



Economic Impact Analysis Virginia Department of Planning and Budget

**18 VAC 85-150 – Regulations Governing the Practice of Behavior Analysis
Department of Health Professions
February 1, 2013**

Summary of the Proposed Amendments to Regulation

As mandated by Chapter 3 of the 2012 Acts of the Assembly, the Board of Medicine (Board) proposes to promulgate new regulations that will govern the licensure behavior analysts and assistant behavior analysts.

Result of Analysis

There is insufficient information to ascertain whether benefits will outweigh costs for these proposed regulations.

Estimated Economic Impact

Prior to General Assembly action in 2012, there was no requirement that individuals who provided behavior analysis services for autistic children be licensed. In 2011, the General Assembly mandated that health insurance cover these services but did not require that behavior analysts be licensed. The General Assembly passed legislation in 2012 to mandate licensure for these entities and to require that the Board promulgate emergency regulations for this licensure program. The Department of Health Professions (DHP) reports that licensure is being mandated strictly to facilitate insurance reimbursement for behavior analysis services and further reports that there have been no issues with unlicensed services being unsafely provided. Pursuant to Chapter 3 of the 2012 Acts of the Assembly, the Board promulgated emergency regulations that became final 9/19/2012 and now proposes to promulgate replacement regulations that will govern the licensure of behavior analysts and assistant behavior analysts after the emergency regulations expire on 9/18/2013.

As mandated by Chapter 3, the Board's regulations will require applicants for initial licensure to be certified by the Behavior Analyst Certification Board (BACB) as certified behavior analysts, if they are seeking licensure as behavior analysts, or as certified assistant behavior analysts, if they are seeking licensure as assistant behavior analysts. In addition to providing documentation of current certification and filling out an application for licensure, behavior analysts will have to report any past or pending disciplinary actions in any other jurisdiction and pay a licensure fee of \$130. Assistant behavior analysts will have to submit all of the same documentation as behavior analysts and pay an initial licensure fee of \$70.

In order to gain certification as a behavior analyst, the BACB requires that applicants have a master's degree in behavior analysis or another natural science, education, human services, engineering, speech/language therapy, occupational therapy, clinical social work, or clinical, counseling or school psychology. In addition to, or as part of, the educational requirements to become certified as a behavior analyst, applicants must either complete 225 classroom hours of graduate level instruction in specified subjects OR complete one academic year as a full time faculty member at a college or university during which applicant must conduct and publish research in behavior analysis. Prospective behavior analysts must also meet one of three experience requirements. They must either: 1) complete 1500 hours of supervised independent fieldwork with supervisors supervising at least once every two weeks for at least 5% of the total number of fieldwork hours, 2) complete 1,000 hours of a practicum in a university practicum program with at least 7.5% of hours directly supervised or 3) complete 750 hours of an intensive practicum program with at least 10% of hours directly supervised.

In order to gain certification as an assistant behavior analyst, the BACB requires that applicants have a bachelor's degree in behavior analysis or another natural science, education, human services, engineering, speech/language therapy, occupational therapy, clinical social work, or clinical, counseling or school psychology. In addition to, or as part of, the educational requirements to become certified as an assistant behavior analyst, applicants must complete 135 classroom hours of college instruction in specified subjects. Prospective assistant behavior analysts must also meet one of three experience requirements. They must either: 1) complete 1,000 hours of supervised independent fieldwork with supervisors supervising at least once every two weeks for at least 5% of the total number of fieldwork hours, 2) complete 670 hours of a practicum in a university practicum program with at least 7.5% of hours directly supervised or

3) complete 500 hours of an intensive practicum program with at least 10 of hours directly supervised.

The Board proposes to require licensed behavior analysts and assistant behavior analysts to renew their licenses every two years. To qualify for active license renewal, behavior analysts must complete 24 hours of continuing education and submit a fee of \$135; assistant behavior analysts must complete 16 hours of continuing education and submit a fee of \$70. Licensees only have to attest to the completion of continuing education but must keep all records of completed education and supply them to the Board within 30 days if requested. Licensees will have the option of maintaining current inactive licensure by paying \$70, for behavior analysts, or \$35 for assistant behavior analysts. Licensees will have one license cycle (two years) to renew late by paying an additional late renewal fee of \$50 or \$30, respectively. Licensees will have to pay \$10 for a letter of good standing or verification to another state, \$5 for a duplicate license, \$15 for a duplicate wall certificate and \$35 returned check fee if a check written to the Board is returned due to insufficient funds. Individuals who allow their license to lapse for more than two years will have to reinstate their license by paying a fee of \$180, for behavior analysts, or \$90 for assistant behavior analysts. Licensees whose licenses are revoked will have to pay a fee of \$2,000 to reinstate their licenses.

