

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Health and Human Services

BILL: CS/SB 1206

INTRODUCER: Health Policy Committee and Senator Harrell

SUBJECT: Applied Behavior Analysis Services

DATE: February 24, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kibbey</u>	<u>Brown</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Gerbrandt</u>	<u>Kidd</u>	<u>AHS</u>	<u>Recommend: Favorable</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1206 exempts a group practice that provides applied behavior analysis (ABA) services from licensure and regulation as a health care clinic.

The bill requires the Agency for Persons with Disabilities (APD) to recognize the certification of registered behavior technicians (RBTs) by a nonprofit corporation in the same manner that the APD is currently required to recognize the certification of behavior analysts.

The bill authorizes certified RBTs who practice under the supervision of a certified behavior analyst or a mental health professional licensed under chapter 490 or chapter 491, to assist and support that professional in providing ABA services in the K-12 classroom setting.

The bill has an insignificant impact on state expenditures, which can be absorbed within existing agency resources. The bill has an indeterminate negative fiscal impact on the AHCA due to a loss in revenue from exempting ABA group providers from health care clinic licensure.

The bill provides an effective date of July 1, 2020.

II. Present Situation:

Health Care Clinics

The Health Care Clinic Act (Act), ss. 400.990-400.995, F.S., was enacted in 2003 as part of the Florida Motor Vehicle insurance Affordability and Reform Act to address personal injury protection insurance exploitation.¹ To prevent significant harm to consumers the purpose of the Act is to strengthen regulation of health care clinics through licensure, and establishment and enforcement of basic standards for health care clinics. Regulation of health care clinics was transferred from the Department of Health (DOH) to the Agency for Health Care Administration (AHCA), to be funded by license application fees.²

To be licensed as a health care clinic, an entity must submit a completed application form to the AHCA and must:³

- Submit to a level-2 background screening for owners and certain employees and officers;
- Demonstrate its financial ability to operate;
- Pay the licensure application fee (\$2,000 every 2 years);
- Provide evidence of incorporation or fictitious name;
- Provide proof of the applicant's legal right to occupy the property; and
- Provide proof of any required insurance.

Each health care clinic must appoint a medical or clinical director.⁴ The medical director must be a physician licensed as an allopathic physician, an osteopathic physician, a chiropractic physician, or a podiatric physician.⁵ If the clinic does not provide services pursuant to those physicians' respective practices acts, it may appoint a Florida-licensed health care practitioner to serve as a clinic director.⁶

Because ABA service providers are not licensed in Florida, an ABA practice licensed as a health care clinic would need to retain a state-licensed health care practitioner to serve as its medical or clinical director in order to comply with the Act.

The AHCA is responsible for licensing and regulating facilities that meet the definition of a health care clinic. A "health care clinic" is an entity where health care services are provided to individuals and which tenders charges for reimbursement for such services, including a mobile clinic and a portable equipment provider.⁷ Currently, there are fourteen exemptions from the definition of health care clinic and from the licensure requirements. Most of these exemptions are provided for entities that:⁸

- Are already regulated by the AHCA as a health care provider for licensure;

¹ Chapter 2003-411, Laws of Fla.

² *Id.* .

³ *See* s. 400.991 ,F.S. and 59A-33.002, F.A.C.

⁴ Section 400.9935(1), F.S.

⁵ Section 400.9905(5), F.S.

⁶ *Id.*

⁷ Section 400.9905(4), F.S.

⁸ Agency for Health Care Administration, *House Bill 575 Analysis* (November 13, 2019) (on file with the Senate Committee on Health Policy).

- Are federally-certified;
- Are otherwise regulated by the DOH or the Department of Children and Families or elsewhere in the Florida Statutes; or
- Have substantial financial commitment.

The AHCA licenses 2,454 health care clinics and 4,720 providers hold an active certificate of exemption.⁹ An entity may apply for a certificate of an exemption, which costs \$100 every two years.¹⁰

Mental health professionals licensed under ch. 490, F.S., (psychological services) or under ch. 491, F.S., (clinical, counseling, and psychotherapy services) who provide services within their scope of practice are granted such an exemption under s. 400.9905(4)(g), F.S., but there is no current exemption for persons or groups providing ABA services.

Applied Behavior Analysis Services

ABA is a therapeutic approach to dealing with behavioral disorders that is based on the science of learning and behavior.¹¹ The primary recipients of ABA services are individuals with autism spectrum disorder.¹² ABA seeks to reduce unwanted behavior patterns and to teach new, productive skills to help drive meaningful change.¹³ Individuals participating in ABA strive to improve language capabilities and other communication skills, limit negative behavioral patterns, improve learning outcomes, and develop social skills.¹⁴

The AHCA covers behavior analysis services for children enrolled in Medicaid ages 0 through 20 with significant maladaptive behaviors, when medically necessary.¹⁵ Before a child can receive ABA services, the child must be referred for a behavior assessment by his or her treating practitioner.¹⁶

Health insurers and health maintenance organizations are required to issue coverage for ABA services for individuals under 18 years of age, or individuals over 18 years of age who are in high school, who have been diagnosed as having a developmental disability at 8 years of age or younger.¹⁷ ABA services must be provided by individuals certified as behavior analysts under s. 393.17, F.S., or licensed under chs. 490 or 491, F.S.¹⁸

⁹ *Id.*

¹⁰ *Id.*

¹¹ TEACH Make a Difference, *What is Applied Behavior Analysis (ABA)?*, <https://teach.com/online-ed/psychology-degrees/what-is-aba/> (last visited Feb 13, 2020).

