

Legislative Update

Special Session is Preview to 2022 Regular Session

by Eric Prutsman, Esq., FABA General Counsel & Lobbyist

The 2022 Legislative Session starts on Tuesday, January 11th. Interim committee meetings have been taking place the past couple of months. However, the interim schedule was interrupted by the Governor's call for a special session to prohibit vaccine mandates. The Legislature has completed its special session to prohibit vaccine mandates by public and private employers in response to the recent guidelines issued by the Biden administration. The Governor signed four bills:



- HB 1B – COVID-19 Mandates – Prohibits private employers, governmental employers, and educational facilities from imposing vaccine mandates, authorizes fines against employers that enact mandates, and prohibits public schools from creating mask or quarantine mandates,
- HB 3B – Public Records Exemptions – Creates public records exemption for complaints filed by employees regarding employers that attempt to enforce vaccine mandates,
- HB 5B – Florida Occupational Health & Safety State Plan – Authorizes the initial stages of the creation of a Florida OSHA agency; and,
- HB 7B – Vaccinations during public emergencies – Prohibits Florida's Surgeon General from mandating the administration of vaccines.

There are many questions yet to be answered regarding the implementation of the new Florida legislation. One of the most common questions from health care providers is how to reconcile the new Florida law with the federal guidelines that require vaccines as a condition of receiving

federal funds. The Centers for Medicare & Medicaid have declared that the federal vaccine mandate rule controls due to the Supremacy Clause of the U.S. Constitution. Florida and many other states have taken issue with that position and are in active litigation to challenge the federal rules and action by the federal judiciary is expected soon.

Also, the long-awaited decision in the litigation challenging AHCA's implementation of the Electronic Visit Verification (EVV) program has also been decided in favor of AHCA proceeding ahead with use of EVV regarding behavior analyst providers. Positive Behavior Support, Inc., had challenged the Agency's statutory authority to promulgate rules for the use of EVV for behavior analysts since the statute clearly allows EVV for home health agencies but is silent as to behavior analysis provider.

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Three Years is a Long Time to Wait . . .

by Tiki Fiol

In the Fall of 2019, I was approached by a family in Brevard County that was informed that their child would no longer be able to receive the medically necessary Applied Behavior Analysis services rendered by a Registered Behavior Technicians for their son in his public school. They were devastated and turned to our local chapter, the Association for Behavior Analysis in Brevard, for assistance. The reason for the denial was based upon the technical language in Florida Statutes, or rather, the lack of specific language. You see, the spirit of the law and the letter of the law no longer matched when reviewing the definition of approved private instructional personnel specifically related to Applied Behavior Analysis services.

Senate Bill 1108 included allowing behavior analysts as private providers when it was filed in February 2013 and went into effect on July 1st of that same year. Many will recall that there was no specific label or term or designation for individuals providing ABA services if you were not certified by the Behavior Analyst Certification Board (BACB). Those individuals were often referred to as behavior assistants, mental health technicians, behavior tutors, behavior technicians or direct care professionals. As time passed, the BACB created a formal pathway for these individuals, and we now know these important personnel as Registered Behavior Technicians. Despite our insistence that these individuals met certification requirements under the BACB, the School Board would not allow them to continue to provide services as the word "certified" was not included.

Parents and practitioners rallied together and spoke at the next School Board meeting. Thankfully, we were able to work with the School Board and RBTs were able to resume providing ABA assistance in Brevard Public Schools. While we were thankful for this victory, we soon realized that this only benefitted the individuals in



Tiki Fiol

Brevard. There are 67 counties in the State of Florida. In some areas, RBTs are still being denied, all due to the missing title in the Statutes. For the past three years FABA has been attempting to update the letter to the law so the spirit of the law can prevail.

The RBT bill was already filed in the House by Representative Plasencia (HB 255) and filed in the Senate by Senator Hooper (SB 538) this year. Dr. Steve Coleman, our FABA Public Policy Director, recently testified in support of the House Bill which was passed. Now we wait until the Legislative Session which begins January 11th, 2022. We are again looking to our membership and individuals and their families to join us in advocating and supporting the upcoming Legislative Efforts, contacting elected representatives, and even speaking publicly in support of the bill. We are calling on our local chapters throughout the state to get the word out and aid in reaching out to our representatives for support to pass this legislation, and



to work with local school boards to educate them about ABA and the roles of RBTs.

This is not only important for the individuals we serve here in the State of Florida. Autism Speaks has spoken in favor of this Legislation. Many other states have looked to Florida for leadership in ABA over the years, and this issue will likely

be impactful on a much larger scale. We are not advocating just for Florida, but we might even be able to assist in nation wide efforts to expand the services we provide that can create such powerful and lasting change. As our field continues to grow and expand, our legislative efforts can serve as a model for areas in need of change. Once again, it is time for us to lead our ABA community and set the example for others to follow on a grander scale. I look forward to celebrating the passage of this Legislation with all of you, and I thank you for your hard work and efforts. Feel free to contact me at any time with concerns or ideas.

Ethics Anyone?

by Authors Jon Bailey and Mary Burch

Google Reviews are Testimonials

NOTE: This question came via the ABA Ethics Hotline

QUESTION: I had a question regarding the acceptability of Google Reviews. I wanted to know if Google Reviews violates our ethical code. If clients were to write a Google Review regarding the company and the service they provide, without the company/owner (BCBA) being aware would that be a violation? Can the company ask for Google Reviews, or would that be considered solicitation?

