

Applied Behavior Analysis Provider Workgroup Meeting #2

Meeting Minutes

RedRossa 10:00am – 2:30pm

17 September 2015

Attendance

Present:

Sarah Aker, Pierre, Department of Social Services (DSS)

Mike Demand, Des Moines, Health insurance representative

Rep. Tom Holmes, Sioux Falls, Legislator

Sec. Marcia Hultman, Pierre, Department of Labor and Regulation (DLR)

Dr. Vicki Isler, Sioux Falls, Provider of autism services

Ann Larsen, Pierre, Department of Education (DOE)

Sen. Jeff Monroe, Pierre, Legislator

Dr. Pamela Osnes, Burke, Provider of autism services

Sec. Gloria Pearson, Pierre-Yankton, Department of Human Services (DHS), Workgroup chair

Michelle Powers, Parent/family

Lisa Stanley, Pierre, Parent/family

Carol Tellinghuisen, Spearfish, Licensing board executive

On the phone:

Dr. Paul Amundson, Sioux Falls, Health insurance representative

Absent:

Rep. Julie Bartling, Burke, Legislator

Sen. Terri Haverly, Rapid City, Legislator

Brittany Schmidt, Sioux Falls, Provider of other services to children with autism

Also attending:

Patrick Baker, DHS

Mallori Barnett, DLR

Carole Boos, DHS

Angie Brown, LifeScape vice president

Terry Dosch, S.D. Council of Mental Health Centers, Executive director

Lacy Knutson, Board Certified Behavior Analyst

Jill Lesselyoung, On behalf of Carol Tellinghuisen

Dan Lusk, DHS

Randy Moses, Avera Health Plans

Jason Simmons, Legislative Research Council

Kelsey Webb, Office of the Governor

Sec. Pearson opened the meeting and welcomed the members at 10:05am.

Introduction

The purpose of the workgroup is to study the certification and licensure of applied behavior analysis therapy providers and to advise and make recommendations to the Governor and the Legislature by December 1, 2015. It is in the state's interest to protect the public, which licensure and certification achieves. The group will discuss and learn about licensure and certification under a licensing board and how that works. Next the workgroup will take public input for 30 minutes. The standard format of signing in will be used. After lunch discussion points will be reviewed to make decisions to move forward.

Agenda

- Welcome back
- Presentation on licensing boards by Carol Tellinghuisen
- Public input, 30 minutes
- Report on Legislative Research Council's position on adopting BACB's regulatory framework, licensing and certification of ABA providers
- Discussion: How should ABA providers be licensed and certified in SD?
- Next steps

Overview of Licensure and Certification

Summary:

Carol Tellinghuisen, executive director of several South Dakota licensure boards, presented on licensure and certification.

- A board member is a person whose primary responsibility is to protect the public from members of their very own profession.
- Licensure boards protect the health and safety of the consumer public by licensure of qualified persons, enforcement of the statutes, rules and regulations, including the appropriate resolution of complaints. Their role is to protect the public, which includes verifying credentials.

Boards are made up of members and always include lay members, who are voting board members. Terms are staggered.

South Dakota licensure boards are funded solely through licensure fees; initial licensure application fees, renewal fees. Boards are administered by voluntary members of the profession and lay members appointed by the Governor.

Statute defines the minimal schedule for required meetings, but meetings may be held more frequently at the discretion of the board and to address necessary board business in a timely matter.

Any complaint filed by a member of the public must come in writing to the board office and will be assigned to a professional member of the board and the appointed representative of the Attorney General's office for investigation. Every effort is made to investigate/adjudicate all complaints in a timely manner. Disciplinary actions are posted to the state websites for disclosure to members of the public.

Complaint inquiries are not confirmed or denied, but final actions are posted online.

Some boards have multiple levels of licensure. For example, the social work board has a social work associate, social worker, certified social worker (master's degree), and certified social worker to engage in private, independent practice (licensed social worker for two years, supervision, and pass an examination).

