



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 06, 2018

The Honorable John Mizuno, Chair
House Committee on Health and Human Services
Twenty-Ninth Legislature
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Dear Representative Mizuno and Members of the Committees:

SUBJECT: HB 2143 - Relating to Behavior Analysis Services
HB 2657 – Relating to Behavior Analysis

The State Council on Developmental Disabilities **strongly supports HB 2143 and HB 2657**. These measures clarify the scope of practice of behavior analysis.

The Council supported the licensing of behavior analysts for the practice of behavior analysis and appreciated the Legislature's swift initiation of Act 235 session 2015 requiring the licensing of behavior analysts beginning on January 1, 2016. However, the Council is aware of individuals with intellectual/developmental disabilities receiving and benefiting from the implementation of an applied behavior analysis plan through other trained professionals and paraprofessionals. We thought Act 235 would build the State's workforce of trained professionals and paraprofessionals, providing comprehensive behavior analysis. Not restrict the practice to only individuals who possess a board certification from the Behavior Analyst Certification Board.

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 defers to DOH/DDD 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 2143 and HB 2657**.

Sincerely,

Daintry Bartoldus
Executive Administrator



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

February 5, 2018

TO: The Honorable Representative John Mizuno, Chair
House Committee on Health and Human Services

FROM: Pankaj Bhanot, Director

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

Hearing: Tuesday, February 6, 2018, 8:30 a.m.
Conference Room 329, 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. 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. If passed the bill will: (1) allow children with autism spectrum disorders to receive appropriate applied behavior analysis treatment, while simultaneously providing safeguards for consumer protection; (2) exempt from the licensure requirement for behavior analysis certain individuals who implement applied behavior analysis services or plans under the oversight of a behavioral review committee or psychologist; and (3) Update and standardize the terminology used to refer to behavior analysts.

The 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.

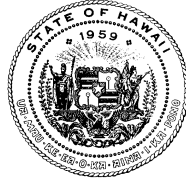
Therefore, the provision of behavior analysis in the I/DD waiver is applicable only for adults, and most often for people with entrenched and challenging behaviors that include self-harm and aggression toward others. These services are quite different than those to treat ASD.

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 sufficient 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 SB 2496 because it will support 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 COMMENTING on HB2657
RELATING TO BEHAVIOR ANALYSIS

REPRESENTATIVE JOHN M. MIZUNO, CHAIR
HOUSE COMMITTEE ON HEALTH & HUMAN SERVICES

Hearing Date: 02/06/18

Room Number: 329

1 **Fiscal Implications:** None.

2 **Department Testimony:**

3 The Department of Health (DOH) strongly supports HB2657 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 HB 2657 because it will help ensure Hawaii's compliance with the
13 I/DD waiver, including its numerous requirements for quality assurance, participant safeguards,
14 and ensuring the rights of 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 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 individuals who design or implement behavior**
27 **analytic services for participants of Waiver.** DDD has access to LBAs through a

1 service called Training and Consultation and has strong quality oversight of behavioral
2 practices as mentioned earlier. As such, this amendment to Chapter 465D, HRS, will
3 mitigate for the broad definition of practice of behavior analysis, and allow DOH-DDD
4 to manage the utilization of behavioral services for cases where the design and
5 implementation requires a LBA. Without this exemption, LBAs are far less likely to
6 work with our population, and access to this critically needed service will continue to be
7 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, 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 HB 2657 to align with
17 the companion bill in the Senate (SB 2496):

18 **Amend Section 4 on page 5, line 20 that would amend §465D-7(a)(3), HRS, to read:**

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

23 **Amend Section 4 on page 7, line 3 that would amend §465D-7(a)(5), HRS to read:**

24 [(4)](5) A family member [or], legal guardian, or caregiver implementing an applied
25 behavior analysis plan and who acts under the direction of a licensed behavior
26 analyst [~~licensed in this State;~~] or licensed psychologist; provided that for the
27 purposes of this paragraph, “caregiver” means an individual who provides

1 habilitative services in an adult foster home, developmental disabilities domiciliary
2 home, adult residential care home, expanded adult residential care home, special
3 treatment facility, or therapeutic living program, pursuant to the medicaid HCBS
4 waiver.

