

## Proposal Summary/ Overview

**To be completed by proposal sponsor. (500 Word Count Limit for this page)**

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*Is this proposal regarding:*

- ***New or increased regulation of an existing profession/occupation? If so, complete this form, Questionnaire A.***
- ***Increased scope of practice or decreased regulation of an existing profession? If so, complete Questionnaire B.***
- ***Any other change to regulation or scope of practice? If so, please contact the Committee Administrator to discuss how to proceed.***

**1) State the profession/occupation that is the subject of the proposal.**

Behavior Analysts

**2) Briefly describe the proposed change.**

A large number of persons who are currently practicing behavior analysis in Minnesota are not required to be regulated by any of the Minnesota Health-Related Licensing Boards. This proposal requires that Master's-level and Bachelor's-level behavior analysts obtain a license to practice and use the title in Minnesota. The proposal creates a Behavior Analyst Advisory Council within the existing Board of Psychology to collaborate with the Board on implementation of the licensing process in order to protect the public. It provides clear standards for practice as well as an investigatory process for complaints where there currently is none.

The new regulation would require the professional to meet the high standards of the national Behavior Analyst Certification Board (BACB) to qualify for licensure in Minnesota, as is already required in 37 other states including neighboring states North Dakota, South Dakota, Iowa, Wisconsin, Illinois, and Indiana. The BACB is a non-governmental agency with its own disciplinary process to protect the public. As such, sanctions from the BACB only apply to current Board Certified Behavior Analysts. Once the behavior analyst surrenders their certification, the BACB's processes no longer apply to them. Thus, they may continue to claim to be behavior analysts and practice in Minnesota with no penalty. Therefore, the Minnesota

license will increase the protection of the public.

- 3) If the proposal has been introduced, provide the bill number and names of House and Senate sponsors. If the proposal has not been introduced, indicate whether legislative sponsors have been identified. If the bill has been proposed in previous sessions, please list previous bill numbers and years of introduction.**

This bill has been introduced most recently in the 2021-2022 biennium: HF 332 (Edelson, Bierman)/SF 425 (Abeler/Hoffman). It was introduced in the 2019-2020 biennium and made first deadline in the Senate before the State shut down for the COVID-19 pandemic (SF 3279/HF 3213). The current proposal was first introduced in March 2018 (SF 3792) (Abeler) after a Council of Health Plans report recommended licensure and that behavior therapists be housed at the Board of Psychology instead of the Board of Behavior Health and Therapy. Much discussion with stakeholders and the Board of Psychology occurred in 2018-2019 getting to the consensus language of the current proposal.

It is anticipated that the same legislators support the proposal, pending scheduled meetings.

- 4) Given the press of business in the 2023 legislative session it is unlikely that health licensing and scope of practice bills will be taken up this year. If there is an urgent need that this bill be heard this year, please explain the urgency.**

The unregulated practice of behavior analysis continues to grow dramatically in Minnesota, with over 1,000 individuals currently using the unregulated title, and 314 agencies providing Early Intensive Developmental and Behavioral Intervention behavior analysis services to 6,700 children, for reimbursement by the Minnesota Department of Human Services. Other DHS and DOE programs also reimburse this unregulated practice. Most behavior analysts work with vulnerable children and adults with disabilities, many in settings that are not licensed.

Licensure of behavior analysts of this distinct health profession will ensure qualified professionals provide competent services to consumers. Time spent receiving ineffective services cannot be recovered. In many cases, incompetence leads to regression and increased behavioral health needs.

In states that have licensed behavior analysts, it has created a career pathway and attracted more people to the field.

## **Questionnaire A: New or increased regulation (adapted from Mn Stat 214.002 subd 2 and MDH Scope of Practice Tools)**

This questionnaire is intended to help legislative committees decide which proposals for new or increased regulation of health professions should receive a hearing and advance through the legislative process. It is also intended to alert the public to these proposals and to narrow the issues for hearing.

This form must be completed by the sponsor of the legislative proposal. The completed form will be posted on the committee's public web page. At any time before the bill is heard in committee, opponents may respond in writing with concerns, questions, or opposition to the information stated and these documents will also be posted. The Chair may request that the sponsor respond in writing to any concerns raised before a hearing will be scheduled.

