



Date: 10-11-2021

Dr. Gary Anthone
Attn: Matt Gelvin, Program Manager, Ron Briel, Program Specialist
Division of Administrative Services
Nebraska Department of Health and Human Services
301 Centennial Mall South
P.O. Box 95026
Lincoln, NE 68509-5026

Dear Dr. Anthone,

The Nebraska Association for Behavior Analysis (NEABA) Public Policy Group is submitting this letter to request that the Department of Health and Human Services (DHHS) initiate a review of the behavior analysis profession under the Credentialing Review (407) Program. NEABA is composed of Nebraskans providing behavior analytic services to a wide range of client populations all over the state. That includes professionals at numerous private service providers, the University of Nebraska Medical Center, University of Nebraska-Omaha, University of Nebraska-Lincoln, DHHS, and behavior analysts working as sole practitioners.

Behavior analysis is a distinct scientific discipline and profession that takes a natural science approach to understanding behavior in relation to environmental events. Over the past several decades the discipline has developed a large array of evidence-based procedures for assessing and building socially important behaviors in a wide range of people with and without specific diagnoses or conditions. The profession has an established scope of practice, academic and clinical training requirements, standards for ongoing education, a code of ethics, and professional examinations in the practice of behavior analysis, all of which are encompassed in the accredited professional certification programs that have been operated by the independent, nonprofit Behavior Analyst Certification Board (BACB) since 1998. The certification components and standards are comparable to those of other professions that are currently licensed by the Nebraska Board of Mental Health Practice and are incorporated in the Association of Professional Behavior Analysts' model licensure act.

The four initial credentialing criteria are paraphrased below along with a brief summary how each one is addressed in this proposal.

1. **Assure safety of the public.** Although many behavior analysts in Nebraska hold a certification issued by the BACB, that credentialing body has no authority to require everyone who purports to practice behavior analysis to hold its certifications or to enforce its ethical and other standards with anyone except its certificants. At present, there is no law requiring everyone who practices behavior analysis in this State to meet established professional standards. Many behavior analysts work with individuals or groups who engage in highly aggressive, destructive, or self-injurious behaviors. Additionally, behavior analysts work with individual with minimal or emerging vocal-verbal repertoires. These populations are particularly vulnerable and can be easily harmed by people who purport treatments that are not evidence-based and are not effective.
2. **Implement procedures that do not impose hardship to the public.** The BACB standards provide a blueprint from which to judge the qualifications of Behavior Analysts. Many of the behavior analysts in the State hold this credential. This proposal plans to use this blueprint for establishing the standards for Licensed Behavior Analysts in Nebraska. This will reduce the cost of implementing this license which will in turn keep costs to consumers down. Currently there are over 180 Board Certified Behavior Analysts in Nebraska. The profession has grown enough to support the need across the State. It will not diminish the number of qualified providers but should, in fact, increase those numbers as Behavior Analysts seek to practice in a state with licensure (currently 36 states have licensure for Behavior Analysts).



3. **Provide assurance of an individual's professional ability.** There currently is no entity within the State to whom consumers, employers, and funders can turn to identify qualified ABA practitioners or raise questions about the conduct of individuals who claim to provide ABA services. This directly conflicts with the interests of the public. Constituents need to be assured that activities of persons providing therapeutic behavioral services are regulated to protect the public health, safety, and welfare.
4. **Protecting the public cannot be accomplished by a more effective alternative.** There is no effective alternative that provides the scope of protections that licensure provides. As noted above, the BACB can regulate individuals who carry that credential, but is powerless to protect consumers who are wronged or injured by an unqualified person claiming to be a behavior analyst. Additionally, other forms of regulation within the State of Nebraska are would not be as effective due to the threat of no regulation as being larger than "relatively small" as outlined in the Universal Credentialing Act. Other forms of direct regulation (i.e., registration, certification) would not provide sufficient protection or experience to adequately regulate the profession.

NEABA firmly believes that Nebraskans need assurance that those who practice behavior analysis professionally in our state meet the well-established education, practical training, examination, ethical, and other standards of the profession as well as the criteria set forth in LB407 under Evaluation of Proposals for Initial Credentialing of the Members of Unregulated Health Professionals Currently Allowed to Engage in Full Practice. To that end, NEABA intends to propose legislation to establish uniform, objective requirements for obtaining and maintaining licenses in the professional practice of behavior analysis and a licensing body to oversee the practice of behavior analysis in the State of Nebraska. We ask DHHS to conduct a 407 review considering the information presented here.

The applicant group requests a waiver of the \$500.00 fee associated with this filing as the coalition supporting this effort is composed of nonprofit organizations with limited funding.

If you have any questions or require additional information, please contact Dr. Steve Taylor (staylor54@centurylink.net) or Desiree Dawson (desireejodawson@gmail.com)

Respectfully submitted,

Steve Taylor, Ph.D. BCBA-D

Desiree Dawson, M.A., BCBA

NEABA Public Policy Group Contributors
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Karen Fry, M.A., BCBA
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Request for the Credentialing Determination for Behavior Analysts

Submitted to:
407 Credentialing and Review Application for Behavior Analysts

August 2021
Resubmitted with Edits: July 2022

Submitted on behalf of the Nebraska Association for Behavior Analysis Public Policy
Committee

Introduction: Applied Behavior Analysis Profession

Behavior analysis is a natural science whose subject matter is individual behavior interacting with environmental events. Like other scientific disciplines, behavior analysis has theoretical, experimental, and applied branches, journals, scholarly and professional organizations, university training programs, and professional credentials. The applied branch of the discipline (applied behavior analysis; ABA) involves using scientific principles and procedures discovered through basic and applied research to improve socially significant behavior to a meaningful degree. Thousands of studies published in peer-reviewed scientific journals have demonstrated the efficacy of many ABA procedures – singly and in various combinations -- for building skills and reducing problem behaviors in many clinical and non-clinical populations in a wide range of settings. Almost as soon as that evidence began to accrue in the 1960s, there was great interest in using it in a variety of human service settings, and the practice of behavior analysis was born. It has grown exponentially in recent years with increased demand for ABA services from consumers, employers, and funding sources.

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Description of the Applicant Group and its Proposal

1. Provide the following information for the applicant group(s):

Name, Address, Telephone Number, E-mail Address and Website of the Applicant Group in Nebraska and any National Parent Organization

- Name: Nebraska Association for Behavior Analysis Public Policy Group
- Address: 15911 Newport Ave. Omaha, NE 68116
- Email Address: nebraskaaba@gmail.com
- Website: www.nebraskaaba.com

- Name: Association for Professional Behavior Analysts (APBA)
- Address: 3435 Camino del Rio South, Suite 103 San Diego, CA 92108
- Email Address: info@apbahome.net
- Website: www.apbahome.net

- Name: Association for Behavior Analysis International (ABAI)
- Address: 550 West Centre Ave Portage, MI 49024
- Telephone Number: (269) 492-9310
- Website: <https://www.abainternational.org/welcome.aspx>

Composition of the Group and Approximate Number of Members in Nebraska; and Relationship of the Group to the Occupation Dealt with in the Application

Listed below are the entirety of the members of the NEABA Public Policy Group

- Steve Taylor: Ph.D. BCBA-D. Director of Specialized Services. Apex Children's Center
- William Higgins: Ph.D., LMHP, BCBA-D. Assistant Professor, Psychology Department UNMC
- Mark Shriver: Ph.D. BCBA-D. Professor of Psychology UNMC. Director of MS in ABA Program. Associate Director of Education and Training, Psychology Director, University Center for Excellence in Developmental Disabilities
- Desiree Dawson: M.A., BCBA. Behavior Analysis Specialist II. Doctoral Student, UNMC

- Karen Fry; M.A., BCBA. Mosaic National Office
- Nancy Lamb; M.S., BCBA. BCBA Clinical Supervisor. Division of Developmental Disabilities, Department of Health and Human Services, State of Nebraska
- Kyle Dawson; M.A., BCBA. Behavior Analysis Specialist II. Doctoral Student, UNMC

2. Identify by title, address, telephone number, e-mail address, and website of any other groups, associations, or organizations in Nebraska whose membership consists of any of the following:

Members of the Same Occupation or Profession as that of the Applicant Group

Behavior Analyst Certification Board (BACB)

7950 Shaffer Parkway,
Littleton, CO 80127, USA
www.bacb.com

Members of the Same Occupation or Profession as that of the Applicant Group

Association for Professional Behavior Analysts (APBA)

3435 Camino del Rio South, Suite 103
San Diego, CA, 92108, USA
www.apbahome.net

Members of the Same Occupation or Profession as that of the Applicant Group

Association for Behavior Analysis International (ABAI)

550 West Centre Ave
Portage, MI 49024, USA
<https://www.abainternational.org/welcome.aspx>

Members of the Occupation Dealt with in the Application

Nebraska Association for Behavior Analysis (NEABA)

15911 Newport Ave. Omaha, NE 68116
(402) 885-4907
nebraskaaba@gmail.com
www.nebraskaaba.com

NEABA has approximately 107 members

Employers of the Occupation Dealt with in the Application

- State of Nebraska
- University of Nebraska Medical Center
- Mosaic
- Private Agencies and Individuals in Private Practice
- School Districts:
 - Special Education Advisory Board
 - Omaha Public Schools
 - Westside District 66
 - Bellevue Public Schools
 - Papillion Public Schools
 - Ralston Public Schools
 - Madonna Schools