5

6 Thank you very much for the opportunity to testify.

7

HB-2657

Submitted on: 2/2/2018 3:36:02 PM

Testimony for HHS on 2/6/2018 8:30:00 AM

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

Comments:

We were very concerned and disappointed when we saw this bill. A few years ago, after the ABA insurance mandate was passed, along with the BCBA licensing law, the DD Division approached several stakeholders and explained its concern about whether HCBS waiver providers would fall within the definition and need to meet the requirements of the licensing statute as they performed their services for people in the DD waiver. A consensus was reached that it would be appropriate to be properly credentialed, as per the legal requirements, and it was also acknowledged that a phase-in period for direct support workers to become RBTs (Registered Behavior Technicians) was necessary. For that reason we and others supported the current law which provides a delayed implementation of the RBT requirement until 1/1/2019.

We had been under the impression that DD was attempting in good faith to comply and to develop the robust network of properly trained providers. If delays or issues were encountered and perhaps an additional period of time was needed, that could have been the subject of discussion among the parties. However, we were a bit taken by surprise when we learned of this bill which now seeks an all out, blanket exemption from the requirements of the law. We see no justification, be it legal or practical, for such a change in the law and we would urge the DD Division to reverse course on this issue and continue with what we thought were supposed to be its good-faith efforts to serve its recipients who need these services.

At the hearing last week on the Senate companion to this measure there was some preliminary consensus that perhaps a five year extension to the current law, without the additional provisions in this bill pertaining to psychologists would be acceptable to the parties. We would concur with that.



2/6/18

COMMITTEE ON HEALTH & HUMAN SERVICES

Rep. John M. Mizuno, Chair

Rep. Bertrand Kobayashi, Vice Chair

Conference Room 329

State Capitol

HB 2657 Relating to Behavior Analysis--Testimony in SUPPORT

Honorable Chair Mizuno, Vice Chair Kobayashi, and members of the committee,

The Hawai'i Association for Behavior Analysis (HABA) would like to thank the members of the committee for your continued attention and support of behavior analysis. In 2015, the Legislature passed Act 199 (Chapter 465-D) that provides for the licensure of Behavior Analysts. Act 199 became a companion bill to "Luke's Law" making Hawai'i the 42nd state to mandate insurance coverage for the treatment of autism. In passing Act 199, the legislature recognized that the practice of applied behavior analysis is a distinct profession and afforded consumers of these services protections through state regulation.

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 by 20% 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 5 additional years for workforce development. We have agreed to partner on trainings and dissemination of information to providers, case managers, and consumers. HABA believes in protecting consumers and maintaining quality of ABA Services; we will work with any Department that makes good faith efforts. HABA supports HB 2657.

Specifically, HABA supports the amendments to chapter 465-D, HRS as stated in HB2657 for the following reasons:

- 1) **Adds an exemption for individuals who design or implement behavior analytic services for participants of Waiver.** DDD has access to LBAs through a service called Training and Consultation and has strong quality oversight of behavioral practices as mentioned earlier. As such, this amendment to Chapter 465D, HRS will mitigate for the broad definition of practice of behavior analysis, and allow DOH-DDD to manage the utilization of behavioral services for cases where the design and implementation requires a LBA.
- 2) **Adds an exemption for Caregivers.** Caregivers are not expressly included in the exemptions listed in §465D-7, HRS. Currently, a “family member” is exempt from licensing under §465D-7(a)(4), HRS. DOH seeks an amendment for caregivers as stated in HB2657, the same as the family exemption in the current statute. Without this exemption, by January 2019, any caregiver reinforcing behaviors in homes must first become an RBT by obtaining the credential from the Behavior Analyst Certification Board. This will likely disrupt placements for waiver participants as most caregivers will not choose to go through the extensive process to become an RBT.

