

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 Committee on Health Policy

BILL: SB 1206

INTRODUCER: Senator Harrell

SUBJECT: Applied Behavior Analysis Services

DATE: February 3, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kibbey	Brown	HP	Pre-meeting
2.			AHS	
3.			AP	

I. Summary:

SB 1206 exempts group practices that provide applied behavior analysis (ABA) services from licensure and regulation as a health care clinic.

The bill requires the Department of Education (DOE) to approve a credentialing entity to certify behavior analysts. The bill amends the K-20 Education Code to remove individuals certified under s. 393.17, F.S., by the Agency for Persons with Disabilities (APD) from the definition of “private instructional personnel” and instead includes behavior analysts certified by a nonprofit credentialing entity that has been approved by the DOE under the definition.

The bill also authorizes paraprofessionals who practice under the supervision of a behavior analyst certified by the DOE-approved credentialing entity or a mental health professional licensed under chapter 490 or chapter 491, to assist and support such professionals in providing ABA services in the K-12 classroom setting.

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

II. Present Situation:

Health Care Clinics

The Health Care Clinic 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 Regulation of health care clinics was transferred from the Department of

¹ Chapter 2003-411, Laws of Fla.

Health (DOH) to the Agency for Health Care Administration (AHCA), to be funded by license application fees of \$2,000 every two years.²

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

- 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;
- 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. The medical director must be a physician licensed as an allopathic physician, an osteopathic physician, a chiropractic physician, or a podiatric physician.³ 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.⁴

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 act as its medical director or clinical director in order to comply with the Health Care Clinic Act.

The AHCA is responsible for licensing and regulating facilities that meet the definition of a health care clinic. Section 400.9905(4), F.S., defines the term "health care clinic" as 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. The subsection then lists fourteen exceptions from licensure that are not included in the definition of the term. Most of these exemptions are provided for entities that:⁵

- Are already regulated by the AHCA as a health care provider for licensure;
- 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.⁶ An entity may apply for a certificate of an exemption, which costs \$100 per biennium.⁷

Mental health professionals licensed under ch. 490, F.S., (psychological services) or under chapter 491, F.S., (clinical, counseling, and psychotherapy services) who provide services within

² Agency for Health Care Administration, *House Bill 575 Agency Analysis* (Nov. 13, 2019) on file with the Senate Committee on Health Policy.

³ Section 400.9905(5), F.S.

⁴ *Id.*

⁵ *Supra* note 2.

⁶ *Id.*

⁷ *Id.*

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.⁸ The primary recipients of ABA services are individuals with autism spectrum disorder.⁹ ABA seeks to reduce unwanted behavior patterns and to teach new, productive skills to help drive meaningful change.¹⁰ Individuals participating in ABA strive to improve language capabilities and other communication skills, limit negative behavioral patterns, improve learning outcomes, and develop social skills.¹¹

The AHCA covers behavior analysis services for children enrolled in Medicaid ages 0 through 20 with significant maladaptive behaviors, when medically necessary.¹² Before a child can receive ABA services, the child must be referred for a behavior assessment by his or her treating practitioner.¹³

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.¹⁴ Covered services must be provided by individuals certified as behavior analysts under s. 393.17, F.S., or licensed under chapter 490 or chapter 491.¹⁵

ABA Service Providers and Certification

There are three provider types of ABA services:

- 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.

Section 393.17(2), F.S., requires the APD to recognize a corporation for the certification of behavior analysts. It requires that the corporation:

- Adhere to the national standards of boards that determine professional credentials; and

⁸ TEACH Make a Difference, *What is Applied Behavior Analysis (ABA)?*, <https://teach.com/online-ed/psychology-degrees/what-is-aba/> (last visited Feb. 2, 2020).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Agency for Health Care Administration, *Medicaid Behavior Analysis Overview* (January 2019) on file with the Senate Committee on Health Policy.

¹³ *Id.*

¹⁴ Sections 627.6686 and 641.31098, F.S.

¹⁵ *Id.*

- 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. In Rule 65G-4.0011 of the Florida Administrative Code, the APD recognizes the certification awarded by the Behavior Analyst Certification Board, Inc., 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.¹⁶

The APD reports that there are 173 certified ABA service providers.¹⁷ The APD website provides a directory to identify certified behavioral analysis service providers.¹⁸

III. Effect of Proposed Changes:

Section 1 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., 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 how many behavior analysis providers are currently licensed as health care clinics. The total number of providers affected by Section 1 of the bill is unknown.

Section 2 amends s. 1003.572, F.S., to revise the definition of “private instructional personnel” for purposes of allowing such personnel to provide services in an educational setting. The current definition includes ABA service providers who are licensed under chapter 490, F.S., licensed under chapter 491, F.S., or certified under s. 393.17, F.S. Section 393.17, F.S., requires the APD to certify behavior analysts through a nonprofit corporation. The bill removes the inclusion of APD-certified behavior analysts from this definition. Instead, DOE-certified behavior analysts would fall into the definition of private instructional personnel. This bill requires the DOE to certify behavior analysts through a nonprofit credentialing entity.

Section 2 of the bill also expands the definition of “private instructional personnel” to include “paraprofessionals” who practice under the supervision of ABA service providers and who assist and support such a provider in providing ABA services.

Section 3 provides an effective date of July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹⁶ Behavior Analyst Certification Board, <https://www.bacb.com/> (last viewed Feb. 2, 2020).

¹⁷ *Supra* note 2.

¹⁸ Florida Developmental Disabilities Resources, *Provider Search*, <https://fdddresources.glarant.com/ProviderSearch.aspx> (last visited Feb. 2, 2020).

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:

SB 1206 will have a positive fiscal impact on providers of ABA service providers that will be able to apply for a \$100 certificate of exemption instead of a \$2,000 health care clinic license.

C. Government Sector Impact:

The bill's exemption from health care clinic licensure should reduce 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 AHCA 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 with existing resources.¹⁹

The DOE may experience an operational impact because it will need to approve a nonprofit credentialing agency to certify behavior analysts.

VI. Technical Deficiencies:

The term "paraprofessional" is used on line 48 as an individual who may assist and support a certified or licensed professional in providing ABA services in K-12 classrooms. It is unclear

¹⁹ *Supra* note 2.

who may be considered such a paraprofessional and what qualifications will be necessary for such paraprofessionals.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 400.9905 and 1003.572 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.