

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 795 Private Instructional Personnel

SPONSOR(S): Tant

TIED BILLS: None. **IDEN./SIM. BILLS:** SB 514

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Education Quality Subcommittee	18 Y, 0 N	Suppiah	Sanchez
2) Health & Human Services Committee	16 Y, 0 N	Calamas	Calamas
3) Education & Employment Committee		Suppiah	Hassell

SUMMARY ANALYSIS

Applied Behavior Analysis (ABA) is an umbrella term referring to the principles and techniques used to assess, treat, and prevent challenging behaviors while promoting new, desired behaviors. ABA has been recognized as a treatment option for a range of behavioral health conditions, with an emphasis on the treatment of autism spectrum disorder.

Current law requires public K-12 schools to allow certified applied behavior analysts and mental health professionals licensed under chapter 490 or chapter 491, to provide ABA services in a classroom setting. Registered behavior technicians who hold a nationally recognized paraprofessional certification in behavior analysis, practice under the supervision of either certified behavior analysts or professionals licensed under chapter 490 or chapter 491, and who are employed by an enrolled Medicaid provider, can also provide these services.

The bill broadens the list of registered behavior technicians who are allowed to provide ABA services in a public K-12 school by eliminating the requirement for employment by an enrolled Medicaid provider. Instead, the bill requires employment by a behavioral analysis provider who is certified under s. 393.17, F.S. or licensed under chapter 490 or chapter 491.

The bill has no fiscal impact on state or local government.

The bill provides an effective date of July 1, 2023.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Applied Behavior Analysis

Applied Behavior Analysis (ABA) is an umbrella term referring to the principles and techniques used to assess, treat, and prevent challenging behaviors while promoting new, desired behaviors. ABA focuses on improving social skills, communication, reading, and academics as well as adaptive learning skills, such as fine motor dexterity, hygiene, grooming, domestic capabilities, punctuality, and job competence. ABA can be effective for children and adults with psychological disorders in a variety of settings, including schools, workplaces, homes, and clinics.¹

ABA has been recognized as a therapeutic intervention in the treatment of autism spectrum disorder (ASD).² ASD is a developmental disability that impacts the social, emotional, and communication skills of affected individuals. The disorder includes a range of conditions that were previously diagnosed separately – such as autism, Asperger syndrome, and other non-specific developmental disorders.³

ABA has become widely accepted among health care professionals, is used in many schools and treatment clinics, and is considered an evidence-based best practice treatment by the U.S. Surgeon General, American Psychological Association, American Academy of Child and Adolescent Psychiatry, and American Academy of Pediatrics.⁴

Providers of ABA Services

Research suggests that ABA interventions should generally be provided under the supervision of a trained behavioral psychologist or behavior analyst. In general, behavior analysts perform patient assessments to determine levels of adaptive and maladaptive behaviors, and develop a treatment plan. Behavior analysts supervise other professionals, such as behavior technicians, who implement the treatment plan, and monitor progress.⁵

The Behavior Analyst Certification Board (BACB) was established in 1998 to develop uniform standards for determining who is qualified to provide professional ABA services.⁶ It is an independent, nonprofit organization whose behavior analyst credentialing programs are accredited by the National Commission for Certifying Agencies of the Institute for Credentialing Excellence.⁷ The BACB certifies professional practitioners at two levels: the Board Certified Behavior Analyst (BCBA) and the Board Certified Assistant Behavior Analyst (BCaBA). The BACB also issues a credential for paraprofessionals, known as the Registered Behavior Technician (RBT).⁸ Requirements for the three credentials are:

¹ “Applied Behavior Analysis,” *Psychology Today*, <https://www.psychologytoday.com/us/therapy-types/applied-behavior-analysis> (last visited March 6, 2023).

² *Id.*

³ U.S. Centers for Disease Control and Prevention, “What is Autism Spectrum Disorder?,” <https://www.cdc.gov/ncbddd/autism/facts.html> (last visited March 6, 2023).

