

NOTICE OF INTENT

Department of Health Behavior Analyst Board

Behavior Analysts (LAC 46:VIII.Chapter 2)

Notice is hereby given in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Behavior Analyst Board intends to adopt Chapter 2 Behavior Analysis.

The purpose of the proposed Rule governs procedures and requirements to provide applied behavior analysis services.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part VIII. Behavior Analysts

Chapter 2. Behavior Analysis

§201. Purpose and Scope

A. The sections of this Chapter govern the procedures and requirements for application and delivery of applied behavior analysis in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3704.

HISTORICAL NOTE: Promulgated by the Department of Health, Behavior Analyst Board, LR 50:

§202. Professional Standards

A. A licensed behavior analyst is authorized to engage in the practice of applied behavioral analysis as set forth in the Practice Act and in accordance with the board's rules. A licensed behavior analyst and/or a state certified assistant behavior analyst possess property rights. A registered line technician does not possess property rights and is therefore not entitled to due process under the Administrative Procedure Act.

B. Behavior analysis excludes psychological testing, neuropsychology, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, and mental health counseling or academic teaching by college or university staff.

C. It is prohibited for an individual to hold themselves out as a licensed behavior analyst, a state certified assistant behavior analyst, or a registered line technician unless licensed, state certified, or registered in accordance with the statutes.

D. Licensed behavior analyst and anyone under their supervision shall conduct their activities in conformity with the ethical and professional standards found in Chapter 10.

E. A licensed behavior analyst will supervise all state certified assistant behavior analysts and registered line technicians in conformity with the supervision requirements found in Chapter 5.

F. The following persons and practices are not prohibited or restricted from engaging in the practice of applied behavior analysis:

1. an individual licensed to practice psychology within the state, provided the applied behavior analysis services are within the licensed psychologist's education, training and expertise. An individual properly registered and supervised as an assistant to a psychologist in accordance with the Louisiana Administrative Code, Title 46, Part LXIII, Chapter 11. Licensed psychologists and those practicing under their extended authority are prohibited from

representing themselves as behavior analysts, licensed behavior analysts, assistant behavior analysts, or state certified assistant behavior analysts without being duly licensed or state certified;

2. other human service professionals who are licensed, certified, or registered by the state of Louisiana, provided such individuals are working within the scope of practice of their profession and the scope of their training and competence;

3. a family member or guardian of a recipient of applied behavior analysis services who implements certain applied behavior analysis procedures with the recipient under the extended authority and direction of a licensee or supervised certified assistant. This individual shall not represent themselves as a behavior analyst;

4. an individual who practices with nonhumans, including applied animal behaviorists and animal trainers;

5. an individual who provides general applied behavior analysis services to an organization, provided those services are not for the benefit of such organization and the services do not involve direct services to individual;

6. a matriculated college or university student, intern, or postdoctoral fellow whose activities are part of a defined behavior analysis program of study, practicum, intensive practicum, or supervised independent fieldwork. Such practice under this exemption requires the direct supervision by a licensed behavior analyst in this state or an instructor in an approved course sequence approved by the board. A student, intern, or postdoctoral fellow shall not represent himself as a behavior analyst and shall use a title that clearly indicates his training status, such as "behavior analysis student", "behavior analysis intern", "behavior analysis trainee", or other title clearly indicating such training status;

7. an individual who teaches behavior analysis or conducts behavior analytic research, provided that such teaching or research shall not involve the delivery of direct behavior analytic services. Such individual may use the title "behavior analyst" but may not represent himself as a licensed behavior analyst or a state certified assistant behavior analyst unless he holds one of those credentials issued by the board;

8. an unlicensed individual pursuing experiential training in behavior analysis consistent with the licensure requirements and standards as required by the board, provided such experience is supervised by a licensed behavior analyst.

G. A licensed behavior analyst is ultimately responsible and accountable for client care and outcomes under their clinical supervision.