Offered Amendments: HABA offers the following amendments to HB 2657 to align with the companion bill in the Senate (SB 2496):

Amend Section 4 on page 5, line 20 that would amend HRS § 465D-7(a)(3) to read:

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

Amend Section 4 on page 7, line 3 that would amend HRS § 465D-7(a)(5) to read:

[(4)][(5)] 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 habilitative 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 HCBS waiver.

Thank you for the opportunity to testify.

Sincerely,

Kathleen Penland

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

Date: February 2, 2018

To: Representatives Belatti and Mizuno

Hearing: February 6, 2018, 8:30 a.m., Room 329

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

Re: Testimony in Strong Support of HB2657, 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 special education teachers, 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 Hawaii Department of Education and 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, e.g., Licensed Mental Health Counselors, Licensed Clinical Social Workers, Advance Practice Registered Nurses, Severe/Autism Credentialed Special Education Teachers, 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.

Date: February 2, 2018

To: Representatives Belatti and Mizuno

Hearing: February 6, 2018, 8:30, Room 329

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

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

I am a behaviorally-trained psychologist and have worked as a psychologist in the public and private sectors for over 30 years.

Support for HB2657

I am in **strong support** of HB2657. It clarifies that licensed psychologists and other professionals whose scope of practice overlaps with behavior analysis will be allowed to continue to provide behavior analysis and supervise others to do so, which we had always understood the intent of Chapter 465D of the Hawaii revised Statutes to be.

Additionally, HB2657 recognizes caregivers as exempt, as they should be.

Finally, HB2657 clarifies the definition of behavior analysis so that qualified individuals, including appropriately trained direct support workers, can continue to utilize behavioral interventions such as star charts, token economies, praise, ignoring, time-out, intermittent reinforcement, and the list goes on - for the purpose of teaching new skills, reducing inappropriate behaviors, etc.

History of ABA in Hawaii

The Departments of Psychology and Special Education at the University of Hawaii were among the first behaviorally-oriented programs in the nation. Professors in both programs have outstanding credentials in behavioral psychology – including formulating learning principles underlying applied behavior analysis with various populations, developing behavioral/instructional techniques, and training many of Hawaii's practicing psychologists and direct support workers. Thus, to say that behaviorism or applied behavior analysis (ABA) is new to Hawaii would be a misstatement.

Twenty years ago, the state began contracting ABA services for individuals with ASD out to the private sector. Hoahana Institute and its successor organizations, Alaka'i Na Keiki, Inc. and CARE Hawaii, were among the first to propose and implement ABA services using a three-tiered model based on the pioneering work of Ivar Lovaas (who traveled to Hawaii to help kick-off the program since it had been proposed by one of his former students). In this model, Hawaii psychologists trained postdoctoral residents from Hawaii and the Mainland to 1) assess and design behavioral interventions for individuals with autism, 2) to consult with team members, and 3) to supervise direct support workers and families implement ABA in the home, community school and/or workplace.

In later years, agencies in Hawaii trained master's level to assess and design behavioral interventions, consult with team members and supervise paraprofessionals/direct support workers – some of whom are now licensed clinical social workers, licensed special education teachers, licensed marriage family therapists, licensed mental health counselors, and most recently, licensed behavior analysts. Thus, to say that psychologists do not supervise others in implementing ABA is incorrect.

“The Gold Standard for Training and Supervision”

The Lovaas model has long been recognized as the gold standard for training and supervision based on research looking at “outcomes”. There is no research evidence to support the notion that BCBAs achieve better outcomes than licensed psychologists or other licensed professionals. HABA cited a research study by Dennis Dixon et al. wherein BCBAs achieved better results than non-BCBAs. Per written testimony from Dr. Dixon to last year’s Senate Committee on SB739, this was a mischaracterization of his findings since licensed psychologists and other licensed professionals were specifically excluded from the study.

Similarly, there is no evidence to support that RBT training is superior, i.e., more effective or leads to better outcomes, than the ABA paraprofessional training provided by other nationally certified groups (which require training in autism for paraprofessionals who implement ABA for individuals with ASD), or the ABA paraprofessional training, as specified by the funding agency¹, and provided by a contracted agency; or the ABA paraprofessional training provided by a licensed psychologist who is responsible, under his/her license, for ensuring competent service delivery to service recipients who require an individualized treatment plan.