Practitioners of the Occupations Similar to or Working Closely with Members of the Occupation Dealt with in the Application

- Clinical Psychologists
- Licensed Independent Mental Health Professionals
- Speech-Language Pathologists
- Occupational Therapists
- School Psychologists
- Social Workers
- Advanced Practice Registered Nurse
- Teachers
- Special Education Professionals
- Clinical Counselors
- Dieticians
- Psychiatrists
- Family Physicians
- Athletic Trainers
- Coaches
- Licensed Mental Health Professionals

Educators or Trainers of Prospective Members of the Occupation Dealt with in the Application

- **University of Nebraska – Lincoln**
Primary Contact: Johanna Higgins, Ph.D., BCBA
- **University of Nebraska – Omaha - Bachelors**
Primary Contact: Sara Kupzyk, Ph.D. BCBA-D, LP
- **University of Nebraska Omaha and University of Nebraska Medical Center - Masters**
Primary Contact: Mark Shriver, PH.D., BCBA-D, LP
- **University of Nebraska Medical Center - Doctoral**
Primary Contact: Nicole Rodriguez, Ph.D., BCBA-D
- **Midland University – Bachelors**
Primary Contact: Connie Taylor, Ph.D., BCBA-D
- **Nebraska Autism Network**
Primary Contact: Annette Wragge, M.Ed., BCBA,
- **Online ABA Programs:**
 - St. Cloud State
 - Florida Institute of Technology
 - Kaplan University

Citizens Familiar with or Utilizing the Services of the Occupation Dealt with in the Application (e.g., Advisory Groups, Patient Rights Groups, Volunteer Agencies for Particular Disease or Conditions etc.)

- **Autism Society of Nebraska**
9012 Q St, Omaha, NE 68127
www.autismnebraska.org
- **Autism Action Partnership**
10110 Nicholas St #202, Omaha, NE 68114
www.autismaction.org
- **Autism Center of Nebraska**
9012 Q St, Omaha, NE 68127
www.autismcenterofnebraska.org
- **Autism Connections of Nebraska**
6127 Havelock Ave, Lincoln, NE 68507
www.autismcenterofnebraska.org
- **Nebraska Autism Spectrum Disorders Network**
Address: 301 Barkley Center, Lincoln, NE 68583
www.unl.edu/asdnetwork
- **Autism Family Network**
6500 Holdrege St, Lincoln, NE 68505
www.autismfamilynetwork.org
- **Nebraska Council on Developmental Disabilities**
301 Centennial Mall South, Lincoln, NE 68509
<https://dhhs.ne.gov/pages/DD-Planning-Council.aspx>
- **ARC of Nebraska**
215 Centennial Mall S # 508, Lincoln, NE 68508
www.arc-nebraska.org
- **Amy K Bonn LLC**
2805 Leigh Lane, Papillion, NE 68133
www.amybonnlaw.com
- **Nebraska Down Syndrome Alliance of the Midlands**
210824 Old Mill Road Suite STE 8, Omaha, NE 68154
<https://www.dsamidlands.org/>

- **Disability Rights Nebraska**
134 S 13th St. #600, Lincoln, NE 68508
<https://www.disabilityrightsnebraska.org/>
- **Nebraska Statewide Independent Living Council**
215 Centennial Mall South, Suite 519, Lincoln, NE 68508
<https://www.nesilc.org/>
- **Children’s Respite Care Center (CRCC)**
2010 N 88th St., Omaha, NE 68134
<https://crccomaha.org/>
- **QLI**
6404 N 70th Plaza, Omaha, NE 68104
<https://qliomaha.com/>
- **The Nebraska Aging and Disability Resource Center**
<https://dhhs.ne.gov/Pages/Aging-and-Disability-Resource-Center.aspx>
- **Nebraska Brain Injury Advisory Counsel**
<https://braininjury.nebraska.gov/>
- **American Association on Intellectual and Developmental Disabilities**
8403 Colesville Road, Suite 900, Silver Spring, MD, 20901
www.aidd.org
- **Mosaic**
4980 S. 118th St., Omaha, NE 68137
www.mosaicinfo.org
- **State of Nebraska, DHHS Developmental Disabilities Division**
301 Centennial Mall South, Lincoln, NE 68509
<https://dhhs.ne.gov/pages/developmental-disabilities.aspx>
- **Duet**
9814 M St., Omaha, NE 68127 (Corporate Office)
<https://www.duetne.org/>

Any other Group that would have an interest in the Application

- **Nebraska Hospital Association**
3255 Salt Creek Circle, Suite 100, Lincoln, NE 68504
<https://www.nebraskahospitals.org/>

- **Region V Services**
3600 Union Dr., Lincoln, NE 68516
<https://www.regionvservices.com/>
- **Nebraska Transition College**
6901 N 13th Cir, Lincoln, NE 68521
<https://www.nebraskatransitioncollege.org/>
- **Nebraska Medical Association**
1045 Lincoln Mall #200, Lincoln, NE 68508
<https://www.nebmed.org/>
- **University of Nebraska-Medical Center/Munroe-Meyer Institute**
6902 Pine St., Omaha, NE 68106
<https://www.unmc.edu/mmi/>
- **Nebraska Association of Service Providers**
1200 Libra Dr., Lincoln, NE 68512
<https://www.neserviceproviders.org/>
- **Multiple Sclerosis Society – Mid America Chapter**
2020 W 89th St., Suite 100, Leawood, KS 66206
<https://www.nationalmssociety.org/Chapters/KSG>
- **Nebraska Nurses Association**
3340 American Ave., Suite F, Jefferson City, MO 65109
<https://nebraskanurses.org/>
- **Nebraska Speech-Language-Hearing Association**
3901 Normal Blvd, STE 100, Lincoln, NE 68506
<https://www.nslha.org/>

3. If the profession is currently credentialed in Nebraska, provide the current scope of practice of this occupation as set forth in the state statutes. If a change in this scope of practice is being requested, identify that change. This description of the desired scope of practice constitutes the proposal. The application comprises the documentation and other materials that are provided in support of the proposal.

Not applicable – the applicant group is currently not credentialed in Nebraska.

4. If the profession is not currently credentialed in Nebraska, describe the proposed credential and the proposed scope of practice, and / or the proposed functions and procedures of the group to be reviewed. This description of the desired scope of practice and the proposed credential constitute the core of the proposal. Also, please describe how the proposal would be administered. The application comprises the documentation and other materials that are provided in support of the proposal.

Proposed Credential

This application seeks to establish licensure for behavior analysts in the state of Nebraska.

Scope of Practice

PRACTICE OF APPLIED BEHAVIOR ANALYSIS. The design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior. The practice of applied behavior analysis includes the empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis. Applied behavior analysis interventions are based on scientific research and direct and indirect observation and measurement of behavior and environment. They utilize contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other procedures to help individuals develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions. The practice of applied behavior analysis excludes diagnosis of disorders, psychological testing, cognitive therapy, psychoanalysis, and counseling.

Administered

The applicant seeks to establish a licensing board to administer the licensure program and oversee the practice of behavior analysis. The board will be established based on the guidelines in the Limited Liability Company (LLC).

The costs of administering the program will be covered by licensing and re-licensing fees.

- In Nebraska, some administrative costs to the DHHS Licensing Department are anticipated. Those costs will be covered by fees paid by the applicants and licenses, with no net cost to the state anticipated. It is anticipated that the operation of the proposed licensing program will be revenue neutral.

The above provide an overview on proposed procedures and functions of the credential. Complete description of administration of the proposal is located within the applicant group's draft title and practice act, which can be found in [Appendix A \(p. 44\)](#) of this document.

5. Describe in detail the functions typically performed by practitioners of this occupation and identify what if any specific statutory limitations have been placed on these functions. If possible, explain why the Legislature created these restrictions

In almost any setting or with any clientele, the services provided by a professional behavior analyst typically begin with a behavioral assessment. The goal of the assessment is to identify behaviors that may be targeted for intervention and the strengths, needs, preferences, and circumstances of the client and their caregivers. The assessment typically begins with a review of relevant background information and previous evaluations, interviews with the client and caregivers, and collection of direct observational data on one or more dimensions of potential target behavior(s). A particular type of assessment -- a functional analysis -- may be conducted to identify environmental events that influence potential target behaviors (in behavior analytic terms, the functions of the behaviors).

Behavior analysts promote functionally safe, socially valued behaviors and emphasize the use of positive reinforcement, shaping, fading for both reducing behaviors that occur in excess, and increasing appropriate behaviors that occur at a deficit.

Once the initial assessment has been completed, the behavior analyst develops a treatment plan in collaboration with the client, their caregivers, and other professionals as appropriate. The treatment plan specifies goals, objectives, and procedures (protocols) for improving the target behaviors and measuring client progress on each. The behavior analyst is responsible for training assistant behavior analysts, behavior technicians, and caregivers to implement certain components of the treatment plan with the client, reviewing graphed behavioral data on each target behavior frequently in order to monitor progress and modify intervention procedures as needed, and overseeing implementation of the treatment plans.

Currently there are no statutory limitations placed on the performance of these functions by BACB-certified behavior analysts or others purporting to be qualified to practice behavior analysis. Licensure of professional behavior analysts is needed to protect Nebraska constituents from individuals who do not have the training the profession has determined to be required to practice behavior analysis safely and effectively, and individuals who engage in incompetent or unethical conduct.

