

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 1085 Behavioral Analysts  
**SPONSOR(S):** Health Quality Subcommittee; Rooney, Jr.  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1212

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	11 Y, 0 N, As CS	Castagna	O'Callaghan
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

Section 11.62, F.S., the Sunrise Act, states that a profession or occupation may not be subject to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage, and a profession or occupation may not be regulated by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation. The Sunrise Act requires the Legislature to consider several factors when determining whether a profession or occupation should be regulated.

The bill creates new regulations for a profession currently not regulated by law, behavior analysts, under ch. 470, F.S. Qualified individuals in this profession are to be licensed by the Department of Health's (Department) Division of Medical Quality Assurance and regulated by the Board of Applied Behavior Analysis (board).

The bill amends s. 20.43(3)(g), F.S., to add the board to the list of professions regulated by the Department's Division of Medical Quality Assurance. The board is granted authority to adopt rules related to:

- Standards of practice;
- Competency for licensure and licensure renewal;
- Examinations to test certain persons' competency to practice;
- Supervision requirements; and
- Approval of a successor certification board.

The bill grants the Department rulemaking authority relating to licensure and licensure renewal applications, fees, and educational requirements. The bill establishes requirements for licensure of assistant behavior analysts and exempts certain persons from any licensure requirements. The bill also establishes a biennial licensure renewal cycle for behavior analysts and assistant behavior analysts.

The bill subjects an applicant for licensure to background checks and amends s. 456.0135, F.S., to include ch. 470, F.S., in the background screening procedural provisions.

The bill provides disciplinary grounds and actions that may be taken against a licensee. The bill provides criminal penalties for those who engage in or assist in the practice of applied behavior analysis without a license.

The bill amends s. 456.001, F.S., to include behavior analysts and assistant behavior analysts in the definition of "health care practitioner."

The bill appears to have a significant fiscal impact on the Department; however, the expenditures incurred are expected to be offset by fee revenues collected. There appears to be no fiscal impact on local governments.

The bill provides an effective date of January 1, 2015.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation**

##### Department of Health, Division of Medical Quality Assurance

Currently, the Division of Medical Quality Assurance (MQA) within the Department of Health (Department) licenses and the boards under MQA regulate health care practitioners to preserve the health, safety, and welfare of the public. There are 22 boards and 6 councils under the MQA, and the MQA licenses 7 types of facilities and 200-plus occupations in more than 40 health care professions.<sup>1</sup>

A board is a statutorily created entity that is authorized to exercise regulatory or rulemaking functions within the MQA.<sup>2</sup> Boards are responsible for approving or denying applications for licensure, establishing continuing medical education requirements, and are involved in disciplinary hearings. Sections 456.072, 456.073, and 456.074 F.S., provide the authority for a board to take disciplinary action against a licensee. The board can take action for any legally sufficient, written, and signed complaint that is filed before it.<sup>3</sup>

##### Applied Behavior Analysis

Applied Behavior Analysis (ABA), is practiced by behavior analysts who seek to change the behaviors of their clients. ABA applies behavioral science in real-world settings and can be differentiated from other areas of psychology in that it is focused on analyzing and modifying behavior using principles of learning and positive reinforcement to improve daily life skills in a wide variety of individuals.<sup>4</sup> Examples of ABA practice include: building the skills and achievements of children in school settings and enhancing the development, abilities, and choices of children and adults with different kinds of emotional and behavioral disabilities.

A growing demand for effective intervention for individuals diagnosed with autism spectrum disorders<sup>5</sup> and other behavioral and emotional conditions has driven more consumers and employers to seek ABA services. Colleges and universities have responded to these demands by establishing professional training programs in applied behavior analysis.<sup>6</sup>

Behavior analysts work in a wide variety of settings to impact behavior change. Behavior analysts are employed in schools to work with students with emotional and behavioral disorders that affect their ability to learn in the classroom. They work in home settings to improve basic behavioral and life skills for those persons with autism and instruct caregivers on ways to effectively reinforce positive, sustainable, behavior change.<sup>7</sup>

##### *Certification of Behavior Analysts*

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<sup>1</sup> Florida Health Source, Florida Department of Health, *accessible at*: <http://www.flhealthsource.gov/> (Last accessed February 28, 2014).

<sup>2</sup> Section 456.001, F.S.