A response is not required for questions which do not pertain to the profession/occupation (indicate "not applicable"). Please be concise. Refer to supporting evidence and provide citation to the source of the information where appropriate.

New or increased regulation of health professions is governed by Mn State 214. Please read and be familiar with those provisions before submitting this form.

While it is often impossible to reach complete agreement with all interested parties, sponsors are advised to try to understand and to address the concerns of any opponents before submitting the form.

### **1) Who does the proposal impact?**

#### **a. Define the occupations, practices, or practitioners who are the subject of this proposal.**

This proposal aims to regulate behavior analysts not working within their scope of practice as a licensed psychologist or otherwise exempt from licensure. Behavior analysts provide direct services to people in their homes, schools, communities, and service settings. The services remediate severely challenging behavior disorders through the use of objective evaluation of the factors that maintain the behavior and the use of objectively evaluated interventions based on those findings. The resulting improvement increases the person's ability to safely participate in social opportunities desired by the person (family, school, community, church, work). The typical intervention is delivered through onsite practical training of the person's natural family members, teachers, and community care providers.

#### **b. List any associations or other groups representing the occupation seeking regulation and the approximate number of members of each in Minnesota**

The Minnesota Northland Association for Behavior Analysis has 250 members.  
The Autism Treatment Association of Minnesota advocates for the responsible use of behavior analysis in the 314 EIDBI agencies who serve over 6,700 persons. The member organizations are: Ascend Services, Autism Matters, Behavior Frontiers, Behavioral Dimensions, Caravel Autism Health, Holland Center, Lovaas Institute Midwest, Minnesota Autism Center, Minnesota

Behavior Specialists, Minnesota Northland for Behavior Analysis, Rochester Center for Children, Solutions Behavioral Healthcare Professionals, St. David's Center for Child and Family Development.

- c. Describe the work settings, and conditions for practitioners of the occupation, including any special geographic areas or populations frequently served.**

Behavior analysts who have obtained the national credential from the Behavior Analyst Certification Board (BACB) are Board Certified Behavior Analysts (BCBAs) and Board Certified Assistant Behavior Analysts (BCaBAs) who work throughout the State of Minnesota. They work directly with children, adolescents and adults who typically have a behavioral health diagnosis in their homes, schools, communities, and service settings.

There are various subspecialties of behavior analysis including autism and other intellectual and developmental disabilities, behavioral gerontology, brain injury rehabilitation, public health, health and fitness, and education.

- d. Describe the work duties or functions typically performed by members of this occupational group and whether they are the same or similar to those performed by any other occupational groups.**

Behavior analysts deliver their highly specialized skills directly in the everyday life settings of the persons in need of help, thus extending the office-based expertise of currently licensed behavioral health providers right into the environments where the challenging behaviors exist. In so doing, the behavior analysts directly observe the challenges that face these persons, and directly train their natural family members, teachers, and community care providers to safely and consistently provide the high-quality care that is needed to remediate the challenges.

For example, when delivering services through the Medical Assistance EIDBI benefit, the behavior analyst might extensively observe a child in their home, who is referred for aggressive and self-injurious behavior. The behavior analyst then uses these findings to design an individualized treatment plan to accomplish the goals that are important to the person and their family. They then train the person's regular care-providers and family members directly in those everyday situations, and collect and regularly review objective data on the use of the plan, so that ongoing changes may be made as needed to ensure progress toward the person's goals.

This extends the practice of the office-based psychologists, who consult on the behavior analysis within their legally authorized scope of practice, directly into the person's natural environments, thus improving the quality of data that the psychologist receives and the fidelity to the recommendations of the psychologist.

**2) Specialized training, education, or experience ("preparation") required to engage in the occupation**

- a. What preparation is required to engage in the occupation? How have current practitioners acquired that preparation?**

The occupation is credentialed by the Behavior Analyst Certification Board which is accredited by the National Commission for Certifying Agencies to certify Board Certified Behavior Analysts

by virtue of obtaining a Master's degree from a recognized university program, have completed defined graduate coursework in behavior analysis, have completed supervised fieldwork, passage of a psychometrically sound examination, compliance with ethics requirements, and continuing education; or Board Certified assistant Behavior Analysts by virtue of obtaining a defined Bachelor's degree from a recognized university program, have completed defined undergraduate coursework in behavior analysis, have completed supervised fieldwork, passage of a psychometrically sound examination, compliance with ethics requirements, continuing education, and ongoing supervision ([www.bacb.com](http://www.bacb.com)).