H. A licensed behavior analyst shall exercise sound professional judgment based upon his knowledge, skill, education, training, and experience, and shall perform only those services for which he is competent. If, during evaluation, reassessment or screening, the licensed behavior analyst finds that treatment which is outside the scope of his knowledge, experience, or expertise is needed, the licensed behavior analyst shall notify the client and provide a referral to an appropriate healthcare provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3704.

HISTORICAL NOTE: Promulgated by the Department of Health, Behavior Analyst Board, LR 50:

§203. Professional Responsibilities

A. Licensed Behavior Analyst and/or State Certified Assistant Behavior Analyst must notify the board in writing of any change in their preferred mailing address, telephone number or email address within 30 days that such change takes effect.

B. A licensee shall ensure proper completion and timely submission of all applications, transfers, renewals, and/or discontinuations for their supervisees. Signatures must be originals or electronically verified time stamped.

~~C. A licensee and/or certificant must comply with all self-reporting requirements as outlined in the ethics code adopted by the board.~~

D. As a mandatory reporter, anyone licensed, certified, or registered by this board is required by law to report suspected or known instances of abuse.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3704.

HISTORICAL NOTE: Promulgated by the Department of Health, Behavior Analyst Board, LR 50:

§204. Telehealth Standards

A. This Chapter provides for, promotes, and regulates the use of telehealth. Further, it defines and establishes the minimum standards for the delivery of applied behavior analysis services when implementing or utilizing telehealth services. The standard of care for telehealth services shall be substantially equivalent to the standard of care for services delivered in person.

B. Applied behavior analysis services delivered through telehealth between a licensee and client, separated by distance, must include synchronous video and audio transmission, delivered in real-time. Licensee shall only use technology assisted media that is in compliance with HIPAA and Hi-tech standards. The use of asynchronous modalities (email, chatting, texting, and fax) is not appropriate for telehealth, except in a crisis to ensure the client's safety and stability.

C. Licensees who provide telehealth must be licensed in Louisiana and must also be licensed in the state where the client is located, if licensing is required.

D. At the onset of telehealth, the licensee shall obtain written informed consent of the client/guardian and shall document such consent in the client's record. Electronic signatures (time stamped) may be used in the documentation of informed consent. Provisions of informed consent shall include:

1. mode of technology-assisted media being utilized and plans for technical failure;
2. scheduling and structure of telehealth services;
3. risks of telehealth;
4. privacy and limits of confidentiality;
5. contact between sessions;
6. emergency plan;
7. consultation and coordination of care with other professionals;
8. referrals and termination of services;
9. information and record keeping;
10. billing and third-party payors;
11. ethical and legal rights, responsibilities, and limitations within and across state lines.

E. At the onset of each session, the licensee shall verify and document the identity and location of the licensee and

the client; and verify the identity of the parent or guardian consenting to the minor's treatment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3704.

HISTORICAL NOTE: Promulgated by the Department of Health, Behavior Analyst Board, LR 50:

Family Impact Statement

The Behavior Analyst Board hereby issues this Family Impact Statement as set forth in R.S. 49:972. The proposed Rule related to procedures and requirements to provide applied behavior analysis services is being implemented to guarantee the licensing authority can safeguard the public welfare of this state and will have no known foreseeable impact on the stability of the family; authority and rights of parents regarding the education and supervision of their children; functioning of the family; family earnings and family budget; behavior and personality responsibility of children; or the ability of the family or a local government to perform the function as contained in the proposed rule.

Poverty Impact Statement

The proposed Rule creates a new rule, LAC 46:VIII. Chapter 1. The proposed Rule should not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;
2. the effect on early childhood development and preschool through postsecondary education development;
3. the effect on employment and workforce development;
4. the effect on taxes and tax credits;
5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Provider Impact Statement

The proposed Rule does not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. Specifically, there is no known or foreseeable effect on: the staffing level requirements or qualifications required to provide the same level of service; the total direct or indirect cost to the providers to provide the same level of service; or the overall ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments to Rhonda Boe, Executive Director, 4334 S. Sherwood Forest Blvd., Suite C-150, Baton Rouge, LA 70816. All comments must be submitted by 12 p.m. on March 11, 2024.