<sup>3</sup> Section 456.025(3), F.S., provides that a complaint is legally sufficient if it contains the ultimate facts that show a violation of the relevant practice act or any rule adopted by the Department or the relevant board.

<sup>4</sup> Psychology: Applied Behavior Analysis, Florida State University, *accessible at*: <http://www.pc.fsu.edu/Academics/Graduate-Programs/Psychology-Applied-Behavior-Analysis> (Last accessed March 22, 2014).

<sup>5</sup> Autism spectrum disorders (ASDs) are a group of developmental disabilities that can cause significant social, communication and behavioral challenges. People with ASDs handle information in their brain differently than other people. ASDs are "spectrum disorders" meaning ASDs affect each person in different ways, and can range from very mild to severe. People with ASDs share some similar symptoms, such as problems with social interaction, but there are differences in when the symptoms start, how severe they are, and the exact nature of the symptoms. Centers for Disease Control and Prevention, "Autism Spectrum Disorder (ASD): Signs and Symptoms," *accessible at*: <http://www.cdc.gov/ncbddd/autism/signs.html> (Last accessed March 22, 2014).

<sup>6</sup> The Behavior Analysis Certification Board has approved 9 Florida Universities as meeting the requirements for coursework and supervised experience. *Infra* fn. 20.

<sup>7</sup> *Infra* fn. 20.

The uneven standard of care used by behavior analysts in the practice of applied behavior analysis led to the formation of the private, nonprofit, Behavior Analyst Certification Board (BACB). The BACB teaches methods to best implement ethical and effective behavior analytic interventions based on published research. The BACB administers examinations for behavior analyst credentialing several times each year in over 200 sites within the United States. To effectively serve behavior analysis professionals and consumers, the BACB has developed:<sup>8</sup>

- Eligibility Standards for applicants wishing to take the BACB Certification Examination;
- Renewal and recertification standards to maintain certification;
- Guidelines for responsible conduct for behavior analysts;
- Professional disciplinary standards with appeal procedures;
- A registry of those certified;
- A process to approve university course sequences and practical experience;
- Procedures to approve continuing education providers; and
- Professionally developed and maintained certification examinations.

Since 2008, 13 states<sup>9</sup> have adopted laws to license behavior analysts in their own right. In all 13 states, BACB certification is accepted as a qualification for licensure.

Under the BACB, certification is currently offered at 2 levels: Board Certified Behavior Analyst (BCBA) and Board Certified Assistant Behavior Analyst (BCaBA), these credentialing programs are accredited by the National Commission for Certifying Agencies.

BCBAs have earned at least a Master's degree and have obtained BACB Certification. They conduct behavioral assessments, functional analyses and provide behavior analytic interpretations of the results. They design and supervise behavior analytic interventions.<sup>10</sup> BCaBAs have earned at least a Bachelor's degree and have obtained BACB certification. They may conduct descriptive behavioral assessments, interpret the results and design behavior analytic interventions under the supervision of a BCBA.<sup>11</sup>

### *Florida Behavior Analysts*

Behavior analysts have been trained and certified in Florida since 1983.<sup>12</sup> They are recognized in multiple sections of Florida law.<sup>13</sup> There are currently 1,793 BCBAs and 604 BCaBAs in Florida.

"Florida-certified Behavior Analysts" are a special section of approximately 100 behavior analysts who were certified by the former behavior analyst credentialing body in Florida. All certification responsibilities and certificate-holders of the former Florida Behavior Analysis Certification Program have been transferred to the BACB, and the Florida program has closed. Florida program certificate-holders must only use the designation Florida-certified Behavior Analyst.<sup>14</sup>

The Florida Association for Behavior Analysis (FABA) has represented Florida behavior analysts for 34 years. FABA was founded to promote the ethical, humane, and effective application of behavior principles in a range of settings across the state. FABA primarily serves to offer continuing education

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<sup>8</sup> About the BACB, Behavior Analysis Certification Board, *accessible at*: <http://www.bacb.com/index.php?page=1> (last accessed March 22, 2014).

<sup>9</sup> Arizona, Kentucky, Louisiana, Massachusetts, Missouri, Nevada, New York, North Dakota, Oklahoma, Oregon, Rhode Island, Virginia, and Wisconsin have adopted licensure laws.