Individuals who have achieved this preparation would be eligible for licensure by the Minnesota Board of Psychology as Behavior Analysts or Assistant Behavior Analysts.

- b. Would the proposed regulation change the way practitioners become prepared? If so, why and how? Include any change in the cost of entry to the occupation. Who would bear these costs?**

The proposal requires the professional to continue to meet the existing requirements of the national BACB certification in order to qualify for a license in Minnesota. It does not increase the requirements beyond the BACB requirement. The licensee would then be responsible for the additional cost of the license fee in Minnesota.

- c. Is there an existing model of this change being implemented in another state? Please list state, originating bill and year of passage?**

All of the States in the Upper Midwest Region have enacted licensure of behavior analysts laws based on the BACB credential (WI 2010, ND 2011, SD 2016, IA 2018, IN 2012, IL 2022). A total of 37 States have enacted laws regulating behavior analysts nationwide. See U.S. Behavior Analyst licensing look up on the BACB website for a comprehensive comparison of the 37 states who have enacted licensure laws. [www.bacb.com](http://www.bacb.com). These laws are generally based on the model licensing act offered by both the Behavior Analyst Certification Board and the Association of Professional Behavior Analysts, although there are some variations state to state. For example, in Montana and Arizona, behavior analyst licensure is housed at the existing Board of Psychology while South Dakota has a Behavior Analyst Advisory Committee and Missouri has its own Behavior Analyst Commission to oversee licensure of behavior analysts.

- d. If current practitioners in Minnesota lack any training, education, experience, or credential that would be required under the new regulation, how does the proposal address that lack?**

The proposed regulation does require that a behavior analyst practicing in Minnesota meet the requirements of the BACB or equivalent in order to be licensed to practice in Minnesota. However it also exempts those who are practicing within their scope of practice as regulated by any of the Minnesota Health-Related Licensing Boards, who are providing services under any DHS licensed agency, or who are licensed by the Department of Education.

It is the consensus of the other 37 states and the national Behavior Analyst Certification Board that these requirements are necessary to meet the minimum standards for ethical practice in order to protect the safety of the public.

- e. Would new entrants into the occupation be required to provide evidence of preparation or be**

**required to pass an examination? If not, please explain why not. Would current practitioners be required to provide such evidence? If not, why not?**

Yes, practitioners would be required to provide evidence of preparation and passage of the examination as designated by the BACB and interpreted by the Minnesota Board of Psychology.

### **3) Supervision of practitioners**

- a. How are practitioners of the occupation currently supervised, including any supervision within regulated institution or by a regulated health professional? How would the proposal change the provision of supervision?**

The intent of this proposal is to adhere to the BACB requirements for the provision of supervision in order to attain the Master's level credential. Master's level practitioners will also not be excluded from any supervision requirements of their licensed employers or regulated institutions, or as required by any Medicaid or insurance program. The BACB also does require ongoing supervision in order to maintain the Bachelor's level credential. Finally the BACB also registers Behavior Technicians who are required to be supervised by a designated BCBA in order to practice.

- b. Does a regulatory entity currently exist or does the proposal create a regulatory entity? What is the proposed scope of authority of the entity? (For example, will it have authority to develop rules, determine standards for education and training, assess practitioners' competence levels?) Has the proposed change been discussed with the current regulatory authority? If so, please list participants and date.**

This proposed regulation creates a Behavior Analyst Advisory Council to assist the existing Board of Psychology in developing rules, standards and outreach aimed at implementing the licensure law to protect the public from harm.

The Board of Psychology has been involved since a 2017 Council of Health Plans report recommended behavior analyst licensure at the Board of Psychology. There were many meetings over the course 2018-2019 with various committees, the Board and stakeholders including the Minnesota Psychological Association. The proposal has been thoroughly vetted to arrive at consensus language that best protects the public without impacting practitioners operating within existing licenses. The existing Board of Psychology again voted to support this proposal on Jan. 19, 2024.

