



# HB 412: Licensure of Behavior Analysts in Georgia

# Topics

- ▶ Rationale for licensure
- ▶ HB 412
  - ▶ History
  - ▶ Main components
  - ▶ Common questions
  - ▶ Next steps



# Rationale for seeking state licensure of behavior analysts

- ▶ Without a good behavior analyst licensure law, there is no
  - ▶ Legal requirement for everyone in the state who claims to practice ABA professionally to meet established standards for education, practical training, and demonstrated knowledge of behavior analysis
  - ▶ Entity in the state that can provide oversight of ABA practitioners
    - ▶ So consumers, employers, funders, and state agencies have no protection from individuals who make false claims to be qualified to practice ABA.
  - ▶ Statutory recognition of the profession and its scope of practice, on par with most other human services and healthcare professions in the state
    - ▶ So behavior analysts have no legally protected right to practice.



# Rationale (cont'd)

- ▶ Medicaid and some commercial health plans require providers to be credentialed by the Behavior Analyst Certification Board (BACB), but absent a licensure law,
  - ▶ Anyone can say they're providing "ABA" services regardless of whether they are BACB-certified.
  - ▶ The BACB cannot require everyone in the state who purports to practice ABA to hold its certifications.
  - ▶ The BACB can enforce its *Ethics Code for Behavior Analysts* and other standards only with its certificants. For others, there is no code of ethics and no oversight.



# Rationale (cont'd)

- ▶ The GA behavior analyst licensure law -- HB 412 -- will afford more protection for consumers, employers, funders, and the profession than BACB certification alone by
  - ▶ Recognizing behavior analysis in state law as a profession in its own right
  - ▶ Requiring those who practice ABA professionally to meet uniform, objective education, training, and ethical standards
  - ▶ Establishing an entity in the state that can investigate allegations of wrongdoing by licensees and individuals practicing without a license



# HB 412

## ▶ History

- ▶ Many practitioners and allies have been working towards licensure in Georgia for about 10 years
- ▶ In 2019 GABA decided to pursue a licensure bill and began searching for a lobbyist
  - ▶ Secured the services of Wendi Clifton and Ted Burdo, Terminus Strategies



# HB 412 history (cont'd)

- ▶ GABA's Licensing Committee also sought input from
  - ▶ Dr. Gina Green, Association of Professional Behavior Analysts (APBA). APBA publishes the *Model Licensure Act for Behavior Analysts* and has worked on behavior analyst licensure bills, laws, and rules around the U.S. for 12+ years
  - ▶ ABAI Licensure Committee
  - ▶ Behavior analysis organizations in some states that have adopted behavior analyst licensure laws
  - ▶ HB 1241 was introduced during the 2020 legislative session to begin to educate legislators about the profession
  - ▶ 4 Q&A sessions for stakeholders were conducted via Zoom in the fall of 2020
- ▶ GABA introduced HB 412 again during the 2021 session



# HB 412 history (cont'd)

- ▶ The bill had to undergo extensive review by the **Georgia Occupational Regulation Review Council** (GORRC; <https://opb.georgia.gov/planning-and-evaluation/georgia-occupational-regulation-review-council>).
- ▶ GORRC was established by law in 1986
  - ▶ “...to ensure that no programs of licensure and certification are imposed on any profession or business unless required for the safety and well-being of the citizens of this state.”
- ▶ Review process took 3 months, during which
- ▶ GABA had to provide information about the profession in GA, rationale for licensing behavior analysts, responses to proposals from other professions to restrict practice
- ▶ Public could comment
- ▶ Last summer the GORRC approved the bill unanimously and recommended that the legislature pass it



# HB 412 history (cont'd)

- ▶ HB 412 passed the House and Senate during the 2022 legislative session after several hearings, proposals for amendments, and negotiations
- ▶ Governor signed bill into law May 2022



# Main components of HB 412

- ▶ Practice and title protections
- ▶ Definition of the practice of ABA (“scope of practice”)
- ▶ Licensing board
- ▶ Basic licensure requirements
- ▶ Exemptions
- ▶ Timelines



# Practice and title protections

- ▶ License required to
  - ▶ Practice ABA professionally in the state (unless exempt)
  - ▶ Call oneself a Licensed Behavior Analyst or Licensed Assistant Behavior Analyst



# Definition of practice

- ▶ The design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior
- ▶ Includes
  - ▶ Functional assessment and analysis
  - ▶ Interventions based on scientific research and direct and indirect observation and measurement of behavior and environment
  - ▶ Utilization of contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other consequences to help people develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions.
- ▶ Excludes psychological testing, diagnosis of a mental or physical disorder, psychotherapy, cognitive therapy, psychoanalysis, and counseling