<sup>10</sup> About BACB credentials, Behavior Analyst Certification Board, *accessible at*: <http://www.bacb.com/index.php?page=4> (last accessed March 22, 2014).

<sup>11</sup> *Id.*

<sup>12</sup> *See infra*, fn. 20.

<sup>13</sup> Behavior analysts are mentioned in ch. 393, F.S., relating to developmental disabilities, ch. 627, F.S., relating to insurance rates and contracts, and ch. 641, F.S., relating to coverage for individuals with developmental disabilities.

<sup>14</sup> Florida Behavior Analyst Certification Committee, Behavior Analyst Certification Board, *accessible at*: <http://www.bacb.com/index.php?page=100202> (last accessed March 25, 2014).

opportunities to BCBAs in Florida and to monitor legislative changes to protect the rights of behavior analysts to practice.<sup>15</sup>

An insurance coverage mandate for autism spectrum disorder enacted in Florida in 2008<sup>16</sup> led to the recognition and required certification of behavior analysts providing ABA services for the treatment of autism in Florida.<sup>17</sup> Florida law requires ABA services to be covered by insurance when prescribed by the insurance holder's physician in accordance with a treatment plan.<sup>18</sup> Florida Medicaid covers ABA services for individuals under the age of 21 through a Community Behavioral Health (CBH) provider, an Early Intervention Services (EIS) provider, or an iBudget waiver provider. ABA services must be prior approved by Medicaid.<sup>19</sup>

### Professional Regulation and the Florida Sunrise Act

Generally, there are 3 different types or levels of regulation:

- Licensure is the most restrictive form of state regulation. Under licensure laws, it is illegal for a person to practice a profession without first meeting all of the standards imposed by the state.
- Certification grants title protection to those who meet training and other standards. Those who do not meet certification standards cannot use the title, but can still perform the services.
- Registration is the least restrictive form of regulation, and usually only requires individuals to file their name, address, and qualifications with a government agency before practicing the occupation.

Section 456.003, F.S., specifies that health care professions may be regulated only for the preservation of the health, safety, and welfare of the public under the police powers of the state. Such professions shall be regulated when:

- Their unregulated practice can harm or endanger the health, safety, and welfare of the public, and when the potential for such harm is recognizable and clearly outweighs any anticompetitive impact which may result from regulation;
- The public is not effectively protected by other means, including, but not limited to, other state statutes, local ordinances, or federal legislation; and
- Less restrictive means of regulation are not available.

Section 11.62, F.S., the Sunrise Act, provides legislative intent regarding the regulation of new professions and occupations, stating that:

- No profession or occupation may be subject to regulation by the state unless the regulation is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage and that the police power of the state may be exercised only to the extent necessary for that purpose; and
- No profession or occupation may be regulated by the state in a manner that unnecessarily restricts entry into the practice of the profession or occupation or adversely affects the availability of the professional or occupational services to the public.

In determining whether to regulate a profession or occupation, s. 11.62(3), F.S., requires the Legislature to consider the following:

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<sup>15</sup> About FABA, Florida Association for Behavior Analysis *accessible at*: <http://fabaworld.org/aboutfaba.php> (last accessed March 21, 2014).

<sup>16</sup> Section 4, ch. 2008-30, L.O.F.

<sup>17</sup> See s. 641.31098, F.S., relating to insurance coverage for individuals with developmental disabilities, which states that applied behavior analysis services shall be provided by an individual certified pursuant to s. 393.17, F.S. or an individual licensed under chapter 490, F.S., (psychologists) or chapter 491, F.S., (clinical social workers, marriage and family therapists, or mental health counselors).

<sup>18</sup> *Id.*

<sup>19</sup> Email correspondence with the Agency for Health Care Administration, March 18, 2014, (on file with Health Quality Subcommittee).

- Whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote;
- Whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability;
- Whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment;
- Whether the public is or can be effectively protected by other means; and
- Whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

The Sunrise Act requires proponents of regulation to submit information documenting the need for the proposed regulation. A sunrise questionnaire was submitted by the Florida Association for Behavior Analysis (FABA) to the Legislature. FABA is the only statewide organization representing behavior analysts in Florida. The current membership is between 900-1000 members.

