

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

**Testimony in SUPPORT of SB1340 SD2 HD1  
RELATING TO THE PRACTICE OF BEHAVIOR ANALYSIS**

REPRESENTATIVE MARK M. NAKASHIMA, CHAIR  
HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

Hearing Date: 3/30/23

Room Number: 329

1 **Department's Position:**

2 The Department of Health (DOH), Developmental Disabilities Division (DDD), strongly  
3 supports this measure and respectfully requests a minor amendment to Hawaii Revised Statutes  
4 (HRS) § 465D-7(a)(6).

5 **Department Testimony:**

6 The House Draft 1 (HD1) amends HRS § 465D-7(a) with respect to those who are  
7 exempted from the licensing requirement for behavior analysts.

8 The DOH-DDD operates, on behalf of the Department of Human Services, Med-QUEST  
9 Division, the §1915(c) Medicaid Waiver for Individuals with Intellectual and Developmental  
10 Disabilities. The exemption in HRS § 465D-7(a)(6) pertaining to the §1915(c) Medicaid Waiver  
11 is set to automatically expire on January 1, 2024.

12 Due to the workforce shortage, 1915(c) Medicaid Waiver providers who implement the  
13 behavioral plan developed by a licensed behavioral analyst have not been able to obtain the  
14 training necessary for certification as a registered behavior technician (RBT) from the Behavior  
15 Analyst Certification Board.

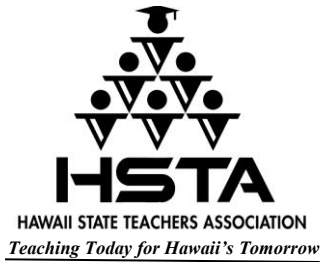
16 The committee report to the HD1 correctly reflects the DOH's requested amendment to  
17 make permanent the exemption for individuals who implement the ABA plan. Due to a drafting  
18 error in the HD1, the word "implements" was inadvertently deleted on page 10, line 14.

1 **Requested Amendment:**

2 The DOH-DDD respectfully requests an amendment to Section 2 of the HD1 that makes  
3 permanent the exemption in HRS § 465D-7(a)(6) for those who implement ABA services to  
4 participants in the Medicaid HCBS waiver program, such that page 10, lines 14-18 reads:

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

8 Thank you for the opportunity to testify.



Osa Tui, Jr.  
President  
Logan Okita  
Vice President  
Lisa Morrison  
Secretary-Treasurer  
Ann Mahi  
Executive Director

TESTIMONY BEFORE THE HOUSE COMMITTEE ON CONSUMER  
PROTECTION & COMMERCE

RE: SB 1340 SD2, HD1 - RELATING TO THE PRACTICE OF BEHAVIOR  
ANALYSIS

THURSDAY, MARCH 30, 2023

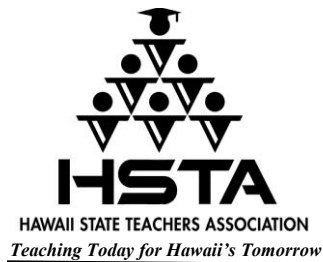
OSA TUI, JR., PRESIDENT  
HAWAII STATE TEACHERS ASSOCIATION

Chair Nakashima and Members of the Committees:

The Hawai'i State Teachers Association **supports SB 1340, SD2, HD1**, relating to the practice of behavior analysis.

**We are in agreement with removing the dates in sections (HRS465D-7; 2), which would remove perceived restrictions imposed on classroom teachers; and (HRS465D-7; 4B), as this provision is already in effect currently for psychologists, whose right to practice was never intended to be infringed upon. HSTA remains in support of licensed psychologists' right to practice applied behavior analysis (ABA), who have ABA in their "education, training, and competence". We agree teachers should be allowed to implement ABA plans without further licensure, under the direction and supervision of a licensed psychologist or licensed behavioral analyst, and removing this date will clarify that fact.**

