



Behavior Analyst Licensure Q&A

Questions posed by the Alaska Association for Behavior Analysis (AKABA)

Answers provided by Sara Chambers, Division Director

AKABA Meeting, Anchorage

October 14, 2014

1. **Regarding the numbers already provided, are those percent full time? For example, would 35.2 for IT set-up be the number of hours, or the percentage of full time employment? Also, what would be included in IT set-up? It seems like a large amount compared to the others.**

The cost estimates provided during legislative testimony include only the costs pertaining to the behavior analyst licensing program. The \$35,200 estimate for IT set-up is based on the Division of Administrative Services' approved estimate fiscal note for use in crafting a fiscal note to attach to proposed legislation. The estimate comprises the personnel and technology costs of initiating a program in our licensing database and receipting systems.

The fiscal note is not designed to predict licensing costs. It is likely that the actual IT cost to create the behavior analyst program will be lower; the attached worksheet of estimated costs for the program shows a lower start-up expense for IT recovered through an indirect allocation of \$3,000.

2. **For the regulations specialist, examiner, and investigator roles, would that not be the services already provided by the Behavior Analyst Certification Board (BACB) at a national level for all Board-Certified Behavior Analysts (BCBAs)? If not, what is the difference? If so, can we use the BACB to regulate BCBAs instead of an additional state regulation?**

The behavior analyst licensing program must comply with Alaska state law. All proposal and adoption of regulations, license processing, records retention, fingerprinting, and license investigations must be performed in accordance with state law. While many of the credentialing functions point to national certification by the Behavior Analyst Certification Board (BACB), a private organization cannot be delegated the statutory authority of state agencies. Licensure by a state is reserved for the state. It is not the role of the agency to evaluate whether private certification meets the needs of the public; rather, the agency is engaged in implementing the laws passed by the legislature.

3. **Are these estimates based on the operating cost of some existing AK licensure programs in which a number of state employees are required to verify that each applicant has the required degree, coursework, and supervised experiential training to qualify for state licensure? Since BACB certification is the main requirement for licensure, it will not be necessary for AK state employees to verify that applicants have the necessary degrees, coursework, etc., because the BACB will have already done that (otherwise the applicant would not be BACB-certified). Therefore, all the state will have to do is check the applicant's certification status with the BACB (and the BACB has efficient procedures set up for doing that). That makes the cost of operating the state licensure program much lower than that of the typical licensure program, and cost-efficient even when the number of licensees is small.**

The cost estimate was based on the known costs of a similarly sized and structured licensing program. While BACB certification is required for licensure, the law requires behavior analysts to adhere to many additional provisions. For example:

- AS 08.15.010 requires practitioners of behavior analysis to be licensed. Investigation and enforcement of this law is a function of the agency, per AS 08.01.087.
- AS 08.15.020 requires licensees to be fingerprinted, which entails agency adherence to the state and FBI requirements for handling and storage of personally identifiable information. The agency is also required to review the results of the background check as part of the license examination process.
- AS 08.15.020 requires the agency to create, publish, and manage licensing application forms and fees, which entail adherence to the state's payment and refund policies and procedures.
- AS 08.15.050 requires licensees to meet professional fitness standards, which are reviewed by the license examiner and referred to the agency's investigative unit, if necessary for enforcement.
- AS 08.15.060 provides the disciplinary sanctions available to the agency if a licensee violates the requirements of AS 08.15.050. Because state law requires all costs of a licensing program to be borne by the licensees of that program (AS 08.01.065), any investigative, attorney, or appeal expenses of the state will be recovered in the licensing fee.
- AS 08.15.080 defers to the agency to adopt necessary regulations for management of the licensing program. The Alaska Administrative Code prescribes the requirements for public notice and adoption of agency regulations—the cost of which is borne by the licensing program.

4. Are there any other ways to reduce the start-up costs?

The agency is committed to delivery of efficient and effective licensure and constantly seeks opportunities to reduce the cost of regulation. As mentioned above, it is likely the actual cost of IT start-up could be much lower than the estimate provided by department IT staff. Since the program has not yet been implemented, the fee analysis is carefully based on actual costs of similar licensing programs.

In this case, the comparative program—while not similar in day-to-day activity by licensees—is very close in terms of level of effort by agency staff. Pawnbroker licensing requires fingerprinting, does not have a governing board, and in FY13 had 26 licensees. The agency has been provided an estimate of 25 total licensees for the behavior analyst program. Should the actual number of licensees be much greater, the cost of licensure will be lower. For example, the cost of a license could be cut in half if 50 behavior analysts were to become licensed.

5. Are their waivers or deferments to spread the initial cost across the first 2 years?

The license is issued biennially, so the cost is already proposed to be spread across two years. After consideration of public comment, the agency could elect to lower the initial cost and keep it steady over the next several licensing cycles; however, this could place the licensing program into an unadvisable deficit position.

6. How does Alaska's proposed licensure revenues and expenses compare to other state's behavior analyst licensing programs? Kentucky's regulation of BCBAs is one example.

First, each state's laws are different. So, depending on what the legislature for that state enacted, the requirements will differ. Here is how the Kentucky revenue and expenditure model provided by an AKABA member compares to Alaska's program estimates:

	<u>KY</u>	<u>AK</u>	<u>AK if # of licensees = KY</u>
Number of licensees:	100	25	100
Start-up biennial expenses:	Unknown	\$28,700 (est.)	\$28,700 (est.)
Initial BCBA start-up biennial fee:	Unknown	\$1000 (proposed)	\$280 (est.)
Ongoing biennial expenses:	\$8,300	\$14,800 (est.)	14,800 (est.)
Ongoing BCBA biennial fee:	\$300 (\$150 x 2)	\$600 (est.)	\$150 (est.)