### Summary of Sunrise Act Questionnaire and Responses

#### *Substantial Harm or Endangerment*

The Sunrise Act Questionnaire<sup>20</sup> requests whether the unregulated practice of the profession or occupation will substantially harm or endanger the public health, safety, or welfare, and whether the potential for harm is recognizable and not remote.

The FABA responded to this question stating that a majority of persons treated by ABA services are highly vulnerable making them susceptible to fraudulent, ineffective practices such as claims of cures, or unethical interventions. Over the past 13 years there have been 26 events of unethical or improper practice that were investigated by the BACB in the state of Florida. These violations involved negligence, incompetence, malpractice, or misconduct.<sup>21</sup>

#### *Specialized Skill or Training, and Measurability*

The Sunrise Questionnaire asks whether the practice of the profession or occupation requires specialized skill or training, and whether that skill or training is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational ability.

According to FABA, the initial measure of a behavior analysts' ability to engage in competent practice is the examination for board certification. The exam is in multiple-choice format with specific questions in each of the content areas of the BACB's task list. To be eligible for examination, one must have at least a master's degree in behavior analysis or other natural science, education, human services, medicine or a field related to behavior analysis to be approved by the BACB.<sup>22</sup>

#### *Unreasonable Effect on Job Creation or Job Retention*

The Sunrise Questionnaire asks whether the regulation will have an unreasonable effect on job creation or job retention in the state or will place unreasonable restrictions on the ability of individuals who seek to practice or who are practicing a given profession or occupation to find employment.

<sup>20</sup> The Sunrise Act Questionnaire is a questionnaire developed by Legislative staff to solicit the responses required by the proponents of the new regulation pursuant to s. 11.62(4), F.S.

<sup>21</sup> Completed Sunrise Questionnaire by the Florida Association for Behavior Analysis, on file with Health Quality Subcommittee staff.

<sup>22</sup> *Id.*

FABA responds that the requirements for licensure under the proposed legislation align with current credentialing requirements required for behavior analysts. Currently the privatized BACB handles all credentialing responsibilities.<sup>23</sup>

Other persons who may implement behavioral interventions and provide counseling services similar to that of BCBA's include schoolteachers, school psychologists, parents, physicians, school faculty, priests, and ministers. These persons are not required to obtain BACB certification.<sup>24</sup>

#### *Can the Public Be Effectively Protected by Other Means?*

The Sunrise Questionnaire asks whether the public is or can be effectively protected by other means.

FABA represents that currently, the BACB addresses complaints against BCBA's and those who are fraudulently claiming to be board certified. Over the past 13 years there have been 26 events of unethical or improper practice that were investigated by the BACB in the state of Florida. The current BACB requirements for making a complaint are time consuming, requiring consumers to produce written records of correspondence to the behavior analyst, correspondence to fiscal agencies or funding sources, and correspondence with state regulatory agencies (which is currently unavailable in Florida). Due to non-existing licensure for behavior analysts in Florida there are no funds to regulate the profession and, according to FABA, effectively preserve the health and safety of those citizens utilizing ABA services.<sup>25</sup>

#### *Favorable Cost-effectiveness and Economic Impact*

The Sunrise Questionnaire asks whether the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers, will be favorable.

FABA does not anticipate that establishing licensure of this profession will make any changes to the current costs of services for consumers. The fees imposed by initial licensure application and license renewal will help to more effectively regulate the profession and better protect consumers. Application fees are not expected to exceed \$100 and licensure and renewal fees are not expected to exceed \$300.<sup>26</sup>

#### **Effect of Proposed Changes**

The bill creates chapter 470, F.S., to establish new regulation over the health care profession of behavior analysts within the Department of Health's (Department) Division of Medical Quality Assurance (MQA).

The bill specifies that the purpose of the practice of applied behavior analysis is to protect the public from harmful conduct of unqualified, unprofessional or unethical applied behavior analysts.

#### *Definitions*

The bill defines several terms related to applied behavior analysis including the following:

- "Applied behavior analysis" means the design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior and includes functional assessment and analysis. The term does not include psychological testing, the diagnosis of a mental or physical disorder, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, or long-term counseling.