⁴ See U.S. Centers for Disease Control and Prevention, *Treatment and Intervention Services for Autism Spectrum Disorder*, <https://www.cdc.gov/ncbddd/autism/treatment.html> (last visited March 6, 2023) and Autism Speaks, *Applied Behavior Analysis*, <https://www.autismspeaks.org/applied-behavior-analysis> (last visited March 6, 2023).

⁵ Association of Professional Behavior Analysts, *Identifying Applied Behavior Analysis Interventions* (2017), at 17-22, available at <https://cdn.ymaws.com/www.apbahome.net/resource/collection/1FDDDBDD2-5CAF-4B2A-A B3F-DAE5E72111BF/APBAwhitepaperABAinterventions.pdf>.

⁶ Board Analyst Certification Board, *Board Certified Behavior Analyst Handbook* (Jan. 2022), at 1, https://www.bacb.com/wp-content/uploads/2022/01/BCBAHandbook_220110.pdf. [hereinafter *BCBA Handbook*].

⁷ *Id.*

⁸ Behavior Analyst Certification Board, *Credentials*, <https://www.bacb.com/> (last visited March 6, 2023).

Board Certified Behavior Analyst (BCBA)⁹
<ul style="list-style-type: none"> • at least a master's degree in applied behavior analysis or a closely-related field; • completion of 315 hours of graduate-level instruction in specified behavior analysis topics; • completion of specified hours of supervised experiential training in ABA; and • passage of the BCBA examination.
Board Certified Assistant Behavior Analyst (BCaBA)¹⁰
<ul style="list-style-type: none"> • at least a bachelor's degree; • completion of 225 classroom hours of instruction in specified behavior analysis topics; • completion of specified hours of supervised experiential training in ABA; and • passage of the BCaBA examination.
Registered Behavior Technician (RBT)¹¹
<ul style="list-style-type: none"> • at least a high school diploma, or equivalent; • completion of 40 hours of training in specified behavior analysis topics; • completion of the RBT initial competency assessment; and • passage of the RBT examination.

A BCBA with doctoral training in behavior analysis may receive the designation of Board Certified Behavior Analyst-Doctoral (BCBA-D). The BCBA-D is not a separate certification, and it does not grant any privileges above or beyond the BCBA certification.¹²

The BACB specifies that BCaBAs may not provide behavior-analytic services without the supervision of a BCBA.¹³ The RBT is a paraprofessional certified in behavior analysis and may assist in delivering ABA services under the direction and supervision of a BCBA or a BCaBA.¹⁴ All individuals certified as a BCBA or BCaBA must accumulate continuing education credits to maintain their credentials and recertify every two years.¹⁵ A certified RBT is not required to accumulate continuing education credits, however, the RBT must recertify every year.¹⁶ A certified RBT may perform specific activities such as assisting with specified assessments and implementing specified behavior reduction procedures¹⁷ under the supervision of a qualified supervisor,¹⁸ and must obtain ongoing supervision for a minimum of five percent of the hours spent providing ABA services each calendar month.¹⁹

⁹ *BCBA Handbook*, *supra* note 6, at 5-8, 34.

¹⁰ Behavior Analyst Certification Board, *Board Certified Assistant Behavior Analyst Handbook* (Jan. 2022), at 5-8, available at https://www.bacb.com/wp-content/uploads/2022/01/BCaBAHandbook_220110.pdf. [hereinafter *BCaBA Handbook*]

¹¹ Behavior Analyst Certification Board, *Registered Behavior Technician Handbook* (Jan. 2022), at 3-16, available at https://www.bacb.com/wp-content/uploads/2022/01/RBTHandbook_220112.pdf. [hereinafter *RBT Handbook*]

¹² *BCBA Handbook*, *supra* note 6, at 1. Certification requirements are provided for those eligible under faculty teaching and research and postdoctoral experience.

¹³ *BCaBA Handbook*, *supra* note 10, at 1.

¹⁴ *RBT Handbook*, *supra* note 11, at 1 and 17-19.

¹⁵ *BCBA Handbook*, *supra* note 6, at 37 and *BCaBA Handbook*, *supra* note 10, at 33.

¹⁶ *RBT Handbook*, *supra* note 11, at 17.