6. Identify other occupations that perform some of the same functions or similar functions.

The practice of some behavior analysts may overlap slightly with that of some of the professions listed below; however, the concepts, principles, and procedures of behavior analysis are distinct. See [question 7](#) for further information.

- Clinical Psychologists
- Licensed Independent Mental Health Professionals
- Speech-Language Pathologists
- Occupational Therapists
- School Psychologists
- Social Workers
- Advanced Practice Registered Nurse
- Teachers
- Special Education Professionals
- Clinical Counselors
- Dieticians
- Psychiatrists
- Family Physicians
- Athletic Trainers
- Coaches
- Licensed Mental Health Professionals

7. What functions are unique to this occupation? What distinguishes this occupation from those identified in question 6?

Although techniques of behavior analysis are widely practiced, including by psychologists and educators, behavior analysis is not a subdomain of any other discipline, but is a distinct discipline unto itself.

Behavior analysis is the science of behavior, with a history extending back to the early 20th century. Its guiding philosophy is behaviorism, which is based on the premise that attempts to improve the human condition through behavior change (e.g., education, behavioral health treatment) will be most effective if behavior itself is the primary focus. To date, behavior-analytic scientists have conducted thousands of studies to identify the laws of behavior—the predictable ways in which behavior is learned and how it changes over time. The underlying theme of much of this work has been that behavior is a product of its circumstances, particularly the events that immediately follow the behavior. Behavior analysts have used this information to develop numerous techniques and treatment approaches for analyzing and changing behavior, and ultimately, to improve lives. Because this approach, applied behavior analysis (ABA), is largely based on behavior and its consequences, techniques generally involve teaching individuals more effective ways of behaving and working to change the social consequences of existing behavior. Treatment approaches based on ABA have been empirically shown to be effective in a wide variety of areas. However, because ABA was first applied to the treatment of individuals with intellectual disabilities and autism, this practice area has the largest research base and has received the most recognition. Additional information on the various applications of ABA can be found [here](#).

ABA is the use of the principles and methods of the science to bring about meaningful changes in socially important behaviors. The characteristics of ABA interventions, which have been defined since 1968, distinguish the practice of ABA from that of other professions. An ABA intervention is

- **Applied** – addresses behaviors that are important to the client and their significant others.
- **Behavioral** – focuses on the client behavior(s) in need of improvement and direct measurement of those behaviors (as opposed to measuring the behavior of others who interact with the client, measuring client behavior indirectly by asking others about it, etc.).
- **Analytical** – consistently produces change in a measured aspect of the target behavior(s) when the intervention is in place vs. when it is not.
- **Technological** – described with sufficient detail and clarity that a reader has a reasonable chance of replicating the intervention.
- **Conceptually systematic** – grounded in the conceptualization that behavior is a function of environmental events and described in terms of behavior analytic principles.
- **Effective** – improves target behaviors to a practical degree.

- **Generalized** - produces changes in target behaviors that last over time, occur in situations other than those in which the interventions were implemented initially, and/or spread to behaviors that were not treated directly.

The fact that this profession is distinct from others is recognized by (a) the American Medical Association (AMA) through approval of distinct codes for ABA services and (b) the Centers for Medicare & Medicaid Services issuance of National Provider Identifier (NPI) number for behavior analysts.

CPT Codes

Current Procedural Terminology (CPT) codes, published by the AMA, are the predominant codes used to describe healthcare procedures for reimbursement purposes. In 2014, the AMA approved the first distinct codes for applied behavior analysis services (CPT III codes 0359T-0374T). In 2019, the AMA published a revised and expanded code set for applied behavior analysis services (CPT I codes 97151-97158, CPT III codes 0362T and 0373T). The AMA approved eight CPT Category 1 codes in total for ABA in the revision and expansion. To receive a CPT Category 1 code, a procedure or service must meet general and specific criteria for each code, which includes the “descriptor is unique, well-defined, and describes a procedure or service which is clearly identified and distinguished from existing procedures and services already in CPT.” (emphasis added; full criteria provided at <https://www.ama-assn.org/practice-management/cpt/criteria-cpt-category-i-and-category-iii-codes>) Additionally, specific criteria for Category 1 codes indicate “[t]he clinical efficacy of the procedure or service is documented in literature that meets the requirements set forth in the CPT code-change application.” These criteria, among others, as outlined by the American Medical Association provide evidence at the distinctness of the practice of ABA and the rigorous scientific standards used in ABA.

NPI Codes

The [National Provider Identifier Database](#) (NPID), operated by the Centers for Medicare & Medicaid Services, issues healthcare providers a unique 10-digit number to be used in billing-related activity. This unique number has essentially come to function as a “social security number” for healthcare providers. In addition, NPID categorizes each healthcare provider into a distinct professional class. *Behavior analysts* (103K00000X) and *assistant behavior analysts* (106E00000X) have unique codes in the NPID that are distinct from those of other behavioral health professions – for example, psychologists (103T00000X).

For a full overview and extensive list of resources to highlight how applied behavior analysis is a distinct profession, please refer to [Appendix B \(pg. 50\)](#).

8. Identify other occupations whose members regularly supervise members of this occupation, as well as other occupations whose members are regularly supervised by this occupation. Describe the nature of the supervision that occurs in each of these practice situations.

Because behavior analysis is a distinct profession as indicated by the response in [question 7](#), the BACB credentials Board Certified Behavior Analysts (BCBAs) and Board Certified Behavior Analysts - Doctoral (BCBA-Ds) to practice independently (https://www.bacb.com/wp-content/uploads/2022/01/BCBAHandbook_220110.pdf pg. 1 for information on the independence of practice). As a result, it is not required that other occupations supervise members of this occupation. The only time supervision of BCBAs or BCBA-Ds is required is when specific insurance requires BCBA oversight by a licensed psychologist or licensed mental health practitioner for reimbursement purposes. A majority of insurance companies acknowledge behavior analysis as a stand-alone profession in which BCBAs and BCBA-Ds practice independently.

Professional behavior analysts will provide supervision to other members in the field of behavior analysis but will not supervise members of other professions. Professional behavior analysts who provide supervision within the practice of behavior analysis do so in accordance with the supervision standards currently set forth by the BACB (https://www.bacb.com/wp-content/uploads/2022/01/BCBAHandbook_220110.pdf#Fieldwork%20Requirements See p. 47 for supervision, assessment, training, and oversight information). Supervision entails training those individuals to implement protocols correctly and safely, observing that implementation directly and frequently, and providing corrective feedback and additional training as needed to ensure client progress. (https://www.bacb.com/wp-content/uploads/2020/05/BACB-Compliance-Code-english_190318.pdf.)

9. What actions, judgments, and procedures of this occupation can typically be carried out without supervision or orders? To what extent is this occupation, or portions of its practice, autonomous?

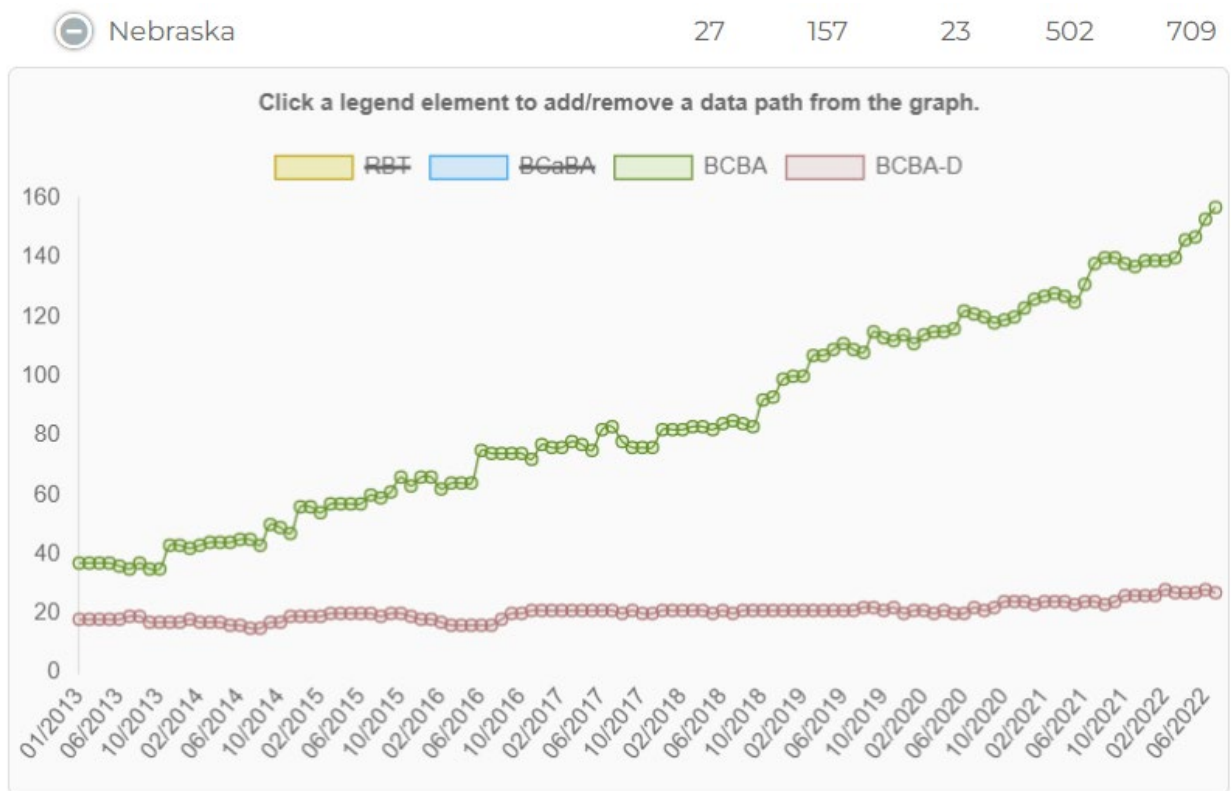
Per the answer to the preceding question, appropriately licensed or certified behavior analysts with advanced degrees can engage in the activities in the profession's scope of practice as defined in state licensure laws (where applicable) or the current BACB Task List (<https://www.bacb.com/wp-content/uploads/2020/08/BCBA-task-list-5th-ed-211019.pdf>) without supervision, provided that the activities are within the individual's scope of training and competence as required by the profession's code of ethics. Some funders, such as health plans, may require a prescription or order from a diagnosing professional before an individual can receive ABA services.

