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MEMORANDUM

To: House Committee on Government Operations
From: House Committee on Health Care
Date: April 17, 2014
Subject: Licensing Applied Behavior Analysts

We are writing in support of licensing the profession of applied behavior analysts. We respectfully request that your Committee request the Vermont Office of Professional Regulation to conduct a sunrise review on behavioral analysts.

In 2012, the Vermont General Assembly passed Act 158, An act relating to health insurance coverage for early childhood developmental disorders, including autism spectrum disorders, with the intent of expanding access to coverage for diagnosis and treatment. The legislation specifically included coverage for applied behavior analysis (ABA), which the act defined as “the design, implementation, and evaluation of environmental modifications using behavioral stimuli and consequences to produce socially significant improvement in human behavior. The term includes the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior.” 8 V.S.A. § 4088i(f).

Since the passage of Act 158, we have heard compelling testimony from parents of children with developmental disorders, some of whom speak of the benefits and results that they see in their children receiving ABA, and others who have been frustrated by the systemic challenges and lack of access to these important services. It is disheartening to hear from parents that they cannot access medically necessary services for their children due to insurance barriers and lack of adequate providers.

We understand that the Office of Professional Regulation only regulates a profession when: “(1) it can be demonstrated that the unregulated practice of the profession or occupation can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is recognizable and not remote or speculative; (2) the public can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and (3) the public cannot be effectively protected by other means.” 26 V.S.A. §3105(a). We believe that applied behavior analysts meet these criteria.

1. The unregulated practice of ABA can clearly harm or endanger the health, safety, or welfare of the public.

In an article making the case for ABA licensing, the authors raise four issues of which the public must be made aware for safety reasons: “(1) The potential for over reliance and use of punishment and/or other restrictive procedures; (2) Failure to adequately supervise, which creates a situation in which the client is exposed to more restrictive or punishing procedures than necessary...; (3) Identifying competent versus incompetent professionals; and (4) Professional issues around aggressive business practices, boundaries and ethics.”¹ Another article explains that ABA, “by its nature as a profession, involves the manipulation of environments and contingencies and the use of reinforcement and punishment, giving rise to ethical concerns of possible excesses in the course of implementing interventions. Given that strategies for behavior change bear the weight of many ethical responsibilities, impaired professionals utilizing these tools are of particular concern.”² Other authors warn that a “potential downside of the increased recognition of the practice of ABA is an influx of individuals seeking to prosper from this opportunity who may have little or no training or experience in ABA – placing both the consumers of their services and the field at large at risk.”³

Children with developmental disorders are a vulnerable population, and one that must be protected. The use of conditioning in ABA, potentially including forms of punishment, requires oversight, and if not done properly could harm or endanger the health, safety, and welfare of the individuals. Further, if ABA is not done properly, an autistic child may miss the critical window when early intervention is most effective. It is not always apparent if a provider is competent, and licensing would help to ensure uniformity. Additionally, as ABA is often done in a home setting, there is a safety concern for the families involved. Taking the step to license those providing ABA services would create safeguards for the children and public.

The lack of licensure is having a negative impact on the health of Vermont residents because many families cannot access ABA. As the Agency of Human Services pointed out, and was echoed in the testimony of several families, there are challenges in obtaining Medicaid reimbursement for private ABA providers. Most Medicaid treatment must be provided by licensed providers, and though board certified behavior analysts (BCBAs) are certified by a national board, Medicaid is currently unwilling to allow the State to pay the unlicensed providers. Unless a BCBA works through a Medicaid-enrolled designated agency, or has another appropriate license (such as a social worker or psychologist), the State’s Medicaid program cannot pay for ABA.⁴ There are waiting lists at the designated agencies, and the children are being harmed by not receiving medically necessary treatment at an often critical time. Because ABA is an unlicensed profession, many families are harmed by the Medicaid barrier and the inability to secure services for their children.

¹ Joseph Cautilli and Halina Dziewolska, “Editorial on Behavior Analytic Licensure: General historical issues of why people oppose licensing and the common replies,” *International Journal of Behavioral Consultation and Therapy*, Vol. 4, No. 1 (2008) (internal citations omitted).

² Hassert, et. al., “The Licensing of Behavior Analysts: Protecting the Profession and the Public,” *Journal of Early and Intensive Behavior Intervention*, Vol. 5, No. 2 (2008) at 15.

³ Dorsey et. al., “The Case for Licensure of Applied Behavior Analysts,” *Behavior Analysis in Practice*, 2(1) (Spring 2009) at 53.

⁴ Agency of Human Services, Report to the Legislature of the State of Vermont Regarding Implementation of Act 158 (Jan. 2014) at 4.

2. The public can reasonably be expected to benefit from an assurance of initial and continuing professional ability.

ABA is one of the most effective ways of dealing with behaviors related to the diagnosis of autism.⁵ It is an evidence-based approach that draws from multiple disciplines to create individualized treatment plans to modify the individual's behavior. Autism Speaks, an autism science and advocacy organization, promotes ABA and has advocated for licensure of behavior analysts. It is critical to ensure that those purporting to provide ABA are appropriately trained and regulated.

For ABA to be most effective, it is best done as an early intervention. It is important that children receive ABA during a critical developmental period, and if it is not done early or properly, the child may lose an important opportunity for meaningful advancement. Access to competent professionals is essential.

According to the Behavior Analyst Certification Board, approximately 15 states have laws or regulations relating to licensure. These states include Alabama, Arizona, Kentucky, Louisiana, Massachusetts, Missouri, Nevada, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Virginia, and Wisconsin. Autism Speaks reports that autism affects one in 68 children (and one in 42 boys). ABA is a growing field, and unfortunately as more children are diagnosed with early childhood developmental disorders, the need will continue for the profession.

3. The public cannot be effectively protected by other means.

Without licensure, Vermont consumers cannot be assured that people holding themselves out as applied behavior analysts are qualified or have adequate knowledge or experience to provide ABA services properly.

Without State regulations, the grievance process can be confusing and convoluted. Though a person may submit a complaint to the Behavior Analyst Certification Board, it is a national organization and may not have the resources to conduct in-depth local investigations. It is also limited in whom it may investigate. The Office of Professional Regulation has the staff and legal authority to respond to complaints from Vermonters about Vermonters. National board certification does not provide the same safeguards for Vermont families as a State entity regulating the profession.

One of the major barriers to families accessing ABA is the Medicaid limitation discussed above. As this is a federal issue and outside our jurisdiction, there is no other means by which the State can protect and assist families that are unable to access necessary medical services for their children.

Licensing applied behavior analysts would further the goal of providing medically necessary services to children with developmental disorders, including autism spectrum disorders, in a safe and effective manner. It is good for the public, for the health and safety of children, and for Vermont families. Thank you for your consideration.

⁵ Hassert, et. al., "The Licensing of Behavior Analysts: Protecting the Profession and the Public," *Journal of Early and Intensive Behavior Intervention*, Vol. 5, No. 2 (2008).