

**RESOLUTION No. 19-316**

**A RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, SUPPORTING THE PASSAGE OF HOUSE BILL 575, AN ACT RELATING TO APPLIED BEHAVIOR ANALYSIS SERVICES; AMENDING 400.9905, F.S.; PROVIDING FOR AN EXEMPTION FROM LICENSURE REQUIREMENTS FOR CERTAIN INDIVIDUALS WHO ARE EMPLOYED OR UNDER CONTRACT WITH CERTAIN ENTITIES PROVIDING APPLIED BEHAVIOR ANALYSIS SERVICES; AMENDING S. 110.572, F.S.; REDEFINING THE TERM “PRIVATE INSTRUCTIONAL PERSONNEL” TO INCLUDE CERTAIN BEHAVIOR ANALYSTS SERVICES; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, the City of Doral wishes to support the passage of House Bill 575; and

**WHEREAS**, House Bill 575 provides exemption from licensure requirements for individuals who are employed or under contract with entities providing applied behavior analysis service; and

**WHEREAS**, Bill 575 redefines the term “instructional personnel” to include behavior analysts and paraprofessionals providing applied behavior analysis services; and

**WHEREAS**, the Bill was referred to the Health Market Reform Subcommittee; Health Care Appropriations Subcommittee; and Health and Human Services Committee; and

**WHEREAS**, the Bill is currently in the Health Market Reform Subcommittee.

**NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF DORAL, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** The above recitals are true and correct and incorporated herein.

**Section 2. Approval.** The Mayor and City Council hereby approve to the Resolution

in support of House Bill 575.

**Section 3. Effective Date.** This Resolution shall take effect immediately upon adoption.

The foregoing Resolution was offered by Councilmember Mariaca who moved its adoption. The motion was seconded by Councilmember Cabrera and upon being put to a vote, the vote was as follows:

Mayor Juan Carlos Bermudez	Yes
Vice Mayor Christi Fraga	Yes
Councilwoman Digna Cabral	Yes
Councilman Pete Cabrera	Yes
Councilwoman Claudia Mariaca	Yes

PASSED AND ADOPTED this 12 day of December, 2019.

  
\_\_\_\_\_  
JUAN CARLOS BERMUDEZ, MAYOR

ATTEST:

  
\_\_\_\_\_  
CONNIE DIAZ, MMC  
CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
FOR THE USE AND RELIANCE OF THE CITY OF DORAL ONLY:

  
\_\_\_\_\_  
LUIS FIGUEREDO, ESQ.  
CITY ATTORNEY



*Claudia Mariaca*  
*Councilwoman*

Date: December 10, 2019

To: City Manager, Albert P. Childress, M.B.A., M.P.A., ICMA-CM

From: Councilwoman Claudia Mariaca

Ref: **ADDITIONAL BACKUP FOR SUPPORT FOR HOUSE BILL 575**

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I hereby take this opportunity to request your kind assistance to include as additional backup to the item "SUPPORT FOR HOUSE BILL 575" in the Council meeting scheduled on December 12, 2019, the following.

- Emails between my Office and Mrs. Cary Bouza-Merida
- Florida House of Representatives Tracking of HB 575
- HB 575 Information Sheet Submitted by Caridad Bouza-Merida
- Health Care Clinic Frequently Asked Questions Specific to Providers of Behavior Analysis Services
- Bullet Points for HB 575
- Behavioral Analysis Exemption
- Statue 393.17

I appreciate your kind consideration to this matter.

## Armando Arana

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**From:** cary.merida@newwaydayservices.org  
**Sent:** Wednesday, November 27, 2019 1:56 PM  
**To:** Armando Arana  
**Cc:** Councilwoman Mariaca  
**Subject:** RE: Behavior Analysis Services in Florida

**Importance:** High

### [EXTERNAL EMAIL]

Thank you we would appreciate all the support we can get. Happy Thanksgiving.