In addition, for the ABA companies that have Google Reviews up, would they have to remove those reviews and how can we prevent reviews in the future if they are a violation

ANSWER: First of all, a Google Review would be considered a testimonial and would come under Code 8.05. In the new 2022 Ethics Code this would be: 5.07, 5.08 or 5.09, depending on whether the “review” was from a current or former client and whether it was for non-advertising purposes.

5.07 Soliciting Testimonials from Current Clients for Advertising (see 1.11, 1.13, 2.11, 3.01, 3.10)

Because of the possibility of undue influence and implicit coercion, behavior analysts do not solicit testimonials from current clients or stakeholders for use in advertisements designed to obtain new clients. This does not include unsolicited reviews on websites where behavior analysts cannot control content, but such content should not be used or shared by the behavior analyst. If a behavior analyst is employed by an organization that violates this Code standard, the behavior analyst makes reasonable efforts to remediate the situation, documenting all actions taken and the eventual outcomes.

5.08 Using Testimonials from Former Clients for Advertising (see 2.03, 2.04, 2.11, 3.01, 3.10)

When soliciting testimonials from former clients or stakeholders for use in advertisements designed to obtain new clients, behavior analysts consider the possibility that former clients may re-enter services. These testimonials must be identified as solicited or unsolicited, include an

accurate statement of the relationship between the behavior analyst and the testimonial author, and comply with all applicable privacy and confidentiality laws. When soliciting testimonials from former clients or stakeholders, behavior analysts provide them with clear and thorough descriptions about where and how the testimonial will appear, make them aware of any risks associated with the disclosure of their private information, and inform them that they can rescind the

testimonial at any time. If a behavior analyst is employed by an organization that violates this Code standard, the behavior analyst makes reasonable efforts to remediate the situation, documenting all actions taken and the eventual outcomes.

5.09 Using Testimonials for Non-advertising Purposes (see 1.02, 2.03, 2.04, 2.11, 3.01, 3.10)

Behavior analysts may use testimonials from former or current clients and stakeholders for

non-advertising purposes (e.g., fundraising, grant applications, dissemination of information about ABA) in accordance with applicable laws. If a behavior analyst is employed by an organization that violates this Code standard, the behavior analyst makes reasonable efforts to remediate the situation, documenting all actions taken and the eventual outcomes.

Next, if a client were to write a review without the BCBA owner’s awareness, that would not be a violation. If the company prompts clients to write reviews, this would be a form of solicitation and as above would come under the current code 8.05.

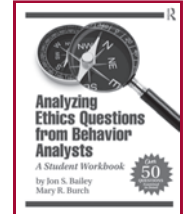
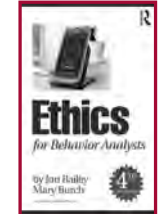
Finally, although Google Reviews are set up in such a way that an owner can remove them, this would be unethical if written by a behavior analyst. This would essentially be a violation of code 1.04 Integrity. To avoid the appearance of soliciting testimonials or an accusation that they are skewed because of editing or deletions of unfavorable reviews, we advise against using Google Reviews.



Jon Bailey, PhD



Mary Burch, PhD



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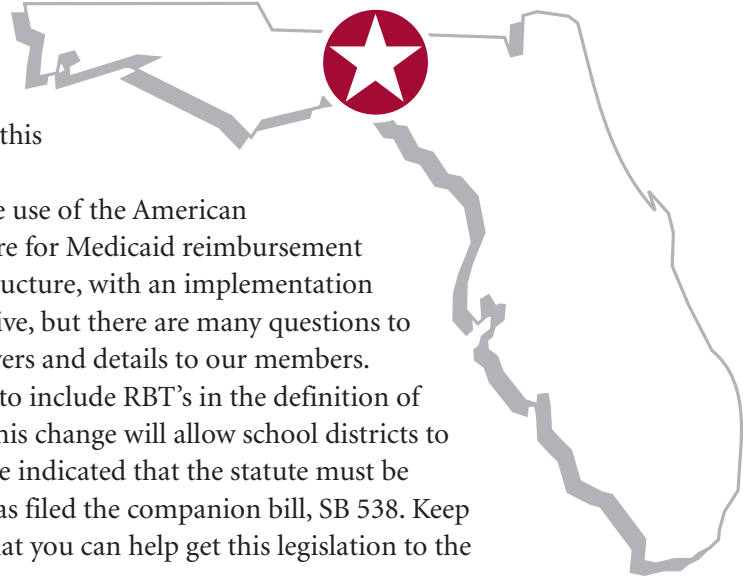
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Special Starts January 11, 2022

Although AHCA had paused the statewide implementation of EVV pending the judges final order, there is no word yet from the Agency as how it will proceed if PBS takes an appeal to the ruling. We will keep the FABA membership informed of developments on this important issue.

Additionally, AHCA reached out to FABA regarding the use of the American Medical Association Behavior Analysis CPT coding structure for Medicaid reimbursement and transitioning from the current HCPCS Level 3 code structure, with an implementation date of July 1, 2022. Initial feedback from members is positive, but there are many questions to be answered and FABA is working on providing those answers and details to our members.

Lastly, Representative Rene Plasencia, has filed HB 255 to include RBT's in the definition of private instructional personnel in the education statutes. This change will allow school districts to accommodate RBT's in the classroom as many districts have indicated that the statute must be changed to allow the RBT's presence. Senator Ed Hooper has filed the companion bill, SB 538. Keep watch for FABA call-to-actions on the RBT legislation so that you can help get this legislation to the Governor's desk in 2022.



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