BCBAs practice independently and must follow the supervision guidelines outlined by the BACB. The only exception is that new BCBAs within the first year of their credential who are providing supervision to BCBA and BCaBA trainees must have a consulting supervisor. This consulting supervisor must have at least 5 years of experience of holding the BCBA credential. See more information at https://www.bacb.com/wp-content/uploads/2022/01/BCBAHandbook_220110.pdf on pg. 47.

Current practice of behavior analysts is unrestricted with no oversight or orders. There is no entity in the state that is authorized by law to regulate practitioners of ABA, and thus no local, legally authorized mechanism to protect consumers, employers, and state agencies from individuals who make false claims to the necessary competence, or whose practice is not consistent with the profession's ethical and disciplinary standards.

10. Approximately how many people are performing the functions of this occupation in Nebraska, or are presenting themselves as members of this occupation? To what extent are these people credentialed in Nebraska?

At this writing, in Nebraska there are 157 Board Certified Behavior Analysts (BCBAs), 27 Board Certified Behavior Analysts-Doctoral (BCBA-Ds). Due to the lack of credentialing and regulation of the practice in the State of Nebraska, it is not known how many non-credentialed individuals are purporting to practice ABA or are representing themselves as behavior analysts. Licensure is needed to provide a method for consumers to confirm a provider’s credential, which would in turn provide a clear means for reporting those who are presenting themselves as an ABA practitioner without the necessary credential.



11. Describe the general level of education and training possessed by practitioners of this occupation, including any supervised internship or fieldwork required for credentialing. Typically, how is this education and training acquired?

Current eligibility requirements for taking the BCBA certification exam are outlined in the BACB's Board Certified Behavior Analyst Handbook, (https://www.bacb.com/wp-content/uploads/2022/01/BCBAHandbook_220110.pdf#Fieldwork%20Requirements; see p 5 for eligibility requirements). They include a graduate degree in behavior analysis, education, or psychology from a qualified institution; a total of 270 semester hours of graduate-level coursework in specified content areas in behavior analysis, evidence of having taught specific behavior analytic course content at the graduate level, or evidence of having 10 years' full-time experience practicing as a credentialed behavior analyst; and completion of specified hours of supervised experiential training as shown in the link provided in this question.

In 2032, the requirements to become BCBA will become more strict, indicating that a standardized method of training from institutions deemed to provide competent education and training is warranted. Even those with higher education degrees or experience teaching behavior analytic coursework at the graduate level will not be permitted to become a BCBA unless they complete a master's degree from an ABAI accredited or recognized program plus 1,500 or more supervised fieldwork hours before taking and passing the national certification exam. For more information on the upcoming changes for BCBA credentialing, visit <https://www.bacb.com/upcoming-changes/>.

12. Identify the work settings typical of this occupation (e.g., hospitals, private physicians' offices, clinics, etc.) and identify the predominant practice situations of practitioners, including typical employers for practitioners not self-employed (e.g., private physician, dentist, optometrist, etc.).

Behavior analysts work in a variety of settings. They include but are not limited to public and private schools, childcare facilities, hospitals, clinics, centers, offices, family homes, group homes and other residential facilities, day treatment programs, vocational programs, nursing homes and other eldercare facilities, detention and rehabilitation facilities, businesses of various kinds, and universities.

Employers include but are not limited to public and private education systems, universities, state governmental agencies (e.g., Division of Developmental Disabilities, Children and Family Services), physicians, hospitals, healthcare agencies and systems, and companies or agencies that operate residential, day treatment, vocational training, and rehabilitation programs. Behavior analysts may also be self-employed in private practices.

13. Do practitioners routinely serve members of the general population? Are services frequently restricted to certain segments of the population (e.g., senior citizens, pregnant women, etc.)? If so, please specify the type of population served.

Services often are provided, but not limited to, individuals with autism and other developmental disabilities, intellectual disabilities, learning and communication difficulties, attention deficit hyperactivity disorder, brain injuries, physical disabilities, behavior disorders, substance use disorders, feeding disorders, movement disorders, health problems, and difficulties associated with aging, as well as typically developing individuals (e.g., students, workers, athletes, caregivers) of all ages.

Autism and Developmental Disabilities:

https://www.bacb.com/wp-content/uploads/2020/05/Behavioral-Treatment-of-Autism-and-Other-Developmental-Disabilities-Fact-Sheet_210108.pdf

Sports:

https://www.bacb.com/wp-content/uploads/2020/05/Behavioral-Sport-Psychology-Fact-Sheet_210125.pdf

Clinical Behavior Analysis:

https://www.bacb.com/wp-content/uploads/2020/05/Clinical-Behavior-Analysis-Fact-Sheet_190520.pdf

Organizational Behavior Management:

https://www.bacb.com/wp-content/uploads/2020/05/Organizational-Behavior-Management-Fact-Sheet_190609.pdf

Behavioral Gerontology:

https://www.bacb.com/wp-content/uploads/2020/05/Behavioral-Gerontology-Fact-Sheet_190520.pdf

Brain Injury Rehabilitation:

https://www.bacb.com/wp-content/uploads/2020/05/Behavior-Analysis-in-Brain-Injury-Rehabilitation-Fact-Sheet_190520.pdf

Education:

https://www.bacb.com/wp-content/uploads/2020/05/Behavior-Analysis-in-Education-Fact-Sheet_210108.pdf

Sustainability:

https://www.bacb.com/wp-content/uploads/2020/05/Behavior-Analysis-in-Environmental-Sustainability-Fact-Sheet_210108.pdf

Behavioral Pediatrics:

https://www.bacb.com/wp-content/uploads/2020/05/Behavioral-Pediatrics-Fact-Sheet_190520.pdf

Prevention/Intervention of Child Maltreatment:

https://www.bacb.com/wp-content/uploads/2020/05/Prevention-and-Behavioral-Intervention-of-Child-Maltreatment-Fact-Sheet_210108.pdf

Health and Fitness:

https://www.bacb.com/wp-content/uploads/2020/05/Behavior-Analysis-in-Health-and-Fitness-Fact-Sheet_210104.pdf

Treatment of Substance Abuse Disorders:

https://www.bacb.com/wp-content/uploads/2020/05/Behavioral-Treatment-of-Substance-Use-Disorders-Fact-Sheet_210108.pdf

14. Identify the typical reasons a person would have for using the services of a practitioner. Are there specific illnesses, conditions or situations that would be likely to require the services of a practitioner? If so, please specify

Please see the answer to [question 13](#) for typical clients of ABA practitioners. Specific illnesses and conditions include but are not limited to dementia, chronic pain, depression, mental illnesses, feeding disorders, behavior problems with significant medical dimensions (e.g., encopresis), medical problems with significant behavioral dimensions (e.g., diabetes, smoking cessation, weight management), noncompliance with medical regimens, autism spectrum disorder, intellectual and developmental disabilities, substance use disorders, behavioral disorders, communication deficits, brain injury rehabilitation, neurocognitive disorders, memory problems, anxiety, stress, relationship discord, disruptive behavior, impulsivity, inattention, movement disorders, and sleep disturbance.

The services of ABA practitioners may also be sought or prescribed in the following situations. The following is not an exhaustive list:

- To improve personal health and fitness. Behavior analysts work directly with individuals or in collaboration with healthcare professionals, registered dietitians, and personal trainers to help individuals adhere to dietary and physical activity regimens. Behavior analytic intervention procedures typically include task clarification, goal-setting, self-monitoring, accountability, feedback, self-talk regulation, stimulus control, behavioral skills training, and contingency management.
- To improve work environments. The subspecialty of Organizational Behavior Management (OBM) focuses on assessing and changing the work environment to improve employee performance and workplace culture. OBM consultants and managers work in a variety of industries (e.g., health care, human services, education, government, nonprofits, manufacturing, financial services, retail) to achieve meaningful and sustainable behavior change and improved business outcomes. OBM practitioners typically facilitate change initiatives, improve and develop processes and systems, close gaps in employee performance, retain and develop staff, and support business growth. Organizational results often include reduced accidents and injuries, improved employee retention, improved customer satisfaction and retention, cultural integration after mergers and acquisitions, improved quality standards, and increased revenue and profits.
- In sports and athletic training. Behavior analytic concepts, principles, and techniques can be used to enhance the performance and satisfaction of athletes, teams, and coaches. Common goals include teaching new skills; decreasing persistent errors; decreasing problem behaviors; maximizing competition performance; addressing motivation, thinking, emotions, confidence, and concentration related to athletic performance; teaching coaching techniques; and promoting adherence to a healthy diet and regular exercise regime. Common

interventions include goal-setting and self-monitoring, self-talk regulation, imagery rehearsal/visualization, video feedback, auditory feedback, behavioral skills training, contingency management, and the development of user-friendly manuals and computer tools.