**However, we do want to remind this committee, that the last time a similar bill was heard in 2019, others tried to insert language into this law asking for an exemption for our special education teachers to be able to design and monitor ABA, and we do not agree to any exemption someone may try to insert into this law for our special education teachers, should they try again. They should not be exempt from this additional license to be able to design/create and monitor Applied Behavior Analysis plans. Our special education teachers are able to, as this bill provides currently, only IMPLEMENT these applied behavior analysis plans.** Yes, some of their practices overlap, and that is fine and this law does not change that, but they should not be exempt from this licensure law. **When our special education teachers have used their practices and methods, but they are not seeing progress in their students' learning goals, and they need help, they should be allowed to consult outside experts, as determined in an IEP meeting, to assist them.** In this case, they should be able



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Osa Tui, Jr.  
President

Logan Okita  
Vice President

Lisa Morrison  
Secretary-Treasurer

Ann Mahi  
Executive Director

to ask for the services of a Licensed Behavior Analyst (LBA) or psychologist with the appropriate training and credentials. **The HDOE receives Medicaid reimbursements for ABA services, which are allowable, and teachers, not even SPED teachers, are NOT on that list for reimbursable services.** The experts they list that are able to design/create and monitor ABA plans have a specialized license. Yes, some of our teachers do have that license and are Board Certified Behavior Analysts (BCBAs) and they, of course, may design/create and monitor ABA plans, but the majority of teachers are not BCBAs. **Teachers often consult other experts such as psychiatrists, speech therapists, occupational therapists, social workers etc., and we need to. Thus, we also need to be able to consult BCBAs or psychologists as well, when our IEP Team decides we need additional help with a student.**

**Our special education teachers, of course, may implement Applied Behavior Analysis plans, but they should not be the ones who design/create, nor monitor ABA plans.**

Act 199, Session Laws of Hawai'i 2015, otherwise known as Luke's Law, established the behavior analyst program within the Department of Commerce and Consumer Affairs and created licensing requirements for behavior analysts. Licensing of behavior analysis services was made concurrent with mandated insurance coverage for diagnosis and treatment related to autism disorders, with which nearly 1,500 public school students are currently diagnosed. Act 205 further clarified the licenses requirements for behavior analysts. The removal of these dates will ensure that our teachers may implement these ABA plans, under the direct supervision of a Licensed Behavior Analyst or licensed psychologists who have ABA in their "education, training, and competence", as was the intention of this law.

To ensure our most vulnerable keiki are given the care they deserve, the Hawai'i State Teachers Association asks your committee to **support** this bill.



STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
KA 'OIHANA HO'ONA'AUAO  
P.O. BOX 2360  
HONOLULU, HAWAII 96804

**Date:** 03/30/2023

**Time:** 02:00 PM

**Location:** 329 VIA VIDEOCONFERENCE

**Committee:** House Consumer Protection  
& Commerce

**Department:** Education

**Person Testifying:** Keith T. Hayashi, Superintendent of Education

**Title of Bill:** SB 1340, SD2, HD1 RELATING TO THE PRACTICE OF  
BEHAVIOR ANALYSIS.

**Purpose of Bill:** Beginning August 1, 2024, expands the exemption from the behavior analyst licensing requirements for certain teachers working in collaboration with a licensed behavior analyst or licensed psychologist; removes the exemption from the behavior analyst licensing requirements for direct support workers; and allows a registered behavior technician who is under the direction of a licensed psychologist to implement applied behavior analysis services. Expands the exemption from the behavior analyst licensing requirements for individuals who implement applied behavior analysis services to participants in the Medicaid Home and Community-based Service Waiver Program. Requires the Department of Education to report to the Legislature on the implementation of Medicaid reimbursements for applied behavior analysis services. Effective 6/30/3000. (HD1)

**Department's Position:**

The Hawaii State Department of Education (Department) supports SB 1340, SD2, HD1, to modify the exemptions allowed under Chapter 465D, Hawaii Revised Statutes. The Department advocates for licensed classroom teachers, or individuals who are working as a classroom teacher and are enrolled in a teacher preparation program working towards licensure, to be allowed to implement, but not design, applied behavior analysis services in a school setting when in direct collaboration with a licensed behavior analyst

or a licensed psychologist.

Supporting the behavioral needs of students is part of a classroom teacher's job duties and scope of practice. Therefore, they should be allowed to implement, but not design, applied behavior analysis services with the support and collaborative guidance of a licensed behavior analyst. Collaboration between classroom teachers and licensed behavior analysts promotes the generalization and maintenance of skills taught to students in the classroom.