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Agency for Health Care Administration, *Behavior Analysis Services Information*, available at: https://ahca.myflorida.com/medicaid/Policy_and_Quality/Policy/behavioral_health_coverage/bhfu/BA_Services.shtml (last visited Feb. 13, 2020).

¹⁶ *Id.*

¹⁷ Sections 627.6686 and 641.31098, F.S.

¹⁸ *Id.*

ABA Service Providers and Certification

There are three provider types of ABA services:¹⁹

- Board Certified Behavior Analyst (BCBAs) – These providers have either a masters or doctoral degree with a background in ABA.
- Board Certified Assistant Behavior Analysts (BCaBAs) – These providers have a bachelor’s degree with a background in ABA.
- Registered Behavior Technicians (RBTs) – These providers have at least a high school diploma, have undergone 40 hours of training, and have passed an exam. RBTs can deliver ABA services under the supervision of a BCBA or a BCaBA.

The APD is required to recognize a non-profit corporation for the certification of behavior analysts. The non-profit corporation is required to:²⁰

- Adhere to the national standards of boards that determine professional credentials; and
- Have a mission to meet professional credentialing needs identified by behavior analysts, state governments, and consumers of behavior analysis services.

Further, the certification procedure recognized by the APD must undergo regular psychometric review and validation, pursuant to a job analysis survey of the profession and standards established by content experts in the field.²¹ The APD recognizes the certification awarded by the Behavior Analyst Certification Board, Inc.,²² which certifies the three provider types and recently added a fourth provider type: the BCBA-D for board certified behavior analysts who hold doctoral degrees.²³

The APD reports that there are 173 certified ABA service providers.²⁴ The APD website provides a directory to identify certified behavioral analysis service providers.²⁵

III. Effect of Proposed Changes:

Section 1 amends s. 393.17, F.S., to authorize the APD to establish a certification process for RBTs and to require the APD to recognize the certification of RBTs awarded by a nonprofit corporation that meets criteria established in current law, such as adhering to the national standards of boards that determine professional credentials relating to ABA.

Section 2 amends s. 400.9905(4), F.S., to exempt a group of certified behavior analysts or individuals licensed under chs. 490 or 491, F.S., and who provide applied behavior analysis services from health care clinic licensure. The AHCA is not able to distinguish behavioral analysis providers from other types of health care clinics, so the AHCA is unable to determine

¹⁹ Behavior Analyst Certification Board <https://www.bacb.com/> (last viewed Feb. 13, 2020).

²⁰ Section 393.17(2), F.S.

²¹ *Id.*

²² Rule 65G-4.0011, F.A.C.

²³ *Supra* note 19.

²⁴ *Supra* note 8.

²⁵ Agency for Persons with Disabilities, *Resource Directory*, available at: <https://resourcedirectory.apd.myflorida.com/resourcedirectory/> (last visited Feb. 13, 2020).

how many behavior analysis providers are currently licensed as health care clinics.²⁶ The total number of providers affected by Section 2 of the bill is unknown.

Section 3 amends s. 1003.572, F.S., to expand the definition of “private instructional personnel” for purposes of allowing such personnel to provide services in a K-12 classroom. The definition is expanded to include certified RBTs who practice under the supervision of a certified behavior analyst or a mental health professional licensed under chapter 490 or chapter 491, and who assist and support such a provider in providing ABA services.

Sections 4-6 of the bill amend ss. 456.47, 627.6686, and 641.31098, F.S., to make conforming changes.

Section 7 provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

CS/SB 1206 will have a positive fiscal impact on eligible ABA service providers who apply for a \$100 certificate of exemption instead of a \$2,000 health care clinic license.

²⁶ Supra note 8.

C. Government Sector Impact:

The bill has a significant positive fiscal impact on the AHCA due the exemption of certain ABA service providers from health care clinic licensure, which reduces workload within the AHCA's Division of Health Quality Assurance because the division will not have to license or survey exempted ABA service providers.

The bill has an indeterminate negative fiscal impact on the AHCA due to a loss in revenue from exempting ABA group providers from health care clinic licensure. However, the AHCA is not able to distinguish behavioral analysis providers from other types of health care clinics, and therefore, is unable to determine how many behavior analysis providers are currently licensed as health care clinics.²⁷

Under the bill, the AHCA will need to update Rule 5G-1.060 of the Florida Administrative Code to remove a reference to behavior analysis groups in regard to health care clinic licensure. The AHCA will experience minor operational cost that can be absorbed within existing resources.²⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 393.17, 400.9905, 456.47, 627.6686, 641.31098, and 1003.572.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Health Policy on February 4, 2020:

The CS:

- Requires the APD to recognize the certification of registered behavior technicians (RBTs) by a nonprofit corporation in the same manner that the APD is currently required to recognize the certification of behavior analysts.
- Reverts to the current law and removes a provision on lines 44-45 of the underlying bill that would require the Department of Education (DOE) to approve a nonprofit credentialing entity to certify behavior analysts. The CS keeps the certification of behavior analysts under s. 393.17, F.S., which currently requires the APD to recognize a corporation for the certification of behavior analysts.

²⁷ *Supra* note 8.

²⁸ *Supra* note 8.

- Replaces the word “paraprofessionals” on line 48 of the underlying bill with RBTs certified under s. 393.17, F.S., to narrow the scope of who may assist a behavior analyst in providing ABA services in K-12 classrooms and to ensure that those providers are qualified.
- Makes conforming changes.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
