacting provision and access to behavior analytic services for adults who are served by the I/DD waiver.

Please note that for children served by the I/DD waiver who also have Autism Spectrum Disorders (ASD), the Centers for Medicare and Medicaid Service (CMS) has clarified that ASD treatments and services must be provided through the child's Medicaid health plan

through their Early and Periodic Screening, Diagnostic, and Treatment (EPSDT) benefit. It cannot be provided as an I/DD waived service.

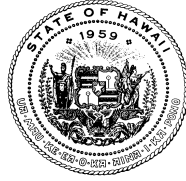
Therefore, the provision of behavior analysis in the I/DD waiver is applicable only for adults, and most often for people with entrenched and challenging behaviors that include self-harm and aggression toward others. These services are quite different than those to treat ASD.

One of the primary issues that has emerged in section 465D-1, Hawaii Revised Statutes (HRS), is the broad definition of the practice of behavior analysis. While the intent of the legislature was to establish standards for the licensing of behavior analysts to address autism, the broad definition is being interpreted to mean that even simple behavioral interventions, including for adults without autism, require a licensed behavior analyst. This is challenging for several reasons – while there is progress in developing the capacity of the workforce, there continues to be insufficient workforce of Licensed Behavioral Analysts (LBA) in Hawaii, as well as a shortage of LBAs to supervise Registered Behavior Technician (RBT) training hours.

Additionally, the LBAs provide services to children with autism primarily in office-based setting. It is much more challenging to address DDD's behavioral health needs. The difficulty is most acute for adults served by the I/DD waiver who have high-end behaviors that require staff-intensive approaches, and who access their services in homes and in the community. These adults require implementation of services by teams of people that include a mix of RBTs and trained direct support workers, often for many hours during the day and night.

For these reasons, DHS supports passage of this measure since it will improve access to the necessary quality services for the adults served by the waiver, and still maintain the appropriate quality assurance, participant safe-guards and the rights of the participants.

Thank you for the opportunity to provide comments on this measure.



STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

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

REPRESENTATIVE SYLVIA LUKE, CHAIR
HOUSE COMMITTEE ON FINANCE

Hearing Date: February 27, 2018

Room Number: 308

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

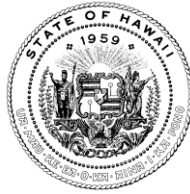
17 **Amend Section 4 on page 7, line 18:**

18 Change rehabilitative to habilitative.

19 **Amend Section 7 on page 12, line 11:**

20 Change effective date to upon its approval.

21
22
23 Thank you very much for the opportunity to testify.
24



DAVID Y. IGE
GOVERNOR
DOUGLAS S. CHIN
LT. GOVERNOR

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CATHERINE P. AWAKUNI COLÓN
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DEPUTY DIRECTOR

PRESENTATION OF
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE HOUSE COMMITTEE ON FINANCE

TWENTY-NINTH STATE LEGISLATURE
Regular Session of 2018

Tuesday, February 27, 2018
12:00 p.m.

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

TO THE HONORABLE SYLVIA LUKE, 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 the Practice of 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 offers the following comments relating to enforcement of this bill.

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:

[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 behavioral 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[.]”

House Bill No. 2657, H.D. 1
February 27, 2018
Page 2

RICO requests clarification on which licensed professionals would be included in “licensed professionals” in HRS section 465D-7(a)(1) on page 5, line 12.

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.



STATE OF HAWAII
STATE COUNCIL
ON DEVELOPMENTAL DISABILITIES
1010 Richards Street, Room 122
HONOLULU, HAWAII 96813
TELEPHONE: (808) 586-8100 FAX: (808) 586-7543

February 27, 2018

The Honorable Sylvia Luke, Chair
House Committee on Finance
Twenty-Ninth Legislature
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Dear Representative Takumi 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. People learn and respond differently to various techniques, so there were times the speech therapist's techniques worked best when addressing a person's behavior and other times an audiologist, whose method of music therapy and aromatherapy, provided a soothing response from an individual that no longer needed to be restrained to calm herself. 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.

Honorable Sylvia Luke
February 27, 2018
Page 2

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,

A handwritten signature in blue ink that reads "Daintry Bartoldus". The signature is written in a cursive, flowing style.

