



GOV. MSG. NO. 1270

EXECUTIVE CHAMBERS
KE KE'ENA O KE KIA'ĀINA

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

July 3, 2023

The Honorable Ronald D. Kouchi
President of the Senate,
and Members of the Senate
Thirty-Second State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

✓The Honorable Scott K. Saiki
Speaker, and Members of the
House of Representatives
Thirty-Second State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 3, 2023, the following bill was signed into law:

SB1340 SD2 HD2 CD1

RELATING TO THE PRACTICE OF BEHAVIOR
ANALYSIS.
ACT 167

Sincerely,

Josh Green, M.D.
Governor, State of Hawai'i

on JUL 3 2023

THE SENATE
THIRTY-SECOND LEGISLATURE, 2023
STATE OF HAWAII

S.B. NO. 1340
S.D. 2
H.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO THE PRACTICE OF BEHAVIOR ANALYSIS.

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

1 SECTION 1. The legislature finds that the department of
2 education is finding it more difficult to attract and retain
3 qualified licensed behavior analysts for the public school
4 system. Staff shortages lead to students not obtaining adequate
5 support in their education. While the department continues to
6 build its internal capacity for its applied behavior analysis
7 services to meet the licensure requirements under chapter 465D,
8 Hawaii Revised Statutes, a large portion of the services
9 provided must be contracted through a statewide contract at a
10 high cost. To be able to continue providing adequate support to
11 students, the department requires options to utilize qualified
12 and competent personnel who may be able to implement applied
13 behavior analysis services in direct collaboration with a
14 licensed behavior analyst or licensed psychologist.

15 The purpose of this Act is to:

- 16 (1) Reinstate and make permanent the exemption from the
17 behavior analyst licensing requirements for teachers



1 working in collaboration with a licensed behavior
2 analyst or licensed psychologist;

3 (2) Expand the exemption for registered behavior
4 technicians to implement applied behavior analysis
5 services under the direction of a licensed
6 psychologist;

7 (3) Reinstate and make permanent the exemption for
8 individuals who implement applied behavior analysis
9 services to participants in the medicaid home and
10 community-based services waiver program; and

11 (4) Require the department of education to report to the
12 legislature on the status of implementing medicaid
13 reimbursements for applied behavior analysis services.

14 SECTION 2. Section 465D-7, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

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

20 (1) A licensed psychologist and any supervisee of the
21 licensed psychologist; provided that applied behavior



1 analysis services performed are within the boundaries
2 of the licensed psychologist's education, training,
3 and competence; provided further that neither the
4 licensed psychologist nor any supervisee of the
5 licensed psychologist purports to be a licensed
6 behavior analyst; [and] provided further that master's
7 level practitioners and postdoctoral fellows may
8 provide training and supervision to direct support
9 workers, paraprofessionals, caregivers, parents, and
10 guardians in a manner and to the extent determined by
11 the supervising licensed psychologist.

12 For purposes of this paragraph, "supervisee"
13 means a master's level practitioner, postdoctoral
14 fellow, direct support worker, paraprofessional,
15 caregiver, parent, or guardian who provides applied
16 behavior analysis services;

- 17 (2) A licensed classroom teacher or an individual who is
18 working as a classroom teacher and is enrolled in a
19 teacher preparation program working towards licensure
20 who implements, but does not design, applied behavior
21 analysis services in a school setting in direct



1 collaboration with a licensed behavior analyst or a
2 licensed psychologist [~~on or before July 1, 2019~~];

3 (3) 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;

11 (4) An individual who directly implements applied behavior
12 analysis services and[+]

13 ~~(A) Is]~~ is credentialed as a registered behavior
14 technician by the Behavior Analyst Certification
15 Board, and is under the direction of a licensed
16 behavior analyst[~~+~~ ~~or~~

17 ~~(B) Is a direct support worker who directly~~
18 ~~implements an applied behavior analysis program~~
19 ~~under the supervision of a licensed behavior~~
20 ~~analyst or licensed psychologist on or before~~
21 ~~January 1, 2020,~~



1 ~~provided that for purposes of this paragraph, "direct~~
2 ~~support worker" means a paraprofessional who directly~~
3 ~~implements intervention or assessment plans under~~
4 ~~supervision and does not design intervention or~~
5 ~~assessment plans,~~] or a licensed psychologist;

6 (5) A family member, legal guardian, or caregiver
7 implementing an applied behavior analysis plan and who
8 acts under the direction of a licensed behavior
9 analyst or Hawaii-licensed psychologist; provided that
10 for the purposes of this paragraph, "caregiver" means
11 an individual who provides habilitative services in an
12 adult foster home, developmental disabilities
13 domiciliary home, adult residential care home,
14 expanded adult residential care home, special
15 treatment facility, or therapeutic living program
16 pursuant to the medicaid home and community-based
17 services waiver program authorized by section 1915(c)
18 of the Social Security Act;

19 (6) An individual who [~~designs or~~] implements applied
20 behavior analysis services to participants in the
21 medicaid home and community-based [~~service~~] services



- 1 waiver program pursuant to section 1915(c) of the
2 Social Security Act [~~on or before January 1, 2024~~];
- 3 (7) An individual who engages in the practice of applied
4 behavior analysis with nonhuman or nonpatient clients
5 or consumers, including but not limited to applied
6 animal behaviorists and practitioners of
7 organizational behavior management;
- 8 (8) A matriculated graduate student or postdoctoral fellow
9 whose activities are part of a defined applied
10 behavior analysis program of study, practicum, or
11 intensive practicum; provided that the student's or
12 fellow's activities or practice is directly supervised
13 by a licensed behavior analyst, licensed psychologist,
14 or an instructor from a nationally recognized training
15 organization or in a Behavior Analyst Certification
16 Board-approved course sequence; or
- 17 (9) An individual pursuing experience in applied behavior
18 analysis consistent with the Behavior Analyst
19 Certification Board's experience requirements;
20 provided that the experience is supervised by a
21 licensed behavior analyst."

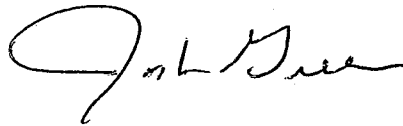


1 SECTION 3. The department of education shall submit a
2 report to the legislature no later than February 1, 2024, on the
3 status of implementing medicaid reimbursements for applied
4 behavior analysis services provided in public schools.

5 SECTION 4. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 5. This Act shall take effect upon its approval.

APPROVED this 3rd day of July, 2023



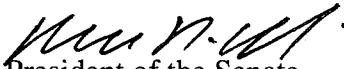
GOVERNOR OF THE STATE OF HAWAII




THE SENATE OF THE STATE OF HAWAI'I

Date: May 2, 2023
Honolulu, Hawai'i 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirty-Second Legislature of the State of Hawai'i, Regular Session of 2023.


President of the Senate


Clerk of the Senate

SB No. 1340, SD 2, HD 2, CD 1


THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 2, 2023
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-Second Legislature of the State of Hawaii, Regular Session of 2023.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives