

SB2496

SD1 HD1

A BILL FOR AN ACT

RELATING TO BEHAVIOR ANALYSIS.

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

1 SECTION 1. The legislature finds that the department of
2 health, developmental disabilities division operates the
3 medicaid intellectual and developmental disabilities home and
4 community based services waiver, also known as the HCBS I/DD
5 waiver, on behalf of the department of human services, Med-Quest
6 division. The HCBS I/DD waiver, which is provided under section
7 1915(c) of the Social Security Act and reviewed and approved by
8 the federal Centers for Medicare and Medicaid Services, has many
9 requirements to ensure the appropriate and efficient provision
10 of services and supports to people with intellectual and
11 developmental disabilities.

12 The legislature further finds that, for children who
13 qualify for a HCBS I/DD waiver who have an autism spectrum
14 disorder, the Centers for Medicare and Medicaid Services has
15 clarified that, per section 1905(a) of the Social Security Act,
16 services "recommended by a physician or other licensed
17 practitioner of the healing arts" for the treatment of autism



1 spectrum disorders must be provided through the child's medicaid
2 health plan through the early and periodic screening,
3 diagnostic, and treatment benefit, and cannot be provided as a
4 HCBS I/DD waiver service. This leaves a gap in coverage for
5 adults with autism spectrum disorders who would be best served
6 under the HCBS I/DD waiver. This gap could be filled by
7 professionals who are exempt from behavior analyst licensure
8 requirements and fall outside the scope of the section 1905(a)
9 requirement, which would allow certain individuals who implement
10 applied behavior analysis services or plans under the oversight
11 of others to provide appropriate treatment to adults with autism
12 spectrum disorders in accordance with the HCBS I/DD waiver.

13 The legislature additionally finds that the Centers for
14 Medicare and Medicaid Services requires the states to provide
15 participant safeguards that ensure the health, safety, and
16 rights of HCBS I/DD waiver participants. The developmental
17 disabilities division has policies and procedures to ensure
18 positive behavior supports are used to proactively minimize
19 challenging behaviors and to limit the use of restrictive
20 procedures. The developmental disabilities division also
21 conducts oversight and continuous quality assurance to ensure



1 safe and appropriate practices including a behavioral review
2 committee to review quality of care for individuals who need
3 supports to learn new behaviors.

4 The legislature also finds that there is confusion in the
5 community as to the scope of the behavior analyst profession.
6 Different professionals use different titles and different
7 terminology to refer to themselves and what they do. The
8 legislature further finds that this confusion may be increased
9 based on the proposed expansion of waivers for licensing.

10 Therefore, the purpose of this Act is to:

- 11 (1) Allow adults with autism spectrum disorders to receive
12 appropriate applied behavior analysis treatment, while
13 simultaneously providing safeguards for consumer
14 protection;
- 15 (2) Exempt from the licensure requirement for behavior
16 analysts certain individuals who implement applied
17 behavior analysis services or plans to adult
18 participants in the HCBS I/DD waiver program on or
19 before January 1, 2024, or under the direction of a
20 licensed behavior analyst or Hawaii-licensed
21 psychologist; and



1 (3) Update and standardize the terminology used to refer
2 to behavior analysts.

3 SECTION 2. Section 465D-7, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§465D-7 Exemptions. (a) This chapter is not intended to
6 restrict the practice of other licensed or credentialed
7 practitioners practicing within their own recognized scopes of
8 practice and shall not apply to:

9 (1) An individual working within the scope of practice or
10 duties of another licensed profession that overlaps
11 with the practice of applied behavior analysis
12 [~~provided that the person does not purport to be a~~
13 ~~behavior analyst;~~], including individuals such as
14 unlicensed master's level practitioners, students, and
15 postdoctoral fellows, directly supervised by a
16 licensed professional, who may train and supervise a
17 paraprofessional, direct support worker, or parent or
18 guardian in implementing an applied behavior analysis
19 intervention; provided that the supervision is within
20 that licensed professional's scope of practice;
21 provided further that the licensed professional and



1 the supervised individual shall not use the title of
2 "licensed behavior analyst";

3 (2) An individual who implements or designs applied
4 behavior analysis services and possesses board
5 certification as an assistant behavior analyst by the
6 Behavior Analyst Certification Board and who practices
7 in accordance with the most recent supervisory and
8 ethical requirements adopted by the Behavior Analyst
9 Certification Board under the direction of a licensed
10 behavior analyst [~~licensed in this State~~];