- To improve education. Behavior analytic methods have been used to improve teaching and learning across many content areas, grade levels, and student populations for over 60 years. In that context, behavior analysis is a natural scientific approach to designing, implementing, and evaluating instruction based on analyzing interactions between teacher and student behaviors. Behavior analytic strategies and tactics have been used to teach academic, social, vocational, and daily living skills to people with and without diagnosed disorders or conditions and to improve entire systems of schooling. Key features include high rates of relevant learner responses with contingent feedback and ongoing instructional decision-making based on direct and frequent measures of student performance. Behavior analytic instructional design informs curriculum development from pre-academic skills to high-level concept formation and problem solving.

Additional information on the various applications of ABA can be found [here](#).

15. Identify typical referral patterns to and from members of this occupational group. What are the most common reasons for referral?

Some common sources of referrals to professional behavior analysts are physicians, psychologists, social workers, counselors, and other professionals who serve individuals with disorders and conditions like those listed in the answers to [questions 13](#) and [14](#), which are the most common reasons for referrals. The diagnosing professional may refer a client to a behavior analyst or an ABA service agency or may make a referral in the form of or accompanied by a letter, order, or prescription stating that ABA services are medically or clinically necessary for the client if that is required to obtain authorizations for services from third-party payers. Other sources of referrals include other behavior analysts, employees of health plans, employees of state human service agencies, school personnel, and family members of prospective clients.

Behavior analysts may refer clients and their caregivers to other behavior analysts who specialize in specific areas of behavior analytic treatment. For example, if a client displays severe problem behavior, a behavior analyst who does not have adequate training and competence to treat the client effectively should refer them to a colleague who does have the necessary training and competence. If there is a possibility that a physical condition may be contributing to a problem behavior, the behavior analyst should refer the client to the appropriate medical professional(s). Behavior analysts often also refer to or consult with speech and language pathologists, occupational therapists, physical therapists, mental health counselors, social workers, psychiatrists, psychologists, physicians, and other professionals with specialized expertise.

16. Is a prescription or order from a practitioner of another health occupation necessary in order for services to be provided?

No, there is no requirement of a prescription or order from a practitioner to practice ABA services. A prescription may be required by funders for the purpose of reimbursement for services.

17. How is continuing competence of credentialed practitioners evaluated?

The proposed State of Nebraska Behavior Analyst Licensing Board would set the continuing education requirements no less than those currently required by the BACB for continuing competence for national certification. The State of Nebraska Behavior Analyst Licensing Board may require additional continuing education.

At the time of writing this application, the BACB requires BCBA-Cs and BCBA-Ds to obtain ongoing continuing education and adhere to the BACB's ethics requirements (<https://www.bacb.com/ethics-information/ethics-codes/>) and self-reporting requirements (<https://www.bacb.com/ethics-information/reporting-to-ethics-department/self-reporting/>).

Continuing education standards currently consist of 32 continuing education units (CEUs) in a 2-year cycle, with at least 4 CEUs in Ethics and 3 in Supervision (if applicable). More information on requirements to maintain BACB certification can be found starting on p. 37 of the BCBA Handbook (https://www.bacb.com/wp-content/uploads/2022/01/BCBAHandbook_220110.pdf#Fieldwork%20Requirements).

18. What requirements must the practitioner meet before his or her credentials may be renewed?

Licenses would be renewed with proof of approved re-certification through the BACB. This ensures the necessary continuing education requirements have been met. Please see information and links provided on [question 17](#) for information about re-certification requirements.

19. Identify other jurisdictions (states, territories, possessions, or the District of Columbia) wherein this occupation is currently regulated by the government, and the scopes of practice typical for this occupation in these jurisdictions.

At this writing, the following 36 U.S. states have adopted laws to license professional behavior analysts: Alabama, Alaska, Arizona, Connecticut, Georgia, Hawaii, Indiana, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Montana, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, and Wyoming. All of those laws have been adopted since 2009, reflecting the fact that the profession is relatively young.

The wording of the scope of practice definition varies somewhat across those 36 licensure laws, depending in part on the model licensure act that was published at the time the law was adopted. In most, however, the definition is identical or similar to the one that appears in the current application.

Additional Question an Applicant Group Must Answer about their Proposal

1a) What is the problem created by not regulating the health professional group under review, or by not changing the scope of practice of the professional group under review?

Many people with autism and related disorders, intellectual disabilities, traumatic brain injuries, and other conditions exhibit behaviors that directly jeopardize their health and safety, such as self-injury, elopement, pica (ingesting inedible items), feeding problems, and aggression. Such behaviors often result in costly and largely ineffective use of psychotropic medications, emergency room services, psychiatric hospitalizations, and residential services as well as tremendous emotional and financial burdens for families (e.g., [Houghton, Ong, & Bolognai, 2017](#); [Mandell, 2008](#); [Montes & Halterman, 2008](#); [Tsakanikos, Costello, Holt, Sturmey, & Bouras, 2006](#)). Substantial research shows that competently designed and delivered ABA interventions are effective for reducing problem behaviors (e.g., [Campbell, 2003](#); [Hagopian, Rooker, & Rolider, 2011](#); [Hassiotis, Canagasabay, Robotham, Marston, & Romeo, 2010](#); [Heyvaert, Maes, Van den Noortgate, Kuppens, & Onghena, 2012](#); [Lang et al., 2009](#); Ontario Association for Behaviour Analysis, 2019). Conversely, research has shown that interventionists who lack sufficient training in ABA can actually *increase* the occurrence of such behaviors in people with autism and other disorders (e.g., [Lovaas, Freitag, Gold, & Kassarla, 1965](#); [Lovaas & Simmons, 1969](#); [Mason & Iwata, 1990](#); also see [Hanley, Iwata, & McCord, 2003](#)).

Abundant research also shows that early, intensive ABA treatment can produce moderate to large improvements in the overall functioning of many young children with autism when that treatment is designed and supervised by qualified professional behavior analysts (e.g., see [Eldevik et al., 2009, 2010](#); [Green, 2011](#); [Klintwall, Eldevik, & Eikeseth, 2015](#); [Virues-Ortega, Rodriguez, & Yu, 2013](#)). The resulting decreased need for specialized services yields large cost savings for the systems that are responsible for education, healthcare, and other services for people with autism ([Chasson, Harris, & Neely, 2007](#); [Jacobson, Mulick, & Green, 1998](#); [Motiwala, Gupta, & Lilly, 2006](#)). In contrast, studies have shown that early “behavioral” intervention overseen by individuals who made unsupported claims to be qualified as ABA “consultants” produced no improvements in young children with autism ([Bibby et al., 2002](#); [Mudford et al., 2001](#)). Thus, the fees paid to those consultants as well as the very precious time of the children they served were lost.

One illustration of harms resulting from the absence of state regulation of practitioners of behavior analysis can be seen in a situation involving an individual in Connecticut who misrepresented herself as a Board Certified Behavior Analyst several years ago. That individual was employed by 5 public school districts to oversee “ABA” interventions for students with autism. The schools did not check her credentials, and over the course of about 3 years paid her nearly \$500,000 in taxpayer-funded fees. Some parents began to question the interventions the individual developed for their children, until eventually it came to light that she had fabricated her BCBA certification and degrees,

and she was convicted of fraud. As a result of that case the state of Connecticut adopted a law requiring public schools to have bona fide BCBAs design and oversee ABA interventions that were in the individualized education plans (IEPs) for students with autism. Subsequently the state also adopted a law to license behavior analysts. Legal cases involving individuals who misrepresented their qualifications in the practice of behavior analysis have arisen in several other states as well. In a state without regulations for the practice of behavior analysis, issues such as those seen in Connecticut and several other states would be overlooked and harm the consumers and all constituents.

To summarize the above, many behavior-analytic interventions are highly effective and safe when designed, delivered, and overseen by qualified professional behavior analysts, but ABA methods can easily be misused and abused by those who lack the necessary training and competencies. As described previously, the Behavior Analyst Certification Board (BACB) has conducted job analysis studies and followed other well-established procedures and standards to identify the competencies needed to practice ABA, specified the didactic and experiential training required to attain those competencies, developed and validated professional examinations in the subject matter, established continuing education requirements, and developed professional and ethical standards. At present there is no entity in Nebraska that is authorized by law to regulate practitioners of behavior analysis, and thus no local, legally authorized mechanism to protect consumers, employers, and state agencies from individuals who make false claims to the necessary competence, or whose practice is not consistent with the profession's ethical and disciplinary standards. Without a law specifying that all individuals who practice ABA professionally must meet well-established training standards, pass a professional examination in the practice of ABA, and adhere to the profession's code of ethics, our most vulnerable citizens are at significant risk of harm. Establishing licensure of behavior analysts with BACB certification as the primary qualification will fill that void and protect the public.