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

- “Board-certified behavior analyst” means a practitioner who is certified as a Board Certified Behavior Analyst, or is recognized as a “Florida-certified behavior analyst” by the national Behavior Analyst Certification Board (BACB), or its successor pursuant to s. 470.42, F.S.
- “Board-certified assistant behavior analyst” means a practitioner who is certified by the national BACB, or its successor pursuant to s. 470.42, F.S., as a Board Certified Assistant Behavior Analyst.
- “Supervised experience” means an individual has completed the training necessary to satisfy the eligibility requirements for BACB certification.
- “Licensed behavior analyst” means an individual who is licensed by the Board of Applied Behavior Analysis (board) and meets the requirements of ch. 470, F.S.
- “Licensed assistant behavior analyst” means an individual who is licensed by the board as an assistant behavior analyst, meets the requirements of ch. 470, F.S., and works under the supervision of a licensed behavior analyst.

### *Board*

The bill creates s. 470.415, F.S., to establish and house the Board of Applied Behavior Analysis (board) within the MQA. The bill provides that ch. 456, F.S., relating to general requirements for health care practitioners, applies to the board. The board must consist of 7 members appointed by the Governor and confirmed by the Senate. Specific membership of the board is as follows:

- Three board-certified behavior analysts; 1 of whom will be appointed to a 1-year term and 2 who will be appointed to 3-year terms.
  - Two of the 3 board-certified behavior analysts will be selected from a list of 6 nominations submitted by the Florida Association for Behavior Analysis.
- One health care provider licensed in this state whose practice must be related to the treatment of behavior disorders including autism spectrum disorders and who is to be appointed for a 2-year term.
- Two laypersons, who may be a parent or guardian of an individual who is a recipient of ABA services.
  - One of whom shall serve a 1-year term and 1 of whom shall serve a 2-year term.
- One board-certified assistant behavior analyst, who is appointed to a 1-year term.

The Governor’s appointments of successors shall be for 4-year terms and successors, except the laypersons, must be licensed. Members may not serve more than 2 consecutive terms.

The bill creates s. 470.42, F.S., providing the board authority to adopt rules pursuant to ss. 120.536(1), F.S., and 120.54, F.S. These rules must include, but are not limited to, rules relating to the following:

- Standards of practice;
- Competency for licensure and licensure renewal;
- Examinations of licensees that may have a mental or physical condition that affects their ability to practice competently;
- Supervision requirements for licensed assistant behavior analysts and those training to be a licensed behavior analyst; and
- Approval of a successor certification board.

The bill amends s. 20.43(3)(g), F.S., to add the professional Board of Applied Behavior Analysis established in ch. 470, F.S., to the list of professions regulated by the Department’s Divisions of MQA.

### *Licensure*

The bill grants the Department rulemaking authority to implement rules relating to:

- Licensure and licensure renewal applications and processes, including fees;
- Educational qualifications for licensure; and

- Continuing education requirements, not to exceed 30 hours biennially, for biennial renewal of licensure.

The bill creates s. 470.43, F.S., providing for the initial licensure and renewal of license for behavior analysts or licensed assistant behavior analysts. In order to be licensed the applicant shall provide evidence that he or she:

- Is a board-certified behavior analyst or board certified assistant behavior analyst;
- Conducts his or her professional activities in accordance with accepted standards as required by rule;
- Complies with all applicable rules adopted by the board;
- Is supervised by a licensed behavior analyst in a manner consistent with BACB requirements, if the applicant is an assistant behavior analyst;
- Has paid the licensure fee or the biennial renewal fee; and
- Has passed a criminal background check after submitting fingerprints and a fee pursuant to s. 456.0135, F.S.

The bill amends s. 456.0135, F.S., to include ch. 470, F.S., in the background screening procedural provisions.

The board may issue a license to a person who holds an active license as a behavior analyst or assistant behavior analyst in another state if the person:

- Has submitted proof of licensure and board certification;
- Has passed a criminal background check after submitting fingerprints and a fee pursuant to s. 456.0135, F.S.; and
- Has paid the licensure fee.

The bill creates s. 470.44, F.S., providing the board authority to establish, by rule, an application fee not to exceed \$100 and to establish a fee for initial licensure and renewal not to exceed \$300. These fees shall be deposited as provided under s. 456.025, F.S.