Additionally, the Department currently claims under its Medicaid Administrative Claiming Program, which includes licensed behavior analysts who provide applied behavior analysis services to students across the state. The Department is also preparing to claim for direct applied behavior analysis services by early school year 2023-2024. The Department stands ready to report on the status of implementing Medicaid reimbursements for applied behavior analysis services by February 1, 2024.

Lastly, the Department respectfully recommends that SB 1340, SD2, HD1 be amended to remove the entirety of SECTION 3 (page 7, line 8 through page 11, line 16), as it appears to be redundant to SECTION 2 but does not reflect the changes made in SECTION 2 (a)(2) and SECTION 2 (a)(4).

Thank you for the opportunity to provide testimony 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 30, 2023

The Honorable Representative Mark M. Nakashima, Chair  
House Committee on Consumer Protection and Commerce  
The Thirty-Second Legislature  
State Capitol  
State of Hawai'i  
Honolulu, Hawai'i 96813

Dear Representative Nakashima and Committee Members:

SUBJECT: SB1340 SD2 HD1 RELATING TO THE PRACTICE OF BEHAVIOR ANALYSIS.

The Hawaii State Council on Developmental Disabilities **supports SB1340 SD2 HD1**, which expands the exemption from the behavior analyst licensing requirements for certain teachers working in collaboration with a licensed behavior analyst or licensed psychologist; removes the exemption from the behavior analyst licensing requirements for direct support workers; and allows a registered behavior technician who is under the direction of a licensed psychologist to implement applied behavior analysis services. Expands the exemption from the behavior analyst licensing requirements for individuals who implement applied behavior analysis services to participants in the Medicaid Home and Community-based Service Waiver Program. Requires the Department of Education to report to the Legislature on the implementation of Medicaid reimbursements for applied behavior analysis services.

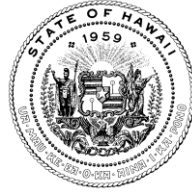
Special Education Teachers are qualified and should be able to implement ABA plans with the correct supervision. Allowing these teachers under the supervision of a licensed psychologist or BCBA to implement ABA services will help our state better serve our intellectually and developmentally disabled keiki.

We believe an error has been made in applying recommended amendments from the Department of Health in the previous committee. On page 6 line 5 and on page 10 line 14; the word "designs" should be stricken out, not "or implements". These individuals should be able to "implement" but **not** "design" applied behavior analysis services. Please see Department of Health (DOH), Developmental Disabilities Division (DDD) for the original request.

Thank you for the opportunity to submit testimony in **support of SB1340 SD2 HD1**.

Sincerely,

Daintry Bartoldus  
Executive Administrator



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I  
OFFICE OF THE DIRECTOR  
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**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
Senate Committee on Health and Human Services  
Thursday, March 30, 2023  
2:00p.m.  
Conference Room 329 and Videoconference**

**On the following measure:  
S.B. 1340, S.D. 2, H.D. 1, RELATING TO THE PRACTICE OF BEHAVIOR ANALYSIS**

Chair Nakashima and Members of the Committee:

My name is Shelley Choy, and I am the Program Specialist for the Department of Commerce and Consumer Affairs' (Department), Professional and Vocational Licensing Division's Behavior Analyst Program (Program). The Department offers comments on this measure.

The purposes of this bill are to: (1) beginning August 1, 2024, expand the exemption from the behavior analyst licensing requirements for certain teachers working in collaboration with a licensed behavior analyst or licensed psychologist; (2) remove the exemption from the behavior analyst licensing requirements for direct support workers; and allows a registered behavior technician who is under the direction of a licensed psychologist to implement applied behavior analysis services; (3) expand the exemption from the behavior analyst licensing requirements for individuals who implement applied behavior analysis services to participants in the Medicaid Home and Community-based Service Waiver Program; and (4) require the Department of



Education to report to the Legislature on the implementation of Medicaid reimbursements for applied behavior analysis services.