- c. Do provisions exist to ensure that practitioners maintain competency? Describe any proposed change.**

Yes. The BACB has a well-established process for maintaining continuing education, which will continue under the proposed regulation.

### **4) Level of regulation (See Mn Stat 214.001, subd. 2, declaring that "no regulations shall be imposed upon any occupation unless required for the safety and well-being of the citizens of the state." The harm must be "recognizable, and not remote." Ibid.)**

- a. Describe the harm to the public posed by the unregulated practice of the occupation or by the**

**continued practice at its current degree of regulation.**

The practice of behavior analysis has been regulated in other states dating back to 2009. We can anticipate that similar rates and severities of harm to the public already exist in Minnesota.

For comparison, in each of the 37 states, a disciplinary process documents the actual violations of professional ethics that have resulted in harm to the public. In the most recent report published by the BACB in 2021, there were 59,846 BCBAs practicing. Of those 1,263 were the subject of notices of alleged violations. Of those 762 were determined to warrant investigation for potential disciplinary action. Of those 231 were substantiated.

The harm to the public from these substantiated violations included: Failure to maintain adequate records; Inadequate supervision; Improper discontinuation of services; Nonsexual multiple or exploitive relationships; Lack of professionalism and integrity; and Inadequate responsibility to clients.

The sanctions and corrective actions warranted by these violations were: Mandatory Supervision; Invalidation of Certification; Revocation of Certification; Practice Restriction; Suspension; Mandatory Mentorship; Required Corrective Action; Mandatory Continuing Education; Verification of Competence; and Mandatory Coursework.

For more detail on the actual harm that is uncovered in licensed states, Montana and Wyoming license behavior analysts at their respective Boards of Psychology and are illustrative. Discipline records may be accessed through the BACB State licensing look up described above.

**b. Explain why existing civil or criminal laws or procedures are inadequate to prevent or remedy any harm to the public.**

There is not an existing civil process where a consumer of behavior analysis can file a complaint against a behavior analyst who causes harm short of initiating civil litigation. This process is not common knowledge and is not accessible, financially or otherwise, to the general public. The burden of time, energy and proof is on the complainant and generally requires an attorney to initiate and pursue resolution. Assuming that a lawyer would take the case, the behavior analyst continues to practice during the years that the lawsuit proceeds through the process. Damages more commonly involve money paid to the individual rather than an order for a particular therapist stop working as a behavior analyst.

In cases of physical or sexual abuse, a criminal prosecution against the behavior analyst is a possibility if there is sufficient evidence to file a police report, and sufficient evidence for a city or county attorney to decide to charge the case. The burden is on the State, not the behavior analyst, to prove to a jury that the abuse happened beyond a reasonable doubt. With potential appeals, the process is at least a year and even if convicted, there is no guarantee of an order that the behavior analyst stop working with other clients once conditions of probation or sentence fulfilled.

The national BACB disciplinary process only applies currently certified behavior analysts. For all other practitioners, the BACB disciplinary process is not applicable. If the certified behavior analyst loses their certification as a sanction, then the BACB no longer regulates their practice. Therefore the only viable protection to the public comes from a state licensing board.

- c. Explain why the proposed level of regulation has been selected and why a lower level of regulation was not selected.**

The current proposal is for licensing of Master's-level behavior analysts and Bachelor's-level assistant behavior analysts. The proposal is based on the same model of nearly all of the 37 states who already license behavior analysts. This compatible level of licensure will ensure reciprocity between states and ensure that bad actors from other states do not come to Minnesota to practice unencumbered by licensure requirements. It also ensures that qualified behavior analysts don't leave Minnesota to practice in a licensed state where the reimbursement and recognition may be more desirable. This proposal gives Minnesota a local mechanism to protect its citizens from the harms that result from incompetent or unethical practitioners. Such a licensure regulation will maximize prevention of harm, establish a viable complaint and discipline process, and promote access to quality services.