The bill provides a list of exceptions to the requirement for licensure stating the following persons will not be prohibited, restricted, or subject to the provisions of the bill, provided false representation as a behavior analyst does not occur:

- An individual licensed under ch. 490, F.S., to practice psychology.
- An individual licensed under ch. 491, F.S., as a clinical social worker, marriage and family therapist, or mental health counselor.
- A physician licensed pursuant to chapters 458 or 459, F.S.
- A certified teacher, teaching assistant, or student support professional performing duties under their scope of practice for which he or she was trained and hired.
- A school psychologist certified in school psychology by the Department of Education who performs ABA services as an employee of a public or private educational institution. This exemption does not authorize unlicensed practice that is not performed directly as an employee of an educational institution.
- An individual who teaches ABA or who conducts behavior analytic research if such teaching or research does not involve the delivery of ABA to individuals.
- A college or university student or postdoctoral fellow whose activities are part of a defined behavior analysis program of study and ABA practices are directly supervised under a board certified behavior analyst.
- An unlicensed individual pursuing supervised experimental training to meet eligibility requirements for BACB certification.
- A board certified behavior analyst or an individual licensed to practice ABA in another state who provides ABA services in Florida to a resident of this state for less than 12 days per year.

- A family member of a recipient of ABA services implementing certain ABA procedures with the recipient.
- A behavior analyst who provides general ABA services to organizations if the services do not involve direct services to individuals.
- An employee of a private non-profit organization providing ABA services to youth and families if the services are provided for no charge and the employee is performing duties for which he or she was hired.
- A rabbi, priest, minister, or member of the clergy of a religious denomination or sect if activities are within the scope of performance of his or her regular specialized ministerial duties and for which no separate fee is charged.
- A behavior analyst that practices with non-human clients.

### *Disciplinary Grounds and Action*

This bill amends s. 456.001, F.S., to include behavior analysts and assistant behavior analysts under the definition of health care practitioner. This inclusion requires behavior analysts to follow the criteria other health care practitioners must meet to uphold the appropriate standard of care for the respective profession.

The bill creates s. 470.45, F.S., providing the disciplinary grounds and actions that may be taken against a licensee who violates any of the provisions of s. 456.072(2), F.S.,<sup>27</sup> and imposes penalties provided under s. 456.072(1), F.S.<sup>28</sup> The bill sets limitations on the board regarding disciplinary action that may be taken by specifying that the board may not:

- Place a licensee on probation for more than 5 years;
- Impose a fine that exceeds \$2,500;
- Suspend a license for more than 5 years; or
- Limit or restrict a license for an indefinite period.

The bill creates s. 470.47, F.S., to provide that a person who engages in or assists in the practice of applied behavior analysis without a license commits a felony of the third degree.<sup>29</sup> This section also provides title protection for the following: licensed behavior analysts, licensed assistant behavior analysts, or any other title that is substantially similar. False representation of such titles would constitute a misdemeanor of the second degree.<sup>30</sup>

## B. SECTION DIRECTORY:

**Section 1.** Creates Chapter 470, F.S., relating to Behavior Analysts.

**Section 2.** Creates s. 470.40, F.S., relating to the purpose of the act.

**Section 3.** Creates s. 470.41, F.S., relating to definitions.

**Section 4.** Creates s. 470.415, F.S., relating to the Board of Applied Behavior Analysis.

**Section 5.** Creates s. 470.42, F.S., relating to the authority and duties of the Board of Applied Behavioral Analysis.

**Section 6.** Creates s. 470.43, F.S., relating to licensure and renewal.

**Section 7.** Creates s. 470.44, F.S., relating to fees.

**Section 8.** Creates s. 470.45, F.S., relating to disciplinary grounds and actions, and reinstatement.

**Section 9.** Creates s. 470.47, F.S., relating to violations and penalties.

<sup>27</sup> Pursuant to s. 456.072(2), F.S., some examples of acts that constitute grounds for disciplinary action are: making fraudulent representations related to the practice of the licensee's profession; intentionally violating any rule adopted by the board or the department, as appropriate; and exercising influence on the patient or client for the purpose of financial gain of the licensee or a third party.

<sup>28</sup> Pursuant to s. 456.072(1), F.S., some examples of penalties imposed on licensees are: refusal to certify, or to certify with restrictions, an application for a license; suspension or permanent revocation of a license; issuance of a reprimand or letter of concern; and refund of fees billed and collected from the patient or a third party on behalf of the patient.