EFFECTIVE DATES OF LICENSURE

Behavior Analysts: (HB361) Effective September 16, 2014, licensure is required for practitioners who:

- have never practiced behavior analysis, as defined in AS 08.15.090, or
- who have practiced behavior analysis in the state but do not meet the following requirements:
 - practicing behavior analysis in this state for at least three of the five years immediately preceding the effective date of this Act,
 - is certified by the Behavior Analyst Certification Board, Inc., and
 - is practicing behavior analysis within the scope of that certification.

Once regulations are adopted, those meeting the criteria for immediate licensure must apply. Effective September 16, 2016, licensure is required for all practicing behavior analysis in this state.

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT

The Department of Commerce, Community, and Economic Development proposes to adopt new regulations relating to the practice of behavior analysts and assistant behavior analysts to implement Chapter 41, SLA 2014 (HB 361). You may comment on the proposed regulation changes, including the potential costs to private persons of complying with the proposed changes, by submitting written comments by mail, fax, or e-mail to:

Jun Maiquis, Regulations Specialist
Division of Corporations, Business and Professional Licensing
Department of Commerce, Community, and Economic Development
P.O. Box 110806, Juneau, AK 99811-0806
Fax: (907) 465-2974 - E-mail: jun.maiquis@alaska.gov

The written comments must be received no later than 4:30 p.m. on October 20, 2014.

If you are a person with a disability who needs a special accommodation in order to participate in this process, please contact Jun Maiquis at (907) 465-2537 no later than October 13, 2014, to ensure that any necessary accommodations can be provided.

For a copy of the proposed regulation changes, contact Jun Maiquis at the address or phone number above, or go to <http://commerce.alaska.gov/dnn/portals/5/pub/bev-0814.pdf>. In accordance with the provisions of law, additional questions and answers received about this proposal will be posted on the division's web site at <http://commerce.alaska.gov/dnn/cbpl/home.aspx>.

After the public comment period ends, the Department of Commerce, Community, and Economic Development will either adopt these or other provisions dealing with the same subject, without further notice, or decide to take no action on them. The language of the final regulations may be different from that of the proposed regulations. **You should comment during the time allowed if your interests could be affected.** Written comments received are public records and are subject to public inspection.

Draft Minutes of the AKABA Meeting Q&A Session, provided by the association, edited for clarity

- Comments on draft regulations end at 4:30p on October 20, 2014. After this date, deliberations will begin.
- After the license goes into effect, all *new* behavior analysts will be required to be licensed without a grandfathering period. Starting September 16, 2016, licensure is required for currently practicing behavior analysts.
- Costs were developed in comparison to Alaska pawnbrokers, another group with a similar number of individuals. Costs are based on estimates of 25 members to maintain the license.
- Costs also include fingerprinting fees. Fees include the process of fingerprinting as well as the administrative support required to keep that information private and protected.
- Director Chambers explains the costs listed in the initial table provided to AkABA President Rachel White in September. Values are based on thousands (i.e., "13.1" means \$13,100 for legal support, public notices, fingerprinting, hearing and mediation services.). Costs may truly end up being less than value quoted.
 - This estimate was based on two year *estimates*, based on the amount of time necessary for setting up the pawnbroker license.

Have other licenses required those staffing supports (i.e., public notices, legal support)?

- Chances are very good that all costs will be used as the AKDOC tries to ensure that an ounce of prevention is worth a pound of cure.

In the event the costs ARE lower, what will happen to the extra money?

- Overpayments are banked for the organization. The cost of license is reevaluated every two years for deficit and surplus and those values are shared with the licensing group.
- Ms. Chambers expectation is that the ongoing cost will be lower than the current estimated ongoing costs (see following biennial estimates).

In addressing the issue of BACB support of license, Ms. Chambers referred to page 1 and 2 in the answer to question 3. Above and beyond the licensing fees, the division will need to investigate practitioners who may be practicing without a license, fingerprinting, background checks, audits of the department of commerce licensing office, appeals, publishing forms, and adoption of necessary regulations for the licensing program.

The law requires that all licenses pay for the costs associated with investigation, etc.

- Ms. Chambers will be commenting to legislature regarding the topic of costs related to investigation.
- If a legislator files a bill, the division will notify licensees. Bill introduced 2013, lots of participation, bill was not successful but led to phase 2.

Timeline - deliberation typically lasts for a couple of weeks after the end of comment period. Changes go to department of law, then lieutenant governor's office for 30 days. The licensing page would be available before the license becomes available to ensure people can get licensed ASAP. Further information about the timeline for licensure laws going into place are found on page 3 (see effective dates of licensure).

Comments will be reviewed immediately, Ms. Chambers anticipates being able to make a decision within a week to adopt regulations.

How could you confirm that an individual was practicing for 3 of last 5 years?

- There are strategies, including review of business licenses, review of tax information, etc.
- The forms that will be published will include a range of options to allow individuals to take advantage of grandfather period

What happens if individuals in the state are certified, but are not currently practicing behavior analysis - are they required to obtain license?

- Ms. Chambers will follow up on the issue of title protection for “Board Certified Behavior Analyst”
- Exceptions to law discussed, such as behavior analysts working exclusively with client, in OBM, etc.

When will we know when the license is ready?

- Information about ongoing costs, availability of the license, etc. will be communicated directly to AKABA to be disseminated to members.
- Encourage members to sign up for the interested parties list (see Jun Maiquis information on page 4 of handout)

BCBA investigation reduction in cost?

- While the outcomes of the BACB review would inform the division’s investigation, we should not assume that the BACB *will* investigate or that their investigation will proceed in a timely fashion (i.e., we should not rely on the BACB to be the primary or default investigatory body). The state law cannot be passed on the assumption that an outside body will assist in the licensure.