



**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 2009 ASSEMBLY BILL 789**

April 1, 2010 – Offered by Representative HINTZ.

1 **AN ACT** *to renumber* subchapter III of chapter 440 [precedes 440.41], subchapter
2 IV of chapter 440 [precedes 440.51], subchapter V of chapter 440 [precedes
3 440.60], subchapter VI of chapter 440 [precedes 440.70], subchapter VII of
4 chapter 440 [precedes 440.88], subchapter VIII of chapter 440 [precedes
5 440.90], subchapter IX of chapter 440 [precedes 440.96], subchapter X of
6 chapter 440 [precedes 440.97], subchapter XI of chapter 440 [precedes 440.98],
7 subchapter XII of chapter 440 [precedes 440.9805] and subchapter XIII of
8 chapter 440 [precedes 440.99]; *to amend* 157.055 (2) (intro.), 441.15 (2m),
9 448.03 (2) (a) and 632.895 (12m) (b) 4.; and *to create* 440.03 (13) (b) 15m.,
10 440.08 (2) (a) 20m., subchapter III of chapter 440 [precedes 440.310] and
11 632.895 (12m) (b) 3m. of the statutes; **relating to:** licensure and regulation of
12 behavior analysts, insurance coverage of the services of behavior analysts for

- 1 autism treatment, providing an exemption from emergency rule procedures,
2 granting rule-making authority, and providing a penalty.
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Analysis by the Legislative Reference Bureau

This substitute amendment provides for licensure and regulation of behavior analysts. Under the substitute amendment, no person may engage in the practice of behavior analysis unless the person has been granted a license by the Department of Regulation and Licensing (department). The substitute amendment defines the practice of behavior analysis as the design, implementation, and evaluation of systematic instructional and environmental modifications to produce socially significant improvements in human behavior, including the empirical identification of functional relations between behavior and environmental factors, including interventions based on scientific research and the direct observation and measurement of behavior and environment. The practice of behavior analysis does not include psychological testing, neuropsychology, psychotherapy, cognitive therapy, sex therapy, marriage counseling, psychoanalysis, hypnotherapy, and long-term counseling as treatment modalities. The substitute amendment provides that the licensure requirement may not be applied to restrict the practice of behavior analysis within the scope of practice of a licensed professional who is not a behavior analyst, if the professional does not represent that he or she is a behavior analyst. An unlicensed person who practices behavior analysis is subject to a fine up to \$250, up to three months in jail, or both.

The department must grant a license to an applicant who submits an application, an initial credential, and evidence that the applicant is certified as a behavior analyst by the private organization Behavior Analyst Certification Board, Inc. (board), except that the department may not grant a license to an applicant who has been convicted of certain crimes specified in the substitute amendment. The substitute amendment authorizes the department to promulgate rules regarding the practice of behavior analysis, including rules authorizing the issuance of temporary permits to practice behavior analysis, but any rules must be consistent with standards established by the board. The department may not promulgate rules that impose additional educational requirements; that require a behavior analyst to practice under supervision by, or in collaboration with, another health care provider; that require a behavior analyst to enter into an agreement with another health care provider; or that limit the location where a behavior analyst may practice.

The substitute amendment requires a behavior analyst to provide to a client a summary of the behavior analyst's experience and training and a copy of any rules promulgated by the department. The substitute amendment also authorizes the department to discipline a behavior analyst who engages in unprofessional conduct or who commits any other infraction identified in the substitute amendment.