Daintry Bartoldus
Executive Administrator



Committee on Finance

Rep. Sylvia Luke, Chair

Rep. Ty J.K. Cullen, Vice Chair

Tuesday, February 27, 2018 12:00 pm

Conference Room, 308

HB 2657 Relating to Behavior Analysis -- Oppose as Written

Honorable Chair Luke, Vice Chair Cullen, and Members of the Committee,

The Hawai'i Association for Behavior Analysis (HABA) appreciates the open dialogue and good-faith efforts that the Department of Health - Developmental Disabilities Division (DOH-DDD) has made in working to meet the requirements of existing law. Specifically, HABA supports DOH-DDD's intention to raise rates above Medicaid, in an effort to meet capacity. HABA also supports DOH-DDD in revising their waiver provider standards to ensure participants in their program, in need of behavioral supports, can access care from licensed and qualified providers. DOH-DDD has communicated that they are committed to fidelity with the implementation of Chapter 465-D.

DOH-DDD and HABA have reached a compromise: keeping existing law, as is, while granting five additional years for workforce development. We have agreed to partner on trainings and dissemination of information to providers, case managers, and consumers. HABA has concerns, however, on the current language in HB 2657, in that the language puts consumers at risk. For this reason, we opposed HB 2657 as written. If the committee decides to move this bill forward, HABA respectfully offers the following language for consideration.

We believe this language clearly allows psychologists and their supervisees the ability to practice behavior analysis, when it is in the boundary of their education, training, and competence. This will ensure psychologists' right to practice behavior analysis while maintaining consumer protections.

Mahalo for the opportunity to testify.

Sincerely,

Kathleen Penland

Kathleen Penland, M. Ed. BCBA, LBA

President, Hawai'i Association for Behavior Analysis

[§465D-7] Exemptions. (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) "Individuals licensed in this State to practice 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, and provided that the person does not purport to be a behavior analyst;

~~(1) An individual working within the scope of practice or duties, which that overlaps with the practice of behavior analysis; provided that the person does not purport to be a behavior analyst;~~

(2) "Individuals licensed in this State to practice 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, and provided that the person 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;

(4) A licensed classroom teacher, or someone who is working as a classroom teacher and is enrolled in a teacher preparation program working towards 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 this State;

~~(3)~~ (5) An individual who directly implements ~~and does not design~~ ~~applied~~ 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 directly implements a behavior analysis program under the supervision of a professional licensed in this State to practice behavior analysis ~~and does not design~~ intervention or assessment plans on or before January 1, 2019;

~~[(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;~~

provided that for purposes of this paragraph, "direct support worker" means a ~~teacher or~~ paraprofessional;

(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;

~~(7) (4) A family member [or], legal guardian, or caregiver implementing an applied behavior analysis plan and who acts under the direction of a licensed behavior analyst [licensed in this State;] or licensed psychologist;~~ 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;

~~(8) (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;~~

~~(9) (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-verified course sequence;~~
or

~~(10) (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.~~

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



Hawai'i Psychological Association

For a Healthy Hawai'i

P.O. Box 833
Honolulu, HI 96808

www.hawaiipsychology.org

Email: hpaexec@gmail.com
Phone: (808) 521-8995

Rep. Sylvia Luke, Chair
Rep. Ty J.K. Cullen, Vice Chair
HOUSE COMMITTEE ON FINANCE

February 25, 2018

Tuesday, February 27, 2018 12:00 pm
Conference Room 308

Testimony
IN STRONG SUPPORT OF HB2657_HD1
RELATING TO BEHAVIOR ANALYSIS SERVICES

The Hawaii Psychological Association (HPA) strongly supports House Bill 2657_HD1 which incorporates an amendment recommended by the association. As licensed psychologists, we are aware that our scope of practice, as defined in Hawaii state statute, includes the practice of "Behavior Analysis" and the supervision of assistants such as postdoctoral fellows, students and unlicensed master's level clinicians who we may use to supervise paraprofessionals, direct support workers, and family members in the implementation of a behavioral program. This version of the bill would clarify psychologists' scope of practice as including the supervision of behavioral interventions and would prevent an unnecessary narrowing of the behavioral health workforce by allowing more variety in the acceptable training and certification requirements for paraprofessional workers and their supervisors.

Thank you for the opportunity to provide testimony on this important issue.

