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Senate Bill 655 (as introduced 10-29-13)
Sponsor: Senator Rebekah Warren
Committee: Health Policy

Date Completed: 12-4-13

CONTENT

The bill would add Part 176A (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:

- After the promulgation of rules for licensure, prohibit an individual from engaging in the practice of applied behavior analysis or practicing as an assistant behavior analyst unless licensed or otherwise authorized.
- Require the Department of Licensing and Regulatory Affairs (LARA) to issue a license to an individual who 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 rules promulgated under part 176A.
- Require LARA to provide for a three-year license cycle.
- Create the Michigan Board of Behavior Analysts within LARA.
- Require LARA to promulgate rules that established the minimum standards for licensure, including a rule to deny a license application or revoke a license for a conviction of a listed offense under the Sex Offender Registration Act.
- 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 an annual license fee for a behavior analyst or assistant behavior analyst license.

After the rules for licensure were promulgated (as described below), an individual could not engage in the practice of applied behavior analysis 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 176A, had the credentials as a certified behavior analyst, or its predecessor credentials, conferred for applied behavior analysis by the Behavior Analyst Certification Board (BACB), or its predecessor organization, and who applied for licensure as a behavior analyst within one year after the effective date of the rules promulgated under Part 176A.

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 176A, had the credentials as a certified assistant behavior analyst, or its predecessor credentials, conferred for applied behavior analysis by the BACB, or its predecessor organization, who was under the supervision of a behavior analyst, and who applied for licensure within one year after the rules' effective date.

Licensure, Practice, & Use of Titles. After the promulgation of rules for licensure, an individual could not use the title "behavior analyst", "B.A.", "licensed behavior analyst", "L.B.A.", "assistant behavior analyst", "A.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 176A.

The Department would have to provide for a three-year license cycle.

The prohibition against practicing as an applied behavior analyst or assistant behavior analyst without a license or other authorization would not prevent any of the following:

- 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.
- An applied behavior analysis direct contact technician or a family member from implementing a plan under the extended authority and direction of a behavior analyst.
- An individual licensed or registered under any other part or law of Michigan from performing activities that were considered under Part 176A to be the practice of applied behavior analysis if the activities were within the licensee's or registrant's scope of practice and were commensurate with his or her education, training, and experience, and if the individual did not use the protected titles.
- An individual, including an applied animal behaviorist or practitioner of organizational behavior management, from performing activities that were considered to be the practice of applied behavior analysis if they were with nonhuman or nonpatient clients or consumers.
- An individual who was a matriculated student at a nationally accredited university approved by the Michigan Board of Behavior Analysts or who was a postdoctoral fellow from performing activities that were considered to be the practice of applied behavior analysis if they were part of a defined behavior analysis program of study or practicum approved by the Board, and if the student or fellow were directly supervised by an individual who was licensed as a behavior analyst, appointed as the instructor of a course sequence approved by the BACB and the Board, or, if approved by the Board, credentialed as a BACB-certified behavior analyst.
- An individual who was not licensed under Part 176A from pursuing experience in behavior analysis compatible with the BACB's experience requirements for applied behavior analysis credentials, if the experience were supervised by a licensed behavior analyst.

"Applied behavior analysis" would mean that term as defined in Section 3406s of the Insurance Code. (Under that section, the term means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.)

"Practice of applied behavior analysis" would mean providing applied behavior analysis services. The term 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 disorder.
- 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 applied behavior analysis under the supervision of a behavior analyst.

Michigan Board of Behavior Analysts

The bill would create the Board within LARA. The Board would consist of the following nine voting members who met the requirements of Part 161:

- Five behavior analysts.
- One assistant behavior analyst.
- Three public members, including one who was a licensed physician who worked with autistic or brain-injured patients.

At least two of the Board members who were licensed under Article 15 would have to be affiliated with a Michigan university that provided instruction or conducted research in applied behavior analysis.

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.

Rules

The Department 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. Until rules were promulgated, LARA would have to use as interim standards the standards adopted by the BACB and in effect when Part 176A took effect.

Notwithstanding Sections 16621 and 16626, 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 he or she was convicted of a listed offense, and that a licensee's license would be revoked if he or she were convicted of a listed offense while licensed.

(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. That Act requires an individual convicted of a "listed offense" to register with the Department of State Police, and categorizes listed offenses as Tier 1, Tier 2, or Tier 3 offenses.)

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 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.

Reimbursement/Benefits

The bill specifies that Part 176A 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 \$50 application processing fee and a \$90 annual license fee for an individual licensed or seeking licensure to engage in the practice of applied behavior analysis, or to engage in practice as an assistant behavior analyst under proposed Part 176A.

Proposed MCL 333.16342a et al.

BACKGROUND

Section 3406s of the Insurance Code requires a hospital, medical, or surgical policy and a health maintenance organization contract to provide coverage for the diagnosis and treatment of autism spectrum disorders (ASDs). "Treatment of ASDs" means evidence-based treatment that includes specific types of care, including behavioral health treatment, prescribed or ordered for an individual diagnosed with an ASD by a licensed physician or psychologist who determines the care to be medically necessary. "Behavioral health treatment" means evidence-based counseling and treatment programs, including applied behavior analysis, that are both of the following:

- Necessary to develop, maintain, or restore, to the maximum extent practicable, the functioning of an individual.
- Provided or supervised by a board-certified behavior analyst or a licensed psychologist so long as the services performed are commensurate with the psychologist's formal university training and supervised experience.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bill would have a likely neutral fiscal impact on the Department of Licensing and Regulatory Affairs and no fiscal impact on local units of government. The bill would establish a \$50 application processing fee and a \$90 annual license fee that would be paid by individuals seeking licensure in the field of applied behavior analysis. It is unknown how many individuals would seek licensure, but it is anticipated that these fee levels would be sufficient to cover the marginal costs related to issuing licenses. Other costs introduced by the bill would be related to rule promulgation, administrative support of the Michigan Board of Behavioral Analysts, and development of license application forms.

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.