Under current law, health insurance policies and self-insured governmental and school district health plans are required to cover a specified amount of intensive-level services and nonintensive-level services provided to an insured for

the treatment of autism, Asperger's syndrome, and pervasive developmental disorder not otherwise specified as long as the treatment is prescribed by a physician and provided by any of the following providers who are qualified to provide intensive-level services or nonintensive-level services: a psychiatrist; a psychologist; a social worker who is certified or licensed to practice psychotherapy; a paraprofessional working under the supervision of any of those three types of providers; a professional working under the supervision of an outpatient mental health clinic; a speech-language pathologist; or an occupational therapist. The substitute amendment provides that the coverage must also apply to services provided by a behavior analyst who is licensed to practice behavior analysis by the department or by a paraprofessional working under the supervision of such a behavior analyst, if the behavior analyst or paraprofessional is qualified to provide intensive-level services or nonintensive-level services.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 157.055 (2) (intro.) of the statutes, as affected by 2009 Wisconsin
2 Act 42, is amended to read:

3 157.055 (2) (intro.) Notwithstanding ss. 69.18 (4), 445.04 (2), 445.14, 979.01 (3),
4 (3m), and (4), 979.02, and 979.10, and subch. VI VII of ch. 440, during a period of a
5 state of emergency related to public health declared by the governor under s. 323.10,
6 a public health authority may do all of the following:

7 **SECTION 2.** 440.03 (13) (b) 15m. of the statutes is created to read:

8 440.03 (13) (b) 15m. Behavior analyst.

9 **SECTION 3.** 440.08 (2) (a) 20m. of the statutes is created to read:

10 440.08 (2) (a) 20m. Behavior analyst: December 15 of each even-numbered
11 year.

12 **SECTION 4.** Subchapter III of chapter 440 [precedes 440.310] of the statutes is
13 created to read:

14 **CHAPTER 440**
15 SUBCHAPTER III

BEHAVIOR ANALYSTS

440.310 Definitions. In this subchapter:

(1) “Behavior analyst” means a person who is certified by the Behavior Analyst Certification Board, Inc., as a board–certified behavior analyst and has been granted a license under this subchapter to engage in the practice of behavior analysis.

(2) “Practice of behavior analysis” means the design, implementation, and evaluation of systematic instructional and environmental modifications to produce socially significant improvements in human behavior, including the empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis, including interventions based on scientific research and the direct observation and measurement of behavior and environment. “Practice of behavior analysis” does not include psychological testing, neuropsychology, psychotherapy, cognitive therapy, sex therapy, marriage counseling, psychoanalysis, hypnotherapy, and long–term counseling as treatment modalities.

440.311 Use of title; penalty. (1) No person may use the title “behavior analyst” or represent or imply that he or she is a behavior analyst unless the person is licensed under this subchapter. This section may not be construed to restrict the practice of behavior analysis by a licensed professional who is not a behavior analyst, if the services performed are within the scope of the professional’s practice and are performed commensurate with the professional’s training and experience, and the professional does not represent that he or she is a behavior analyst.

(2) Any person who violates sub. (1) may be fined not more than \$250, imprisoned not more than 3 months in the county jail, or both.

1 **440.312 Licensure. (1)** Except as provided in sub. (2), the department shall
2 grant a license as a behavior analyst to a person under this subchapter if all of the
3 following apply:

4 (a) The person submits an application to the department on a form provided
5 by the department.

6 (b) The person pays the initial credential fee determined by the department
7 under s. 440.03 (9) (a).

8 (c) The person submits evidence satisfactory to the department that the person
9 is a behavior analyst certified by the Behavior Analyst Certification Board, Inc., or
10 its successor organization.

11 **(2)** The department may not grant a license under this subchapter to any
12 person who has been convicted of an offense under s. 940.22, 940.225, 940.302 (2) (a)
13 1. b., 944.06, 944.15, 944.17, 944.30, 944.31, 944.32, 944.33, 944.34, 948.02, 948.025,
14 948.051, 948.06, 948.07, 948.075, 948.08, 948.09, 948.095, 948.10, 948.11, or 948.12.

15 **440.313 Renewal. (1)** The renewal date for licenses granted under this
16 subchapter is specified in s. 440.08 (2) (a). Renewal applications shall be submitted
17 to the department on a form provided by the department and shall include the
18 renewal fee determined by the department under s. 440.03 (9) (a).

