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BILL ANALYSIS



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Senate Bill 1015 (Substitute S-2 as passed by the Senate)  
Senate Bill 1016 (Substitute S-1 as passed by the Senate)  
Sponsor: Senator Rebekah Warren (S.B. 1015)  
Senator Margaret E. O'Brien (S.B. 1016)  
Committee: Regulatory Reform

Date Completed: 10-10-16

### **RATIONALE**

Several years ago, legislation was enacted to require health insurance policies in Michigan to cover the diagnosis and treatment of autism spectrum disorders (ASDs), and to establish a State fund to reimburse insurers for the expenses they incur in providing access to the covered services. The legislation was enacted in response to reports from parents that they faced significant barriers in getting appropriate treatment for their children with ASDs. Because the majority of insurance plans did not cover the diagnosis and treatment of autism at the time, there were few qualified providers in the State and the treatment was often prohibitively expensive.

Early intervention using evidence-based treatments has been shown effective in improving outcomes for people with ASDs. One such treatment, now required to be covered by insurers, is applied behavior analysis (ABA). According to the Behavior Analysis Association of Michigan, ABA is a method by which a "needed skill is broken down into manageable steps, taught using highly motivating methods, then reassembled so it is functional and useful". Applied behavior analysis is provided by practitioners who are certified by the Behavior Analyst Certification Board, a nonprofit credentialing corporation; to date, however, these professionals are not licensed by the State. Reportedly, this can complicate provider reimbursement by insurers. Thus, it has been suggested that a mechanism for the licensure and oversight of behavior analysts should be established.

### **CONTENT**

**Senate Bill 1015 (S-2) would add Part 182A (Applied Behavior Analysis) to the Public Health Code to provide for the licensure of behavior analysts and assistant behavior analysts. The bill would do the following:**

- **Prohibit an individual from engaging in the practice of applied behavior analysis or practicing as an assistant behavior analyst unless licensed or otherwise authorized, beginning one year after the effective date of rules promulgated for licensure.**
- **Within two years after the effective date of Part 182A, require the Department of Licensing and Regulatory Affairs (LARA), in consultation with a proposed Michigan Board of Behavior Analysts, to promulgate rules that established the minimum standards for licensure, including a rule to deny or revoke a license for a conviction of a listed offense under the Sex Offender Registration Act.**
- **Require LARA to issue a license to an individual who already had credentials as a certified behavior analyst or certified assistant behavior analyst (and who was under the supervision of a behavior analyst, in the case of an assistant) and who applied for licensure within one year after the effective date of the rules.**
- **Require LARA to provide for a four-year license cycle.**
- **Prohibit an individual from acting as a behavior technician unless he or she had a criminal history check conducted and the check did not contain any criminal history record information for him or her, and he or she completed a training program.**

- **Allow LARA, in consultation with the Board, to promulgate rules to require a licensee seeking renewal to furnish evidence that he or she was current on his or her certification during the preceding license period.**

**The bill also would amend Part 161 (General Provisions) to establish an application fee and a per-year license fee for a behavior analyst or assistant behavior analyst license.**

**Senate Bill 1016 (S-1) would add a section to proposed Part 182A to establish the Michigan Board of Behavior Analysts within LARA.**

The bills are tie-barred. Each bill would take effect 90 days after enactment.

### **Senate Bill 1015 (S-1)**

#### Licensure, Practice, & Use of Titles

Beginning one year after the rules for licensure took effect, an individual could not engage in the practice of ABA or practice as an assistant behavior analyst unless licensed or otherwise authorized under Article 15 (Occupations) of the Public Health Code.

The Department of Licensing and Regulatory Affairs would have to issue a behavior analyst license to an individual who, on or before the effective date of Part 182A, had a credential as a Board-certified behavior analyst conferred for applied behavior analysis by the Behavior Analyst Certification Board (BACB), or its successor, and who applied for licensure as a behavior analyst within one year after the effective date of the rules promulgated under Part 182A.

The Department would have to issue a license as an assistant behavior analyst to a person who, on or before the effective date of Part 182A, had a credential as a Board-certified assistant behavior analyst conferred for ABA by the BACB, or its successor, who was under the supervision of a behavior analyst, and who applied for licensure within one year after the rules' effective date.