Rhonda Boe
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Behavior Analysts

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Other than the cost of rulemaking, which is approximately \$600 in FY 24 related to publishing the proposed rule and final rule in the Louisiana Register, the proposed rule is not anticipated to result in implementation costs or savings to state

or local governmental units. This cost will be paid from self-generated funds.

The proposed rule governs the procedures and requirements for application and delivery of applied behavior analysis. Although behavior analysts are currently able to practice telehealth, the proposed rule also provide for, promote for, and regulate the use of telehealth.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule is not anticipated to have any effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule may benefit providers and recipients of behavior analysis services to the extent that adoption of the proposed rule leads to increased adoption of telehealth. This may provide recipients of these services with a wider choice of providers and may provide increased income to behavior analysts

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

To the extent that the proposed rule leads to increased adoption of telehealth practices among behavior analysts, the proposed rule may increase competition amongst providers of behavior analysis services by allowing recipients to receive services via telehealth, which may provide these recipients with a greater choice of service providers.

Rhonda Boe
Executive Director
2402#021

Patrice Thomas
Deputy Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health
Behavior Analyst Board**

**Board Composition, Meeting Procedures, and
ADA Accommodations (LAC 46:VIII.Chapter 1)**

Notice is hereby given in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Behavior Analyst Board proposes to adopt Chapter 1. Board.

The purpose of this proposed Rule is to outline board composition, meeting procedures, and ADA accommodations for board meetings.

Title 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part VIII. Behavior Analysts

Chapter 1. Board

§101. Overview

A. The sections of this Chapter outline board composition, meetings, procedures, and ADA accommodations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3703.

HISTORICAL NOTE: Promulgated by the Department of Health, Behavior Analyst Board, LR 50:

§102. Board Composition

A. The board shall be comprised of seven members to include six behavior analysts and one consumer member. Elections will occur when the professional behavior analysts board seats become vacant in accordance with policies and

procedures and the MOU between the board and the professional association. The governor shall then appoint members from a list of the nominees submitted by the professional association. The consumer member shall possess the qualifications found in R.S. 37:3703 and submit an application to the governor.

B. Each member shall be appointed for a term of four years. No member of the board shall serve more than two consecutive complete terms on the board.

C. Board members shall continue to serve, even if their term has expired, until the governor appoints their replacement.

D. The board shall elect annually from its membership a chair and vice-chair.

E. Members of the board shall serve without compensation but shall be reimbursed for reasonable travel expenses incurred in attendance at meetings and other official business of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3703.

HISTORICAL NOTE: Promulgated by the Department of Health, Behavior Analyst Board, LR 50:

§103. Board Meetings

A. The board shall meet at least quarterly. The board shall meet at the call of the chair or at the request of at least three members. Meeting dates are to be posted on the board's website when scheduled.

B. The board shall provide written public notice of any regular, special, or re-scheduled meeting no later than 24 hours before the meeting. Notice shall include the agenda, date, time, and place of meeting. Notice shall be published on the board website and the Boards and Commission website.

C. All board meetings and hearings shall be open to the public. In accordance with R.S. 42:16-17, the board may conduct any portion of its meeting in executive session, closed to the public and may request the participation in such executive session of staff members and others as may be needed for the business at hand.

D. A majority of the board shall constitute a quorum for the transaction of all business.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3703.

HISTORICAL NOTE: Promulgated by the Department of Health, Behavior Analyst Board, LR 50:

§104. Board Procedures

A. Board members are expected to attend regularly scheduled meetings, special meetings, open forums and hearings. Attendance constitutes active participation in at least 80 percent of the entire meeting. Missing two meetings per year is generally acceptable; however, exceptions may be granted for good cause. Notification of an expected absence shall be submitted to the board office as early as possible.

