

2009 DRAFTING REQUEST

Bill

Received: **03/31/2010**

Received By: **csundber**

Wanted: **As time permits**

Companion to LRB:

For: **Robert Wirch (608) 267-8979**

By/Representing: **Jennifer Bishop**

May Contact:

Drafter: **csundber**

Subject: **Occupational Reg. - prof lic
Insurance - health**

Adtl. Drafters: **pkahler**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Wirch@legis.wisconsin.gov**

Carbon copy (CC:) to: **christopher.sundberg@legis.wisconsin.gov**

Pre Topic:

No specific pre topic given

Topic:

Add behavior analysts to list of providers treating autism for whose services insurance must pay, create licensure of behavior analysts

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	csundber 03/31/2010	kfollett 03/31/2010		_____			State
/1			rschluet 03/31/2010	_____	sbasford 03/31/2010	cduerst 03/31/2010	

FE Sent For: **"1" @ intro. 4/5/10**

<END>

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/?	csundber	116f 3/31		_____ _____			

FE Sent For:

<END>

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

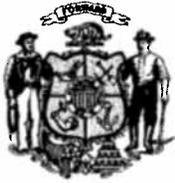
Legal (608-266-3561)

LRB

3/31/10

Draft AB 789 + AA1 as bill, incorp change
to certification req'd for licensure.

Wanted 4/1/10 (no footin')



State of Wisconsin
2009 - 2010 LEGISLATURE

4612/1
LRB-3912/2
PJK:jld:rs
RMNR
CTSE
E. Hoff

~~2009 ASSEMBLY BILL 789~~

March 2, 2010 - Introduced by Representatives HINTZ, GOTTLIEB, HIXSON, TURNER, BROOKS, MOLEPSKE JR., HILGENBERG, KAUFERT and GRIGSBY, cosponsored by Senators WIRCH and OLSEN. Referred to Committee on Insurance.

INS
A

1 AN ACT *to amend* 632.895 (12m) (b) 4.; and *to create* 632.895 (12m) (b) 3m. of
2 the statutes; **relating to:** insurance coverage of the services of behavior
3 analysts for autism treatment.

regen cat

licensure and regulation of behavior analysts,

Analysis by the Legislative Reference Bureau

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. This bill provides that the coverage must also apply to services provided by a behavior analyst, excluding an assistant behavior analyst, who is certified to practice behavior analysis by the Behavior Analyst Certification Board, Inc. or by a paraprofessional working under the supervision of such a behavior analyst, if the

licensed

department

The

providing an exemption from emergency rule procedures, granting rule-making authority, and providing a penalty

ASSEMBLY BILL 789

INS
2-1

FE-S

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 ~~#~~ 632.895 (12m) (b) 3m. of the statutes is created to read: *licensed under* §. 440.312 ✓

2 632.895 (12m) (b) 3m. A behavior analyst who is certified to practice behavior

3 analysis by the Behavior Analyst Certification Board, Inc., excluding a person who

4 is certified as an assistant behavior analyst.

5 SECTION ~~#~~ 632.895 (12m) (b) 4. of the statutes, as created by 2009 Wisconsin

6 Act 28, is amended to read:

7 632.895 (12m) (b) 4. A paraprofessional working under the supervision of a

8 provider listed under subds. 1. to 3. 3m.

9 SECTION ~~#~~ **Initial applicability.**

10 (1) If a disability insurance policy or a governmental self-insured health plan

11 that is in effect on the effective date of this subsection contains a provision that is

12 inconsistent with this act, this act first applies to that policy or plan on the date on

13 which it is renewed.

14 (END)

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2-8

INS
2-13



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

U.S.
Thaw

March 24, 2010 - Offered by Representative HINTZ.

INS
2-1

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 1, line 2: before "insurance" insert "licensure and regulation of
3 behavior analysts,".

4 **2.** Page 1, line 3: after "treatment" insert ", providing an exemption from
5 emergency rule procedures, granting rule-making authority, and providing a
6 penalty".

7 **3.** Page 2, line 1: before that line insert:

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

10 157.055 (2) (intro.) Notwithstanding ss. 69.18 (4), 445.04 (2), 445.14, 979.01 (3),
11 (3m), and (4), 979.02, and 979.10, and subch. VI VII of ch. 440, during a period of a
12 state of emergency related to public health declared by the governor under s. 323.10,
13 a public health authority may do all of the following:

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

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

10 **440.312 Licensure.** (1) Except as provided in sub. (2), the department shall
 11 grant a license as a behavior analyst to a person under this subchapter if all of the
 12 following apply:

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

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

17 (c) The person submits evidence satisfactory to the department that the person
 18 is certified by the Behavior Analyst Certification Board, Inc., or its successor
 19 organization. *(s) a behavior analyst*

20 (2) The department may not grant a license under this subchapter to any
 21 person who has been convicted of an offense under s. 940.22, 940.225, 944.06, 944.15,
 22 944.17, 944.30, 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.051, 948.06,
 23 948.07, 948.075, 948.08, 948.09, 948.095, 948.10, 948.11, 948.12, or 940.302 (2) (a)

*940.302 (2) (a)
1. b. 7*

(24)

(1. b.)

or

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

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

9 **440.314 Rules.** (1) The department may promulgate rules necessary to
10 administer this subchapter, including rules of conduct by behavior analysts and by
11 holders of temporary permits under sub. (2). Except as provided in subs. (2), (3), and
12 (4), any rules regarding the practice of behavior analysis shall be consistent with
13 standards established by the Behavior Analyst Certification Board, Inc., or its
14 successor organization.