While there are no prohibitions for the practice of behavior analysis, there are regulations regarding reimbursement that could present barriers to access behavior analytic services. Nebraska Medicaid coverage describes that ABA services must be provided under a professional who is licensed or is providing services under a licensed practitioner. This requirement can limit access to services for those with Medicaid, especially considering the current behavioral health provider shortage across the State of Nebraska. In the 2020 & 2021 Legislative Report, the Behavioral Health Education Center of Nebraska (BHECN) identified that 88 of 93 counties in Nebraska are Mental Health Professions Shortage Areas, and 29 Nebraska counties have no behavioral health providers of any kind (more information can be found on the [FY 2020 & 2021 Legislative Report](#)). While insurance requirements for reimbursement does not impact provision of services, it may pose a barrier to accessing services, specifically for children with Medicaid. When considering the shortage of licensed professionals in Nebraska already, access to services for our most vulnerable is already limited without the licensure of behavior analysts.

Finally, Nebraska is currently experiencing a drastic increase in the number of ABA-based service providers opening centers in Nebraska without a base in Nebraska. These nation-wide clinics have standardized business models across states and follow the licensure laws in a given state. Because Nebraska does not require a license to practice, only to be reimbursed through Medicaid, these companies would likely bypass children with Medicaid in order to receive reimbursement through insurance companies without licensure requirements, or the companies will require families to self-pay for services. Over one-half of ABA companies in Nebraska are national chain companies or companies based outside of Nebraska, which creates a significant barrier to accessing services, specifically for children with Medicaid.

2a) If the proposal is for the regulation of a health professional group not previously regulated, all feasible methods of regulation, including those methods listed below, and the impact of such methods on the public, must be considered. For each of the following evaluate the feasibility of applying it to the profession and the extent to which the regulatory method would protect the public.

- Inspection Requirements:
Not appropriate. The threat to the public health, safety, and welfare are above a “relatively small” threat, so direct credentialing is necessary (Uniform Credentialing Act and Neb. Rev. Stat. 71-6222). Inspection of facilities would not provide sufficient oversight to the facilities or individuals providing behavior analytic services.
- Injunctive Relief:
Not appropriate. The threat to the public health, safety, and welfare are above a “relatively small” threat, so direct credentialing is necessary (Uniform Credentialing Act and Neb. Rev. Stat. 71-6222). Bringing to an end a harmful practice *following* harm does not provide the necessary initial safeguard needed to ensure necessary competency to provide behavior analytic services. As demonstrated in the application, harm to our most vulnerable population is possible, and direct regulation is needed to prevent harm.
- Regulating the business enterprise rather than individual providers
Not appropriate. The threat to the public health, safety, and welfare are above a “relatively small” threat, so direct credentialing is necessary (Uniform Credentialing Act and Neb. Rev. Stat. 71-6222). Regulation of business enterprise would not provide sufficient regulation compared to direct regulation that would function to ensure professional standards required to provide behavior analysis services. Additionally, independent providers are able to provide services, so regulation of business enterprise would not regulate independent contractors.
- Regulating or modifying the regulation of those who supervise the providers under review
Not appropriate. The threat to the public health, safety, and welfare are above a “relatively small” threat, so direct credentialing is necessary (Uniform Credentialing Act and Neb. Rev. Stat. 71-6222). Applied behavior analysis is a distinct profession requiring distinct training and competencies, so regulation under a different profession would not be appropriate.
- Registering the providers under review
Applied behavior analysis is a natural science approach to human behavior with the intent to understand and produce meaningful change in the behavior of consumers. The discipline of behavior analysis has theoretical, experimental, and applied branches. The approach to applied behavior analysis is based off principles of these three branches of behavior analysis, and therefore does not

have different theories of behavioral mechanisms. Registration would not provide sufficient protection and does not meet the criteria outlined in Neb. Rev. Stat. 71-6222(2), as there is not a diversity of approaches and theories.

- Certifying the providers under review by the State of Nebraska

It is the belief of the applicant group that certification or licensure of the practice of behavior analysis is the required amount of regulation, however the applicant group still views certification as suboptimal. Many behavior-analytic methods are powerful, and can easily be misused and abused by those who lack necessary training. Oversight of the practice of behavior analysis is needed for protection, but this oversight should be provided by individuals with a deep understanding of the principles of behavior analysis, the methods used in behavior analysis, the ethical standards of the profession, and the dangers associated with various procedures. As a result, we believe regulation under certification is suboptimal as the profession would not be self-regulating and therefore not privy to the standard practice of the field.

- Licensing the providers under review

Licensure of behavior analysis is both feasible and necessary to protect the public. As outlined in this proposal, a sound model for licensing behavior analysts exists and is being implemented in many jurisdictions. It makes current certification by the Behavior Analyst Certification Board (BACB) the main qualification for state licensure, thereby ensuring that every applicant for licensure will have had their degrees, coursework, and supervised experiential training verified and will have passed the only psychometrically and legally validated professional examination in the practice of ABA. That will ensure that license holders meet standards for practicing ABA that have been set by the profession, and that parallel requirements for licensure in most other professions. Additionally, it will put the regulation efforts in the hands of professionals who have similar education, training, and demonstrated competency and who will be able to make decisions based on the ethical and professional standards of the practice. It will also save the state licensing entity a great deal of labor and money and make operation of the licensure program very cost-effective.

3a) What is the benefit to the public of regulating the health professional group under review or changing the scope of practice of the regulated health profession under review?

As noted earlier, independent practice of ABA requires a high level of specialized formal and experiential training, as reflected in the BACB certification standards. Behavior analysts often work with individuals who engage in severe problem behavior such as aggression, property destruction, and self-injury. Additionally, behavior analysts often work with populations with limited vocal-verbal repertoires that limits their participation in other therapies. These very vulnerable populations have different needs than clients that are typically served by mental health professionals. To treat such behaviors effectively, a behavior analyst must conduct specialized assessments, implement treatments tailored to those assessment results, train appropriate individuals to carry out those treatments, monitor and oversee the individual's progress, and develop procedures that will last over time and generalize to non-treatment settings. By enacting the legislation proposed here, the legislature will ensure that Nebraska constituents have an objective means of identifying providers who have met standards identified by an approved credentialing body and that they receive services from practitioners who have met requirements comparable to those that apply to most other healthcare and human service professions. It will also ensure that, like most other professions, the practice of behavior analysis is regulated by a board with full authority to enforce the licensure law and regulations. That includes authority to investigate alleged violations of ethical standards, and to impose sanctions on those who are found guilty, up to and including revocation of licenses. This would protect constituents from individuals who have lost their license in other states who move to Nebraska to continue providing services due to the current lack of local legislation overseeing the profession.

4a) What is the extent to which the proposed regulation or the proposed change in scope of practice might harm the public?

We anticipate that adoption of the proposed licensure law will ultimately protect the public by ensuring that providers meet quality standards and provide quality services for consumers.

It is likely that the proposed regulation may restrict some individuals who purport to be practicing ABA because it will require current national certification and a state-issued license to practice legally in the state. It is important to note, however, that the proposed standards are not more restrictive than necessary to ensure the safe and effective practice of ABA. Rather, the standards reflect the minimum requirements the profession deems necessary. They are similar to the licensure requirements of other professions in Nebraska and for licensure in behavior analysis in 36 states (see <https://www.bacb.com/u-s-licensure-of-behavior-analysts/> for details on licensure standards of other jurisdictions). Additionally, the BACB certification programs have been in place for more than 20 years. During that time the number of BACB certificants has increased substantially, suggesting that the certification standards have not restricted entry into the profession. To illustrate, in January 2013 there were 55 individuals with a BCBA or BCBA-D credential in Nebraska. At this writing there are 184 -- a 234.5% increase in the last 9 years. A recent analysis commissioned by the BACB found that there were 265 job postings for BCBAs or BCBA-Ds in Nebraska in 2021, which was a 42% increase from 2020. The analysis also found the demand for BCBA and BCBA-Ds in the U.S. increased by 5,852% in the last 12 years, with increases occurring each year since 2010 (https://www.bacb.com/wp-content/uploads/2022/02/BurningGlass2022_220208.pdf).

The demand for ABA services in this state and elsewhere creates the potential for individuals to capitalize on the vulnerability of constituents seeking behavior analytic services by fraudulently representing that they are qualified to provide them. Without licensure for behavior analysis, consumers who are harmed by such individuals have no entity within the state that can enforce disciplinary actions or sanctions.

5a) What standards exist or are proposed to ensure that a practitioner of the health professional group under review would maintain competency?

We propose to incorporate the continuing education requirements outlined in the answer to [question 17](#). Those requirements are reiterated below.

At the time of writing this application, the BACB requires BCBA-Cs and BCBA-Ds to obtain ongoing continuing education, adhere to the BACB's ethics requirements (<https://www.bacb.com/ethics-information/ethics-codes/>) and self-reporting requirements (<https://www.bacb.com/ethics-information/reporting-to-ethics-department/self-reporting/>) See the link below for the current BACB continuing education requirements. Continuing education standards currently consist of 32 continuing education units in a 2-year cycle, with at least 4 CEUs in Ethics and 3 in Supervision (if applicable). More information can be found starting on p. 37 of the BCBA Handbook (https://www.bacb.com/wp-content/uploads/2022/01/BCBAHandbook_220110.pdf#Fieldwork%20Requirements).

6a) What is the current and proposed role and availability of third-party reimbursement for the services provided by the health professional group under review?

Currently ABA services are designated medically necessary for individuals with autism spectrum disorder and reimbursed by many commercial health plans in the state per LB254, which went into effect in 2014. Medicaid also covers ABA services, but only for ABA providers under the supervision of other licensed professionals. By licensing behavior analysts, it opens services for individuals with Medicaid to clinics and individual practitioners who previously did not have a licensed professional on staff and was unable to bill for services.