The Board proposes to not require licensees to also maintain active certification with BACB but individuals who are reactivating a license or reinstating a license that has lapsed for more than two years will have to prove active practice in another jurisdiction (and prove 12 hours of continuing education for every year a Virginia license has lapsed, not to exceed 36 hours) OR recertify with BACB before they can become actively licensed again. BACB charges \$100 for behavior analysts and \$65 for assistant behavior analysts to renew certification biennially. BACB also requires that behavior analysts complete 36 hours of continuing education every three years and requires assistant behavior analysts to complete 24 hours of continuing education every three years.

Requiring licensure for behavior analysts, as well as requiring health insurance plans to cover their services, will benefit users of these services as their out of pocket expenditures will likely go down. There might also be intangible benefits that accrue to families of autistic children, and perhaps even to their communities, if behavior analysis services allow these

children to better function in society. These benefits must be weighed against costs that are likely to be driven up on both the demand and the supply side of the market for these services.

First, research shows that decreasing the cost share that recipients of health care services pay (i.e. requiring insurance to cover these services) will lead to them using more of those services than they previously did... and perhaps more services than are actually needed.¹ The increased costs of additional services used will be borne by the whole pool of insured individuals rather than by the recipient of the services purchased. This increase in demand would tend to increase the cost of services and, in an equilibrating market, will tend to increase the quantity of services supplied. That is, when individuals can make more money providing behavior analysis services, more individuals would normally enter the market and provide those services. In this instance, however, the licensure regimen required by the General Assembly serves as a significant barrier to entry into this market. Because individuals (even individuals who could very ably provide these services but who can not easily meet BACB's certification requirements) will find it significantly harder to enter this market, an artificial scarcity will likely occur wherein parents of autistic children will find it more difficult to find behavior analysis services. Costs on the supply side of this market will likely be driven up by the costs associated with getting and maintaining licensure and by costs associated with having to deal with insurance companies (recordkeeping costs, cost of time to fill out paperwork, etc.).

Businesses and Entities Affected

The Department of Health Professions (DHP) reports the number of individuals that worked as behavior analysts before licensure was required, and who have been or will be affected by these proposed regulations, is unknown. DHP reports that 174 behavior analysts and 24 assistant behavior analysts have been licensed by the Board since emergency regulations were promulgated.

Localities Particularly Affected

No locality will be particularly affected by this proposed regulatory action.

¹ The Newhouse study found, for instance, that total expenditures on health care were 50% higher when individuals were subject to no cost sharing than when they were responsible for paying 95% of their health care expenditures (up to \$1,000 per year) out of pocket. The Newhouse study concluded that additional services used were likely a mix of high-value services that did improve health outcomes and low-value services that did not. Additionally, the Brook study found that free medical care did not appear to improve health outcomes for those receiving that care.

Projected Impact on Employment

This proposed regulatory action is likely to cut the number of individuals who work as behavior analysts and assistant behavior analysts.

Effects on the Use and Value of Private Property

The legislation that mandates these proposed regulatory changes will likely drive up the costs of acquiring behavior analysis services.

Small Businesses: Costs and Other Effects

DHP reports that most affected entities are either independently practicing, and would qualify as small businesses, or work for schools.

Small Businesses: Alternative Method that Minimizes Adverse Impact

DHP reports that most affected entities are either independently practicing, and would qualify as small businesses, or work for schools. Licensure is currently very proscribed by the legislation that mandates it. There is little the Board can do to lower costs without legislative changes.

Real Estate Development Costs

This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

References

Brook, Robert, et al. "Does Free Care Improve Adults' Health? Results From a Randomized Clinical Trial". *New England Journal of Medicine*. December 8, 1983.

Liebowitz, Stanley. "Why Health Care Costs Too Much". *Cato Policy Analysis* No. 211. June 23, 1994. <http://www.cato.org/pubs/pa211.htm> .

Newhouse, Joseph, et al. "Some Interim Results from a Controlled Trial of Cost Sharing In Health Insurance". *New England Journal of Medicine*. December 17, 1981.

"Paying for Health Services". American College of Healthcare Executives. http://www.ache.org/pdf_preface/SampleGatewayChapter.pdf .

Legal Mandate

The Department of Planning and Budget (DPB) has analyzed the Board the economic impact of this proposed regulation in accordance with Section 2.2-4007.H of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.H requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, Section 2.2-4007.H requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.