Boards vary with their budgets and financials. Tellinghuisen provided sample information.

Federation of Associations of Regulatory Boards (FARB) is a not-for-profit corporation formed to promote public protection and provide a forum for information exchange for associations of regulatory boards with interests in professional regulation; comprised of state regulatory boards, e.g., SD Board of Examiners of Psychologists, SD Board of Social Work Examiners, Minnesota boards, Nevada boards, all 50 states, etc. FARB's mission is to promote excellence in regulation for public protection by providing expertise and innovation from a multi-professional perspective.

The Association of State and Provincial Psychology Board (ASPPB) of Directors has approved the following position statements:

- ASPPB adopts the position that applied behavior analysis (ABA) services must be state, provincially or territorially regulated in order to ensure consumer protection.
- ASPPB adopts the position that ABA services should be regulated under the psychology boards with a defined scope of practice and title separate from that of psychologists.

Certification boards: Peer-developed, externally validated programs, which serve as important markers for a higher standard of care. Practitioners seek certification usually as a form of self-promotion and in an attempt to distinguish one practitioner from another.

Differentiation: Certification is a form of self-regulation, which is voluntary and without governmental oversight.

Tellinghuisen commented on the Federation of State Massage Therapy Board handout regarding licensure and certification. "Governmental licensing is often confused with private credentialing, generally referred to as certification because the meanings of the terms are frequently interchanged. Although some jurisdictions use the term certification as signifying governmental authority to practice a profession, the difference between licensure and certification is essentially the difference between governmental regulation and self-regulation of a profession."

The complaint procedure is the most frequently asked about component of boards. The process is a complaint is filed and an investigator is assigned. A preliminary investigation is conducted, and the investigator decides if a hearing is warranted, the complaint should be dismissed or if the matter should be resolved by an agreed disposition. The severity and nature of complaints varies greatly with boards.

Questions/Comments:

Comment: Talk about the infrastructure of boards and the cost of operations.

Tellinghuisen: Boards generally have seven members and staff. There are contractual services for staff and attorneys, and most boards work with state of South Dakota staff.

Tellinghuisen walked through the Board of Social Work Examiners revenue and expenses. Revenue includes licensure fees and exam fees. Different professions charge different fees. For example, the Board of Examiners of Psychologists charges \$200 per year (highest) and some others charge as little as \$50 every two years (lowest). Legal expenses can affect licensure fees, and the larger the board is, the lower the license fees are. The psychology board has the authority to assess legal penalties.

Comment/question: If we have a small number of providers, then fees associated with licensure would be quite high. So a common pathway is to subordinate themselves to another board. However, if that's not desirable, providers want to use their peer certification to a national board for licensure, but insurance providers find that difficult because their standard is to allow licensed providers only. Is that something SD would allow?

Pearson: This is the purpose of our workgroup and what we will discuss.

Comment (Hultman-DLR): The Department of Labor and Regulation (DLR) houses a large number and variety of boards. The Athletic Commission is in its second year of operation. Laws were passed to create the commission. The time required of staff to draft rules for the board to begin to license these types of events and participants was very extensive. Also, due to issues, the legislation needs to be modified. It took at least a year to develop and draft rules before the board could convene. Funding was also an issue. There is concern that the \$45,000 operating

budget is not sustainable because there are not enough events and participants paying licensing fees.

Comment: Independent behavior analysis boards heavily rely on the national Behavior Analyst Certification Board (BACB). This should be considered in our group for a decision. Kentucky has an independent board with a budget of \$4,000. It was researched, a sample five-member board of ABA providers who would pay an application fee, a yearly licensing fee and provisional fees (this could include 14 board certified, 4 assistant behavior analysts, 7 students based on Kentucky's model).

Comment: Some states recommend operating under an existing board until numbers are sustainable.

Question: If an independent board was established in SD, do you anticipate conflict with the small numbers of providers, in relation to the Supreme Court North Carolina dental board case?