Sincerely,

Raymond A. Folen, Ph.D., ABPP
Executive Director



February 23, 2018

The Honorable Sylvia Luke, Chair
The Honorable Ty J.K. Cullen, Vice Chair
House Committee on Finance

Re: HB 2657, HD1 – Relating to Health Insurance

Dear Chair Luke, Vice Chair Cullen, 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.

We continue to 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.

We appreciate the previous Committee's effort to define "caregiver" in HB 2657, HD1; however, we suggest the Committee further define this service within HRS 465D for consistency and clarity.

We look forward to continuing our work with the stakeholders to safely and efficiently expand ABA services in our state. Thank you for allowing us to provide comments on HB 2657, HD1.

Sincerely,

Pono Chong
Vice-President, Government Relations

Date: February 11, 2018

To: Rep. Roy M. Takumi, Chair, and Rep. Linda Ichiyama, Vice Chair

Hearing: February 12, 2018, 2:00, Room 329

From: Richard J. Kravetz, Ph.D.
(808) 258-2598

Re: Testimony in Strong Support of HB2657 HD1, Relating to Behavior Analysis Services as Amended by the Hawaii Psychological Association

I have worked in Hawaii as a psychologist for over thirty years. Since 1996, my work has included training and supervising paraprofessionals, practicum students, interns, postdoctoral residents and master's level clinicians in providing applied behavior analysis (ABA) through contracts with the Hawaii Department of Health Developmental Disabilities Division and Early Intervention Section as well as the Hawaii Department of Education.

Twenty years ago there were less than a handful of behavioral health professionals in Hawaii who were trained to provide ABA for individuals with autism. Over the past 20 years, as a Licensed Psychologist for the Hoahana Institute and Clinical Director of Alaka'i Na Keiki, Inc., I have had the privilege of training and supervising over 70 interns, postdoctoral fellows and unlicensed master's level mental health practitioners to deliver ABA services, consult with parents and relevant professionals, and supervise paraprofessionals and direct support workers within a tiered model of service delivery. Care Hawaii and Hawaii Behavioral Health have provided similar training experiences for psychologists in Hawaii. In turn, these psychologists have trained and supervised the next generation, including paraprofessionals, who when they learned what a difference they could make for children with Autism, decided to go back to school and are now among Hawaii's ABA and autism-trained licensed clinical social workers, licensed mental health counselors, and licensed marriage and family therapists, and include, as well, our State's newest group of licensed behavioral health professionals, i.e., behavior analysts.

Although the law licensing behavior analysts (Hawaii Revised Statutes, Chapter 465D), expressly exempts a licensed practitioner practicing within the practitioner's own scope of practice from the licensure requirements for behavior analysts, some state agencies and insurance companies are interpreting this new law as restricting licensed psychologists and other professionals from supervising behavior analysis even though it is within their recognized scope of practice. We are told that state agencies are trying to address how they are going to meet, what they understand to be, the requirement of the new law that behavioral interventions can only be delivered by certified Registered Behavior Technicians working under the supervision of an LBA.

I would like to point out that providing and supervising behavior analysis is firmly established as part of psychology. Behavior analysis is based on psychological principles, founded by psychologists including my mentor O. Ivar Lovaas; and continues to be developed by the research efforts of psychologists today.

Statutorily, Hawaii's law related to the licensure of psychologists (Hawaii Revised Statutes 465) specifically includes behavior analysis and therapy in its definition of the practice of psychology and also recognizes the scope of our practice to include supervising others including assistants, students, and post-docs.

Hawaii needs licensed psychologists as providers and supervisors in order to maintain and continue to develop an adequate and workforce of professionals and paraprofessionals. I am concerned that ACT 199 and related laws requiring that all direct support workers working with the Developmental Disabilities Division be certified as Registered Behavior Technicians (RBTs) by January 1, 2019 and be supervised by a select group of ABA trained professionals, namely LBAs, will result in a ***"restraint of trade"*** for Licensed Psychologists as well as other qualified professionals, who have been providing and supervising ABA services as part their own recognized scope of practice.

Such a restriction of services will not well serve our community, which continues to need to retain and increase its professional and paraprofessional workforce. We need everyone.

Thank you for the opportunity to share my concerns.



Achieve with us.

Testimony in Support of HB2657 HD1

Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair
House Committee on Finance

Hearing Date: February 27, 2018 Room Number: 308

Honorable Representatives:

The Arc in Hawaii strongly supports HB2657 HD1, which seeks to amend portions of HRS 465-D.

