REGULATIONS GOVERNING THE PRACTICE OF BEHAVIOR ANALYSIS

A Comparison of the BACB Guidelines, BOM Regulations, and DMAS Regulations for EPSDT
Licensure under the Board of Medicine

It is the responsibility of every LBA and LABA to become familiar with these regulations housed on the Board of Medicine Web site: http://www.dhp.virginia.gov/medicine

It is the licensed person’s responsibility to update the BOM when his/her name or address changes within 30 days

Initial fees are:
- BCBA - $130
- BCaBA - $70

Renewal fees are:
- BCBA - $135
- BCaBA - $70
- Renewals occur in the birth month of odd-numbered years

The main requirement for licensure is BACB certification, but BACB certification is not needed for renewal.

Source: BOM Regulations
Note: In this slide and in all of the following, some of the information is pulled word-for-word from the sources, and some is paraphrased.
As of January 2018, providers need to be credentialed and contracted with any or all of the MCOs (Managed Care Organizations) through whom they want to provide services.

Providers must be an LBA

- LABAs may work with an LBA but are not separately credentialed by the MCOs
- Direct staff can be LBA, LABA or personnel under the supervision of an LABA or LBA

Source: EPSDT Supplement – Behavioral Therapy Program 12/5/2014
It is very important to note that BCBAs or BCaBAs without a current license MUST NOT PRACTICE, regardless of their ability or status in another state.

From the BACB Professional and Ethical Compliance Code for Behavior Analysts (Jan 2016 version):

- 1.04 Integrity.

  (d) Behavior analysts’ behavior conforms to the legal and ethical codes of the social and professional community of which they are members.

It is every behavior analyst’s responsibility to know the laws that govern us.

Source: BOM Regulations
18VAC85-150-110. Scope of practice.

The practice of a behavior analyst includes:

1. Design, implementation, and evaluation of environmental modifications using the principles and methods of behavior analysis to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior; and

2. Supervision of licensed assistant behavior analysts and unlicensed personnel.

Source: BOM Regulations
ELIGIBILITY CRITERIA - DMAS

While the scope of practice for a behavior analyst is not limited beyond what the behavior analyst is qualified to do from the perspective of the BOM or the BACB, DMAS does limit who can receive the services (as covered by Medicaid).

EPSDT Behavioral Therapy services are available to individuals who:
- are under 21 years of age and enrolled in Medicaid/FAMIS Plus or FAMIS Fee-for-Service; and,
- have a medical need (identified by a physician) for behavioral therapy and meet eligibility criteria as identified in the manual.

For the service description, covered services, and limitations, see the manual.

Note that Behavioral Therapy can only be authorized for a client that would not be able to benefit from any other EPSDT service and can not be provided alongside any other Community Mental Health Rehabilitation Service.

All treatment service hours beyond the initial assessment require authorization.

Any provider of EPSDT Behavioral Therapy Services must be familiar with and follow the manual.

Source: EPSDT Supplement – Behavioral Therapy Program 12/5/2014
The BOM continuing education requirements were changed in X to track with BACB requirements that changed in January of 2015.

### CONTINUING EDUCATION

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<tr>
<th></th>
<th>BACB</th>
<th>VA License</th>
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<tbody>
<tr>
<td>BCBA/LBA</td>
<td>32/2 years</td>
<td>32/2 years</td>
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<tr>
<td></td>
<td>Includes 4 ethics credits (and supervision requirements)</td>
<td>Includes 4 ethics credits</td>
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<tr>
<td>BCaBA/LBA</td>
<td>20/2 years</td>
<td>20/2 years</td>
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<tr>
<td></td>
<td>Includes 4 ethics credits</td>
<td>Includes 4 ethics credits</td>
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Note that the source of the CEUs are the same for the BACB and the BOM (a BACB approved provider).

*Up to 2 CEUs may be satisfied through delivery of behavioral analysis services, without compensation, to low-income individuals receiving services through a local health department or a free clinic organized in whole or primarily for the delivery of health services. One hour of continuing education may be credited for three hours of providing such volunteer services. For the purpose of continuing education credit for voluntary service, the hours shall be approved and documented by the health department or free clinic.

Source: BOM Regulations, BACB
SUPERVISORY RESPONSIBILITIES

Supervision in the BOM regulations refers only to supervision of LABAs by LBAs and does not related to supervision of students.

“The Licensed Behavior Analyst is ultimately responsible and accountable for client care and outcomes under his clinical supervision . . . Delegation shall only be made if, in the judgment of the licensed behavior analyst, the task or procedures can be properly and safely performed by an appropriately trained assistant behavior analyst or other person, and the delegation does not jeopardize the health or safety of the client.”