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

16 [~~(3)~~] (4) An individual who directly implements applied
17 behavior analysis services and:

18 (A) Is credentialed as a registered behavior
19 technician by the Behavior Analyst Certification
20 Board, and is under the direction of a licensed
21 behavior analyst [~~licensed in this State~~]; or



1 (B) Is a direct support worker who provides autism
2 treatment services pursuant to an individualized
3 education plan on or before January 1, 2019;

4 [~~for~~

5 ~~[(C)] Is a direct support worker who provides medicaid~~
6 ~~home and community based services pursuant to~~
7 ~~section 1915(c) of the Social Security Act on or~~
8 ~~before January 1, 2019;]~~

9 provided that for purposes of this paragraph, "direct
10 support worker" means a teacher or paraprofessional
11 who directly implements intervention or assessment
12 plans under supervision and does not design
13 intervention or assessment plans;

14 [~~4~~] (5) A family member [~~or~~], legal guardian, or
15 caregiver implementing an applied behavior analysis
16 plan and who acts under the direction of a licensed
17 behavior analyst [licensed in this State;] or Hawaii-
18 licensed psychologist; provided that for the purposes
19 of this paragraph, "caregiver" means an individual who
20 provides habilitative services in an adult foster
21 home, developmental disabilities domiciliary home,



1 adult residential care home, expanded adult
2 residential care home, special treatment facility, or
3 therapeutic living program, pursuant to the medicaid
4 home and community-based services waiver program
5 authorized by section 1915(c) of the Social Security
6 Act;

7 [~~(5)~~] (6) An individual who engages in the practice of
8 applied behavior analysis with nonhuman or nonpatient
9 clients or consumers including but not limited to
10 applied animal behaviorists and practitioners of
11 organizational behavior management;

12 [~~(6)~~] (7) A matriculated graduate student or postdoctoral
13 fellow whose activities are part of a defined applied
14 behavior analysis program of study, practicum, or
15 intensive practicum; provided that the student's or
16 fellow's activities or practice is directly supervised
17 by a licensed behavior analyst [~~licensed in this~~
18 ~~State~~] or an instructor in a Behavior Analyst
19 Certification Board-approved course sequence; or

20 [~~(7)~~] (8) An individual pursuing experience in applied
21 behavior analysis consistent with the Behavior Analyst



1 Certification Board's experience requirements;
2 provided that the experience is supervised by a
3 licensed behavior analyst [~~licensed in this State~~].

4 (b) Nothing in this chapter shall be construed to prevent
5 any licensed psychologist from engaging in the practice of
6 applied behavior analysis in this State as long as the [person]
7 licensed psychologist is not in any manner held out to the
8 public as a "licensed behavior analyst" or "behavior analyst"
9 and the behavior analysis services provided by the licensed
10 psychologist are within the licensed psychologist's recognized
11 scope of practice."

12 SECTION 3. Sections 465D-2, 465D-4, 465D-5, and 465D-11,
13 Hawaii Revised Statutes, are amended by substituting the phrase
14 "practice of applied behavior analysis" wherever the phrase
15 "practice of behavior analysis" appears, as the context
16 requires.

17 SECTION 4. Section 465D-11, Hawaii Revised Statutes, is
18 amended by substituting the phrase "applied behavior analysis"
19 wherever the phrase "behavior analysis" appears, as the context
20 requires.



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

3 SECTION 6. This Act shall take effect on July 1, 3000.



Report Title:

Applied Behavior Analysis; Developmental Disabilities

Description:

Allows adults with autism spectrum disorders to receive appropriate applied behavior analysis treatment, while simultaneously providing safeguards for consumer protection. Exempts from licensure requirements for behavior analysis certain individuals who implement applied behavior analysis services or plans under the oversight or direction of others. Updates and standardizes the terminology used to refer to behavior analysts. (SB2496 HD1)

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



**PRESENTATION OF THE
BOARD OF PSYCHOLOGY**

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Wednesday, March 21, 2018
2:15 p.m.

WRITTEN TESTIMONY ONLY

TESTIMONY ON SENATE BILL NO. 2496, S.D. 1, H.D. 1, RELATING TO BEHAVIOR ANALYSIS.