Cary Bouza-Merida  
Administrative Director  
New Way Day Services, Inc.  
Office: 305-597-3861 ext. 401  
Direct: 786-646-9250  
9600 NW 25 Street, PH  
Doral, FL 33172



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**From:** Armando Arana <Armando.Arana@cityofdoral.com>  
**Sent:** Wednesday, November 27, 2019 11:39 AM  
**To:** cary.merida@newwaydayservices.org  
**Cc:** Councilwoman Mariaca <Claudia.Mariaca@cityofdoral.com>  
**Subject:** RE: Behavior Analysis Services in Florida

Good morning Cary,

Thank you for your email to Councilwoman Mariaca. Councilwoman Mariaca has already been actively been supportive, having brought forth to Council the Resolution 19-84 which was passed earlier this year. She was also Chair of the last Autism Speaks Walk. Rest assured, she will review this issue and explore ways to support your initiative.



Claudia Mariaca is with Vanessa Bolanos and 2 others.



April 26 · 🌐

I was pleased to speak to parents to share that the City of Doral unanimously passed Resolution No. 19-84, urging the Florida Legislature to oppose the budget proposal which proposes a \$98 Million permanent reduction in MEDICAID spending - that directly threatens children's access to behavior analysis services. #DoralProud



We will be reaching out to you in the coming days.

Wishing you and your family a joyful Thanksgiving!

**Armando Arana**

*Legislative Analyst*

*Office of Councilwoman Claudia Mariaca*

**City of Doral**

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*The City of Doral is on [Twitter](#) , [Facebook](#) and [YouTube](#)!*



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**From:** [cary.merida@newwaydayservices.org](mailto:cary.merida@newwaydayservices.org) <[cary.merida@newwaydayservices.org](mailto:cary.merida@newwaydayservices.org)>  
**Sent:** Tuesday, November 26, 2019 5:01 PM  
**To:** Mayor Bermudez <[JuanCarlos.Bermudez@cityofdoral.com](mailto:JuanCarlos.Bermudez@cityofdoral.com)>  
**Cc:** Vice Mayor Fraga <[Christi.Fraga@cityofdoral.com](mailto:Christi.Fraga@cityofdoral.com)>; Councilwoman Cabral <[Digna.Cabral@cityofdoral.com](mailto:Digna.Cabral@cityofdoral.com)>; Councilwoman Mariaca <[Claudia.Mariaca@cityofdoral.com](mailto:Claudia.Mariaca@cityofdoral.com)>; [pete.cabrera@cityofdoral.com](mailto:pete.cabrera@cityofdoral.com).  
**Subject:** Behavior Analysis Services in Florida  
**Importance:** High

[EXTERNAL EMAIL]

Good Afternoon Mayor Bermudez,

We want to thank you and Councilwoman Digna Cabral for listening to us this past weekend at the Chamber of Commerce event. We have reached out on behalf of our Behavior Analysis Service Provider Community seeking support and possible assistance on HB575, which was sponsored by Representative Rene Placensia on November 8, 2019. This bill is important for our industry to be able to practice after December 2020.

As most of the Council is aware, we provide Applied Behavior Analysis (ABA) therapy to children diagnosed with Autism Spectrum Disorder (ASD) and related disabilities, we like to call them Exceptional Abilities. Over the past two years the Agency for Health Care Administration (AHCA) and Medicaid have targeted our industry, in which we have been for 20 years. Not many know that our agency was instrumental with the case presented to the Federal Judge in March 2012 when it was ordered the Medicaid and AHCA must pay for ABA therapy for children with ASD. Immediately thereafter AHCA and Medicaid began covering the medically necessary services for these children. Subsequently, this coverage spread around the country.

With that said, AHCA and Medicaid have set a deadline for Behavior Analysis agencies to obtain either the Health Care Clinic Licensure or the exemption to the licensure. The only way to get the exemption at this time is with a current license from the Department of Health Medical Quality Assurance (MQA) of which Behavior Analysts do not currently possess and there is no licensure legislation in the pike. Therefore, Representative Placensia has sponsored HB575, which is attached. We have also attached several documents with an index of each and a brief synopsis of their content and issues.

We are also seeking a sponsored Senate Bill and are reaching out to Senators Manny Diaz and Anitere Flores in hopes they would sponsor a similar bill at the Senate. Ultimately we would want for both bills to pass so Behavior Analysis agencies can be assured they can continue providing these needed services to their patients and their families.

Should you have any questions regarding any of the documents attached please feel free to contact us directly at 305-389-0943.