Some services provided by behavior analysts may fall outside the realm of autism services that are covered through third-party insurance providers (e.g., smoking cessation). In these cases, insurance companies may potentially reimburse for services that are provided by an untrained and unqualified individual. Furthermore, the services provided by these individuals may not be effective, or worse, harmful to the consumers.

7a) What is the experience of other jurisdictions in regulating the practitioners affected by the proposal? Identify appropriate statistics on complaints, describing actions taken, etc., by jurisdictions where the profession is regulated.

State Complaints and Disciplinary actions

Missouri: Began licensing behavior analysts in 2010. As of 2020 the Missouri licensing entity had licensed 113 behavior analysts and investigated 13 complaints against licensees. (<https://pr.mo.gov/ba.asp>)

Missouri was included due to the state having licensure for over a decade and giving a relative comparison to another Midwest state.

There are currently no data to report in Nebraska because the lack of licensure results in any fraudulent practice going unnoticed and/or unreported.

8a) What are the expected costs of regulating the health professional group under review, including the impact of registration, certification, or licensure on the costs of services to the public? What are the expected costs to the state and to the general public of implementing the proposed legislation?

Because the cost of administering the proposed licensure program is low, it is not anticipated that adoption of the licensure law will have a measurable impact on the costs of behavior analytic services to the public. The proposed State of Nebraska Behavior Analyst Licensing Board will not be as costly to operate as many other licensing boards because BACB certification will be the primary qualification for licensure. The licensing of this profession will be revenue-neutral, self-sustaining, and self-funding.

The BACB (or other approved credentialing boards) will have vetted applicants for licensure to see that they meet the degree, coursework, and supervised experience requirements set by the profession, and will verify that the applicant has passed the professional examination in behavior analysis, so the state board will not have to incur any of those costs. Additionally, the BACB (or other approved credentialing board) has established procedures for coordinating with state licensing entities to vet applicants and on disciplinary matters. Therefore, the proposed State of Nebraska Behavior Analyst Licensing Board will be able to operate in a cost-effective manner without charging prohibitive licensure fees.

The expected cost to licensure can be highlighted by looking at another state that has enacted licensure for behavior analysis. Kentucky is a state that has had licensure for behavior analysts for over 11 years. Beginning in 2011, 20 licenses were issued. In 2020, nearly 400 licenses were active in that jurisdiction. Each fiscal year since the onset of licensure, the cost in revenue has been greater than the cost of expenses, resulting in cash carried forward into the next fiscal year (information on cost found on page 4 at <https://aba.ky.gov/Documents/March%202021%20ABA%20Newsletter.pdf>). It is anticipated that the operating costs in Nebraska would be similar, indicating that a stand-alone behavior analyst licensing board would be cost-effective to the state.

9a) Is there any additional information that would be useful to the technical committee members in their review of the proposal?

To expand on information provided in the answer to [question 4a](#), from 1999 to 2014 the number of BACB certificants went from 0 to more than 16,000 in the U.S. ([Deochand & Fuqua, 2016](#)). Over that same time period the numbers in Nebraska increased from 0 to 75. <https://www.bacb.com/services/o.php?page=101134>

Starting in 2007, laws requiring certain commercial health plans to cover ABA and other services for individuals diagnosed with an autism spectrum disorder began to be adopted in many states, including Nebraska in 2014. Such laws or state orders with similar requirements are now in place in all 50 states, which has spurred large increases in the demand for ABA services from qualified professionals. At this writing there are more than 51,000 BCBAs and BCBA-Ds and more than 4,000 BCaBAs in the U.S (see BACB link previously in [question 9a](#)). As noted previously, the demand for ABA services in Nebraska is expected to continue to increase, raising concerns that individuals who do not have the necessary training will attempt to practice and bill third-party payers for “ABA” services. That is a direct threat to the health, safety, and wellbeing of Nebraska consumers who seek quality behavior analytic services.

The proposed licensure law will provide consumers of ABA services a double layer of protection, because the practice of licensees will be overseen by both the state licensing board and the BACB. It will also allow appropriately credentialed members of other professions to practice behavior analysis without being licensed under this law, provided that the practice of behavior analysis is in that profession’s legislated scope of practice and the individual’s scope of training and competence. Licensure for behavior analysis will provide protections to consumers while ensure continued access to service.

Finally, the Draft of the Licensure Act in [Appendix A](#) provides a summary of how the licensure would be carried out in the State of Nebraska and the rationale for requiring such title and practice act.

Appendix A

An Act to License Behavior Analysts – Draft

Preamble

An Act to license professional practitioners of applied behavior analysis; to establish the Behavior Analyst Licensing Board; to authorize the Board to regulate the practice of behavior analyst professionals; to provide for the membership, terms of office, powers, and duties of the Board; to establish requirements for licensure; and to provide exemptions from licensure.

Section 1. Declaration of Policy

The practice of applied behavior analysis in State of Nebraska is hereby declared to affect the health, safety, and welfare of citizens of State of Nebraska and to be subject to regulation to protect the public from (i) the practice of applied behavior analysis by unqualified persons, and (ii) unprofessional, unethical, and/or harmful conduct by behavior analysis practitioners.

Section 2. Prohibitions and Penalties

- A. The practice of applied behavior analysis by unlicensed individuals is prohibited unless they are exempted in Section 7 of this Act.
- B. No person shall hold himself or herself out to be a Licensed Behavior Analyst unless they are licensed under this Act.
- C. The Behavior Analyst Certification Board's [Ethics Code for Behavior Analysts](#) is incorporated herein as the code of conduct for individuals licensed under this Act.
- D. Any person found to be in violation of any provision(s) of this Act shall be subject to a fine of no less than [X] dollars. Violators who are licensed under this Act shall be subject to other sanctions and penalties, up to and including revocation of licenses.

Section 3. Definitions

For the purposes of this Act and elsewhere in the Uniform Credentialing Act, unless the context otherwise requires, the definition in the following sections apply:

- A. BOARD. The State of Nebraska Behavior Analyst Licensing Board, which is authorized to implement and enforce this Act and oversee the practice of applied behavior analysis.
- B. CERTIFYING ENTITY. The Behavior Analyst Certification Board (BACB) or

another entity whose programs to credential practitioners of applied behavior analysis are accredited by the National Commission on Certifying Agencies (NCCA) or the American National Standards Institute (ANSI).

- C. LICENSED BEHAVIOR ANALYST. An individual who is certified by the certifying entity as a Board Certified Behavior Analyst® (BCBA®) or Board Certified Behavior Analyst -Doctoral™ (BCBA-D™) and who meets the other requirements specified in Section 5 of this Act.
- D. ASSISTANT BEHAVIOR ANALYST. An individual who is approved by the certifying entity as a Board Certified Assistant Behavior Analyst® (BCaBA®) and practices under the close, ongoing supervision of a Licensed Behavior Analyst.
- E. BEHAVIOR TECHNICIAN. A paraprofessional who practices under the close, ongoing supervision of a Licensed Behavior Analyst. The behavior technician does not design assessment or intervention plans or procedures but delivers services as assigned by the supervisor responsible for his or her work.
- F. PRACTICE OF APPLIED BEHAVIOR ANALYSIS. The design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior. The practice of applied behavior analysis includes the empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis. Applied behavior analysis interventions are based on scientific research and direct and indirect observation and measurement of behavior and environment. They utilize contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other procedures to help individuals develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions. The practice of applied behavior analysis excludes diagnosis of disorders, psychological testing, psychotherapy, cognitive therapy, psychoanalysis, and counseling.
- G. DIRECTOR. The Director of Public Health of the State of Nebraska Division of Public Health or their designee.

Section 4. Behavior Analyst Licensing Board

- A. The State of Nebraska Behavior Analyst Licensing Board is hereby established. The Board shall issue licenses to individuals who meet the requirements specified in this Act, promulgate rules and establish fees necessary to implement this Act, and investigate all complaints relating to the practice of applied behavior analysis by any Licensed Behavior Analyst or any other person alleged to be violating any of the provisions of this Act.
- B. The initial Board shall consist of four members, including three Board Certified Behavior Analysts or Board Certified Behavior Analysts-Doctoral who are eligible for licensure under this Act and one public member who is not a professional

behavior analyst. The Board Certified Behavior Analyst and Board Certified Behavior Analyst–Doctoral members shall apply for licensure as soon as feasible. Subsequently the Board shall consist of three Licensed Behavior Analysts and one public member.

- C. The membership of the Board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the State of Nebraska. Each member shall serve a three-year term, with initial terms being staggered so that one member serves an initial term of one year, one member serves an initial term of two years, and two members serve initial terms of three years, as provided by the director. The public member shall be a person who is not and never was a member of the profession licensed or regulated under this Act or the spouse of such a person, and who does not have and never has had a material interest in the practice of applied behavior analysis.
- D. Members of the Board shall be appointed by the director upon recommendations submitted by the Nebraska Association for Behavior Analysis and any other group deemed appropriate by the director. Terms and vacancies shall be filled as follows:
 - (i) Any vacancy occurring other than by expiration of terms shall be filled for the remainder of the unexpired term by appointment by the director upon recommendation of the Board.
 - (ii) No member shall serve more than two successive three-year terms.
 - (iii) A member shall serve until a successor is appointed and assumes office.
 - (iv) Members shall not be remunerated, but shall be paid out of the funds of the Board the same per diem as prescribed by law for State of Nebraska employees for each day of attendance at Board meetings.
- E. The Board shall meet at least twice annually and may meet at such other times as necessary, at the call of the chair or by a majority of the members, to complete the business required.
 - (i) Three members of the Board shall constitute a quorum.
 - (ii) The Board shall elect a chair from among its membership on an annual basis.

