

SENATE BILL REPORT

SSB 5488

As Passed Senate, March 9, 2015

Title: An act relating to applied behavior analysis.

Brief Description: Concerning applied behavior analysis.

Sponsors: Senate Committee on Health Care (originally sponsored by Senators Keiser, Jayapal, Parlette and Cleveland).

Brief History:

Committee Activity: Health Care: 2/09/15, 2/19/15 [DPS].

Passed Senate: 3/09/15, 49-0.

SENATE COMMITTEE ON HEALTH CARE

Majority Report: That Substitute Senate Bill No. 5488 be substituted therefor, and the substitute bill do pass.

Signed by Senators Becker, Chair; Dammeier, Vice Chair; Angel, Bailey, Brown, Cleveland, Conway, Jayapal, Keiser and Rivers.

Staff: Evan Klein (786-7483)

Background: Central Washington University describes applied behavior analysis (ABA) as a systematic approach to the assessment and evaluation of behavior, and the application of interventions that alter behavior.

In 2014 the Washington State Department of Health (DOH) undertook a sunrise review of the behavior analyst profession. The sunrise review found that a patchwork of ABA provider requirements currently exists solely for insurance reimbursement for autism spectrum disorders (ASD) and other conditions. As a result, some providers have obtained counseling or other health care credentials to meet requirements of insurers who cover ABA services. Medicaid reimbursement requires a state license for medically necessary treatment of ASD and other developmental disorders. The Health Care Authority (HCA) and Department of Social and Health Services (DSHS) regulations for ABA services include credentialing and referral requirements.

The sunrise review further found that the system provides some level of public protection for individuals using ABA services because the providers must meet minimum credentialing

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qualifications and are subject to background checks and regulatory oversight. However, private-pay clients of ABA providers do not have the same protections and there are waitlists to access ABA services because some qualified providers are limited from practicing.

DOH provided the following recommendations:

- behavior analysts and assistant behavior analysts should be licensed in Washington, since the sunrise review criteria for a new profession have been met;
- a bill should clarify that the use of behavior techniques alone, such as positive reinforcement and antecedent stimuli, does not constitute the practice of ABA;
- that any bill language use the term applied behavior analysis rather than behavior analysis because it is more commonly understood by other health care providers and the public; and
- that in the absence of an amended definition of the scope of practice, DOH would alternatively recommend title protection only for the ABA profession.

Summary of Substitute Bill: A number of provisions that establish three behavior analysis professions in Washington are included:

- A certified behavior technician is defined as a paraprofessional who implements a behavior analysis treatment plan under the close, ongoing supervision of a licensed behavior analyst or a licensed assistant behavior analyst, but who does not design or supervise implementation of a treatment plan;
- A licensed assistant behavior analyst is defined as an individual who is licensed to engage in the practice of applied behavior analysis (ABA) under the supervision of a licensed behavior analyst; and
- A licensed behavior analyst means an individual who is licensed to engage in the practice of applied behavior analysis.

Scope of Practice. The practice of ABA includes the following:

- the design of instructional and environmental modifications based on scientific research, observation, and measurement of behavior;
- empirical identification of functional relations between behavior and environment factors; and
- utilization of contextual factors, motivation, stimuli, positive reinforcement, and other consequences to assist individuals.

The practice of ABA does not include psychological testing, diagnosis of mental or physical disorders, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, or counseling as treatment modalities.

No person may engage in the practice of ABA unless they are licensed. Those not licensed may not represent themselves as a licensed behavior analyst.

Licensure. Applicants for licensure must meet certain requirements.

For behavior analysts, requirements include the following:

- a masters or doctorate in behavior analysis or other related field;
- completion of a minimum of 225 classroom hours at the graduate level;
- completion of a supervised experience requirement, consisting of a minimum of 1500 hours; and

- completion of an examination.

For assistant behavior analysts, requirements include the following:

- a bachelor's degree;
- 135 classroom hours of instruction in behavior analysis topics; and
- a minimum of 1000 hours of supervised experience.

For certified behavior technicians, requirements include the following:

- completion of a training program of at least 40 hours.

All three of the professions must demonstrate good moral character, not engage in unprofessional conduct, not be subject to disciplinary action, and be able to practice with reasonable skill.

Licenses are valid for two years.

A temporary license may be granted to a person who does not reside in Washington if they are licensed to practice ABA in another state or province of Canada. A temporary license holder may only practice for a limited period of time, as defined by the Secretary of DOH. A person holding a license in another state or province of Canada may receive a Washington license if the other state or province have substantially equivalent licensing standards.

This license does not prohibit or restrict the following:

- a person employed by the United States government who is acting solely under the direction or control of the agency by which they are employed;
- an employee of a school acting in the performance of their regular duties, so long as the employee does not offer behavior analytic services;
- the practice of ABA by a college or university student participating in a course of study, who is supervised by faculty and clearly indicates their trainee status;
- implementation of a behavior analysis treatment plan by a family member or legal guardian; or
- the practice of ABA with animals.

Advisory Committee. A Washington State ABA advisory committee is established consisting of five members:

- three who are licensed behavior analysts;
- one who is a licensed assistant behavior analyst; and
- one member of the public.

It is recommended that one of the advisory committee members be a licensed behavior analyst and have an additional mental health license, such as a psychiatrist.

The Secretary of DOH must consult the committee in determining the qualifications for licensure or certification.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill: PRO: The sunset review of the ABA profession provided significant research and findings in favor of creating this licensed profession. The state needs to step up and create the ABA profession at this point. Washington needs to have a behavioral analysis profession that is fully licensed and credentialed. The ABA profession met criteria in law, under the sunset review process, to create the new profession. Licensure will ensure that professionals have appropriate training and that ABAs are trained to safely deal with children. This is the exact bill that DOH recommended in their sunrise review process and other groups have already had an avenue to address their concerns. This bill adopts many of the national standards.

OTHER: The concerns addressed in this bill are appreciated, but the bill needs to address and protect professions with overlapping scopes of practice. Sometimes ABA techniques are not always appropriate, so the occupational therapy association would recommend a referral requirement for ABA services. There is also a billing concern for other providers who may have some ABA services in their scope of practice and want to continue to get reimbursed for some of those services.

Persons Testifying: PRO: Senator Keiser, prime sponsor; Lucy Homans, WA State Psychological Assn.; Martin Mueller, DOH; Christopher Jones, WA Assn. of Behavior Analysts; Charlie Brown, Charna Mintz, WA Assn. for Behavior Analysis; Amber Ulvenes, Group Health.

OTHER: Melissa Johnson, WA Speech-Language-Hearing Assn.; Kate White Tudor, WA Occupational Therapy Assn.; Diana Stadden, The Arc of WA State.