We look forward to working with the City of Doral Council in making a Statewide Impact for this vulnerable population.

Cary Bouza-Merida  
Administrative Director  
New Way Day Services, Inc.  
Office: 305-597-3861 ext. 401  
Direct: 786-646-9250  
9600 NW 25 Street, PH  
Doral, FL 33172



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## HB 575 - Applied Behavior Analysis Services

General Bill by Plasencia

[Appear at Meeting](#)

**Applied Behavior Analysis Services:** Provides exemption from licensure requirements for individuals who are employed or under contract with entities providing applied behavior analysis services; redefines term "private instructional personnel" to include behavior analysts & paraprofessionals providing applied behavior analysis services.

Effective Date: July 1, 2020

Last Event: Added to Health Market Reform Subcommittee agenda on Wednesday, December 4, 2019 4:22 PM

### Referred Committees and Committee Actions

#### House Referrals

**Health Market Reform Subcommittee**

On agenda for: 12/11/19 4:00 PM

[View Notice](#)

**Health Care Appropriations Subcommittee**

**Health & Human Services Committee**

#### Related Bills

(No Related Bills On Record)

#### Bill Text

[Original Filed Version](#)

#### Staff Analysis

(None Available)

#### Vote History

(No Votes Recorded)

#### Bill History

Event	Time	Member	Committee	Ver.
H Added to Health Market Reform Subcommittee agenda	12/04/2019 - 4:22 PM		<a href="#">Health Market Reform Subcommittee</a>	—
H Now in Health Market Reform Subcommittee	11/15/2019 - 10:49 AM		<a href="#">Health Market Reform Subcommittee</a>	—
H Referred to Health & Human Services Committee	11/15/2019 - 10:49 AM		<a href="#">Health &amp; Human Services Committee</a>	—
H Referred to Health Care Appropriations Subcommittee	11/15/2019 - 10:49 AM		<a href="#">Health Care Appropriations Subcommittee</a>	—
H Referred to Health Market Reform Subcommittee	11/15/2019 - 10:49 AM		<a href="#">Health Market Reform Subcommittee</a>	—
H Filed	11/07/2019 - 10:47 AM	<a href="#">Plasencia</a>		—

#### Statutes Referenced by this Bill

[400.9905](#)

[1003.572](#)

## Information for City Council Initiative for Behavior Analysts Exemption on HCC Licensure

1. HB575 sponsored by Representative Rene Placencia. The highlighted areas are targeted to the behavior analysts and registered behavior technicians (paraprofessionals) who work for an agency. The bill only addresses the worker not the agency itself. The agency as the bill to provider may still have to get the licensure in order to bill insurance and Medicaid.
2. Health Care Clinic FAQ from AHCA – Second highlighted section #2 is confusing. Some people interpret it as meaning that the only way we can get exemption is that a) you have an immediate family member as part owner who is licensed, however, they may not supervise beyond the scope of their license or b) one of the licensed owners is also a BCBA. – the latter is what is confusing us all. Since there is no licensure for Behavior Analysts at this time, only a Board Certification from the Behavior Analysis Certification Board (BACB) this would only be possible if the person was a Licensed Mental Health Counselor, Marriage and Family Therapist, Clinical Social Worker or Psychologist. There are some like this but not many. The main goal of HB575 is to afford behavior analysts an exemption from this HCCL until such time there is licensure for behavior analysts in Florida.
3. Bullet Points for HB575 – this documents breaks down the need for the bill to be approved with the need for a Senatorial sponsored bill for behavior analysts to get the exemption. The Agency for Healthcare Administration (AHCA) has given us a deadline of December 2020 to either get the exemption or the licensure. The quickest resolve would be adding behavior analysts to the exemptions list. Please note that there are Board Certified Behavior Analysts (BCBA's), Board Certified Assistant Behavior Analysts (BCaBA's) and Florida Certified Behavior Analysts (FLCBA's). The latter were certified by the State prior to there being a non-profit certification board. They seem to not include FLCBA's but it is important that they too be included.
4. There are currently 14 providers in the City of Doral. This list has 9 pages because it gives their location and their Active Status with AHCA. Of the 14 agencies there is 1 with a HCC license. This may be due in part to them being licensed in one of the areas stated above. It is also important to note that these agencies all have patients who depend on these services as well as the livelihood of the therapists who work with them.
5. Behavior Analysis exemption (FAC 490) highlighted area states that "no provision of this chapter shall be construed to limit the practice of any individual who solely engages in behavior analysis so long as he or she does not hold themselves out to the public as possessing a license issued pursuant to this chapter (FAC 490), etc". Therefore by them requiring this HCC licensure they are limiting those individuals who are behavior analysts from practicing after December 2020.
6. Chapter 393 explains behavioral programs and the certification thereof when it was first implemented. Tried finding the history of this chapter but could not. Jose was certified by the State of Florida in 1993. This current version appears to have been amended because it states that the State shall recognize the certification of behavior analysts by a non-profit organization that adheres to the national standards of boards, etc.