Beginning one year after the rules for licensure took effect, an individual could not use the title "licensed behavior analyst", "L.B.A.", "licensed assistant behavior analyst", "L.A.B.A.", or similar words or letters that indicated that he or she was licensed as a behavior analyst or assistant behavior analyst unless he or she was licensed under Part 182A.

"Practice of applied behavior analysis" would mean the design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvement in human behavior. The term would include all of the following:

- The empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis.
- Applied behavior analysis interventions that are based on scientific research and the direct observation and measurement of behavior and the environment.
- The use of contextual factors, motivating operations, antecedent stimuli, or positive reinforcement.
- The use of other consequences to help individuals develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions.

"Practice of applied behavior analysis" would not include any of the following:

- The practice of medicine or osteopathic medicine and surgery or medical diagnosis or treatment.
- The practice of speech-language pathology, physical therapy, or occupational therapy.
- Psychological testing, including standardized testing for intelligence or personality.
- Diagnosis of a mental or physical impairment.
- The practice of neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, or counseling as treatment modalities.

"Practice as an assistant behavior analyst" would mean the practice of ABA under the supervision of a behavior analyst.

#### Authorized Practice without ABA License

The prohibition against practicing as an applied behavior analyst or assistant behavior analyst without a license or other authorization would not prevent self-care by a patient or uncompensated care by a friend or family member who did not represent or hold himself or herself out to be a behavior analyst or assistant behavior analyst.

The prohibition also would not prevent any of the following:

- A behavior technician from implementing a care plan under the delegation and supervision of a behavior analyst.
- A family member from providing a follow-up home program designed by a behavior analyst.
- An individual who was not licensed under Part 182A from pursuing experience in behavior analysis compatible with the BACB's experience requirements for an ABA credential, if the experience were supervised by a licensed behavior analyst.
- An individual authorized to practice psychology in Michigan from providing services included in the practice of ABA, if the services were within the individual's education, training, and experience.

The prohibition also would not prevent an individual who was a matriculated student at a nationally accredited university approved in rules or who was a postdoctoral fellow from performing activities that were considered to be the practice of ABA if they were part of a defined behavior analysis program of study or practicum approved in rules, and if the student or fellow were directly supervised by an individual who was licensed as a behavior analyst or appointed as the instructor of a course sequence approved by the BACB or other certification board.

Additionally, the prohibition against practicing without a license would not prevent an individual who held a license, certificate, registration, or other authorization from the State that authorized him or her to perform services included in the practice of ABA, as long as he or she did not do any of the following: perform any services that were not within the scope of practice of his or her profession or occupation; perform services that he or she was not qualified by education, training, or experience to perform; or represent that he or she was a behavior analyst or assistant behavior analyst.

Further, the prohibition would not prevent a school-based paraprofessional from implementing an ABA intervention under the delegation and supervision of an individual authorized to practice psychology or an individual described directly above.

Also, the prohibition would not prevent an individual from performing activities that were considered to be the practice of ABA if they were with nonhuman or nonpatient clients or consumers. Such individuals would include applied animal behaviorists and practitioners or organizational behavior management.

"Behavior technician" would mean an individual who was not licensed or authorized to practice a profession under Part 182A and who delivered ABA services under the delegation and supervision of a behavior analyst and met certain requirements (described below). "Applied behavior analysis services" would mean services provided to clients that are included in the practice of applied behavior analysis.

#### Rules

Within two years after Part 182A took effect, LARA, in consultation with the Michigan Board of Behavior Analysts, would have to promulgate rules that established the minimum standards for licensure as a behavior analyst or assistant behavior analyst. For purposes of this requirement, LARA could adopt in its rules the professional standards, in whole or in part, issued by the BACB or any other nationally recognized professional association as its standards.

Notwithstanding Sections 16621 and 16626 of the Code, LARA would have to include in the rules that a license application would be denied if the applicant's criminal history check required by the Code revealed that the applicant was convicted of a listed offense, and that a licensee's license would be permanently revoked if the licensee were convicted of a listed offense while licensed. The Department would have to provide an opportunity for a hearing to an individual whose application was denied or whose license was revoked under these rules.

(Sections 16621 and 16626 authorize LARA to investigate activities related to the practice of a health profession by a licensee or license applicant and report its findings to the appropriate disciplinary subcommittee, and require the subcommittee to impose sanctions against a licensee if it determines that certain grounds exist.