The Arc in Hawaii, a private non-profit agency, provides services to individuals with intellectual and developmental disabilities (ID/DD) and their families across Oahu. Together with its national and neighbor-island Arc affiliates, The Arc in Hawaii promotes and protects the rights of people with ID/DD and actively supports their right to be included and fully participate in the community throughout their lifetime.

We understand the very real concerns that underlie HRS 465-D. While we agree that the licensing of BCBA's is important and that they serve a very important role, it is our belief that the statute as written is too broad and needs clarification. We also believe requiring that every individual providing Direct Services to individuals with BSPs be a certified RBT is both unnecessary and unworkable in the real world environment in which we operate.

The Arc in Hawaii serves adults with ID/DD who may or may not be on the autism spectrum. Most of the participants we serve have minor behavioral issues that can be addressed with simple behavioral protocols. A Behavioral Support Plan (BSP), requiring the services of a Licensed Behavioral Analyst (LBA), is not necessary in these situations. Given the current shortage of LBAs in Hawaii it is also not realistically workable.

Roughly a third of our Direct Service staff members have been with The Arc in Hawaii for over 10 years. A vast majority of them do not possess a degree, nor do they have the time, resources, or in some cases the capacity necessary to obtain RBT certification. They do 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. Additionally, staff undergo rigorous training on a regular basis and are provided appropriate oversight to ensure proper care.

465-D's broad outlines would seem to require that the presence of one participant whose behavior requires a BSP in an ADH classroom or in an Arc-operated waiver home would mean

that all staff in those environments would have to be certified RBTs. That would create a staffing and scheduling nightmare for us. The likely dramatic increase in staff turnover would disrupt relationships and even long-standing placements that provide our participants with the consistency and emotional stability they need.

We humbly submit that our agency can more than adequately address the needs behind 465-D under the following regime:

- 1) Training and consultation services from an LBA or Psychologist to provide an overarching framework for needed behavioral support plans, along with
- 2) A mix of both RBTs and Direct Service workers providing ADH, PAB and CLS services to implement those plans.

We caution that:

- 1) Given the difficult employment market we currently face, a raise in reimbursement rates to cover additional salary costs will be imperative if we are to provide necessary behavioral support plans successfully under even an amended statute.
- 2) Sufficient time to develop appropriate implementation guidelines and to develop an adequate workforce will also be necessary to ensure success, again even under an amended statute.

Thank you very much for allowing us to submit testimony on behalf of HB2657 HD1.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lei Fountain', with a long horizontal flourish extending to the right.

Lei Fountain
Executive Director

MAILING ADDRESS

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Kealahou, HI 96750

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KAPAAU

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OCEAN VIEW

92-1804 Keaka Parkway

Federal ID

99-0108896

To: Representative Sylvia Luke, Chair
Representative Ty J.K. Cullen, Vice Chair
Committee on Finance

Hearing Date: February 27, 2018, 12:00 pm, Room 308

RE: **Testimony in support of HB2657 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.

We understand the concerns that underlie HRS 465-D and, while we agree that the licensing of BCBA's 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. Additionally, staff undergo rigorous training on a regular basis and are provided appropriate oversight to ensure proper care.

United Way 

carf
Commission on Accreditation
of Rehabilitation Facilities



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

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 the staff and our 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 HB2657 HD1 specifically as it clarifies language and adds the term "applied" to behavioral analysis, adds an exemption for individuals who design or implement behavior analysis services for Medicaid Waiver Home and Community Based Services, and adds an exemption for caregivers in licensed residential settings.

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

HB-2657-HD-1

Submitted on: 2/26/2018 9:31:48 AM

Testimony for FIN on 2/27/2018 12:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
James Kilgore	Full Life	Support	No

Comments:

Dear Chair Luke, Vice Chair Cullen and Members of the House Committee on Finance,

I am writing in support of HB2657 HD1. Full Life has served individuals with I/DD on Hawai'i Island for over 17 years. There continues to be a shortage of Licensed Behavior Analysts on Hawai'i Island. People who Full Life serves in the community require the implementation of services which may include behavior supports by a mix of direct support workers, family members, and caretakers. We desire to build capacity by adding RBTs into that mix of support providers as capacity increases for LBAs on Hawaii Island.