## Health Care Clinic Frequently Asked Questions Specific to Providers of Behavior Analysis Services

1. Does a group providing behavior analysis services have to be licensed as a health care clinic or is it exempt from licensure?

**Answer:** An entity, which provides health care services (including behavior analysis services) and tenders charges for reimbursement for these services to payors such as Medicare, Medicaid or other insurance, is required to be licensed in Florida as a health care clinic unless it qualifies for an exemption from licensure as a health care clinic as listed in [sections 400.9905\(4\)\(a\)-\(n\), Florida Statutes \(F.S.\)](#).

There is not a single definitive answer as to whether an entity, which receives Medicaid reimbursement for behavior analysis services, needs to apply for a health care clinic license or qualifies for an exemption from licensure. The health care clinic law allows for many “exemptions” from licensure, each listed in section 400.9905(4), F.S.

The Agency for Health Care Administration will make a determination of whether an entity qualifies for an exemption from licensure only after an application has been submitted and reviewed as a determination is based upon the individual entity’s ownership structure and other factors that must be verified by appropriate documentation. Each entity must review the law and decide if it qualifies.

If an entity meets the definition of a health care clinic and does not qualify for an exemption from licensure, it must apply for a health care clinic license.

2. How would a behavior analysis group qualify for the exemption from licensure as a health care clinic as provided in section 400.9905(4)(g), Florida Statutes (F.S.)?

**Answer:** Subsection 400.9905(4)(g), Florida Statutes (F.S.), provides an exemption from licensure as a health care clinic for a sole proprietorship, group practice, partnership, or corporation that provides health care services by licensed health care practitioners under various Florida laws (including Chapter 490 – Psychological Services and Chapter 491 - Clinical, Counseling, and Psychotherapy Services), if the business entity is wholly owned by one or more licensed health care practitioners, or the licensed health care practitioners set forth in the subsection and the spouse, parent, child, or sibling of a licensed health care practitioner and if one of the owners who is a licensed health care practitioner is supervising the business activities and is legally responsible for the entity’s compliance with all federal and state laws. **However, a health care practitioner may not supervise services beyond the scope of the practitioner’s license.** In most cases in order to provide behavior analysis services, at least one of the owning licensed health care practitioners must also be certified as a Board Certified Behavior Analyst (BCBA) or a Board Certified Behavior Analyst Doctoral (BCBA-D) with the Behavior Analyst Certification Board and must supervise the business activities in order to qualify for this exemption from licensure as a health care clinic.

## Health Care Clinic Frequently Asked Questions Specific to Providers of Behavior Analysis Services

3. If an entity's ownership structure does not qualify for an exemption from licensure as a health care clinic, who is eligible to serve as the medical/clinic director for a behavior analysis group applying for health care clinic licensure?

**Answer:** Current Florida law requires a medical/clinic director of a licensed health care clinic must be a Florida-licensed health care practitioner and the services provided at the clinic **must not be beyond the scope of that practitioner's license**. A medical doctor or an osteopath may serve as a medical director of a licensed health care clinic providing behavior analysis services. All other Florida-licensed health care practitioners must also be certified as a Board Certified Behavior Analyst (BCBA) or a Board Certified Behavior Analyst Doctoral (BCBA-D) with the Behavior Analyst Certification Board in order to serve as a 'clinic director.'

4. If an entity does not operate a 'facility setting' and only provides behavior analysis services in client's homes, schools and other community settings, what type of health care clinic would this be considered?