B. The board shall keep written minutes of all open meetings. The minutes shall include the date, time, and place of the meeting; the members of the public body recorded as either present or absent; the substance of all matters decided, and, at the request of any member, a record, by individual member, of any votes taken. The minutes shall be public records and shall be available within a reasonable time after the meeting, except where such disclosures would be inconsistent with R.S. 42:16 and R.S. 42:17.

C. A scheduled time for public comments on agenda items shall be held during each board meeting. Each person making public comments shall announce their identity and the group, organization, company, or entity represented, if any. The chair shall allot the time available to all who wish to comment to ensure an opportunity is afforded to all who desire to comment.

D. Board members will be appointed as chair or member of committees to assist in carrying out specific board functions.

E. The board shall operate on self-generated funds to maintain effective and efficient operations.

F. The board shall annually adopt a budget and comply with all state audit guidelines.

G. The board shall appoint an executive director to carry out the administrative work of the board and shall designate the duties and responsibilities for that position.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3703.

HISTORICAL NOTE: Promulgated by the Department of Health, Behavior Analyst Board, LR 50:

§105. ADA Accommodations

A. Any member of the public with a disability recognized by the Americans with Disabilities Act or a designated caregiver of such a person who would like to submit a request to participate in the Open Meeting portions of this board meeting is encouraged to contact the board office to discuss viable alternative methods at least three days prior to the meeting. People with disabilities are defined as any of the following:

1. a member of the public with a disability recognized by the Americans with Disabilities Act (ADA);
2. a designated caregiver of such a person; or
3. a participant member of the agency with an ADA-qualifying disability.

B. Viable alternative method to be utilized will be teleconference. If additional accommodations are required, such as a translator, the board will make every attempt to meet the requestor's needs utilizing resources available. If in the future the board has access to reliable internet technology in their meeting room, the board will include participation by video as a method.

C. The written public notice for an open meeting, as required by R.S. 42:19, includes the name, telephone number and email address of the designated agency representative to whom a disability accommodation may be submitted and shall be posted at least three days prior to the meeting date.

D. The requestor shall be provided with an accommodation, including the teleconference and/or video conference link, for participation via electronic means as soon as possible following receipt of the request, but no later than the start of the scheduled meeting.

E. A board member who has a disability recognized by the ADA shall be allowed to participate and vote in a meeting via electronic means and shall be counted in the quorum. This does not include electronic participation in any disciplinary hearings and/or adjudications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3703.

HISTORICAL NOTE: Promulgated by the Department of Health, Behavior Analyst Board, LR 50:

Family Impact Statement

The Behavior Analyst Board hereby issues this Family Impact Statement as set forth in R.S. 49:972. The proposed Rule and adoption of the Rule will have no known foreseeable impact on the stability of the family; authority and rights of parents regarding the education and supervision of their children; functioning of the family; family earnings and family budget; behavior and personality responsibility of children; or the ability of the family or a local government to perform the function as contained in the proposed Rule.

Poverty Impact Statement

The proposed Rule and adoption of the Rule should not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;
2. the effect on early childhood development and preschool through postsecondary education development;
3. the effect on employment and workforce development;
4. the effect on taxes and tax credits;
5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Provider Impact Statement

The proposed Rule does not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. Specifically, there is no known or foreseeable effect on: the staffing level requirements or qualifications required to provide the same level of service; the total direct or indirect cost to the providers to provide the same level of service; or the overall ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments to Rhonda Boe, Executive Director, 4334 S. Sherwood Forest Blvd., Suite C-150, Baton Rouge, LA 70816. All comments must be submitted by 12 p.m. on March 11, 2024.

Rhonda Boe
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Board Composition, Meeting Procedures, and ADA Accommodations

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Other than the cost of rulemaking, which is approximately \$600 in FY 24 related to publishing the proposed rule and final rule in the Louisiana Register, the proposed rule is not anticipated to result in implementation costs or savings to state or local governmental units. This cost will be paid from self-generated funds.