The Department recognizes the need for increased access to applied behavioral analysis services in schools and supports the implementation of applied behavioral analysis services by qualified and competent personnel who are working in direct collaboration with a licensed behavior analyst or a licensed psychologist. However, the Department has concerns with the H.D. 1's amendments to the exemption for individuals who provide applied behavior analysis services to participants in the Medicaid home and community-based service waiver program (DOH-DDD HCBS). If the exemption is to be extended in perpetuity for individuals in the DOH-DDD HCBS waiver service program for design, rather than for implementation as seems to be intended as noted in Standing Committee Report HSCR1544, the Department requests that the amendment be removed. Allowing the extension of design services in perpetuity by individuals who do not meet the required competency measures to provide such design, jeopardizes the health, safety, and welfare of consumers.

Thank you for the opportunity to testify on this bill.



**S E A C**  
**Special Education Advisory Council**  
1010 Richards Street Honolulu, HI 96813  
Phone: 586-8126 Fax: 586-8129  
email: [spin@doh.hawaii.gov](mailto:spin@doh.hawaii.gov)  
March 30, 2023

**Special Education  
Advisory Council**

Ms. Martha Guinan, *Chair*  
Ms. Susan Wood, *Vice Chair*

Ms. Sara Alimoot  
Ms. Virginia Beringer  
Ms. Mary Brogan  
Mr. Rick Bunny  
Ms. Deborah Cheeseman  
Ms. Annette Cooper  
Ms. Shana Cruz  
Mr. Mark Disher  
Dr. Lisa Garcia  
Ms. Mai Hall  
Ms. Melissa Harper Osai  
Mr. Kerry Iwashita  
Ms. Melissa Johnson  
Ms. Tina King  
Ms. Jennifer Leoiki-Drino  
Ms. Cheryl Matthews  
Dr. Paul Meng  
Ms. Kiele Pennington  
Ms. Carrie Pisciotto  
Ms. Kau'i Rezentes  
Ms. Rosie Rowe  
Ms. Ivalee Sinclair  
Mr. Steven Vannatta  
Ms. Lisa Vegas  
Ms. Paula Whitaker  
Ms. Jasmine Williams  
Ms. Susan Wood

Ms. Roxanne Rokero, *liaison to  
the Superintendent*  
Ms. Wendy Nakasone-Kalani,  
*liaison to the military  
community*

Amanda Kaahanui, Staff  
Susan Rocco, Staff

Representative Mark M. Nakashima, Chair  
Committee on Consumer Protection & Commerce  
Hawaii State Capitol  
Honolulu, HI 96813

RE: SB 1340, SD 2, HD 1-Relating to the Practice of Behavior Analysis

Dear Chair Nakashima and Members of the Committee,

The Special Education Advisory Council (SEAC), Hawaii's State Advisory Council under the Individual's with Disabilities Act (IDEA) strongly supports SB 1340, SD 2, HD 1 which helps to ensure timely and appropriate applied behavior analysis (ABA) services for students who need these interventions in order to reach their academic, behavioral and functional goals.

This proposed amendment to Section 465D-7 of the Hawaii Revised Statutes will increase the number of competent personnel to implement ABA services in two important ways: 1) it will make permanent the exemption from the behavior analyst licensing requirements for classroom teachers and individuals working as a classroom teacher while enrolled in a teacher preparation program working toward licensure who are working in direct collaboration with a licensed behavior analyst or licensed psychologist, and 2) it allows registered behavior technicians to work under the direction of either a licensed behavior analyst or a licensed psychologist.

SEAC holds that these changes to the law are necessary to address current staff shortages by expanding the pool of individuals who can implement timely interventions while maintaining the safeguard of having licensed behavior analysts and psychologists conduct the behavioral assessment and design the student behavior plan.

Thank you for the opportunity to provide testimony.

Respectfully,

Martha Guinan, Chair



Committee on Consumer Protection and Commerce

Thursday, March 30, 2023

2:00 PM

Conference Room 329 & Videoconference

State Capitol

415 South Beretania Street

Comments with Suggested Amendments on SB1340 HD1 Relating to the practice of behavior analysis

Chair Nakashima, Vice Chair Sayama, and members of the Committee:

On behalf of the Hawai'i Association for Behavior Analysis (HABA) we thank you for the opportunity to submit comments **with suggested amendments** on SB1340 HD1 relating to the practice of behavior analysis and exemptions from the behavior analyst licensing requirements.