Mahalo,

Jim Kilgore

Date: February 26, 2018

To: Rep. Sylvia Luke, Chair and Rep. Ty J.K. Cullen, Vice Chair

Hearing: Tuesday, February 27, 2018, 11:00 am, Conference Room 308

From: Linda D. Hufano, Ph.D.
(808) 258-2250

Re: Testimony in Strong Support of HB2657_HD1, Relating to the Practice of Behavior Analysis

Chapter 465 of the Hawaii Revised Statutes expressly defines behavior analysis and therapy as within the scope of psychology, as well as our ability to supervise and direct assistants. The lack of clarification in ACT 199 has resulted in misinterpretations by state agencies and some insurance companies who mistakenly interpret ACT 199 as excluding ABA-trained psychologists and other ABA-trained licensed or credentialed professionals from designing ABA programs for eligible individuals and/or supervising others to implement the programs.

As a behaviorally-trained psychologist I have worked as a psychologist in the public and private sectors for over 30 years. I strongly support HPA amendments incorporated into HB2657_HD2 as amended. These amendments clarify the exemption of licensed psychologists and other professionals whose scope of practice overlaps with behavior analysis in ACT 199.

I also support the identification of the Behavior Analyst Certification Board (BACB) and recommend the inclusion of the Behavioral Intervention Certification Council (BICC) in the statute as well. Both of these national certifying boards have met the rigorous standards for accreditation by the National Commission for Certifying Agencies (NCCA). I am aware that the Hawaii workforce has included paraprofessional workers who have been certified by the BACB as well as those who have been certified by the BICC. Including the BICC as a national certifying agency would help to ensure a qualified workforce that is not arbitrarily diminished by the existing state statute.

Why Should Individuals and Families Have Access to ABA-trained Psychologists and Other ABA-trained Mental Health Professionals

Compared with LBAs who are not trained in mental health, ABA-trained psychologists have the advantage of experience in treating the anxiety disorders, clinical depression, externalizing disorders such as ADHD, that are frequently co-morbid with autism (30 – 40% or more for each of the previously mentioned disorders). Suicide is also significantly high among individuals with autism as are post-traumatic stress disorders. As mental health providers, they can incorporate for individuals presenting co-occurring disorders during the assessment, planning, and monitoring phases of ABA service delivery.

LBA's are desirous of extending ABA services to individuals who do not have autism. Insofar as many if not the majority of these individuals needing such services may have mental health issues, it is critical that the persons delivering these services also have training in mental health.

While some LBA's may have a mental health background, most LBA's would not be expected to have such training as it is not required by their certification board. In cases where an individual has a mental health diagnosis, an ABA-trained mental health provide would be a preferred option since an ABA-trained mental health professional would be able to modify an ABA program based on the individual's mental health disorder, and/or incorporate non-ABA evidence-based approaches, as warranted.

Everyone qualified provider is needed, including the many licensed/credentialed employees working within the DD Division who are competent and trained to design, deliver and supervise paraprofessionals in providing ABA services. It is clear in speaking with representatives of state agencies that there will be a significant lack of trained professionals and paraprofessionals to deliver ABA services if Chapter 465D of the Hawaii Revised Statute continues to be misinterpreted as restricted to professionals and paraprofessionals certified by the Behavior Analyst Certification Board (BACB).

Clarifying who can legally provide behavioral intervention services as well as the definition will result in services getting to the students who need them by properly trained staff.

I am attaching a comparison sheet of the training requirements of paraprofessional staff for your consideration. National certification of paraprofessionals will be very costly; there is a turnover of 30-40% annually; to my knowledge no other DD Division is required to have direct support workers who are RBT's; the 40 hour on-line training for RBT's (or alternately training by licensed or nationally certified professionals) is relatively new, and there is no proof that it leads to better outcomes. Despite the numbers of LBA's and RBT's registered in Hawaii, contracted agencies, parents, and referring agencies are reporting a shortage of RBTS's and frequent turnover in addition to long waitlists, with one agency no longer even keeping a waitlist because of a three year demand. LBA's are not restricted by their national board in only being able to supervise an RBT; they can also supervise paras certified by the other national certifying agencies as well as direct support workers who are trained but not certified.

It is certainly possible to include an observation/assessment component to the training of direct support worker, or similar oversight protection, that would assure that a direct support worker is competent to provide the behavioral interventions needed by a particular consumer.

Thank you for the opportunity to submit testimony.