TO THE HONORABLE ROY M. TAKUMI, CHAIR, AND MEMBERS OF THE
COMMITTEE:

My name is May Ferrer, and I am the Executive Officer of the Board of Psychology ("Board"). Thank you for the opportunity to testify on S.B. 2496, S.D. 1, H.D. 1, Relating to Behavior Analysis. The Board will have an opportunity to discuss this measure at its next scheduled meeting on Friday, March 23, 2018.

S.B. 2496, S.D. 1, H.D. 1 allows adults with autism spectrum disorders to receive appropriate applied behavior analysis treatment, while simultaneously providing safeguards for consumer protection. It exempts from licensure requirements for behavior analysis certain individuals who implement applied behavior analysis services or plans under the oversight or direction of others. This bill also updates and standardizes the terminology used to refer to behavior analysts. H.D. 1 amends this measure by: (1) expanding the licensing exemption for individuals working within the scope of an overlapping licensed profession to include unlicensed individuals working under the supervision of licensed professionals; and (2) changing the effective date to July 1, 3000, to promote further discussion.

Thank you for the opportunity to provide written testimony on S.B. 2496, S.D. 1, H.D. 1.



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

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Wednesday, March 21, 2018
2:15 p.m.

TESTIMONY ON SENATE BILL NO. 2496, S.D. 1, H.D. 1, RELATING TO BEHAVIOR ANALYSIS.

TO THE HONORABLE ROY TAKUMI, CHAIR, AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs (“Department”) appreciates the opportunity to testify on S.B. 2496, S.D. 1, H.D. 1, Relating to Behavior Analysis. My name is Daria Loy-Goto, and I am the Complaints and Enforcement Officer for the Department’s Regulated Industries Complaints Office (“RICO”). RICO takes no position on this bill and offers the following comments relating to enforcement.

S.B. 2496, S.D. 1, H.D. 1 amends the law that regulates the practice of behavior analysis. H.D. 1 amends Hawaii Revised Statutes (“HRS”) section 465D-7 to exempt the following individuals from the licensing requirements of behavior analysis on page 4, line 13 to page 5, line 2:

“[I]ndividuals such as unlicensed master's level practitioners, students, and postdoctoral fellows, directly supervised by a licensed professional, 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 scope of practice; provided further that the licensed

S.B. 2496, S.D. 1, H.D. 1

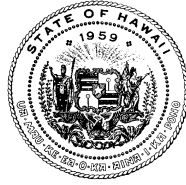
March 21, 2018

Page 2

professional and the supervised individual shall not use the title of
"licensed behavior analyst[.]"

RICO requests clarification on which licensed professionals would be included in
"licensed professionals" in HRS section 465D-7(a)(1) on page 4, lines 20 and 21.

Thank you for the opportunity to testify on S.B. 2496, S.D. 1, H.D. 1. I am
available to answer any questions the Committee may have.



STATE OF HAWAII
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**Testimony in SUPPORT of SB2496 SD1, HD1
RELATING TO BEHAVIOR ANALYSIS**

ROY M. TAKUMI, CHAIR
HOUSE COMMITTEE ON CONSUMER PROTECTION

Hearing Date: March 21, 2018

Room Number: 329

1 **Fiscal Implications:** NONE

2 **Department Testimony:**

3 The Department of Health (DOH) strongly supports SB2496 SD1, 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 the
10 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 SB2496 SD1, HD1 because it will help ensure Hawaii's compliance
13 with the I/DD waiver, including its numerous requirements for quality assurance, participant
14 safeguards, and ensuring the rights of participants. DDD has developed the operational policies
15 and 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 SB2496
21 SD1, HD1 for the following reasons:

- 22 1) Adds the term “applied” to “behavioral analysis” throughout the statute where it is
23 missing. This serves two purposes: consistency of terms, and distinguishing simple
24 analysis for understanding functions of behaviors and implementing routine interventions
25 with those functions that only a licensed person can perform;
- 26 2) Adds an exemption for individuals who design or implement behavior analytic
27 services for participants of Waiver provided there is oversight by a behavioral review

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

8 3) Adds an exemption for Caregivers. Caregivers are not expressly included in the
9 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 SB2496 SD1, HD1 the same as the family exemption in the current statute. Without
12 this 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
17 Thank you very much for the opportunity to testify.