# Behavior Analyst Licensing Board

- ▶ 5 members
  - ▶ 3 Licensed Behavior Analysts (initially, license-eligible BCBAs or BCBA-Ds)
  - ▶ 1 Licensed Assistant Behavior Analyst (initially, license-eligible BCaBA)
  - ▶ 1 public member who is not licensed or has not practiced ABA
- ▶ 3-year staggered terms
- ▶ Appointed by the Governor
- ▶ Meets at least twice annually and at other times as necessary to carry out business



# Licensing board's authority

- ▶ Adopt, amend, and repeal rules and regulations for implementing the licensure law
- ▶ Conduct background checks
- ▶ Issue, renew, and reinstate licenses
- ▶ Initiate investigations pursuant to alleged violations of the licensure law or rules
- ▶ Conduct hearings
- ▶ Impose sanctions if allegations are substantiated, potentially including including denial, suspension, and revocation of licenses



# Requirements for obtaining licenses

- ▶ Background check
- ▶ Current certification by the BACB
  - ▶ For Licensed Behavior Analyst: BCBA or BCBA-D
  - ▶ For Licensed Assistant Behavior Analyst: BCaBA
- ▶ Fee (will be set by licensing board based on several factors)
- ▶ Renewed every 2 years



# BACB certification as principal qualification

- ▶ Signifies that each applicant for licensure has
  - ▶ Met degree, coursework, and supervised practical training standards set by the profession for practicing ABA broadly (i.e., *not specific to any client population, setting, etc.*)
  - ▶ Passed legally and psychometrically validated professional exam in ABA
- ▶ Requirements parallel those of most licensed professions
- ▶ Makes operation of licensing program cost-efficient
- ▶ Provides consumers with two layers of protection (licensees are overseen by BACB and state licensing board, in coordination)





# Exemptions

- ▶ Virtually all licensure laws have exemptions (exceptions) that allow specified categories of individuals to engage in certain activities under specified conditions without being licensed in that profession. Common exemption categories in laws licensing human services professionals\*:
  - ▶ Other professionals licensed in the state and practicing within the bounds of their profession's legislated scope of practice and their individual scope of competence
  - ▶ Students, interns, postdocs, and other trainees under supervision
  - ▶ Paraprofessionals/assistants under supervision
  - ▶ Individuals involved in teaching and research
  - ▶ Employees of certain state and/or federal agencies
  - ▶ Individuals licensed in another jurisdiction who provide services in the state for a limited period of time

\* For some examples, see GA licensure laws for psychologists, speech-language pathologists and audiologists, and occupational therapists



# Exemptions in HB 412

- ▶ The following are exempt from licensure, i.e., allowed to engage in ABA activities within certain parameters without being an LBA or LABA:
  - ▶ Licensed psychologists and other licensed professionals with education, training, and experience in ABA and their supervisees
  - ▶ Licensed physicians practicing medicine
  - ▶ Behavior technicians and caregivers who deliver ABA services under the supervision of LBAs or LABAs
  - ▶ Behavior analysts who work with nonhuman or nonpatient clients or consumers (e.g., animal behaviorists, practitioners of OBM)

# Exemptions in HB412 (cont'd)

- ▶ Graduate students and postdocs supervised by LBAs or faculty
- ▶ Individuals pursuing supervised experiential training for BACB certification/licensure supervised by LBAs
- ▶ University faculty and researchers
- ▶ Licensed behavior analysts, BCBAs, or BCBA-Ds from other states who work in GA no more than 30 days in a calendar year and obtain a temporary license
- ▶ Individuals employed by boards of education performing the duties of their positions; cannot represent themselves as LBAs or LABAs or offer, provide, or be remunerated for providing ABA services outside of their employment with the board of education
- ▶ Individuals providing behavior support services covered under the Medicaid Comprehensive Supports Waiver Program (COMP) or New Options Waiver (NOW) program



# Common questions

- ▶ **Q:** Why are individuals who are employed by school systems exempt from licensure?
  - ▶ **A:** The public education system is governed by its own laws and regulations. Federal and state special education laws require public schools to provide services that are in IEPs for students with special needs, including “behavioral” services. Those laws allow the education system to determine who is qualified to provide those services, i.e., what credentials are required or recognized for positions within schools
  - ▶ Behavior analyst licensure bills that do not include an exemption for school personnel are at high risk of being rejected on the grounds that they violate education laws



# Common questions

- ▶ **Q:** Why are individuals who provide behavior support services under the Medicaid Comprehensive Supports Waiver Program (COMP) or New Options Waiver (NOW) program exempt from licensure?
  - ▶ **A:** Laws and regulations governing Medicaid programs and developmental disabilities service agencies in many states include positions or funding for individuals who provide "behavioral" services to clients. Those laws/regs may not require those individuals to be BACB-certified. Behavior analyst licensure bills that do not include an exemption for such personnel are at high risk of being rejected on the grounds that they violate those laws/regs and would restrict or end the services
  - ▶ GABA included this exemption at the request of the Dept. of Behavioral Health and Developmental Disabilities (DBHDD) because there are not enough license-eligible behavior analysts to serve individuals who qualify for Medicaid waivers. At present there is a waitlist of 55,000 children and adults, and > 40% of the providers are not BACB-certified. Requiring those providers to be licensed at this time would severely restrict access to behavior support services by those beneficiaries. In the future it may be possible to work with DBHDD on revising its regulations to require providers of ABA services under Medicaid waivers to be licensed