**5) Implications for Health Care Access, Cost, Quality, and Transformation**

- a. Describe how the proposal will affect the availability, accessibility, cost, delivery, and quality of health care, including the impact on unmet health care needs and underserved populations. How does the proposal contribute to meeting these needs?**

There is a dramatic shortage in accessible behavior analysis services in Minnesota. The Minnesota Department of Health estimates that there are 260,523 children with a diagnosed mental or behavioral health condition in Minnesota ([www.health.state.mn.us/people/childreneyouth/cyshn/pedmenthlth.html](http://www.health.state.mn.us/people/childreneyouth/cyshn/pedmenthlth.html)), and there are only 460 Board Certified Behavior Analysts available to meet the needs of those with serious behavioral challenges. The shortage is more severe for children who live with disadvantages and in rural areas. In the 37 states with BCBA licensure the rate of growth of the occupation has been shown to be 10% greater than in states without licensure like Minnesota.

- b. Describe the expected impact of the proposal on the supply of practitioners and on the cost of services or goods provided by the occupation. If possible, include the geographic availability of proposed providers/services. Cite any sources used.**

While the Minnesota DHS EIDBI program specifically reimburses services by BCBA's, to date only 6,700 children have been able to access EIDBI behavior analyst services, out of the total of 30,000 eligible for this Medicaid program. Given that this Medicaid program pays fees that are set in statute, the increase in accessibility of behavior analysis services will not change the cost of services provided.

- c. Does the proposal change how and by whom the services are compensated? What costs and what savings would accrue to patients, insurers, providers, and employers?**

The proposal does not change how and by whom the services are compensated.

Minnesota statutes already include the BCBA in 4 places:

Chapter 125A Special Education Standards for Restrictive Procedures

Chapter 245D Home and Community-Based Intervention Services

Chapter 256B Medical Assistance Early Intensive Developmental and Behavioral

## Intervention Benefit

Chapter 256B Medical Assistance Home and Community-based Services Waiver

Minnesota DHS Rules also include the BCBA:

Chapter 9544 Positive Support Strategies and Restrictive Interventions

- d. Describe any impact of the proposal on an evolving health care delivery and payment system (e.g., collaborative practice, innovations in technology, ensuring cultural competency, value-based payments)?**

The dramatic lack of accessible behavioral health treatment calls for new models of care. For example, A large-scale study of behavioral health treatment claims made to private insurance and Medicaid found that more than 20% of children diagnosed with a behavioral health disorder received no treatment and 40% were only able to receive treatment with psychotropic medication. This is despite the accepted standards of the American Academy of Child and Adolescent Psychiatry that behavioral therapy be the first line of treatment, and that any use of psychotropic medication be accompanied by behavioral therapy. This is not a simple problem of over-prescription. Instead it is a problem of lack of access to effective therapy. These physicians, who dispense medications, typically do so when there is no accessible alternative to meet the needs of desperate families. (Ali, M. M., Sherman, L. J., Lynch, S., Teich, J., & Mutter, R. (2019). Differences in Utilization of Mental Health Treatment Among Children and Adolescents With Medicaid or Private Insurance. *Psychiatric services* (Washington, D.C.), 70(4), 329–332. <https://doi.org/10.1176/appi.ps.201800428>).

The cost effectiveness of behavior analysis for the treatment of autism is one of the most well-studied new models of behavioral health treatment. As a result, all 50 states now mandate the coverage of ABA services by Medicaid and/or third-party insurance. For example, Chatterji, Decker, & Markowitz (2015) found that the effects of mandated benefits for autism has beneficial effects in states in which greater percentages of privately insured individuals are subject to the mandates. Therefore, in the case of EIDBI, it has been found that cost-effective care-determinations can be made when re-evaluating responsiveness to treatment and making different referrals based upon the results of these individualized assessments.

- e. What is the expected regulatory cost to state government? Is there an up-to-date fiscal note for the proposal? How are the costs covered under the proposal?**

There was a fiscal note completed in 2020 for a Senate Health and Human Services hearing on SF 3279 (BCBA licensing bill). There were nominal start-up costs associated with the bill, of which could be absorbed by the Board of Psychology.