18

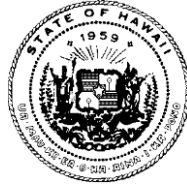
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GOVERNOR



PANKAJ BHANOT
DIRECTOR

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DEPUTY DIRECTOR

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

March 20, 2018

TO: The Honorable Representative Roy M. Takumi, Chair
House Committee on Consumer Protection and Commerce

FROM: Pankaj Bhanot, Director

SUBJECT: **SB 2496 SD1 HD1 – RELATING TO BEHAVIORAL ANALYSIS**

Hearing: Wednesday, March 21, 2018, 2:15 p.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: (1) Allow adults 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 to adult participants in the HCBS I/DD waiver program on or before January 1, 2024, or under the direction of a licensed behavioral analyst or Hawaii-licensed 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 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; they are not necessarily trained 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 SD1 HD1 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
STATE COUNCIL
ON DEVELOPMENTAL DISABILITIES
1010 Richards Street, Room 122
HONOLULU, HAWAII 96813
TELEPHONE: (808) 586-8100 FAX: (808) 586-7543
March 21, 2018

The Honorable Roy Takumi, Chair
House Committee on Consumer Protection & Commerce
Twenty-Ninth Legislature
State Capitol
State of Hawaii
Honolulu, Hawaii 96813

Dear Senator Baker and Members of the Committees:

SUBJECT: HB 2496 SD1 HD - Relating to Behavior Analysis

The State Council on Developmental Disabilities **supports HB 2496 SD1 HD1**. Allows adults with autism spectrum disorders to receive appropriate applied behavior analysis treatment, while simultaneously providing safeguards for consumer protection. Exempts from licensure requirements for behavior analysis certain individuals who implement applied behavior analysis services or plans under the oversight or direction of others. Updates and standardizes the terminology used to refer to behavior analysts.

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

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

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

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

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

Sincerely,

Daintry Bartoldus
Executive Administrator



COMMITTEE ON CONSUMER PROTECTION & COMMERCE

Rep. Roy M. Takumi, Chair
Rep. Linda Ichiyama, Vice Chair

Wednesday, March 21, 2018, 2:20 PM
Conference Room 329, State Capitol

SB 2496 Relating to Behavior Analysis - Opposition

Honorable Chair Takumi, Vice Chair Ichiyama, and members of the committee,

The Hawai'i Association for Behavior Analysis (HABA) would like to send a sincere mahalo to our legislators for listening to families, supporting teachers, and believing in our keiki. We are in support of providing quality services to our consumers and maintaining the protections afforded (in HRS 465-D) to the public, as well as our profession. HABA has worked diligently with community members to identify language other stakeholders can stand behind; to include the Hawai'i State Teachers Association (HSTA), Hawai'i Disability Rights Center (HDRC), and our consumers-- who have submitted over 250 pieces of testimony this session for bills pertaining to the practice of behavior analysis. While we appreciate the discussion and the opportunity to testify today, we feel that SB2496 HD1 has become bogged down with confusing and contradictory language. We respectfully request that the Committee Chair, Vice Chair and committee members not advance this bill forward. If the committee decides to move this measure forward, we respectfully ask that you consider reverting to the language of SB 2925 SD1, which we have attached below.

Mahalo,

Kathleen Penland

Kathleen Penland, M. Ed. BCBA, LBA

President, Hawai'i Association for Behavior Analysis

A BILL FOR AN ACT

RELATING TO THE PRACTICE OF BEHAVIOR ANALYSIS.

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

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

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

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

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

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

Accordingly, the purpose of this Act is to:

- (1) Clarify the licensing exemptions for certain individuals under certain conditions who provide behavior analysis services; and
- (2) Require the department of education to create and implement a plan to provide medicaid billable applied behavior analysis services to all students diagnosed with autism spectrum disorder within the department.

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

"(a) This chapter shall not apply to:

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

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

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

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

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

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

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

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

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

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

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

(1) ~~[An individual working within the scope of practice or duties of another licensed profession that overlaps with the practice of behavior analysis; provided that the person does not purport to be a behavior analyst;]~~ An individual licensed in the State who practices other professions and their supervisees; provided that behavior analysis is in the scope of practice of the profession's licensure law and the services provided are within the boundaries of the licensed professional's education, training, and competence; provided further that the individual does not purport to be a behavior analyst;

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

~~[(2)]~~ (3) An individual who implements or designs ~~[applied]~~ behavior analysis services and possesses board certification as an assistant behavior analyst by the Behavior Analyst Certification Board and who practices in accordance with the most recent supervisory and ethical requirements adopted by the Behavior Analyst Certification Board under the direction of a behavior analyst licensed in this State;