**Answer:** A portable equipment/service provider is a single administrative office from which treatment, services and/or diagnostic testing is provided to individuals in multiple locations and which otherwise meets the definition of a health care clinic. See sections [400.9905\(7\)](#) and [400.991\(1\)](#), F.S. This would most closely fit the model of a health care clinic that does not provide any services at the clinic location.

5. Revisions to the Florida Medicaid Provider Enrollment Policy will require proof of health care clinic licensure or proof of possession of a certificate of exemption from licensure as a health care clinic for behavior analysis groups by July 1, 2020. When should these groups apply for a health care clinic license or certificate of exemption?

**Answer:** Applications may be submitted as soon as a complete licensure or certificate of exemption application has been prepared. Waiting to apply may cause delays due to heavier workloads as Medicaid rule deadlines approach for all health care providers. Refer to the draft Florida Medicaid Provider Enrollment Policy (handbook), [Rule 59G-1.60, F.A.C.](#), for details.

### **What we need:**

- **Co-Sponsors and support for HB575 filed by “Coach P.” Rene Plasencia!**

### **How that will help us:**

- **Minor adjustments to the wording of two antiquated Florida statutes in order to ensure that BCBA’s and FLCBA’s can continue to provide services to children with Autism in clinics, in the community, in their family homes, and in schools!**

### **Background Information:**

- In 2019, AHCA proposed sweeping changes to Behavior Analysis services in the state of Florida
- Over 40,000 individuals receive Behavior Analysis services either through Medicaid or through private insurances in Florida
- Behavior Analysis is a medically necessary service prescribed by a doctor for individuals who display problematic behaviors such as aggression, self-injury, and property destruction, or have significant deficits in necessary skills such as communication, self-care, and safety skills
- Most recipients of Behavior Analysis are diagnosed with Autism, Down Syndrome, or related developmental disabilities

### **Issues Impacting the State:**

- One of the many changes proposed is a new interpretation of the Healthcare Clinic Licensure Law found in Chapters 400 and 408 of the Florida Statutes, and rules 59A-35 and 58A-33
- AHCA’s Quality control company for Behavior Analysis – EQ Health began a series of changes to their program that immediately impacted providers’ ability to intake and provide services to clients
- AHCA proposed the implementation of an “Electronic Verification” Pilot program in south Florida
- AHCA is allowing the continued use of alternate professionals as “Lead Analysts” for Behavior Analysis Services (Including Psychologists, Mental Health Counselors, Marriage and Family Counselors, and Social Workers)

### **What does this mean for families with special needs children on the Autism Spectrum and related disabilities?**

- Potential loss of services and increases to the time it takes to get services due to a lack of providers in the Medicaid network!
- Loss of the best time for important communication and social gains according to research!
- Increases in the need for life-long care for the child, and subsequently increases in the cost of that life-long care!
- Forcing the child to fit into the public education system even with extreme problem behaviors, issues with discrimination against Autism, and the steady rise in Autism related baker acts and police involvement in schools!
- Families may have to move out of state to find their child the service they need and the providers to be able to serve them!

**490.014 Exemptions.—**

(1)(a) No provision of this chapter shall be construed to limit the practice of physicians licensed pursuant to chapter 458 or chapter 459 so long as they do not hold themselves out to the public as psychologists or use a professional title protected by this chapter.

(b) No provision of this chapter shall be construed to limit the practice of nursing, clinical social work, marriage and family therapy, mental health counseling, or other recognized businesses or professions, or to prevent qualified members of other professions from doing work of a nature consistent with their training, so long as they do not hold themselves out to the public as psychologists or use a title or description protected by this chapter. Nothing in this subsection shall be construed to exempt any person from the provisions of s. 490.012.

(2) No person shall be required to be licensed or provisionally licensed under this chapter who:

(a) Is a salaried employee of a government agency; a developmental disability facility or program; a mental health, alcohol, or drug abuse facility operating under chapter 393, chapter 394, or chapter 397; the statewide child care resource and referral network operating under s. 411.0101; a child-placing or child-caring agency licensed pursuant to chapter 409; a domestic violence center certified pursuant to chapter 39; an accredited academic institution; or a research institution, if such employee is performing duties for which he or she was trained and hired solely within the confines of such agency, facility, or institution, so long as the employee is not held out to the public as a psychologist pursuant to s. 490.012(1)(a).