Board Certification from the ABPP vs. Certification from the BACB

Opponents of last year’s SB739, SD1, seemed to equate board certification from the Behavior Analysis Certification Board (BACB) with board certification from the American Board of Professional Psychology (ABPP). Thus, it is important to recognize the following:

- Board certification from the American Board of Professional Psychology (ABPP) is purely voluntary. Neither the Hawaii law pertaining to the licensure of psychologists or the American Psychological Association (APA) requires or recommends that psychologists obtain board certification from the American Board of Professional Psychology (ABPP)² to provide Applied Behavior Analysis (ABA) or to supervise others in implementing ABA services. (See the attached “Motion recently passed by the APA Council Pertaining to ABA Policy”)³.
- It is relevant to note that only 3-4% of all licensed psychologists in the U.S. - approximately 4,000 out of an estimated 107,000 - possess ABPP certification in one or more of 15 different areas. Of these 4,000 psychologists, only 141 possess certification in Behavioral and Cognitive Psychology. Per the ABPP⁴, certification in this area could mean the psychologist was examined in ABA, but it could also mean he or she was examined in behavior therapy, cognitive-behavior therapy, or cognitive therapy.⁵
- HABA’s position that psychologists should obtain ABPP certification is totally without merit, and would certainly have the effect of, restricting the pool of qualified professionals who are trained in ABA and have been providing services to individuals with autism under contracts with the Hawaii DOE, EIS and DD Division for several years.

¹ The Hawaii DOE, DOH, EIS, CAMHD, and DDD currently specify education, training and supervision requirements which meet or exceed RBT training in many areas, are less costly, and less likely to result in service delays. It is worth noting that paraprofessional turnover estimates in Hawaii are between 30-40 percent annually and 50% on the Mainland.

² The ABPP is a separate entity from the APA. The APA is the national professional organization for psychology which HABA confuses with the ABPP in various written communications.

³ See APA Council Meeting Minutes dated 2/24 and 25, 2017, email shared by HPA Representative, June Ching.

⁴ Personal communication to Dr. Linda Hufano from Kathy Holland, ABPP, on 2/28/17.

⁵ Only two licensed psychologists possess ABPP certification in Behavioral and Cognitive Psychology. The HPA knows both of these individuals, neither of whom specialize in ABA or ASD.

- The BCBA credential is not consistent with generally accepted concept of board certification in other human services professions where board certification is understood to mean a level of proficiency “over and above” what is required by the practitioner’s professional organization or by individual state licensing boards. Consumers and other professionals familiar with the more traditional use of the term “board certification” may mistake the credentialing of behavior analysts as implying advanced proficiency when in fact it reflects a pre-license, certification for professionals with a master’s degree in an area that may or may not have been in a human service field⁶, fewer course credits and supervised field hours than those required by than are required by licensed psychologists or other licensed professionals whose scope of practice overlaps with behavior analysis, and does not require post-master’s or post-doctoral supervision prior to licensure.
- To our knowledge, no funding source requires the ABPP certification. It is unreasonable and creates an unnecessary barrier to treatment by imposing a requirement on psychologists who have already surpassed educational and experience requirements than those completed by the average BCBA.
- Just as a psychologist would be expected to have sufficient training in ABA, we trust the BCBA to have specific training in ABA with the target population he or she works with or risk losing his or her license. The fact that the psychologist is licensed is what prevents the psychologist from acting outside of the scope of that license. There is no need for suggesting an additional requirement.

Why Should Individuals and Families Have Options

Compared with LBAs who are not trained in mental health, ABA-trained psychologists have the advantage of experience in treating the anxiety, depression, or PTSD, that are frequently co-morbid with autism. As mental health providers, they can incorporate for individuals presenting co-occurring disorders during the assessment, planning, and monitoring phases of ABA service delivery.