"Listed offense" would mean that term as it is defined in Section 2 of the Sex Offenders Registration Act.)

In addition to the requirements of Part 161, LARA, in consultation with the Board, could promulgate rules to require a licensee seeking renewal to do one of the following:

- For a licensee seeking renewal of his or her behavior analyst license, furnish evidence that, during the preceding license period, he or she was current on his or her certification by the BACB or other certification board as a board-certified behavior analyst.
- For a licensee seeking renewal of his or her assistant behavior analyst license, furnish evidence that he or she was current on his or her certification and was practicing under the supervision of a licensed behavior analyst.

#### Behavior Technician

An individual could not act as a behavior technician in Michigan unless he or she met both of the following criteria, if applicable:

- Had a criminal history check conducted and the check did not contain any criminal history record information for that person.
- Beginning three years after the bill took effect, had completed a training program that was based on the BACB's Registered Behavior Technician Task List.

A behavior technician could not use words, titles, or letters that indicated that he or she was a behavior analyst or assistant behavior analyst or that he or she was engaging in the practice of ABA or practice as an assistant behavior analyst.

#### Reimbursement/Benefits

The bill specifies that Part 182A would not require new or additional third-party reimbursement or mandated worker's compensation benefits for services rendered by an individual licensed as a behavior analyst or an assistant behavior analyst.

#### Fees

The bill would establish a \$75 application processing fee and a \$90 per-year license fee for an individual licensed or seeking licensure to engage in the practice of ABA, or to engage in practice as an assistant behavior analyst under proposed Part 182A.

### **Senate Bill 1016 (S-1)**

The bill would create the Michigan Board of Behavior Analysts within LARA. The Board would consist of the following nine voting members:

- Four behavior analysts.
- One individual affiliated with a Michigan university that provided instruction or conducted research in ABA.
- One assistant behavior analyst.

- One physician who was licensed under Part 170 (Medicine) or 175 (Osteopathic Medicine and Surgery) of the Public Health Code and who worked with patients with autism spectrum disorders or brain injuries.
- Two public members.

The behavior analyst members would have to be licensed under Part 182A, except that the first four appointed to the Board could be board-certified behavior analysts who were not licensed. The behavior analyst members would have to be appointed in a manner that ensured that three of them were engaged in providing clinical services and one was engaged in providing ABA services to the Medicaid population in addition to providing clinical services.

The terms of office of individual members, except those appointed to fill vacancies, would expire on December 31 in the fourth year after the appointment. For the members first appointed, however, three would serve for two years, three for three years, and three for four years.

(Part 161 requires the Governor, with the advice and consent of the Senate, to appoint members of boards under Article 15.)

Proposed MCL 333.16343a et al. (S.B. 1015)  
Proposed MCL 333.18255 (S.B. 1016)

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Although the insurance coverage requirement enacted several years ago has improved access to ABA for Michigan children with autism spectrum disorders, the lack of a regulatory structure continues to present an obstacle. The bills would establish a framework to ensure the competency of behavior analysts, provide appropriate disciplinary measures, and distinguish between different practice areas in the treatment of autism. This would facilitate provider reimbursement by third-party payers, enabling people with ASDs to be diagnosed in a timely fashion and receive the services they need to improve their quality of life.

The licensure requirement also would attract qualified providers to the State. The bills are similar to the behavior analyst licensure legislation enacted in approximately 30 other states, which would make it easy for those who are already licensed elsewhere to come to Michigan.

Legislative Analyst: Julie Cassidy

## **FISCAL IMPACT**

The bills would have an indeterminate, but likely minor fiscal impact on the Bureau of Professional Licensing within the Department of Licensing and Regulatory Affairs, and no fiscal impact on local units of government. Under the bill, individuals engaged in the practice of behavior analysis would be required to seek licensure from the Bureau, and remit a \$75 application fee and a per-year license fee of \$90. These fees are similar to those paid by fully licensed psychologists, and those fees generate revenue that is in excess of what is needed to regulate the profession. It is expected that in the long term, the fees created by the bills would provide sufficient revenue to license and regulate behavior analysts. In the short term, the bills would create some regulatory costs related to rule promulgation and other administrative functions, such as the creation of application forms and licensure database updates. The bills also would create the Michigan Board of Behavior Analysts, which would presumably receive administrative support from LARA at some unknown, but likely minor cost that would likely be covered by the fees established in the bills.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.