(b) Is a salaried employee of a private, nonprofit organization providing counseling services to children, youth, and families, if such services are provided for no charge, if such employee is performing duties for which he or she was trained and hired, so long as the employee is not held out to the public as a psychologist pursuant to s. 490.012(1)(a).

(c) Is a student who is pursuing a course of study which leads to a degree in medicine or a profession regulated by this chapter who is providing services in a training setting, provided such activities or services constitute part of a supervised course of study, or is a graduate accumulating the experience required for any licensure under this chapter, provided such graduate or student is designated by a title such as “intern” or “trainee” which clearly indicates the in-training status of the student.

(d) Is certified in school psychology by the Department of Education and is performing psychological services as an employee of a public or private educational institution. Such exemption shall not be construed to authorize any unlicensed practice which is not performed as a direct employee of an educational institution.

(e) Is not a resident of the state but offers services in this state, provided:

1. Such services are performed for no more than 5 days in any month and no more than 15 days in any calendar year; and

2. Such nonresident is licensed or certified by a state or territory of the United States, or by a foreign country or province, the standards of which were, at the date of his or her licensure or certification, equivalent to or higher than the requirements of this chapter in the opinion of the department or, in the case of psychologists, in the opinion of the board.

(f) Is a rabbi, priest, minister, or member of the clergy of any religious denomination or sect when engaging in activities which are within the scope of the performance of his or her regular or specialized ministerial duties and for which no separate charge is made, or when such activities are performed, with or without charge, for or under the auspices or sponsorship, individually or in conjunction with others, of an established and legally cognizable church, denomination, or sect, and when the person rendering service remains accountable to the established authority thereof.

(3) No provision of this chapter shall be construed to limit the practice of any individual who solely engages in behavior analysis so long as he or she does not hold himself or herself out to the public as possessing a license issued pursuant to this chapter or use a title or description protected by this chapter.

(4) Nothing in this section shall exempt any person from the provisions of s. 490.012(1)(a)-(b).

(5) Except as stipulated by the board, the exemptions contained in this section do not apply to any person licensed under this chapter whose license has been suspended or revoked by the board or another jurisdiction.

**History.**—ss. 1, 3, ch. 81-235; s. 36, ch. 82-179; s. 40, ch. 83-216; ss. 1, 3, ch. 83-265; s. 92, ch. 83-329; ss. 11, 18, 19, ch. 87-252; s. 36, ch. 88-392; ss. 9, 12, 13, ch. 89-70; s. 10, ch. 90-192; s. 4, ch. 90-263; s. 4, ch. 91-429; s. 114, ch. 92-149; s. 33, ch. 93-39; s. 9, ch. 95-279; s. 505, ch. 97-103; s. 8, ch. 97-198; s. 200, ch. 97-264; s. 156, ch. 98-403; s. 126, ch. 2001-277; s. 62, ch. 2006-227; s. 24, ch. 2010-210.

**393.17 Behavioral programs; certification of behavior analysts.—**

(1) The agency may establish a certification process for behavior analysts in order to ensure that only qualified employees and service providers provide behavioral analysis services to clients. The procedures must be established by rule and must include criteria for scope of practice, qualifications for certification, including training and testing requirements, continuing education requirements for ongoing certification, and standards of performance. The procedures must also include decertification procedures that may be used to determine whether an individual continues to meet the qualifications for certification or the professional performance standards and, if not, the procedures necessary to decertify an employee or service provider.

(2) The agency shall recognize the certification of behavior analysts awarded by a nonprofit corporation that adheres to the national standards of boards that determine professional credentials and whose mission is to meet professional credentialing needs identified by behavior analysts, state governments, and consumers of behavior analysis services. The certification procedure recognized by the agency must undergo regular psychometric review and validation, pursuant to a job analysis survey of the profession and standards established by content experts in the field.

**History.**—s. 22, ch. 89-308; s. 1, ch. 90-192; s. 4, ch. 91-429; s. 2, ch. 98-152; s. 80, ch. 2004-267; s. 32, ch. 2006-227.