19 **(2)** A behavior analyst shall, at the time that he or she applies for renewal of
20 a license under sub. (1), submit proof satisfactory to the department that he or she
21 is, at the time he or she applies for renewal, certified by the Behavior Analyst
22 Certification Board, Inc., or its successor organization.

23 **440.314 Rules. (1)** The department may promulgate rules necessary to
24 administer this subchapter, including rules of conduct by behavior analysts and by
25 holders of temporary permits under sub. (2). Except as provided in subs. (2), (3), and

1 (4), any rules regarding the practice of behavior analysis shall be consistent with
2 standards established by the Behavior Analyst Certification Board, Inc., or its
3 successor organization.

4 (2) (a) The department may promulgate rules authorizing the department to
5 issue a temporary permit to a person who is certified by the Behavior Analyst
6 Certification Board, Inc., or its successor organization authorizing the practice of
7 behavior analysis by the person under the supervision of a behavior analyst licensed
8 under s. 440.312 (1).

9 (3) The rules may not do any of the following:

10 (a) Require an applicant for a license under this subchapter to have education
11 in addition to the education required by the Behavior Analyst Certification Board,
12 Inc., or its successor organization.

13 (b) Require a behavior analyst to practice behavior analysis under the
14 supervision of, or in collaboration with, another health care provider.

15 (c) Require a behavior analyst to enter into an agreement, written or otherwise,
16 with another health care provider.

17 (d) Limit the location where a behavior analyst may practice behavior analysis.

18 **440.315 Informed consent.** A behavior analyst shall, at an initial
19 consultation with a client, provide a copy of the rules promulgated by the department
20 under this subchapter and shall disclose to the client orally and in writing all of the
21 following:

22 (1) A summary of the behavior analyst's experience and training.

23 (2) Any other information required by the department by rule.

24 **440.316 Disciplinary proceedings and actions.** (1) Subject to the rules
25 promulgated under s. 440.03 (1), the department may conduct investigations and

1 hearings to determine whether a violation of this subchapter or any rule
2 promulgated under this subchapter has occurred.

3 **(2)** Subject to the rules promulgated under s. 440.03 (1), the department may
4 reprimand a behavior analyst or deny, limit, suspend, or revoke a license granted
5 under this subchapter if the department finds that the applicant or the behavior
6 analyst has done any of the following:

7 (a) Intentionally made a material misstatement in an application for a license
8 or for renewal of a license.

9 (b) Subject to ss. 111.321, 111.322, and 111.34, practiced behavior analysis
10 while his or her ability to engage in the practice was impaired by alcohol or other
11 drugs.

12 (c) Advertised in a manner that is false or misleading.

13 (d) In the course of the practice of behavior analysis, made a substantial
14 misrepresentation that was relied upon by a client.

15 (e) In the course of the practice of behavior analysis, engaged in conduct that
16 evidences an inability to apply the principles or skills of behavior analysis.

17 (f) Obtained or attempted to obtain compensation through fraud or deceit.

18 (g) Allowed another person to use a license granted under this subchapter.

19 (h) Violated any law of this state or federal law that substantially relates to the
20 practice of behavior analysis, violated this subchapter, or violated any rule
21 promulgated under this subchapter.

22 (i) Engaged in unprofessional conduct.

23 **(3)** Subject to the rules promulgated under s. 440.03 (1), the department shall
24 revoke a license granted under this subchapter if the behavior analyst is convicted
25 of any of the offenses specified in 440.312 (2).

1 **440.317 Advisory committee.** The department may appoint an advisory
2 committee under s. 440.042 to advise the department on matters relating to the
3 regulation of behavior analysts.

4 **SECTION 5.** Subchapter III of chapter 440 [precedes 440.41] of the statutes is
5 renumbered subch. IV of ch. 440.

6 **SECTION 6.** Subchapter IV of chapter 440 [precedes 440.51] of the statutes is
7 renumbered subch. V of ch. 440.