¹⁷ Behavior Analyst Certification Board, *RBT Task List* (2nd Edition) (Dec. 2018), available at https://www.bacb.com/wp-content/uploads/2020/05/RBT-2nd-Edition-Task-List_181214.pdf.

¹⁸ *Id.* at 18. RBT supervisors must hold a BCBA or BCaBA certification or be licensed in another behavioral health profession that has applied behavior analysis in its scope of practice and are competent in applied behavior analysis.

¹⁹ *RBT Handbook*, *supra* note 11, at 17.

As of March 2023, the BACB reported the following monthly certificant data for Florida:²⁰

- 266 BCBA-D certifications
- 5,552 BCBA certifications
- 1,716 BCaBA certifications
- 29,771 RBT certifications

Medicaid Coverage of ABA Services

Florida Medicaid has covered ABA services since 2012.²¹ In 2017, the Agency for Health Care Administration (AHCA) adopted a provider reimbursement rule, setting a formal classification for ABA providers that closely follows the certification hierarchy of the BACB. The rule established “lead analysts” as those professionals either holding a BCBA certification or professionals licensed by the state under chapters 490 or 491. The rule also recognizes other personnel who are permitted to provide ABA services, such as those holding BCaBA credentials and RBT credentials.²²

To enroll as a behavior analysis provider in Florida’s Medicaid Program, a provider must submit an enrollment application along with documentation of proof of certification, which is then evaluated and verified by AHCA.²³ Depending on the type of BCBA certification, a provider may apply as a sole proprietor or a sole proprietor enrolling as a member of a group.²⁴ An RBT may only apply as a sole proprietor enrolling as a member of a Medicaid-enrolled behavior analysis group and AHCA requires a behavior analysis group to have at least one lead analyst as a group member.²⁵

Effective May 14, 2018, the AHCA instituted a moratorium on Medicaid enrollment for behavior analysis practices in Broward and Miami-Dade counties.²⁶ The moratorium resulted from AHCA’s determination that some providers of ABA services in the affected areas had falsified enrollment credentials and used fraudulent billing practices. AHCA initially authorized the moratorium for a six-month period, but it continued in effect until May 13, 2022.²⁷

Florida’s Agency for Persons with Disabilities (APD) requires all providers of behavior analysis services in the Medicaid home and community based waiver program to be licensed to practice under chapters 490²⁸ or 491,²⁹ or be certified by a nonprofit corporation that adheres to the national standards of boards that determine professional credentials and whose mission is to meet professional credentialing

²⁰ Behavior Analyst Certification Board, *Region-Specific Certificant Data -Florida*, <https://www.bacb.com/services/o.php?page=101134> (last visited March 6, 2023).

²¹ See The Florida Bar Foundation, *Federal judge orders state of Florida to cover applied behavioral analysis therapy for autism*, (July 1, 2012), <https://thefloridabarfoundation.org/federal-judge-orders-state-of-florida-to-cover-applied-behavioral-analysis-therapy-for-autism/> (last visited March 6, 2023).

²² Rule 59G-4.125, F.A.C.

²³ Agency for Health Care Administration, *Enrolling as a Florida Medicaid Behavior Analysis Provider* (April 25, 2019), at 9, available at

https://ahca.myflorida.com/medicaid/Policy_and_Quality/Policy/behavioral_health_coverage/bhfu/pdf/Enrolling_as_a_Florida_Medicaid_Behavior_Analysis_Provider.pdf; A Medicaid Provider Enrollment Level 2 background screening is also required.

²⁴ *Id.* at 13.

²⁵ *Id.* at 12-21.

²⁶ Agency for Health Care Administration, *AHCA Announces Moratorium on Enrollment of New Behavioral Analysis providers* (May 14, 2018), available at https://ahca.myflorida.com/Executive/Communications/Press_Releases/pdf/BA_provider_release5142018.pdf.

