

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 Rules

BILL: CS/SB 538

INTRODUCER: Rules Committee and Senator Hooper

SUBJECT: Private Instructional Personnel Providing Applied Behavior Analysis Services

DATE: March 2, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Palazesi</u>	<u>Bouck</u>	<u>ED</u>	Favorable
2.	<u>Smith</u>	<u>Brown</u>	<u>HP</u>	Favorable
3.	<u>Palazesi</u>	<u>Phelps</u>	<u>RC</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 538 expands the definition of “private instruction personnel,” for purposes of allowing such personnel to provide services in public schools, to include a registered behavior technician who holds a nationally recognized paraprofessional certification in behavior analysis. The bill authorizes the registered behavior technician to practice in a public school under the supervision of a Board Certified Behavior Analyst or an individual licensed under ch. 490 or 491, F.S., and who is employed by an enrolled Medicaid provider ., for applied behavior analysis services, by assisting and supporting such an individual in the provision of those services.

The bill provides an effective date of July 1, 2022.

II. Present Situation:

Applied Behavior Analysis Services

Behavior Analysis measures outcomes through data collection and the direct observation of behavior.¹ Applied Behavior Analysis (ABA) is the use of principled methods of behavior

¹ Florida Association for Behavior Analysis, *What is Behavior Analysis?*, <https://www.fabaworld.org/what-is-behavior-analysis> (last visited Jan. 10, 2022).

analysis to bring about meaningful changes in socially important behaviors.² ABA is best known for its success in treating individuals with autism spectrum disorder and other developmental disabilities.³ Florida law defines ABA as “the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including but not limited to, the use of direct observation, measurement, and functional analysis of the relations between environment and behavior.”⁴

ABA Service Providers and Certification

Florida’s Agency for Persons with Disabilities (APD) is required to recognize a non-profit corporation for the certification of behavior analysts. The non-profit corporation is required to:⁵

- 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.⁶ The APD recognizes the certification awarded by the Behavior Analyst Certification Board, Inc.,⁷ which certifies the three provider types: Board Certified Behavior Analysts, Board Certified Assistant Behavior Analysts, and Registered Behavior Technicians.

The Behavior Analyst Certification Board’s requirements for certification are outlined below:

- Board Certified Behavior Analyst (BCBAs):⁸
 - At least a master’s degree in applied behavior analysis or a closely-related field;
 - Completion of 270 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 (BCaBAs):⁹
 - At least a bachelor’s degree;
 - Completion of 180 classroom hours of instruction in specified behavior analysis topics;
 - Completion of specified hours of supervised experiential training in ABA; and,

² Association of Professional Behavior Analysts, *Identifying Applied Behavior Analysis Interventions white paper*, (2017), available at <https://cdn.ymaws.com/www.apbahome.net/resource/collection/1FDDDBDD2-5CAF-4B2A-AB3F-DAE5E72111BF/APBAwhitepaperABAinterventions.pdf>, at 16 (last visited Jan. 10, 2022).

³ Behavior Analyst Certification Board, *Autism & Intellectual/Development Disabilities*, https://www.bacb.com/wp-content/uploads/2020/05/Behavioral-Treatment-of-Autism-and-Other-Developmental-Disabilities-Fact-Sheet_210108.pdf (last visited Jan. 10, 2022).

⁴ Sections 627.6686(2)(a), F.S. and 641.31098(2)(a), F.S.

⁵ Section 393.17(2), F.S.

⁶ *Id.*

⁷ Rule 65G-4.0011, F.A.C.

⁸ Behavior Analyst Certification Board, *Board Certified Behavior Analyst Handbook*, https://www.bacb.com/wp-content/uploads/2021/09/BCBAHandbook_210915-2.pdf (last visited Jan. 10, 2022).

⁹ Behavior Analyst Certification Board, *Board Certified Assistant Behavior Analyst Handbook*, https://www.bacb.com/wp-content/uploads/2021/09/BCaBAHandbook_210915-2.pdf (last visited Jan. 10, 2022).

- Passage of the BCaBA examination.
- Registered Behavior Technician (RBTs):¹⁰
 - At least a high school diploma;
 - Be at least 18 years old;
 - Completion of 40 hours of training in specified behavior analysis topics;
 - Completion of the RBT competency assessment; and
 - Passage of the RBT examination.