Relating to the Department of Education, the association recognizes the need for ensuring the language of the law removes prior sunset dates and allows teachers to **implement, but not design** applied behavior analysis (ABA) services when working in collaboration with a licensed behavior analyst or licensed psychologist with ABA in their education, training, and competence. Children in need of ABA services in the DOE need access to qualified implementers and designers of behavior analytic programs during this crucial time in their development.

Regarding the requested amendment from DOH-DDD for the waiver program that was included in HD1, which is intended to make a permanent exemption from the requirement to have Registered Behavior Technicians (RBTs) to implement applied behavior analysis (ABA) services under Medicaid Home and Community-Based Services (HCBS) waiver program, HABA would like to share the potential concerns of this with the Committee for consideration. Implementation is the primary interaction with consumers of ABA services and those implementing programs often work 1:1 with consumers who have limited communication and other skill deficits that make them a vulnerable population. The requirement for RBT certification from the Behavior Analyst Certification Board® (BACB), an external nationally accredited certifying body, to implement ABA services provides consumer protection in the form of required training, demonstrated initial competency, required oversight (minimum monthly supervision and onsite observation of implementation of the behavior plan), annual renewal of competency, and ongoing adherence to an ethical code with enforcement and disciplinary actions. These are consumer protections provided by the requirement for RBT certification that will not be provided for participants in the waiver program if this exemption is granted. Based on this, this change may also increase the workload for the Department of Commerce and Consumer Affairs (DCCA) Regulated Industries Complaints Office (RICO) in that it will be responsible for determining potential violations related to the licensed professional's oversight and direction of non-certified implementers that do not have established standards of practice or an ethical code (whereas RBTs are held to certification standards). In accordance with these concerns,

the Committee could consider a new sunset date allowing the Department and its providers additional to build additional workforce capacity while keeping intended consumer protections in the law. HABA appreciates DOH-DDD's prior collaboration with our association, as well as their current waiver standards that include both LBAs and RBTs for those with the most significant behavioral needs and also recognizes the current workforce challenges in having staff to meet the needs of waiver program participants (primarily adults). Therefore, based on this prior good faith effort by the Department to meet the needs of their participants and utilize RBTs when needed even when it was not required by this law, we are offering the above comments for consideration by the Committee. We are however strongly advocating for necessary suggested amendments due to an editing error in the current HD1. In the prior hearing, testimony submitted by DOH-DDD and the Committee report both reflect intention to change the language to exempt those who "implement" only; however, the current HD1 language left design and "implements" was stricken in the HD1 which has significantly different meaning. HABA strongly opposes any exemption to the design of ABA programs. **We offer the proposed correction for Section 2, exemption (6), page 6, line 5.**

(6) An individual who ~~designs [or implements]~~ applied 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}~~;

Additionally, the language in the preamble for Section 1, page. 1, line 16 states "Beginning August 1, 2024," however in the current law the DOH-DDD Medicaid HCBS waiver exemption sunset date is January 1, 2024 creating a gap period of January to August 2024.

While we do have concern about the decreased consumer protections for HCBS waiver participants we welcome continued collaboration with DOH-DDD to meet the needs of adults in our state in need of ABA and other HCBS supports. Particularly, given this decrease in the required competency of implementers for behavior plans in HCBS waiver services, we urge the state to continue to explore providing access to medically necessary ABA for QUEST beneficiaries (i.e., SB1473).

We thank this Committee for the continued focus on ensuring this vulnerable population of consumers of behavior analytic services have protections.

Mahalo,



Kristen Koba-Burdt, BCBA, LBA, CDP  
Legislative Chair  
Hawai'i Association for Behavior Analysis

**SB-1340-HD-1**

Submitted on: 3/29/2023 2:06:04 PM

Testimony for CPC on 3/30/2023 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
James Kilgore	Full Life	Support	Written Testimony Only

Comments:

We strongly support expanding the exemption from behavior analyst licensing and registered behavior technician licensing requirements allowing direct support professionals in the I/DD 1915c Home and Community Based Services program to implement a behavior support plan without being licensed as a registered behavior technician.

This will help to ensure that services can continue to be provided to people in this program with complex support needs.