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

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

(A) Is credentialed as a registered behavior technician by the Behavior Analyst Certification Board, and is under the direction of a behavior analyst licensed in this State;

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

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

"licensed behavior analyst";

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

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

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

~~[(5)]~~ (8). An individual who engages in the practice of behavior analysis with nonhuman or nonpatient clients or consumers including but not limited to applied animal behaviorists and practitioners of organizational behavior management;

~~[(6)]~~ (9). A matriculated graduate student or postdoctoral fellow whose activities are part of a defined behavior analysis program of study, practicum, or intensive practicum; provided that the student's or fellow's activities or practice is directly supervised by a behavior analyst licensed in this State or an instructor in a Behavior Analyst Certification ~~[Board approved]~~ Board-verified course sequence; or

~~[(7)]~~ (10). An individual pursuing experience in behavior analysis consistent with the Behavior Analyst Certification Board's experience requirements; provided that the experience is supervised by a behavior analyst licensed in this State."

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

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

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

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

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

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

Report Title:

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

Description:

Clarifies the licensing exemptions for certain individuals under certain conditions who provide behavior analysis services. Requires the Department of Education to create and implement a plan to provide Medicaid billable applied behavior analysis services to all students diagnosed with autism spectrum disorder within the Department. Establishes reporting requirements. (SD1)

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

Testimony in Support of SB2496 SD1

Representative Roy M. Takumi, Chair
Representative Linda Ichiyama, Vice Chair
House Committee on Consumer Protection & Commerce
Hearing Date: March 21, 2018 Room Number: 329

Honorable Representatives:

The Arc in Hawaii strongly supports SB2496 SD1, 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:

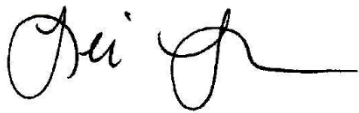
- 1) Training and consultation services from an LBA or Psychologist to provide an over-arching framework for needed behavioral support plans, along with
- 2) A mix of both RBTs and Direct Service workers providing ADH, PAB and CLS services to implement those plans.

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 SB2496 SD1.

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

Date: March 20, 2018

To: Rep. Roy M. Takumi, Chair and Rep. Linda Ichiyama, Vice Chair
Committee on Consumer Protection & Commerce

Hearing: March 21, 2018, 2:00 p.m., Room

Re: Testimony in Support of SB2496_SD1_HD1, Relating to the Practice of Behavior Analysis,
As Amended

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

Re: Testimony in Support of SB2496_SD1_HD1, Relating to the Practice of Behavior Analysis,
As Amended

As a behaviorally-trained psychologist who has worked in Hawaii for over 30 years, I strongly support SB 2496_SD1_HD1 as amended. This bill clarifies the scope of Psychologists' practice of Behavior Analysis to Section 2. (a) (1) as follows:

An individual working within the scope of practice or duties of another licensed profession that overlaps with the practice of behavior analysis, including individuals directly supervised by a licensed professional, such as unlicensed master's level practitioners, consumers 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 falls within the licensed professional's scope of practice; provided further that the licensed professional and supervised individual shall not use the title of "licensed behavior analyst."

As amended this bill will help assure that in addition to Licensed Behavior Analysts (LBA's), competent, behaviorally-trained psychologists can continue to be utilized by the DD Division to assess, design, implement and supervise direct support workers in providing behavioral interventions for consumers needing this service.

This should be done without a loss of quality. As stated by Gina Green Ph.D., BCBA-D, and Chief Executive Officer of the Association of Professional Behavioral Analysts:

“(a) the behavior analyst licensure law clearly permits licensed psychologists and other appropriately credentialed professionals to practice ABA without being licensed as behavior analysts, provided that behavior analysis is in their profession's scope of practice and the scope of the individual psychologist's documented training and competence; and (b) licensed psychologists and other professionals already have the right to supervise trainees, paraprofessionals, and others in accordance with the licensure laws and regulations of their respective professions.”

The current bill will help clarify to families, state agencies, insurance companies that it is “not illegal” for ABA-trained psychologists to continue to design, implement and supervise others in implementing ABA services when that is and has been within their recognized scope of practice, competence and training.