The rule outlines board composition, meetings, procedures and Americans Disability Act (ADA) accommodations,

including electronic participation pursuant to Act 393 of the 2023 Regular Legislative Session. The board indicates that it is able to provide such participation via teleconference.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule is not anticipated to have any effect on revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)

The rule is not estimated to have any costs and/or economic benefits to directly affected persons, small businesses, or non-governmental groups.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition and employment from the proposed rule.

Rhonda Boe
Executive Director
2402#020

Patrice Thomas
Deputy Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Board of Dentistry

Continuing Education Requirements (LAC 46:XXXIII.313)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Dental Practice Act, R.S. 37:751, et seq., and particularly R.S. 37:760 (8), notice is hereby given that the Department of Health, Board of Dentistry intends to amend LAC 46:XXXIII.313.

The Board of Dentistry is amending LAC 46:XXXIII.313 to remove unnecessary language and remove the requirement that a lead apron be worn when taking digital radiographs.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXIII. Dental Health Profession

Chapter 3. Dentists

§313. Portable and Mobile Dentistry

A. - C.3. ...

4. All mobile or portable operations must conform to all existing and applicable Dental Practice Act rules and regulations, federal, state, and local laws, regulations, and ordinances including those relative to radiographic equipment, flammability, construction, sanitation, zoning, OSHA regulations, and applicable Federal Centers for Disease Control Guidelines and Prevention, Louisiana Department of Health and Hospital regulations including those for medical waste transportation, and the applicant possesses any applicable parish and city licenses or permits to operate the unit.

5. Each mobile dental clinic or mobile dental unit shall have:

- a. ready access to a ramp or lift if necessary;
- b. a properly functioning sterilization system;
- c. ready access to an adequate supply of potable water;
- d. ready access to toilet facilities if necessary;

e. a covered galvanized, stainless steel, or other non-corrosive container for deposit of refuse and waste materials;

f. an emergency kit available at all times;

g. portable oxygen available at all times;

h. medical waste disposal consistent with CDC guidelines;

i. properly functioning radiograph equipment producing fully developed x-rays of diagnostic quality;

j. suction equipment to maintain the current prevailing standard of care.

6. Each *portable dental clinic* shall have:

a. ready access to an adequate supply of potable water;

b. a covered galvanized, stainless steel, or other non-corrosive container for deposit of refuse and waste materials;

c. an emergency kit available at all times;

d. portable oxygen available at all times;

e. medical waste disposal consistent with CDC guidelines;

f. a properly functioning sterilization system;

g. properly functioning radiograph equipment producing fully developed x-rays of diagnostic quality;

h. suction equipment to achieve a minimum level of three cubic feet per minute.

7. The *mobile dental clinic*, mobile dental unit, or portable dental clinic shall be inspected in a timely fashion by a dental board member or a staff evaluator prior to receiving approval to operate.

8. During operations the mobile dental clinic, mobile dental unit, or portable dental clinic shall prominently display all applicable licenses and permits in compliance with §104 of these rules. These documents may be kept in a notebook labeled Licenses and Permits. Copies of licenses and permits are acceptable.

9. Transferability. Neither the mobile or portable permits are transferable.

10. Renewal. Mobile or portable permits expire at the same time as the operator's dental license but shall be renewed at the time the operator renews his or her dental license by completing the renewal form and paying all applicable fees.

D. Record Keeping. The operator or operation shall maintain an official business or mailing and actual, physical address of record which shall not be a post office box except where mail is deliverable to a post office box only and a 24 hour emergency telephone number which shall be filed with the board. The dental board shall be notified within 30 days of any change in the address of record. All written or printed, or electronic documents available from or issued by the operator or operation shall contain the official address of record of the operator or operation. When not in transit, all dental and official records, printed or electronic shall be maintained or available at the official office address of record, in conformity with all record-keeping requirements.

E. - E.8. ...

9. When analogue radiographs are to be made by the operator or operation, a lead apron which includes a thyroid collar shall be utilized and adequate protection for the x-ray technician shall be utilized. The lead apron is not necessary when the radiographs are digital.