## 6) Evaluation/Reports

**Describe any plans to evaluate and report on the impact of the proposal if it becomes law, including focus and timeline. List the evaluating agency and frequency of reviews.**

The proposal creates the Behavior Analyst Advisory Council under the Minnesota Board of Psychology. The council will:

- (1) advise the board regarding standards for behavior analysts and assistant behavior analysts;
- (2) assist with the distribution of information regarding behavior analyst standards;
- (3) advise the board on enforcement of sections 148.9981 to 148.9995;

- (4) review license applications and license renewal applications and make recommendations to the board;
- (5) review complaints and complaint investigation reports and make recommendations to the board on whether disciplinary action should be taken and, if applicable, what type;
- (6) advise the board regarding evaluation and treatment protocols; and
- (7) perform other duties authorized for advisory councils under chapter 214 as directed by the board to ensure effective oversight of behavior analysts and assistant behavior analysts.

**7) Support for and opposition to the proposal**

**a. What organizations are sponsoring the proposal? How many members do these organizations represent in Minnesota?**

The Minnesota Northland Association for Behavior Analysis is a statewide organization with over 250 active members with a mission to promote the ethical and effective use of behavior analysis. It convened an independent special interest group to address this critical need for behavior analyst licensure. Members of the special interest group include several employees of the Department of Human Services, the Department of Education, the Minnesota Veterans Home, several school districts, and numerous providers of human services both to children and adults. An overlapping trade group, the Autism Treatment Association of Minnesota has also reviewed and provided input into this proposal. The Association for Professional Behavior Analysts and the Behavior Analyst Certification Board have both provided national input into Minnesota's effort.

The Minnesota Northland Association for Behavior Analysis has over 250 professional, academic, and student members. The Autism Treatment Association of Minnesota is a trade group composed of 13 agency members. These agencies serve over 6,000 children and adults through a variety of professions, including behavior analysis.

**b. List organizations, including professional, regulatory boards, consumer advocacy groups, and others, who support the proposal.**

The proposal has been purposely written to ensure that all existing professions are exempt from the requirements, in order not to impose an arbitrary conflict with another profession's scope of practice.

MPA, Minnesota Psychological Association has been thoroughly involved in the fine-tuning of this proposal over the past 4 years. As a result the MPA has voted to support this proposal.

The Minnesota Board of Psychology has been thoroughly involved in the fine-tuning of this proposal over the past 4 years. As a result, the board supports this proposal.

The Autism Society of Minnesota has supported this bill.

The American Medical Association identifies BCBAs as the primary providers of Adaptive Behavior Assessment and Treatment Services under its CPT coding system.

The American Academy of Pediatrics identifies BCBAs as the typical providers of ABA for children.

The APA Practice Organization issued the following statement in 2012. The statement both stakes out the appropriateness of psychologists delivering ABA and the need for other professions (including behavior analysts) to also have a credible license requirement.

"Therefore, qualified licensed psychologists should be allowed to provide behavior analysis and to call the services they provide "behavior analysis" or "applied behavior analysis" without obtaining additional credentials or licensure. Other professionals who provide behavior analysis should be required by law or regulation to demonstrate education, training and supervision appropriate to a defined scope of practice and to the needs of the jurisdiction. The APAPO Board supports advocacy to ensure that any legislation or regulations regarding behavior analysts or the practice of behavior analysis contain provisions to protect consumers by ensuring that they receive services by appropriately qualified professionals. Further, the APAPO Board recommends that, to the extent that behavior analysts are regulated separately by state law, the benefits of regulation under the state board of psychology should be considered."

- c. List any organizations, including professional, regulatory boards, consumer advocacy groups, and others, who have indicated concerns/opposition to the proposal or who are likely to have concerns/opposition. Explain the concerns/opposition of each, as the sponsor understands it.**

There are no organized groups opposing this bill.

- d. What actions has the sponsor taken to minimize or resolve disagreement with those opposing or likely to oppose the proposal?**

The proposal has been purposely written to ensure that all existing professions are exempt from the requirements, on order not to impose an arbitrary conflict with another profession's scope of practice.

MPA, Minnesota Psychological Association has been thoroughly involved in the fine-tuning of this proposal over the past 4 years. As a result, MPA has voted to support this proposal.

The Minnesota Board of Psychology has been thoroughly involved in the fine-tuning of this proposal over the past 4 years. The Board has voted to support this proposal, most recently on Jan. 19. 2024.