There is also a workforce issue. Everyone qualified provider is needed. 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 LBA’s and the persons they supervise. It is our understanding from parents of individuals with autism and case managers, that waitlists for ABA services covered by insurance vary between providers from anywhere from 6 months to two years. Individuals with autism deserve access to all qualified professionals and their assistants.

It is also our understanding that in no other state are DD Divisions or Departments of Education mandated to certify their direct support workers/paraprofessional staff or exclusively use Licensed Behavior Analysts/BCBA’s to supervise such individuals. Such a mandate would impede access of competent care to consumers desperately needing services, be an unfair restraint of trade for professionals who have been providing this care, and create an illegal monopoly for Licensed Behavior Analysts, Registered Behavior Technicians and their national certifying board.

Thank you for the opportunity to submit testimony.

⁶ The BACB website currently indicates a master’s degree in behavior analysis, education or psychology is acceptable and those applicants who are unsure or whether the field of study of their degree is acceptable may request a preliminary review. In the past, however, the BACB has approved master’s degrees in many other fields, including art, English, history, business, and economics.

HB-2657

Submitted on: 2/4/2018 10:20:11 PM

Testimony for HHS on 2/6/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Lesley A Slavin		Support	Yes

Comments:

Testimony SUPPORTING HB2657
RELATING TO BEHAVIOR ANALYSIS SERVICES
And recommending amendments

HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES
REPRESENTATIVE JOHN M. MIZUNO, CHAIR
REPRESENTATIVE BERTRAND KOBAYASHI, VICE CHAIR

Tuesday, February 6 2018 8:30AM
Conference Room 329
State Capitol
415 South Beretania Street

I support Senate Bill 2657 with the amendment recommended by the Hawaii Psychological Association (HPA). As a licensed psychologist, I am aware that my 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 I may use to supervise paraprofessionals, direct support workers, and family members in the implementation of a behavioral program. The proposed amendment 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 topic.

Sincerely,

Lesley A. Slavin, Ph.D.

317C Olomana Street, Kailua HI 96734

808 393-9110



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

Testimony SUPPORTING HB2657
RELATING TO BEHAVIOR ANALYSIS
and recommending amendments

HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES
REPRESENTATIVE JOHN M. MIZUNO, CHAIR
REPRESENTATIVE BERTRAND KOBAYASHI, VICE CHAIR

Tuesday, February 6, 2018 8:30AM
Conference Room 329
State Capitol
415 South Beretania Street

The Hawaii Psychological Association supports House Bill 2657 and it's intention to:

- (1) Allow children with autism spectrum disorders to receive appropriate applied behavior analysis treatment, while simultaneously providing safeguards for consumer protection;
- (2) Exempt from the licensure requirement for behavior analysis certain individuals who implement applied behavior analysis services or plans under the oversight of a behavioral review committee or psychologist

The Hawaii Psychological Association is very concerned that language in Act 199, the previous legislation applying to treatment services for autism and the licensure of Board Certified Behavior Analysts (BCBAs), unintentionally restricted well-qualified professionals from providing services to children with autism **and other behavioral challenges** and unintentionally provided a monopoly for one certifying agency, the Behavior Analyst Certification Board. HPA is seeking to correct the restraint of trade issues that the previous legislation created.

Our sole intention is to clarify the language so that properly trained psychologists can continue to provide services and continue to supervise paraprofessionals in the multi-tiered delivery model that is the standard of practice in autism. We support HB 2657 with the proposed amendment which would clarify psychologists' scope of practice, as defined in Hawaii state statute, to include the practice of "Behavior Analysis" and the supervision of assistants such as postdoctoral fellows, students and unlicensed master's level clinicians. In a multi-tiered model, a psychologist may supervise post-doctoral fellows, students and unlicensed master's level

clinicians as these trainees then supervise paraprofessionals, direct support workers, and family members in the implementation of a behavioral program. This clarification 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.

Proposed amendment:

Section 4(a)(1): An individual working within the scope of practice or duties of another licensed profession that overlaps with the practice of applied behavioral analysis including individuals 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/guardian in implementing an ABA 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";

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.

We strongly support HB 2657 with amendments that clarify psychologists' scope of practice and prevents an unnecessary narrowing of the behavioral health workforce.