Tellinghuisen: Administrative costs could be reduced. The number of licensees does not affect the amount of work. When the speech pathology board was created, it took an inordinate amount of work to draft rules.

In light of the recent Supreme Court, the state needs to be involved to protect the public, and there must be oversight from state government. Boards are a partnership with the state agency that houses them. For example, the DLR staff attorney works with the DLR boards. The boards are on the state IT system. On a national scale, there is a desire from boards to have more and more state oversight.

Question/comment: How many providers are needed to sustain an independent board?

Tellinghuisen: Members of the professional community are supportive of licensure and understand the need to protect the public as well as the difficulties of creating an independent board.

Comment (Hultman-DLR): The DLR board fees range from \$20 to \$150 per year (the more licensees, the less per person because the cost of the licensure must fund the board).

Comment: Talk about the SD Board of Examiners for Speech-Language Pathology and the transition from operation with no board to their own board, the complaint procedure, etc...

Tellinghuisen: This was before my time with them. I think complaints were handled by the medical board, because the provider worked under a physician. If the provider was in the K-12 schools, the complaints went to the Department of Education. This was a concern for protection of the public.

Question: What areas are not covered by the national BACB board?

Comment: We would recommend a partnership with the state board to provide background checks and administrative duties like fee collection.

Tellinghuisen: The psychology board does not do a criminal background check, but the staff do a primary source verification.

Comment: State background checks with the Division of Criminal Investigation only costs \$15. The next level is through the Federal Bureau of Investigation and costs more (some thought \$43.25).

Comment: Criminal background checks have been required by law for a number of years for community support providers. Providers are required to complete them to work at LifeScape, for example.

Public Comment

Angie Brown, LifeScape

Brown: We are very supportive of licensure for professionals; we employ several behavior analysts.

Licensure provides good protection of consumers and employers.

Brown submitted two letters intended as public input from an occupational therapist and a clinical psychologist (see public input attachments).

Question regarding boards that license multiple professionals/disciplines (for example, Board of Medical and Osteopathic Examiners) – Are they structured differently? If ABA were a part of the psychology board, would it look different in the future?

Tellinghuisen: Works with audiology board, which has very similar professionals. Good question – this group needs to consider.

Brown: Look at medical and osteopathic board for examples.

Michael Wasmer, Autism Speaks, director of state government affairs (via telephone)

I work closely with BACB and Association for Professional Behavior Analysts (APBA). There are now 24 states that license behavior analysts and all refer to the BACB certification in some fashion in their licensure process. Autism Speaks does not have a position about licensure. Regarding the expense of licensure, it can be done inexpensively and he encourages the workgroup to discuss this with Dr. Gina Green, executive director of the APBA. The BACB certifies the applicants and handles most of the work, but they do not do background checks. Allowing the BACB to handle the rest of the documentation and then send the information to the state would save money for licensure fees.

States with Specific Laws Regulating Licensure of ABA Therapy Providers

Patrick Baker, DHS, provided information about what other states are doing with certification and licensure of ABA therapy providers.

Tellinghuisen clarified that in South Dakota, the psychology association's purpose is the promotion of the profession, whereas the psychology board's purpose is the protection of the public.

Report on Legislative Research Council's position on adopting BACB's regulatory framework: Sec. Hultman provided information regarding authority delegated to a national board. South Dakota can use resources and examinations from outside groups, but there must be an entity to oversee regulation. The state or the board must issue the licenses. An group must be created with control over the entity (i.e., a board or commission) or designate a state agency. SD can adopt national standards and reference national standards.

Options for the group to consider:

1. State agency to be the licensing authority
2. An independent, new board created attached to a state agency
3. Join an existing board and increase the scope of responsibility

Comment: It is a good idea to put the licensure under the psychology board. The state-agency option and the independent-board option are not the best fit for a state the size of South Dakota.