<sup>29</sup> A felony of the third degree is punishable by a term of imprisonment not exceeding 5 years and a fine not to exceed \$5,000. Sections 775.082, 775.083, or 775.084, F.S.

<sup>30</sup> A misdemeanor of the second degree is punishable by a term of imprisonment not exceeding 60 days and a fine not to exceed \$500. Sections 775.082 and 775.083, F.S.

**Section 10.** Creates s. 470.48, F.S., relating to exceptions for applicability.

**Section 11.** Amends s. 20.43, F.S., relating to the Department of Health.

**Section 12.** Amends s. 456.001, F.S., relating to definitions.

**Section 13.** Amends s. 456.0135, F.S., relating to background screening provisions.

**Section 14.** Provides an effective date of January 1, 2015.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The initial application fees for behavior analysts and assistant behavior analysts are to be established by rule, but may not exceed \$100 and initial licensure fees may not exceed \$300. The unlicensed activity fee of \$5 imposed by MQA<sup>31</sup> will also be assessed upon initial licensure and renewal. FABAs estimate 2,000 new applicants for licensure. The estimated revenue for application fees is \$200,000 and the estimated revenue for initial licensure fees is \$600,000. The estimated revenue from unlicensed activity fees is \$10,000. The fees collected are subject to the 8% general revenue surcharge, which means an estimated \$64,800 is to be deducted from the estimated amounts to be collected. The total estimated revenue to be gained is \$745,200 using the maximum fees authorized.<sup>32</sup>

#### 2. Expenditures:

The Department estimates that 1 full time equivalent (FTE) will be required to implement the provisions of this bill. 1 FTE can manage an active/inactive licensure pool size of 2,600 for professionals licensed under ch. 491, F.S.<sup>33</sup> Further, it is also anticipated that 1 OPS will be required to handle the initial influx of applicants. One FTE Regulatory Specialist II, with no travel costs, and 1 OPS Regulatory Specialist II, with no travel costs, would cost \$86,563.<sup>34</sup>

Based on FY12-13 enforcement data, it is estimated that there will be 30 complaints filed against certified behavior analysts and assistant behavior analysts and 12 of those complaints will be deemed legally sufficient for investigation and prosecution. MQA can manage a workload of 42 cases per FTE for investigation and 37 cases per FTE for prosecution; therefore, 2 half time FTEs are justified. The total FTE cost for enforcement is \$82,478.<sup>35</sup>

MQA anticipates approximately 1,200 additional telephone calls in the Communication Center, which will require additional staff at a cost of \$29,228.<sup>36</sup>

MQA anticipates holding 4, 1.5 day meetings per year with 7 board members and 2 Department staff. The average travel cost for professions licensed under chapter 491, F.S., is \$450 per day for a total cost of \$31,800. The cost for board member compensation at \$50 per day for each board member totals \$3,681 (\$2,841/OPS Salary + \$840/HR). The total estimated meeting cost is \$35,481.<sup>37</sup>

The Department currently contracts for services for processing of initial and renewal applications and related fees. The cost of the contracted service is based on a \$7.69 per application rate. It is projected 2,000 new applications will be processed for a cost of \$15,680 (2,000 x \$7.69).<sup>38</sup>

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<sup>31</sup> Section 455.2281, F.S., refers to unlicensed activity fee which funds regulation of licensed professions, including investigations of persons conducting unlicensed health care activities.

<sup>32</sup> 2014 Department of Health Agency Legislative Bill Analysis for HB 1085, dated February 25, 2014, on file with committee staff.

<sup>33</sup> Ch. 491, F.S., relates to the similar fields of clinical social work, marriage and family therapy, and mental health counseling.

<sup>34</sup> *Supra fn 31.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

The Department will incur non-recurring costs for rulemaking, which current budget authority is adequate to absorb.

Consistent with adding any new profession, DOH will update the Customer Oriented Medical Practitioner Administration System (COMPAS) licensure system to accommodate the new certified behavior analyst and assistant behavior analyst license, which current resources are adequate to absorb.<sup>39</sup>

DOH will incur an increase in workload associated the development and maintenance of a new website, online renewals, online applications, etc., which current resources are adequate to absorb.