Being able to continue to use ABA-trained psychologists will continue to provide consumers, agency staff and their families with access to professionals who have training in mental health. This is particularly important in properly addressing the needs of consumers with autism who frequently (30-40%) have co-occurring diagnoses of anxiety disorder, clinical depression, externalizing disorders, and are at high risk for post-traumatic stress disorder (PTSD) and suicide. Identification of a mental health disorder/co-occurring disorder is critical in planning effective and efficient behavioral interventions and habilitative programs for consumers. Since many ABA-trained mental health professionals also have training in non-ABA approaches, it is more likely that they will be able to recommend supplemental evidence-based practices, tweak an ABA program to address a barrier that may be the result of a consumer’s mental health disorder, and recommend a newer/different protocol or treatment approach, if a consumer is not making adequate progress.

Thank you for the opportunity to share my concerns.

Testimony on SB2496

Easterseals Hawaii supports SB2496 SD1 HD1, which seeks to standardize the terminology for behavior analysis and to ensure consumer protection for individuals with autism spectrum disorders.

Easterseals Hawaii provides individualized, family-centered services to empower people with disabilities or special needs to achieve their goals and live independent, fulfilling lives. We have been serving special needs children, youth and adults for 70 years and provide more than 500,000 hours of direct service annually to individuals and families across the state. Our organization and many other service providers will be directly affected by SB2496 SD1 HD1.

We understand the need to update and standardize the terminology used to refer to behavior analysts on a very personal level. The broad definition has been interpreted to mean that even simple behavioral interventions, including for adults without autism, require a licensed behavior analyst (LBA). There is a lack of LBAs both in the workforce as well as to supervise registered behavior technician (RBT) training hours. These factors, along with the fact that most LBAs provide services to children with autism primarily in office-based settings, are limiting access to behavioral analysis services for adults in the waiver who have high-end behaviors that require staff-intensive approaches in their homes and in the community. They require services by teams of people that include RBTs and trained direct support workers often for many hours during the day and night.

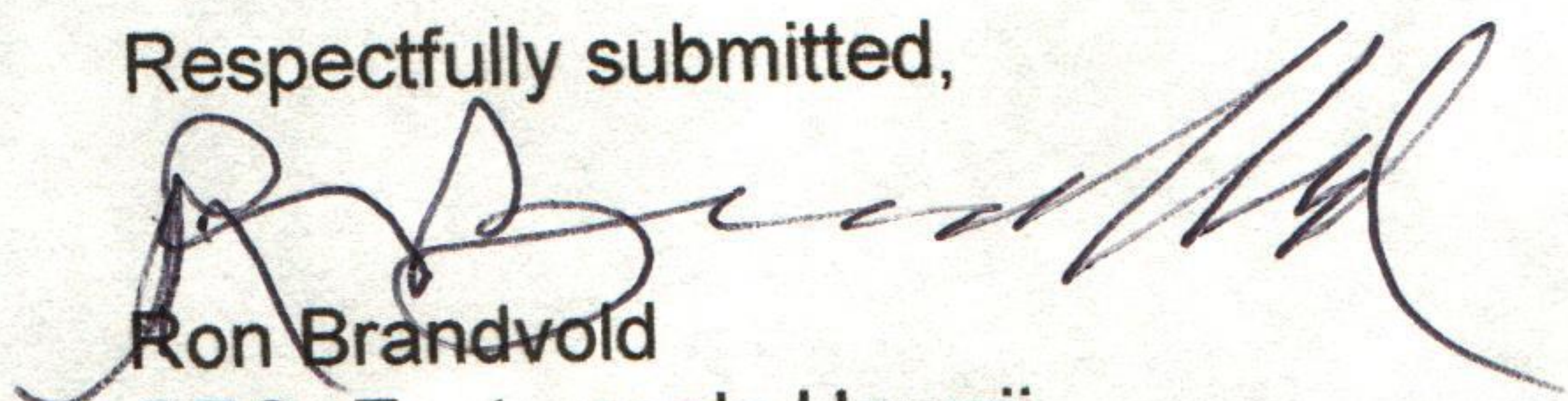
The exemption from licensure requirements for certain individuals who implement applied behavior analysis services or plans under the oversight of those with a license greatly helps our organization and our clients. While many of our direct support workers may not possess a degree or certification, they do possess the compassion and dedication necessary to provide quality services to our clients. In many cases, their relationships are long-standing and crucial to our clients' well-being. Requiring our staff to have these degrees and certifications would disrupt relationships that provide our participants with emotional stability. Currently, staff undergo rigorous training on a regular basis and are provided appropriate oversight to ensure proper care.

