

**ACT 167**

S.B. NO. 1340

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 the department of education is finding it more difficult to attract and retain qualified licensed behavior analysts for the public school system. Staff shortages lead to students not obtaining adequate support in their education. While the department continues to build its internal capacity for its applied behavior analysis services to meet the licensure requirements under chapter 465D, Hawaii Revised Statutes, a large portion

of the services provided must be contracted through a statewide contract at a high cost. To be able to continue providing adequate support to students, the department requires options to utilize qualified and competent personnel who may be able to implement applied behavior analysis services in direct collaboration with a licensed behavior analyst or licensed psychologist.

The purpose of this Act is to:

- (1) Reinstate and make permanent the exemption from the behavior analyst licensing requirements for teachers working in collaboration with a licensed behavior analyst or licensed psychologist;
- (2) Expand the exemption for registered behavior technicians to implement applied behavior analysis services under the direction of a licensed psychologist;
- (3) Reinstate and make permanent the exemption for individuals who implement applied behavior analysis services to participants in the medicaid home and community-based services waiver program; and
- (4) Require the department of education to report to the legislature on the status of implementing medicaid reimbursements for applied behavior analysis services.

SECTION 2. 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) A licensed psychologist and any supervisee of the licensed psychologist; provided that applied behavior analysis services performed are within the boundaries of the licensed psychologist’s education, training, and competence; provided further that neither the licensed psychologist nor any supervisee of the licensed psychologist purports to be a licensed behavior analyst; ~~and~~ provided further that master’s level practitioners and postdoctoral fellows may provide training and supervision to direct support workers, paraprofessionals, caregivers, parents, and guardians in a manner and to the extent determined by the supervising licensed psychologist.

For purposes of this paragraph, “supervisee” means a master’s level practitioner, postdoctoral fellow, direct support worker, paraprofessional, caregiver, parent, or guardian who provides applied behavior analysis services;

- (2) A licensed classroom teacher or an individual who is working as a classroom teacher and is enrolled in a teacher preparation program working towards licensure who implements, but does not design, applied behavior analysis services in a school setting in direct collaboration with a licensed behavior analyst or a licensed psychologist ~~[on or before July 1, 2019]~~;
- (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 licensed behavior analyst;
- (4) An individual who directly implements applied behavior analysis services and;

- (A) ~~Is] is~~ is ~~credentialed as a registered behavior technician by the Behavior Analyst Certification Board, and is under the direction of a licensed behavior analyst[; or~~
- (B) ~~Is a direct support worker who directly implements an applied behavior analysis program under the supervision of a licensed behavior analyst or licensed psychologist on or before January 1, 2020;~~  
provided that for purposes of this paragraph, “direct support worker” means a ~~paraprofessional who directly implements intervention or assessment plans under supervision and does not design intervention or assessment plans;~~ or a licensed psychologist;
- (5) A family member, legal guardian, or caregiver implementing an applied behavior analysis plan and who acts under the direction of a licensed behavior analyst or Hawaii-licensed psychologist; provided that for the purposes of this paragraph, “caregiver” means an individual who provides habilitative services in an adult foster home, developmental disabilities domiciliary home, adult residential care home, expanded adult residential care home, special treatment facility, or therapeutic living program pursuant to the medicaid home and community-based services waiver program authorized by section 1915(c) of the Social Security Act;
- (6) An individual who ~~[designs or]~~ implements applied behavior analysis services to participants in the medicaid home and community-based ~~[service]~~ services waiver program pursuant to section 1915(c) of the Social Security Act ~~[on or before January 1, 2024];~~
- (7) An individual who engages in the practice of applied behavior analysis with nonhuman or nonpatient clients or consumers, including but not limited to applied animal behaviorists and practitioners of organizational behavior management;
- (8) A matriculated graduate student or postdoctoral fellow whose activities are part of a defined applied 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 licensed behavior analyst, licensed psychologist, or an instructor from a nationally recognized training organization or in a Behavior Analyst Certification Board-approved course sequence; or
- (9) An individual pursuing experience in applied behavior analysis consistent with the Behavior Analyst Certification Board’s experience requirements; provided that the experience is supervised by a licensed behavior analyst.”

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

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

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

(Approved July 3, 2023.)