The total estimated costs for the first biennium is \$444,683 in the following categories:<sup>40</sup>

Annual Estimated Cost

Salary - \$113,469/Recurring

OPS – \$2,841/Recurring + \$28,331/Non-Recurring

Expense - \$61,647/Recurring + \$25,126/Non-Recurring

Contracted Services - \$15,380/Recurring

Human Resources - \$2,216/Recurring + \$120/Non-Recurring

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Behavior analysts and assistant behavior analysts currently certified under the BACB will be required to pay the application and initial licensure fee, and other fees required by the Department to obtain initial licensure. The board may not set an application fee to exceed \$100 and the initial licensure fee may not exceed \$300. Licensees will also be required to pay license renewal fees to maintain licensure. The board may not set the licensure renewal fee above \$300.

The background screening and fingerprint submission required for licensure of behavior analysts and assistant behavior analysts will cost \$40.50 per applicant. This cost is applicable to other professions such as doctors and nursing home employees.<sup>41</sup>

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

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<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Criminal History Record Checks, Florida Department of Law Enforcement , accessible at: <http://www.fdle.state.fl.us/Content/getdoc/1acc7c3e-dac7-45d4-8739-0d221749d8ce/FAQ.aspx#13> (last accessed March 25, 2014).

None.

**B. RULE-MAKING AUTHORITY:**

This bill grants the board rulemaking authority to adopt rules relating to behavior analysts and assistant behavior analysts, which provide for:

- Standards of practice.
- The number of persons that a licensed behavior analyst or licensed assistant behavior analyst may supervise at one time.
- The competency of a person to receive or renew his or her license.
- The physical and mental examination of licensed behavior analysts and licensed assistant behavior analysts who may be impaired by reason of a mental, physical, or other condition that impedes their ability to practice competently.
- Approval of a successor certification board.

The bill grants the Department of Health rulemaking authority relating to:

- Licensure and licensure renewal applications, and associated fees.
- Educational qualifications for licensure.
- Continuing education requirements for biennial renewal of licensure.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 24, 2014, the Health Quality Subcommittee adopted a strike-all amendment and passed HB 1085 as a committee substitute (CS). The strike-all amendment:

- Changes the definition of “board certified behavior analyst” to include “Florida-certified behavior analysts” that are recognized by the national Behavior Analyst Certification Board.
- Increases the term limits for members of the Board of Applied Behavior Analysis from 3-year to 4-year terms, which is consistent with other professional boards’ term limits under current law.
- Replaces the term health care provider with “health care practitioner” which is defined in existing law under ch. 456, F.S., to ensure behavior analysts and assistant behavior analysts are subject to the provisions of that chapter.
- Revises rulemaking authority of the board relating to licensure, renewal, and continuing education requirements to align with rulemaking authority granted to other professional boards regulating professions under ch. 456, F.S.
- Adds rulemaking authority for the Department of Health to adopt rules relating to:
  - Licensure and licensure renewal applications, and associated fees.
  - Educational qualifications for licensure.
  - Continuing education requirements for biennial renewal of licensure.
- Clarifies that persons applying to be licensed as a behavior analyst or assistant behavior analyst must apply to the Department of Health not the board.
- Revises licensure requirements to include submission of fingerprints for background checks.
- Revises the reciprocity of licensure provision in the bill to authorize licensure for out-of-state candidates if they are board-certified, hold a license, pass a criminal background check, and pay licensure fees.
- Revises language to remove terms relating to behavior analysis services and replaces them with the defined term “applied behavior analysis.”

- Revises who are exempt from licensure requirements by:
  - Clarifying anyone licensed under chapters 490 (psychologists), 491 (clinical social workers, marriage and family therapists, and mental health counselors), 458 (medical doctors), or 459 (osteopathic doctors), F.S., are exempt from licensure under the act.
  - Clarifying family members are exempt from licensure.
  - Removing Florida-certified behavior analysts to require that they are licensed.
- Amends s. 20.43(3)(g), F.S., to add the professional Board of Applied Behavior Analysis established in ch. 470, F.S., to the list of professions regulated by the Department of Health's Division of Medical Quality Assurance.
- Amends ch. 456.0135, F.S., to include ch. 470, F.S., in the background screening procedural provisions.
- Changes the effective date from October 1, 2014, to January 1, 2015.

The analysis is drafted to the committee substitute as passed by the Health Quality Subcommittee.