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

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

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

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

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

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

4 **440.315 Informed consent.** A behavior analyst shall, at an initial
5 consultation with a client, provide a copy of the rules promulgated by the department
6 under this subchapter and shall disclose to the client orally and in writing all of the
7 following:

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

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

10 **440.316 Disciplinary proceedings and actions.** (1) Subject to the rules
11 promulgated under s. 440.03 (1), the department may conduct investigations and
12 hearings to determine whether a violation of this subchapter or any rule
13 promulgated under this subchapter has occurred.

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

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

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

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

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

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

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

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

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

8 (i) Engaged in unprofessional conduct.

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

12 **440.317 Advisory committee.** The department may appoint an advisory
13 committee under s. 440.042 to advise the department on matters relating to the
14 regulation of behavior analysts.

15 ~~SECTION 1e.~~ Subchapter III of chapter 440 [precedes 440.41] of the statutes is
16 renumbered subch. IV of ch. 440.

17 ~~SECTION 1d.~~ Subchapter IV of chapter 440 [precedes 440.51] of the statutes is
18 renumbered subch. V of ch. 440.

19 ~~SECTION 1c.~~ Subchapter V of chapter 440 [precedes 440.60] of the statutes is
20 renumbered subch. VI of ch. 440.

21 ~~SECTION 1f.~~ Subchapter VI of chapter 440 [precedes 440.70] of the statutes is
22 renumbered subch. VII of ch. 440.

23 ~~SECTION 1g.~~ Subchapter VII of chapter 440 [precedes 440.88] of the statutes
24 is renumbered subch. VIII of ch. 440.

1 ~~SECTION 1h.~~ Subchapter VIII of chapter 440 [precedes 440.90] of the statutes
2 is renumbered subch. IX of ch. 440.

3 ~~SECTION 1i.~~ Subchapter IX of chapter 440 [precedes 440.96] of the statutes is
4 renumbered subch. X of ch. 440.

5 ~~SECTION 1j.~~ Subchapter X of chapter 440 [precedes 440.97] of the statutes is
6 renumbered subch. XI of ch. 440.

7 ~~SECTION 1k.~~ Subchapter XI of chapter 440 [precedes 440.98] of the statutes is
8 renumbered subch. XII of ch. 440.

9 ~~SECTION 1l.~~ Subchapter XII of chapter 440 [precedes 440.9805] of the statutes
10 is renumbered subch. XIII of ch. 440.

11 ~~SECTION 1m.~~ Subchapter XIII of chapter 440 [precedes 440.99] of the statutes
12 is renumbered subch. XIV of ch. 440.

13 ~~SECTION 1n.~~ 441.15 (2m) of the statutes is amended to read:
14 441.15 (2m) Subsection (2) does not apply to a person granted a license to
15 practice midwifery under subch. XII XIII of ch. 440.

16 ~~SECTION 1p.~~ 448.03 (2) (a) of the statutes is amended to read:
17 448.03 (2) (a) Any person lawfully practicing within the scope of a license,
18 permit, registration, certificate or certification granted to practice midwifery under
19 subch. XII XIII of ch. 440, to practice professional or practical nursing or
20 nurse-midwifery under ch. 441, to practice chiropractic under ch. 446, to practice
21 dentistry or dental hygiene under ch. 447, to practice optometry under ch. 449, to
22 practice acupuncture under ch. 451 or under any other statutory provision, or as
(23) otherwise provided by statute.

24 4. Page 2, line 1: delete "SECTION 1" and substitute "SECTION 1r".

END
INS 2-1

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2-8

1 5. Page 2, line 2. delete lines 2 to 4 and substitute:
2 "682.895 (12m) (b) 3m. A behavior analyst who is licensed under s. 440.312."

3 6. Page 2, line 8: after that line insert:

4 ~~SECTION 2m~~ **Nonstatutory provisions.**

5 (1) The department of regulation may promulgate rules under section 440.314
6 of the statutes, as created by this act, as emergency rules under section 227.24 of the
7 statutes. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency
8 rules promulgated under this subsection may remain in effect until the effective date
9 of permanent rules promulgated by the department under section 440.314 of the
10 statutes, as created by this act. Notwithstanding section 227.24 (1) (a) and (3) of the
11 statutes, the department is not required to provide evidence that promulgating a rule
12 under this subsection as an emergency rule is necessary for the preservation of the
13 public peace, health, safety, or welfare and is not required to provide a finding of
14 emergency for a rule promulgated under this subsection.

15 7. Page 2, line 13: after that line insert:

END INS 2-8

16 ~~SECTION 4m~~ **Effective dates.** This act takes effect on the day after
17 publication, except as follows:

18 (1) The creation of subchapter III of ch. 440 of the statutes takes effect on the
19 30th day after publication.

20 (END)

INS
2-13

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-4612/lins
CTS:.....

1

Insert A:

This bill provides for licensure and regulation of behavior analysts. Under the bill, 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 bill 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 bill 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 ~~3~~ ^{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 bill. The bill 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 bill 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 bill also authorizes the department to discipline a behavior analyst who engages in unprofessional conduct or who commits any other infraction identified in the bill.

Duerst, Christina

From: McGuire, Paula
Sent: Wednesday, March 31, 2010 3:39 PM
To: LRB.Legal
Subject: Draft Review: LRB 09-4612/1 Topic: Add behavior analysts to list of providers treating autism for whose services insurance must pay, create licensure of behavior analysts

Please Jacket LRB 09-4612/1 for the SENATE.