Additionally, a very tight job market has made it extremely difficult to find people to fill these direct service roles. The reimbursement rate for services has meant that salaries have not been increased at the same rate as the other labor sectors, which has made it difficult to recruit new staff and increase salaries for existing staff. We know that requiring degrees and certifications to work at this time would actually decrease the number of staff available, and have a very negative effect on services.

This bill will also help ensure Hawaii's compliance with the I/DD waiver, including its numerous requirements for quality assurance, participant safeguards, and ensuring the rights of participants.

Thank you very much for allowing us to submit testimony on behalf of SB2496 SD1 HD1.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ron Brandvold", is written over a horizontal line.

Ron Brandvold
CEO, Easterseals Hawaii



Hawai'i Psychological Association

For a Healthy Hawai'i

P.O. Box 833
Honolulu, HI 96808

www.hawaiiopsychology.org

Phone: (808) 521-8995

Committee on Consumer Protection & Commerce
Representative Roy M. Takumi, Chair
Representative Linda Ichiyama, Vice Chair

Tuesday, March 20, 2018

Wednesday, March 21, 2018 at 2:15pm
Conference Room 329

TESTIMONY
IN SUPPORT TO SB2496_SD1_HD1
RELATING TO BEHAVIOR ANALYSIS SERVICES

The Hawaii Psychological Association supports SB2496 and its intention to:

- (1) Allow children with autism spectrum disorders to receive appropriate applied behavior analysis treatment, while simultaneously providing safeguards for consumer protection; and
- (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 Hawai'i Psychological Association (HPA) is particularly supportive of HD1 amendments to Section 2.(a)(1) on Page 4 Line 9 through Page 5 Line 2 that clarify that other qualified professionals can provide treatment services for autism. We have been very concerned that language in the previous legislation regarding this issue and the licensure of Board Certified Behavior Analysts (BCBAs) unintentionally restricted well-qualified professionals from providing services to children with autism and unintentionally provided a monopoly for one certifying agency, the Behavior Analyst Certification Board. **We respectfully ask that the current HD1 language in this section be passed by this committee without further amendment.** In support of our position, 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."

We support SB2496_SD1_HD1 with further proposed amendment which 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.

Below are our two (2) proposed amendments:

1. **We respectfully request that the term "behavior analyst" be struck from Section 2.(b) on Page 8 Line 8** as it unnecessarily restricts licensed psychologists who are highly trained in, and qualified to provide, behavior analysis to refer to themselves as behavior analyst when they in fact may be:

Section 2.(b) Nothing in this chapter shall be construed to prevent any licensed psychologist from engaging in the practice of applied behavior analysis in this State as long as the [person] licensed psychologist is not in any manner held out to the public as a "licensed behavior analyst" ~~or "behavior analyst"~~ and the behavior analysis services provided by the licensed psychologist are within the licensed psychologist's recognized scope of practice."

2. Additionally, **we request that the following Section 2. (a)(4)(c) starting on Page 6 Line 4 be included with the language below** to prevent a monopoly from one certifying agency:

Section 2. (a)(4)(c) **Is a behavior technician certified by a nationally recognized certifying agency and under the supervision of an appropriate supervisor.**

Thank you for the opportunity to submit testimony and our proposed amendments for your consideration.

Respectfully,

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



Statement on Behavior Analysis and Behavior Analysts

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

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

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

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An affiliate of the American Psychological Association



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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March 21, 2018

The Honorable Roy M. Takumi, Chair
The Honorable Linda Ichiyama, Vice Chair
House Committee on Consumer Protection and Commerce

Re: SB 2496, SD1, HD1 – Relating to Behavior Analysis

Dear Chair Takumi, Vice Chair Ichiyama, and Members of the Committee:

The Hawaii Medical Service Association (HMSA) appreciates the opportunity to testify on SB 2496, SD1, HD1 which would exempt from licensure requirements certain individuals who implement applied behavior analysis (ABA) services or plans.

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 amendments made to SB 2496, SD1, HD1.

Specifically we continue to have concerns with Section 4(a)(1) which would expand the supervisory responsibilities of 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 respectfully request the Committee consider replacing Section 2 (a)(1) with language from SB 2496, SD1:

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

We appreciate the intent of this measure and are open to working with the stakeholders. Thank you for allowing us to provide our comments on SB 2496, SD1, HD1.