²⁷ Agency for Health Care Administration, *Florida Medicaid Health Care Alert* (Nov. 10, 2021), <http://www.icontact-archive.com/archive?c=227375&f=11179&s=13873&m=854301&t=850d8a08f66cb5c2e1e49656573dbe0caeb447b39b9d192096e732cbe37425f5> (last visited March 6, 2023). Under the moratorium, individual rendering providers in Miami-Dade and Broward counties wishing to link to a behavior analysis group that is already enrolled in Florida Medicaid may continue to do so. The moratorium remains in effect for the enrollment of new behavior analysis group providers and individual providers practicing independent of a group.

²⁸ Chapter 490, “Psychological Services Act” regulates psychological services in the state of Florida, including but not limited to, the process and requirements to become a Florida Department of Health licensed psychologist, defining the scope of practice of psychology, and the continuing education requirements of a licensed psychologist.

²⁹ Chapter 491, regulates mental health counseling, clinical social work, and marriage and family therapy, including but not limited to the process and requirements to become a Florida Department of Health licensed marriage and family therapist, clinical social worker, and mental health counselor.

needs identified by behavior analysts, state governments, and consumers of behavior analysis services.³⁰ The APD recognizes the certification for behavior analysts awarded by the BACB.³¹

Applied Behavior Analysis Services in Schools

Current law encourages the collaboration of public and private instructional personnel to enhance but not supplant the school district's responsibilities under the federal Individuals with Disabilities Education Act.³² The school must provide therapy services to meet the expectations provided by federal and state law.³³ The coordination of services and plans between public school and private instructional personnel is encouraged to avoid duplication or conflicting services or plans.³⁴

Current law defines "private instructional personnel" to include:³⁵

- Individuals certified under s. 393.17, F.S. (Certified Behavior Analysts) or individuals licensed under chapters 490 or 491 for applied behavior analysis services.
- RBTs who have a nationally recognized paraprofessional certification in behavioral analysis, practice under the supervision of individuals certified under s. 393.17, F.S. or licensed under chapters 490 or 491, and who are employed by an enrolled Medicaid provider.
- Speech-language pathologists licensed under s. 468.1185, F.S.
- Occupational therapists licensed under part III of chapter 468.
- Physical therapists licensed under chapter 486.
- Psychologists licensed under chapter 490.
- Clinical social workers licensed under chapter 491.

Private instructional personnel, including providers of ABA services, who are hired or contracted by a student's parents to collaborate with public instructional personnel must be permitted to observe the student in the educational setting, collaborate with instructional personnel in the educational setting, and provide services in the educational setting, so long as the following requirements are met:

- the student's teacher and principal consent to the time and place; and
- the private instructional personnel must pass a background screening.³⁶

A school district is prohibited from imposing any additional requirements beyond those specified in law for private instructional personnel, and the district may not charge any fees.³⁷

The statute does not expressly address other behavior analysis professionals, such as RBTs, who implement the treatment plans established by behavior analysts.

Effect of Proposed Changes

The bill broadens the list of registered behavior technicians who are allowed to provide ABA services in a public K-12 school by eliminating the requirement for employment by an enrolled Medicaid provider. Instead, the bill requires employment by a behavioral analysis provider who is certified under s. 393.17, F.S. or licensed under chapter 490 or chapter 491.

This would apply to behavior technicians working for behavior analysis providers who are:

³⁰ Section 393.17(2), F.S. and rule 65G-4.0011, F.A.C.

³¹ Rule 65G-4.0011, F.A.C.

³² Section 1003.572(2), F.S.; 20 U.S.C. ss.1400 et seq.

³³ *Id.*

³⁴ *Id.*

³⁵ Section 1003.572(1)(a)-(g), F.S.

³⁶ Section 1003.572(3)(a)-(b), F.S.

³⁷ *Id.* Flush left provision at the end of the paragraph.

- Certified under s. 393.17 F.S. to provide services in the Medicaid home and community based waiver for persons with developmental disabilities.
- Psychologists licensed under chapter 490.
- Clinical social workers, marriage and family therapists, and mental health counselors, licensed under chapter 491.

This bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

- Section 1.** Amends s. 1003.572, F.S.; revising the definition of the term "private instructional personnel" to include registered behavior technicians employed by certain providers.
- Section 2.** Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.
2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.
2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:
None.
2. Other:
None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.