8 **SECTION 7.** Subchapter V of chapter 440 [precedes 440.60] of the statutes is
9 renumbered subch. VI of ch. 440.

10 **SECTION 8.** Subchapter VI of chapter 440 [precedes 440.70] of the statutes is
11 renumbered subch. VII of ch. 440.

12 **SECTION 9.** Subchapter VII of chapter 440 [precedes 440.88] of the statutes is
13 renumbered subch. VIII of ch. 440.

14 **SECTION 10.** Subchapter VIII of chapter 440 [precedes 440.90] of the statutes
15 is renumbered subch. IX of ch. 440.

16 **SECTION 11.** Subchapter IX of chapter 440 [precedes 440.96] of the statutes is
17 renumbered subch. X of ch. 440.

18 **SECTION 12.** Subchapter X of chapter 440 [precedes 440.97] of the statutes is
19 renumbered subch. XI of ch. 440.

20 **SECTION 13.** Subchapter XI of chapter 440 [precedes 440.98] of the statutes is
21 renumbered subch. XII of ch. 440.

22 **SECTION 14.** Subchapter XII of chapter 440 [precedes 440.9805] of the statutes
23 is renumbered subch. XIII of ch. 440.

24 **SECTION 15.** Subchapter XIII of chapter 440 [precedes 440.99] of the statutes
25 is renumbered subch. XIV of ch. 440.

1 **SECTION 16.** 441.15 (2m) of the statutes is amended to read:

2 441.15 **(2m)** Subsection (2) does not apply to a person granted a license to
3 practice midwifery under subch. ~~XII~~ XIII of ch. 440.

4 **SECTION 17.** 448.03 (2) (a) of the statutes is amended to read:

5 448.03 **(2)** (a) Any person lawfully practicing within the scope of a license,
6 permit, registration, certificate or certification granted to practice midwifery under
7 subch. ~~XII~~ XIII of ch. 440, to practice professional or practical nursing or
8 nurse–midwifery under ch. 441, to practice chiropractic under ch. 446, to practice
9 dentistry or dental hygiene under ch. 447, to practice optometry under ch. 449, to
10 practice acupuncture under ch. 451 or under any other statutory provision, or as
11 otherwise provided by statute.

12 **SECTION 18.** 632.895 (12m) (b) 3m. of the statutes is created to read:

13 632.895 **(12m)** (b) 3m. A behavior analyst who is licensed under s. 440.312.

14 **SECTION 19.** 632.895 (12m) (b) 4. of the statutes, as created by 2009 Wisconsin
15 Act 28, is amended to read:

16 632.895 **(12m)** (b) 4. A paraprofessional working under the supervision of a
17 provider listed under subds. 1. to ~~3.~~ 3m.

18 **SECTION 20. Nonstatutory provisions.**

19 (1) The department of regulation may promulgate rules under section 440.314
20 of the statutes, as created by this act, as emergency rules under section 227.24 of the
21 statutes. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency
22 rules promulgated under this subsection may remain in effect until the effective date
23 of permanent rules promulgated by the department under section 440.314 of the
24 statutes, as created by this act. Notwithstanding section 227.24 (1) (a) and (3) of the
25 statutes, the department is not required to provide evidence that promulgating a rule

1 under this subsection as an emergency rule is necessary for the preservation of the
2 public peace, health, safety, or welfare and is not required to provide a finding of
3 emergency for a rule promulgated under this subsection.

4 **SECTION 21. Initial applicability.**

5 (1) If a disability insurance policy or a governmental self-insured health plan
6 that is in effect on the effective date of this subsection contains a provision that is
7 inconsistent with this act, this act first applies to that policy or plan on the date on
8 which it is renewed.

9 **SECTION 22. Effective dates.** This act takes effect on the day after publication,
10 except as follows:

11 (1) The creation of subchapter III of ch. 440 of the statutes takes effect on the
12 30th day after publication.

13 (END)