Sincerely,

Jennifer Diesman
Senior Vice-President-Government Relations

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

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

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

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

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

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

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

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

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

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

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

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

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

Date: March 20, 2018

To: Rep. Roy M. Takumi, Chair and Rep. Linda Ichiyama, Vice Chair
Committee on Consumer Protection & Commerce

Hearing: March 21, 2018, 2:00 p.m., Room

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

Re: Testimony in Support of SB2496_SD1_HD1, Relating to the Practice of Behavior Analysis,
As Amended

I am a behaviorally-trained psychologist. Since 1984, I have worked as a Psychologist for the Hawaii Department of Education (HIDOE), Branch Chief/Psychologist for the Child Adolescent Mental Health Division (CAMHD), private practitioner in Honolulu and Leeward O'ahu, and have recruited, developed, trained and supervised providers of Applied Behavior Analysis (ABA) and other psychological services to work under contracts with the HIDOE and for the CAMHD, Developmental Disabilities Division, and Early Intervention Section of the Hawaii Department of Health.

I strongly support SB 2496_SD1_HD1 as amended. This bill clarifies the scope of Psychologists' practice of Behavior Analysis to Section 2. (a) (1):

An individual working within the scope of practice or duties of another licensed profession that overlaps with the practice of behavior analysis, including individuals directly supervised by a licensed professional, such as unlicensed master's level practitioners, consumers 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 falls within the licensed professional's scope of practice; provided further that the licensed professional and supervised individual shall not use the title of "licensed behavior analyst:"

This bill will help assure that in addition to Licensed Behavior Analysts (LBA's), competent, behaviorally-trained psychologists and other licensed professionals can continue to be utilized by the DD Division to assess, design, implement and supervise direct support workers in providing behavioral interventions for consumers needing this service.

This should be done without the loss of quality. As stated by Gina Green Ph.D., BCBA-D, and Chief Executive Officer of the Association of Professional Behavioral Analysts:

“(a) the behavior analyst licensure law clearly permits licensed psychologists and other appropriately credentialed professionals to practice ABA without being licensed as behavior analysts, provided that behavior analysis is in their profession's scope of practice and the scope of the individual psychologist's documented training and competence; and (b) licensed psychologists and other professionals already have the right to supervise trainees, paraprofessionals, and others in accordance with the licensure laws and regulations of their respective professions.”

Why Individuals, Community Settings and Families Should Continue to have Access to ABA-trained Mental Health Providers

Licensed psychologists and other mental health providers are trained to work with the “whole” person. Their concern is not only with developing appropriate behaviors and reducing inappropriate behaviors; it extends to promoting the individual’s sense of well-being as a family and community member. Licensed psychologists, clinical social workers, and registered nurse practitioners are also legally qualified to diagnose as well as treat autism as well as disorders that have been found to co-occur with autism 30-40% of the time, i.e., anxiety disorders, clinical depression, and externalizing disorders, such as attention-deficit and oppositional-defiant disorders.

Individuals with ASD and other developmental disorders are also at a significantly higher risk for post-traumatic stress disorder (PTSD) and suicide than their non-disabled counterparts. In light of recent events, many families are also expressing concern about the potential their family member may have for violence against others. The knowledge and skill sets of mental health providers, which include family therapy/parent education, can be critical to designing an effective and efficient intervention program for consumers with co-occurring mental health problems. ABA-trained mental health providers can evaluate and modify programs that are not producing the desired outcomes because of a mental health diagnosis in addition to suggesting other types of treatment that may be beneficial to the consumer, including newer or non-ABA protocols.

Thank you for the opportunity to share my concerns.

SB-2496-HD-1

Submitted on: 3/20/2018 9:37:39 AM

Testimony for CPC on 3/21/2018 2:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Amanda N Kelly	Individual	Oppose	Yes

Comments:

I would like to send a sincere mahalo to our legislators for listening to families, supporting teachers, and believing in our keiki. I am in support of providing quality services to our consumers and maintaining the protections afforded (in HRS 465-D) to the public, as well as our profession. While I appreciate the discussion and the opportunity to testify today, I feel that SB2496 HD1 has become bogged down with confusing and contradictory language. I respectfully request that the Committee Chair, Vice Chair and committee members not advance this bill forward. If the committee decides to move this measure forward, I respectfully ask that you consider reverting to the language of SB 2925 SD1, as suggested by the Hawaii Association Behavior Analysis (HABA).

Mahalo,

Amanda N Kelly, PhD, BCBA-D, LBA

Legislative Chair, Hawai'i Association for Behavior Analysis