Section 5. Eligibility Requirements for Initial Licensure

Each applicant for licensure as a Licensed Behavior Analyst shall submit an application and specified fees to the Board. The application must include evidence that the applicant meets all of the following requirements:

- (i) Is of good moral character.

- (ii) Has successfully completed a criminal background check.
- (iii) Each applicant shall also have their current certification as a Board Certified Behavior Analyst or Board Certified Behavior Analyst-Doctoral verified with the certifying entity by the Board.

Section 6. Expiration and Renewal

A license shall be granted for a period of 2 years. Prior to expiration of a license, the license may be renewed upon submission of an application for renewal, Board verification of current certification by the certifying entity, and payment of any renewal fee established by the Board.

Section 7. Exemptions

The provisions of this Act shall not be construed as prohibiting or restricting the practice of any of the following:

- A. Individuals licensed to practice psychology in State of Nebraska and those who deliver psychological services under their supervision, provided that (a) applied behavior analysis is in the scope of practice section of the State of Nebraska psychology licensure law; (b) the applied behavior analysis services provided are within the boundaries of the Licensed Psychologist's education, training, and competence; and (c) the Licensed Psychologist does not represent that they are a Licensed Behavior Analyst unless also licensed under this Act.
- B. Individuals licensed to practice other professions in State of Nebraska and those who deliver services under their supervision, provided that (a) applied behavior analysis is in the scope of practice section of the profession's licensure law; (b) the applied behavior analysis services provided are within the boundaries of the licensed professional's education, training, and competence; and (c) the licensed professional does not represent that they are a Licensed Behavior Analyst unless also licensed under this Act.
- C. Board Certified Assistant Behavior Analysts (BCaBAs) who practice under the extended authority and direction of a Licensed Behavior Analyst who is approved by the certifying entity to supervise BCaBAs.
- D. Behavior technicians who deliver applied behavior analysis services under the extended authority and direction of a Licensed Behavior Analyst or an assistant behavior analyst. Such individuals must not represent themselves as professional behavior analysts, and must use titles that indicate their nonprofessional status, such as "ABA technician," "behavior technician," or "tutor."
- E. Caregivers of recipients of applied behavior analysis services who deliver those services to the recipients under the extended authority and direction of a Licensed Behavior Analyst. Such individuals must not represent themselves as professional

behavior analysts.

- F. Behavior analysts who practice with nonhumans, including applied animal behaviorists and animal trainers. Such individuals may use the title “behavior analyst” but may not represent themselves as Licensed Behavior Analysts unless licensed under this Act.
- G. Professionals who provide general applied behavior analysis services to organizations, so long as those services are for the benefit of the organizations and do not involve direct services to individuals. Such professionals may use the title “behavior analyst” but may not represent themselves as Licensed Behavior Analysts unless licensed under this Act.
- H. Matriculated college or university students or postdoctoral fellows whose applied behavior analysis activities are part of a defined program of study, course, practicum, internship, or fellowship and are directly supervised by a Licensed Behavior Analyst in this jurisdiction or a qualified faculty member. Such individuals must not represent themselves as professional behavior analysts and must use titles that clearly indicate their trainee status, such as “student,” “intern,” or “trainee.”
- I. Unlicensed individuals pursuing experience in applied behavior analysis consistent with the experience requirements of the certifying entity, provided such experience is supervised in accordance with the requirements of the certifying entity.
- J. Individuals who teach behavior analysis or conduct behavior-analytic research, provided that such activities do not involve the direct delivery of applied behavior analysis services beyond the typical parameters of applied research. Such individuals may use the title “behavior analyst” but may not represent themselves as Licensed Behavior Analysts unless licensed under this Act.
- K. Individuals employed by a school district performing the duties of their positions. Such individuals shall not represent themselves as Licensed Behavior Analysts unless licensed under this Act, and shall not offer applied behavior analysis services to any persons or entities other than their school employer or accept remuneration for providing applied behavior analysis services other than the remuneration they receive from their school employer.

Section 8. Temporary License

Behavior analysts licensed in another jurisdiction or certified by the certifying entity to practice independently who provide applied behavior analysis services in State of Nebraska on a short-term basis may apply for a temporary license. Applicants for temporary licenses shall submit an application and fee established by the Board, and evidence that their practice in the jurisdiction will be temporary as defined by the Board in rules. A temporary license will be granted only if the Board verifies the

applicant's licensure or certification status with the relevant entity.

Section 9. Reciprocity

The Board shall issue a license to a person who is currently licensed as a behavior analyst in good standing in another jurisdiction that imposes licensure requirements comparable to those specified in this Act. Applicants for reciprocal licensure shall have current licensure verified by the Board and comply with other requirements set forth in Section 5 of this Act.

Appendix B

Behavior Analysis is a Distinct Discipline

Provided by the Association for Professional Behavior Analysts (APBA)

Summary: Although techniques of behavior analysis are widely practiced, including by psychologists and educators, behavior analysis is not a subdomain of any other discipline, but is a distinct discipline unto itself. This brief includes summaries of the professional landscape in behavior analysis that support this assertion.

DEFINITION

Behavior analysis is the science of behavior, with a history extending back to the early 20th century. Its guiding philosophy is behaviorism, which is based on the premise that attempts to improve the human condition through behavior change (e.g., education, behavioral health treatment) will be most effective if behavior itself is the primary focus. To date, behavior-analytic scientists have conducted thousands of studies to identify the laws of behavior—the predictable ways in which behavior is learned and how it changes over time. The underlying theme of much of this work has been that behavior is a product of its circumstances, particularly the events that immediately follow the behavior. Behavior analysts have used this information to develop numerous techniques and treatment approaches for analyzing and changing behavior, and ultimately, to improve lives. Because this approach, applied behavior analysis (ABA), is largely based on behavior and its consequences, techniques generally involve teaching individuals more effective ways of behaving and working to change the social consequences of existing behavior. Treatment approaches based on ABA have been empirically shown to be effective in a wide variety of areas. However, because ABA was first applied to the treatment of individuals with intellectual disabilities and autism, this practice area has the largest research base and has received the most recognition. Additional information on the various applications of ABA can be found [here](#).

UNIVERSITY TRAINING

There are hundreds of [university training programs](#) in behavior analysis. Because behavior analysis can be effectively applied to such a variety of human concerns, these programs are offered in a variety of academic locations, including departments/colleges of education (the most common location), psychology, behavior analysis, among others.

ACADEMIC LITERATURE

Since the mid-20th century, behavior analysis has had its own distinct scientific and professional literatures. There are over a dozen peer-reviewed journals devoted to behavior-analytic content. Here is a sample:



In addition, there are dozens of textbooks and practical handbooks devoted exclusively to behavior analysis. Here is a sample:



LICENSURE & FUNDING

Since 2009, [36 states](#) have enacted legislation to license behavior analysts as independent practitioners. The most common licensing authority among these regulatory systems is a stand-alone behavior analyst licensing board or committee.

CPT Codes

Current Procedural Terminology (CPT) codes, published by the American Medical Association (AMA), are the predominant codes used to describe healthcare procedures for reimbursement purposes. In 2014, the AMA approved the first distinct codes for applied behavior analysis services (CPT III codes 0359T-0374T). In 2019, the AMA published a revised and expanded code set for applied behavior analysis services (CPT I codes 97151- 97158, CPT III codes 0362T and 0373T). Additional information on these codes is available through the [ABA Coding Coalition](#).

NPI Codes

The [National Provider Identifier Database](#) (NPID), operated by the Centers for Medicare & Medicaid Services, issues healthcare providers a unique 10-digit number to be used in billing-related activity. This unique number has essentially come to function as a “social security number” for healthcare providers. In addition, NPID categorizes each healthcare provider into a distinct professional class. *Behavior analysts* (103K00000X) and *assistant behavior analysts* (106E00000X) have unique codes in the NPID that are distinct from those of other behavioral health professions – for example, psychologists (103T00000X).

SCOPE OF PRACTICE

The scopes of practice in most licensure laws were influenced by the [APBA Model Behavior Analyst Licensure Act](#), which includes the following model scope:

The design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior. The practice of applied behavior analysis includes the empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis. Applied behavior analysis interventions are based on scientific research and direct and indirect observation and measurement of behavior and environment. They utilize contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other procedures to help individuals develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions. The practice of applied behavior analysis excludes diagnosis of disorders, psychological testing, psychotherapy, cognitive therapy, psychoanalysis, and counseling.

Scopes of practice included in licensure statutes describe the range of activities that members of a profession may legally perform within the state. However, the core knowledge, skills, and abilities required to practice a profession are actually first determined using a process referred to as a job task analysis. These are extensive efforts that involve panels of subject matter experts and large-scale surveys of a profession’s members. The resulting document, referred to as a [task list](#), serves as a

basis for the [examination](#) required for entry into the profession. All healthcare and behavioral health professions undergo this process. The task list for behavior analysis contains virtually no overlap with those of other professions, including psychology, social work, occupational therapy, etc. In addition to a distinct task list and professional examinations, behavior analysts also have their [ethics code](#).