

SUBJECT: Licensing behavior analysts and assistant behavior analysts in Texas

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — Price, Sheffield, Arévalo, Burkett, Coleman, Cortez, Guerra, Klick, Oliverson, Zedler

0 nays

1 absent — Collier

SENATE VOTE: On final passage, May 1 — 25-6 (Burton, Creighton, Hall, Huffines, Nelson, V. Taylor)

WITNESSES: No public hearing

DIGEST: CSSB 589 would require behavior analysts and assistant behavior analysts to have a state-issued license administered and enforced by the Texas Department of Licensing and Regulation (TDLR), starting September 1, 2018. To receive a license, applicants would be required to submit an application, required fees, and proof of a state-approved criminal background check to TDLR and to meet certain other requirements.

License requirements. Applicants for a behavior analyst or assistant behavior analyst license also would be required to present evidence to TDLR that the applicant:

- was currently certified as a Board Certified Behavior Analyst or a Board Certified Behavior Analyst--Doctoral or an equivalent certification;
- had met the educational requirements of those certifications;
- had passed the Board Certified Behavior Analyst examination or an equivalent examination in applied behavior analysis;
- was in compliance with all professional, ethical, and disciplinary standards established by the nationally accredited Behavior

- Analysis Certification Board or another entity that was accredited by the National Commission for Certifying Agencies or the American National Standards Institute; and
- was not subject to any disciplinary action by the certifying entity.

Applicants for an assistant behavior analyst license additionally would be required to be supervised by a licensed behavior analyst. The bill would require both types of license applicants to meet any additional requirements of the Texas Commission of Licensing and Regulation.

Reciprocal licensing. The bill would allow a person who already held a valid license as a behavior analyst or an assistant behavior analyst to be licensed in Texas if the license was from another state or jurisdiction that had similar licensure requirements to those in Texas. An applicant for a reciprocal license would have to pay a fee, be in good standing as determined by TDLR, and comply with certain Texas license requirements as specified in the bill.

License renewal. A license as authorized by the bill would be valid for two years, after which a license could be renewed by submitting a renewal application, paying a renewal fee, and providing verification that the applicant had completed any required continuing education requirements.

License denial. The bill would allow the commission or TDLR's executive director to deny, suspend, or revoke a license or place the license holder on probation if the applicant or license holder:

- violated the bill's provisions, a commission rule, or an order by the commission or the executive director;
- obtained a license through fraud, misrepresentation, or concealment of a material fact;
- sold, bartered, or offered to sell or barter a license; or
- engaged in unprofessional conduct, as specified in the bill.

Complaints. TDLR would be required to provide reasonable assistance to a person who wished to file a complaint regarding a licensee or activity

related to the practice of applied behavior analysis, as defined by the bill. Certain information about a complaint or investigation concerning a licensee could not be disclosed under the Public Information Act, disclosure, discovery, subpoena, or other means of legal compulsion to release information. The bill would specify when complaint or investigation information could be released and to whom.

Exceptions. The bill would list the circumstances under which the bill's licensing requirements would not apply to the following individuals:

- licensed psychologists and licensees of certain other professions;
- a family member or guardian of a service recipient;
- an applied behavior analysis technician, behavior technician, tutor, or front-line therapist;
- a college or university student, intern, fellow, or trainee;
- an unlicensed person pursuing supervised experience;
- a certified behavior analyst licensed in another jurisdiction;
- a teacher or employee of a private or public school; and
- individuals who do not provide direct services.

Behavior Analyst Advisory Board. The bill would create the Behavior Analyst Advisory Board to provide advice and recommendations to TDLR on technical matters related to behavior analyst licensing. The board would have nine members, including four licensed behavior analysts, one licensed assistant behavior analyst, one physician who had experience with mental health or behavioral health services, and three public members who were either former recipients of applied behavior analysis services or a recipient's parent or guardian.

The bill would authorize advisory board members to receive reimbursement for actual and necessary expenses incurred in performing board functions, among other provisions specifying how the board would operate. The board members would be appointed as soon as practicable after September 1, 2017, and the first behavior analyst or assistant behavior analyst members appointed to the board would not be required to have a license as long as they met practice requirements as added by the

bill.

Effective dates. The bill would take effect September 1, 2017, except as otherwise provided. By April 1, 2018, the Texas Commission of Licensing and Regulation would be required to adopt the rules, procedures, and fees necessary to administer the bill's provisions.

SUPPORTERS
SAY:

CSSB 589 would establish licensing for applied behavior analysis practitioners in Texas, which is necessary to allow these analysts to be reimbursed by certain health insurance plans, including Medicaid. The federal Centers for Medicare and Medicaid require licensure before it will authorize reimbursement for Texas behavior analysts or assistant behavior analysts. Many other states have enacted similar licensing requirements and Texas should join them.

Unlicensed applied behavior analysis is a problem because families who seek out these treatments need to know that they are receiving the services they expect to receive and that their insurance would cover. Insurance companies also need to know whether the practitioners they reimburse are appropriately trained. The bill would accomplish those goals.

The bill also would protect children and families from harm caused by unskilled practitioners. Early and effective applied behavior analysis treatment is necessary for children with autism to develop necessary life and career skills. Unskilled treatment by an unlicensed or untrained analyst could cause a child irreparable harm or to regress. Currently, Texans who are harmed by a fraudulent practitioner have little, if any, protection or legal recourse. Analysts who were disciplined by a national licensing board or by another state's board currently are allowed to practice in Texas and could cause further harm to Texas children and families without licensure.

Regulation of applied behavior analysis should be placed under the Texas Department of Licensing and Regulation rather than the Texas State Board of Examiners of Psychologists because only a few psychologists are trained in applied behavior analysis and the board would not

appropriately regulate the profession. Placing licensure under the psychology board also could restrict the scope of practice for behavior analysts and assistant behavior analysts.

OPPONENTS SAY: CSSB 589 would increase barriers to entry to the applied behavior analyst profession by requiring a state license. Texas needs fewer, not more, occupational licenses.

OTHER OPPONENTS SAY: The practice of applied behavior analysis should be licensed, but CSSB 589 should place licensure under the umbrella of the Texas State Board of Examiners of Psychologists, not TDLR.

NOTES: The Legislative Budget Board estimates that the bill would have a positive impact of \$12,142 through the fiscal 2018-19 biennium and an annual positive impact of \$752 from fiscal 2020 to fiscal 2022.