# Common questions



- ▶ **Q:** Will licensure delay or restrict consumers' access to ABA services?
  - ▶ **A:** Licensure will ensure that the ABA services accessed by most consumers will be designed and overseen by individuals who have met well-established, objective standards for practicing ABA professionally (like consumers of virtually all other healthcare services in the state)
  - ▶ When BACB certification is the principal requirement for state licensure, applications can be processed quite efficiently because applicants have already been vetted by the BACB as having met education and training requirements and have passed the only professional exam in the practice of ABA. That is facilitated when a stand-alone behavior analyst licensing board processes applications (as in HB 412) vs. a licensing board or other state agency that must manage licenses for other professions in addition to behavior analysis (as is the case in a number of other states)
  - ▶ GABA is committed to working with the behavior analyst licensing board and other state officials to make the processing of licensure applications as efficient as possible

# Common questions

- ▶ **Q:** Why is licensure necessary given that most commercial health plans and Medicaid require ABA providers to hold a BACB certification?
  - ▶ **A:** The regulations and policies governing the Medicaid EPSDT program and commercial health plans do not apply to clients whose services are funded by other sources or the individuals who serve those clients. As noted earlier, without a licensure law GA consumers had no protection from people who claim to be qualified to practice ABA but are not certified by the BACB, nor did behavior analysts have a legally protected right to practice. HB 412 represents a major step towards remedying those problems



# Common questions

- ▶ **Q:** Why are behavior technicians not required to be licensed or otherwise regulated directly by the licensing board?
  - ▶ **A:** Licensure laws for many professions exempt paraprofessional-level individuals from direct regulation, provide they are supervised by individuals who are regulated directly, i.e., licensed professionals (e.g., see GA licensure laws for psychologists, SLPs, and OTs).
    - ▶ Codes of ethics require professionals to take responsibility for the actions of all their supervisees (students, interns, and others as well as paraprofessionals). That is true of LBAs or LABAs under HB 412, who will be bound by the profession's ethics code.
  - ▶ If behavior technicians who deliver ABA services had to be regulated directly by the licensing board, it would
    - ▶ Delay access to ABA services for many consumers because many 3<sup>rd</sup> party payers will not "credential" such individuals until the state licensing entity has approved their applications
    - ▶ Greatly increase the labor, costs, and time required to operate the licensing program



# Common questions

- ▶ **Q:** What are the licensure rules?
  - ▶ **A:** Like most licensure laws, HB 412 sets out general parameters for the licensure program. It requires a licensing board to be appointed by the governor, and then to develop specific rules that detail how the law will be implemented
    - ▶ Such rules often address topics like application and renewal fees, supervision requirements, conduct standards, procedures for handling alleged violations of the law or rules, and the like
    - ▶ Other preliminary information about the rules process will be provided later in this session





# Common questions

- ▶ **Q:** Will individuals from other states have to be licensed in GA to deliver services in this state by telehealth? Will GA LBAs and LABAs be able to deliver services to clients in other states by telehealth?
  - ▶ **A:** In general, one must be licensed in the state where the recipient of services resides regardless of whether the services are delivered in person or remotely, though there are exceptions. And special exceptions have been made in many states during the COVID-19 pandemic. It is unclear, however, whether telehealth delivery of many types of services that has been allowed on an interim basis will be allowed to continue when the federal public health emergency ends. Those decisions will be influenced by federal regulations (e.g., approval of CPT codes for telehealth by the Centers for Medicaid & Medicare Services) as well as public policies in each state
  - ▶ The ABA Coding Coalition ([www.abacodes.org](http://www.abacodes.org)), in which APBA is a partner, has applied for permanent CMS telehealth approval for some of the CPT codes for ABA services and is monitoring that
  - ▶ The GA behavior analyst licensing board will likely have to address telepractice in the rules for implementing the licensure law. Other state laws, executive orders, and payer policies around telehealth will also need to be considered

# What's next?

- ▶ The GABA Licensing Committee is researching the process for constituting a licensing board
- ▶ We plan to solicit indications of interest in serving on the licensing board and then interview interested parties (details TBD)
- ▶ The committee will identify 8 -12 individuals to be recommended to the governor
  - ▶ NOTE: The governor does not have to select from that list.
- ▶ HB 412 goes into effect July 2023, so the board will need to be in place by then
- ▶ The board must work with an individual from the Attorney General's office (also appointed by the governor) to promulgate rules for implementing the licensure law. In all likelihood there will be opportunities for public comment on draft rules

# Licensure Committee



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Questions?