The RBT is a paraprofessional certified in behavior analysis. RBTs may assist in delivering ABA services under the direction and supervision of a BCBA or a BCaBA.¹¹

Medicaid Coverage of ABA Services

Florida Medicaid has covered ABA services since 2012.¹² 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 BCBA. 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.¹³

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.¹⁴ 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.¹⁵ 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.¹⁶

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

¹⁰Behavior Analyst Certification Board, *Registered Behavior Technician Handbook*, https://www.bacb.com/wp-content/uploads/2021/09/RBTHandbook_210915-3.pdf (last visited Jan. 10, 2022).

¹¹ *Id.*

¹² 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 Feb. 21, 2022).

¹³ Rule 59G-4.125, F.A.C.

¹⁴ 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.

¹⁵ *Id.* at 13.

¹⁶ *Id.* at 12-21.

under chapters 490¹⁷ or 491,¹⁸ 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 needs identified by behavior analysts, state governments, and consumers of behavior analysis services.¹⁹ The APD recognizes the certification for behavior analysts awarded by the BACB.²⁰

ABA Services in Florida's Public Schools

In an educational setting, behavior analysis provides a scientific approach to designing, implementing, and evaluating instruction based on analyzing interactions between what the teacher does and student learning.²¹

Section 1003.572, F.S., was created in 2013,²² to encourage cooperation and coordination of services for students with disabilities through public and private instructional collaboration. Private instructional personnel who are hired by or contracted by parents to collaborate with public instructional personnel must be permitted to observe the student in the educational setting, act as a team with instructional personnel in the educational setting, and provide services in the educational setting.²³ Private instructional personnel must undergo a background screening, and the student's public instructional personnel and principal must consent to the time and place.²⁴

Section 1003.572, F.S., defines term "private instructional personnel" to include:²⁵

- Individuals certified under s. 393.17, F.S., (a Board Certified Behavior Analyst) or individuals licensed under ch. 490, F.S.,²⁶ or ch. 491, F.S.,²⁷ for applied behavior analysis services.
- Speech-language pathologists licensed under s. 468.1185, F.S.
- Occupational therapists licensed under part III of ch. 468, F.S.
- Physical therapists licensed under ch. 486, F.S.
- Psychologists licensed under ch. 490, F.S.

¹⁷ 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.

¹⁸ 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.

¹⁹ Section 393.17(2), F.S. and rule 65G-4.0011, F.A.C.

²⁰ Rule 65G-4.0011, F.A.C.

²¹ Behavior Analyst Certification Board, *Behavior Analysis in Education*, https://www.bacb.com/wp-content/uploads/2020/05/Behavior-Analysis-in-Education-Fact-Sheet_210108.pdf (last visited Jan. 10, 2022).

²² Section 5, ch. 2013-236, L.O.F.

²³ Section 1003.572(3), F.S.

²⁴ *Id.*

²⁵ Section 1003.572(1), F.S.

²⁶ 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.

²⁷ 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.

- Clinical social workers licensed under ch. 491, F.S.

The statute does not expressly address other behavior analysis professionals, such as BCaBAs or RBTs.

III. Effect of Proposed Changes:

CS/SB 538 expands the definition of “private instruction personnel” for purposes of allowing such personnel to provide services in public schools. The definition is expanded to include a registered behavior technician who holds a nationally recognized paraprofessional certification in behavior analysis.

The bill adds an Registered Behavior Technician (RBT) who holds a nationally recognized paraprofessional certification in behavior analysis, who practices under the supervision of either certified behavior analysts or professionals licensed under chapter 490 or chapter 491, F.S., and who is employed by an enrolled Medicaid provider, to the list of private instructional personnel who must be allowed to provide ABA services in a K-12 public school.

The bill provides an effective date of July 1, 2022.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 1003.572 of the Florida Statutes.

IX. Additional Information:

- A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Rules on March 1, 2022:

The committee substitute requires that registered behavior technicians utilized for applied behavior services in the classroom be employed by an enrolled Medicaid provider.

B. Amendments:

None.