Tanya Gamby, Ph.D.
President
Hawaii 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."

750 First Street, N.E.
Washington, DC 20002-4242
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(202) 336-5797 Fax
(202) 336-6123 TDD

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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

Submitted on: 2/5/2018 8:05:20 AM

Testimony for HHS on 2/6/2018 8:30:00 AM

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

Comments:

I support the compromise between DOH-DDD and HABA and the amendments they have submitted.

Testimony in Support of HB2657

Representative John H. Mizuno, Chair
Representative Bertrand Kobayashi, Vice Chair
House Committee on Health and Human Services
Hearing Date: February 6, 2018 Room Number: 329

Honorable Representatives:

The Arc in Hawaii strongly supports HB2657, 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:

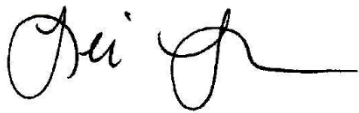
- 1) Training and consultation services from an LBA or Psychologist to provide an over-arching framework for needed behavioral support plans, along with
- 2) A mix of both RBTs and Direct Service workers providing ADH, PAB and CLS services to implement those plans.

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.

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



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Building Independence for Challenged Lives

PRESIDENT & CEO
Marian E. Tsuji

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Committee on Health and Human Services
Representative John M. Mizuno, Chair
Representative Bertrand Kobayashi, Vice Chair

February 6, 2018; 8:30 a.m.
Conference Room 329
HB2657

Dear Chair Mizuno, Vice Chair Kobayashi, and members of the Health and Human Services Committee.

Lanakila Pacific strongly supports HB2657 which seeks to amend portions of HRS 465-D. We understand the very real concerns that underlie HRS 465-D. While we agree that our participants with challenging behaviors require a workforce that is appropriately trained to meet their needs, it is our belief that the statute as written is too broad and needs clarification. In addition, we also believe requiring that every individual providing direct services to individuals with behavior support plans be certified as a registered behavior technician is both unnecessary and unworkable in the real world environment in which we operate.

Given the current language of HRS 465-D, Lanakila Pacific would have to ensure most if not all direct support staff be certified as RBTs since the service is delivered and authorized in groups. Furthermore, several clients would require costly behavioral assessments etc. that is currently not being done, nor is it needed. This type of staff requirement would cause undue hardship on the staff and the agency to include a potential exit of most of the workforce, which could result in an interruption of services and most important compromise the physical and emotional well-being of those we serve.

If it is not possible to exempt the population we serve as stated in HB2657 from the requirements associated with HRS 465-D, we propose the following:

1. A revised and comprehensive definition of the types of interventions that require specialized training and monitoring associated with the requirements of an RBT.
2. An increase in reimbursements rates to cover the additional costs associated with the implementation of plans etc. even with an amended statute.
3. Sufficient time to develop appropriate implementation guidelines and to develop an adequate workforce will also be necessary to ensure success.

Lanakila Pacific is a 79 year old Hawaii-based non-profit organization, whose mission is to build independence for challenged lives. Our programs include Teaching and Learning Centers (TLC) in Honolulu and Wahiawa, which teach over 115 adults with disabilities how to become more independent. TLC teaches life skills and actively give back by volunteering in our communities.

Thank you for the opportunity to provide testimony in support of this measure.

Respectfully submitted,

Marian E. Tsuji
President & CEO

Rona Fukumoto
VP of Programs and
Mission Advancement

Lori Lutu
Director of Teaching and
Learning Centers

HB-2657

Submitted on: 2/5/2018 7:09:36 PM

Testimony for HHS on 2/6/2018 8:30:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez		Support	No

Comments:

HB-2657

Submitted on: 2/5/2018 1:00:10 PM

Testimony for HHS on 2/6/2018 8:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl		Comments	No

Comments:

Questioning the timing of this bill and the relationship to how it affects children vs the \$\$ of the budget for the DOE and State. Please give full consideration to what is good for ALL children and those who work with children when making decisions on this bill. There are experts who know and can help. Ask them.