Economically this makes sense, and a number of states have taken this approach, and it works well as it is a good fit. This could benefit the psychology board in terms of numbers, as this profession is growing.

A letter provided by the SD Psychological Association (SDPA) Executive Committee was discussed (see public input attachments).

Objections might include the structure of the current board and how it would be changed, as well as the regulating body.

There are models available to guide inclusion under the psychology board.

Tellinghuisen is meeting with the psychology board and will ask for an official position.

Concerns from the ABA providers include limiting scope of practice to just autism and regulation from professionals who are not behavior analysts, as they are not trained in this field. The composition of the board would need to be addressed. The scope of practice of ABA is used across fields, not just autism, though the letter provided by Trisha Miller of the SDPA

Executive Committee identifies that ABA is provided with autism only (see public input attachments).

Objections for having a separate board include financial concerns (costs for licensees, operations). An amount of \$4,000 was provided as a sample operational budget and another estimate was provided that it would be more like \$20,000. Some believed the annual budget would be considerably higher. Resources are available through the BACB to reduce costs. There are other examples of national assessments and ways to obtain licensure, and even in those instances the operation costs are much higher.

Some states have decided to join the psychology board, whereas other states have not.

Practitioners want to be governed by members of their own profession, not members untrained nor credentialed in the training and profession.

Tellinghuisen clarified the psychology board has not taken a position. The board meeting tomorrow is open to the public and all are welcome to attend, or a teleconference could be set up in the future. Also, this group has not made a recommendation.

The group discussed the importance of licensure and all agreed it is important and necessary and the group should proceed with a recommendation of licensure. The group also agreed the BACB is the foundational resource for this effort and should be consulted with any steps forward.

The chair of the group feels due to the limited number of providers and budgetary concerns and so forth, the group agrees to pursue an existing board, and asked if it makes sense to pursue the psychology board, as it is the best fit in terms of the work. The recommendation is to base the decision on the best fit.

A comment was made about the scope of practice. Are we asking the psychology board to bring on the ABAs, just to provide ABA services, or to bring them on to the board and allow them a broader scope of practice?

The legislation charges the group to review the licensure and certification of ABAs.

It's important that the scope of practice be broad enough to reflect what the behavior analysts do. There are model scopes of practice available to guide the drafting.

The group needs to understand there are behavioral psychologists and clinical psychologists. There is concern a majority would try to govern the minority.

The DHS attorney would work with workgroup members to come up with a discussion-draft recommendation. The draft would be provided to members in advance for feedback, and the members can discuss the draft with their respective public groups.

A question was asked regarding funding and fees to add to the psychology board. There is concern the psychology board would have to pay more to cover the additional costs for adding ABA to its board. Sec. Pearson clarified the DHS staff would offer assistance to draft legislation and rules and work with Tellinghuisen in a separate meeting before the next workgroup meeting. DHS attorney Boos clarified the task of the workgroup is to license ABA providers that provide therapy beyond just autism.

Pearson went through the following discussion points:

- 1. Do we want certification of ABA providers in South Dakota? There was consensus that, yes, we do.**
- 2. If yes, do we want a new board/or existing board? It was agreed that operation under an existing board would be the best place to start.**
- 3. Which board? The psychology board was the best fit.**

A small group was established to prepare a discussion draft before the next meeting. DHS attorney Carole Boos and Osnes and Isler will help create the discussion draft.

Pearson talked about the group's recommendation and how next the recommendation would work through the legislative process (which could be legislation from the Governor or legislators). Members commented about how this is a step in the process and one leg of the table/stool to continue to move this effort forward. Pearson asked for a closing round by members identifying their thoughts on the work of the committee thus far. The following summarizes the feedback received:

There was broad support of a subcommittee to draft language and share in advance of the final meeting and that ABA providers should join a standing board – at least until they are self-sustainable – as well as a need to clarify scope of practice.

Pearson concluded the meeting by thanking the members for their participation and their passion. The hard work is now beginning and we are up to the challenge.