

Legislative Analysis



LICENSURE OF APPLIED BEHAVIORAL ANALYSTS

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Senate Bill 1015 (S-2) as passed by the Senate
Sponsor: Sen. Rebekah Warren

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 1016 (S-1) as passed by the Senate
Sponsor: Sen. Margaret E. O'Brien *(Enacted as Public Acts 403 and 404 of 2016)*

House Committee: Health Policy
Senate Committee: Regulatory Reform
Complete to 11-27-16

SUMMARY:

Senate Bill 1015 would add Part 182A (Applied Behavior Analysis) to the Public Health Code to provide for the licensure of applied behavior analysts and assistant behavior analysts, and to prescribe the functions of both. The bill would also amend Part 161 (General Provisions) to establish an application fee of \$75 and a per-year license fee of \$90 for a behavior analyst or assistant behavior analyst license. The license cycle will be four years.

Senate Bill 1016 would add a section to the proposed Part 182A to establish the Michigan Board of Behavior Analysts within the Department of Licensing and Regulatory Affairs (LARA).

Senate Bills 1015 and 1016 are tie-barred together, meaning neither would take effect unless both are both are enacted. They would take effect 90 days after enactment.

Simply put, applied behavior analysis (ABA) is the application of behavioral principals to everyday situations that will, over time, increase or decrease targeted behaviors. Those behaviors can be almost anything, from aggression or self-injury, to communication or reading and adaptive living skills. ABA is often used for individuals with autism spectrum disorders or brain injuries.

Senate Bill 1015 (proposed 333.16343a and Part 182A)

Practice of applied behavior analysis

The practice of applied behavior analysis is the design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior. The practice of applied behavior analysis includes 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 utilization of contextual factors, motivating operations, antecedent stimuli, or positive reinforcement; and
- The utilization of other consequences to help individuals develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions.

The practice of ABA does not include the practice of medicine; osteopathic medicine and surgery; medical diagnosis or treatment; speech language pathology; physical therapy; occupational therapy; psychological testing, including standardized testing for intelligence or personality; diagnosis of a mental or physical impairment; or the practice of neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, or counseling as treatment modalities.

Titles and practice limited to licensed individuals

Beginning one year after the rules promulgated by the Board take effect, an individual may not use the titles "licensed behavior analyst", "L.B.A.", "licensed assistant behavior analyst", "L.A.B.A." or similar words or letters unless licensed as such or otherwise authorized.

Also, beginning one year after the rules take effect, a person may not engage in the practice of ABA or practice as an assistant behavior analyst unless licensed or otherwise authorized.

The prohibition on practice by unlicensed individuals does not prevent self-care by a patient or uncompensated care by a family member; a behavior technician or school-based paraprofessional from implementing a care plan under the delegation and supervision of a behavior analyst; a family member from conducting a follow-up home program; or a psychologist from providing applied behavior analysis within the scope of the psychologist's training. It also does not prevent a state-licensed professional from performing one or more of the services included in ABA, as long as that service is in the scope of that professional's practice, and he or she is qualified to perform it and does not represent himself or herself as a behavior analyst or assistant behavior analyst.

Finally, the prohibition does not prevent a student in ABA from performing behavior analysis under the supervision of a licensed behavior analyst or instructor in a Behavior Analyst Certification Board (BACB)-approved course of study. Likewise, it does not prevent an unlicensed individual from pursuing experience in ABA compatible with the BACB's experience requirements, under the supervision of a licensed behavior analyst.

Current behavior analysts "grandfathered in"

A behavior analyst or assistant behavior analyst who is BACB-certified on or before this bill takes effect, and who applies for licensure within one year after the rules takes effect, will be issued a license by LARA.

Applied behavior analysis licensure rules

Within two years after the bill takes effect, LARA, in consultation with the Michigan Board of Behavior Analysts, will promulgate rules establishing the minimum standards for licensure as a behavior analyst and assistant behavior analyst. These standards may be, in whole or in part, the professional standards issued by the BACB. The rules will include a provision that, subject to a hearing by LARA, a license will be denied if an applicant does not pass the criminal history check, and the license will be permanently revoked if the licensee is convicted of a listed offense under the Sex Offender Registration Act.

Licensure and renewal

Individuals licensed or seeking licensure in either of those specialties would be required to pay a \$75 application processing fee and a \$90 license fee per year. The license cycle will be four years.

Additionally, LARA, in consultation with the Board of Behavior Analysts may promulgate rules to require a behavior analyst or assistant behavior analyst seeking renewal to furnish evidence that he or she is current on certification by the BACB. For an assistant behavior analyst, LARA may also require evidence that he or she is practicing under the supervision of a licensed behavior analyst.

Definitions

- The **BACB** is the Behavior Analyst Certification Board, a nonprofit corporation that is exempt from taxation under Section 501(C)(3) of the IRS Code.
- A **behavior technician** is an individual who is not licensed or authorized to practice a profession under this part and who delivers applied behavior analysis services under the delegation and supervision of a behavior analyst. (The individual also must have passed a criminal history check and, beginning three years after this section takes effect, have completed a training program that is based on the BACB's registered behavior technician task list. Finally, a behavior technician may not use words or letters that indicate that he or she is a behavior analyst or assistant behavior analyst, or practice as such.)

The bill 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 assistant behavior analyst.

Senate Bill 1016 (proposed MCL 333.18255)

Senate Bill 1016 would add a section to the proposed Part 182A to establish the Board of Behavior Analysts within LARA. The board would consist of nine members, composed of the following:

- Four licensed behavior analysts (or board-certified initially, until state-licensing exists), three of whom provide clinical services and one who also provides ABA to the Medicaid population;
- One individual who is affiliated with a university and provides instruction or conducts research in ABA;
- One assistant behavior analyst;

- One medical or osteopathic physician who works with patients with autism spectrum disorders or brain injuries;
- Two public members.

The terms of board members (except those appointed to fill vacancies) will expire four years after the appointment on December 31 of the year in which the term expires. For the initial members, three will serve two years, three will serve three years, and three will serve four years.

FISCAL IMPACT:

Senate Bills 1015 and 1016 would likely have a neutral fiscal impact on the Department of Licensing and Regulatory Affairs (LARA). The bills establish fees for those seeking licensure as applied behavior analysts or assistant behavior analysts. There is a \$75.00 application processing fee and a \$90.00 license fee per year. LARA would experience increased administrative costs for rules promulgation to establish the minimum standards for licensure, for hearings for license denials and revocations, and for establishing the necessary materials and infrastructure to license the profession. The licensing fees are expected to be sufficient to offset the increased administrative costs that the department will likely experience. The bills would not have significant fiscal impacts on other units of state or local government.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.