Source: BOM Regulations
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<tr>
<th></th>
<th>BACB 2017</th>
<th>VA License</th>
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<tbody>
<tr>
<td><strong>Responsibility</strong></td>
<td>BCBA supervisor will be responsible for the work of the BCaBA(s) he/she is supervising</td>
<td>LBA ultimately responsible (see previous slide)</td>
</tr>
<tr>
<td><strong>Public Identification</strong></td>
<td>BCBA supervisor will be publicly identified on the Certificant Registry</td>
<td>Reported to the BOM, but not listed publically</td>
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<tr>
<td><strong>Qualifications</strong></td>
<td>Same requirements as in the Experience Standards policy (e.g., the supervisor may not be related to or subordinate to the BCaBA); Supervisor must complete a supervision class and module and maintain supervision CEUs</td>
<td>Not addressed</td>
</tr>
<tr>
<td><strong>Caseload</strong></td>
<td>Volume of supervisory activity must be commensurate with ability to be effective</td>
<td>Not addressed</td>
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# LABA SUPERVISION COMPARISON WITH BACB

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<tr>
<th></th>
<th>BACB 2017</th>
<th>VA License</th>
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<tr>
<td><strong>Amount</strong></td>
<td>2% of hours of ABA services provided per month; supervisors may require more when appropriate (adjusted based on hours of practice)</td>
<td>The frequency and nature of supervision interactions are determined by the individualized assessment or treatment plans of the clients served by the licensed behavior analyst and the assistant behavior analyst, but shall occur not less than once every four weeks with each supervision session lasting no less than one hour.</td>
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<tr>
<td><strong>Frequency</strong></td>
<td>At least once per month, but the supervisor must be available for consultation during service-delivery periods</td>
<td></td>
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<tr>
<td><strong>New BCaBAs</strong></td>
<td>5% of hours of ABA services provided per month for the first 1,000 hours of practice, with no less than one hour of supervision every two weeks (current BCaBAs exempt)</td>
<td>Not addressed</td>
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## LABA Supervision Comparison with BACB

<table>
<thead>
<tr>
<th>Interaction Type</th>
<th>BACB 2017</th>
<th>VA License</th>
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<tbody>
<tr>
<td></td>
<td>Real-time, face-to-face interactions not required; no supervision via text or email; incorporates Experience Standards provisions on nature of supervision</td>
<td>“Real-time” shall mean live and person-to-person.</td>
</tr>
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</table>

*Source: BACB Newsletter – 12/2014, BOM Regulations*
### LABA SUPERVISION COMPARISON WITH BACB

<table>
<thead>
<tr>
<th>BACB 2017</th>
<th>VA License</th>
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<tbody>
<tr>
<td><strong>Observation</strong></td>
<td>Quarterly via any appropriate means (no in-person requirement)</td>
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Source: BACB Newsletter – 12/2014, BOM Regulations
# LABA Supervision Comparison with BACB

<table>
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<tr>
<th>Group Supervision Type</th>
<th>BACB 2017</th>
<th>VA License</th>
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<tr>
<td></td>
<td>Small interactive groups of 2-10 supervisees. If non-supervisees are present, their participation should be limited</td>
<td>Includes real-time interactions between a supervisor and a group of supervisees to review and discuss assessment and treatment plans and procedures, client assessment and progress data and reports, published research, ethical and professional standards and guidelines, professional development needs and opportunities, and relevant laws, regulations, and policies.</td>
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| Group Supervision Amount Allowed | Max. 50% of supervision |

*Source: BACB Newsletter – 12/2014, BOM Regulations*
# Laba Supervision Comparison with BACB

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<th>VA License</th>
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<tr>
<td><strong>Reporting</strong></td>
<td>Ongoing documentation of supervision meetings using meeting form that must be provided if requested by the BACB</td>
<td>A copy of the written supervisory agreement shall be maintained by the licensed behavior analyst and the licensed assistant behavior analyst and made available to the board upon request.</td>
</tr>
</tbody>
</table>

*Source: BACB Newsletter – 12/2014, BOM Regulations*
BCABA/LABA CONTRACT COMPARISON

BACB 2017

A contract must be in place that specifies:

▪ Nature and frequency of supervision (including grounds for increased supervision at the discretion of the supervisor)
▪ Mechanism for reporting caseload to supervisor
▪ Methods of supervisory observation
▪ Mandatory third-party consent for supervisor involvement
▪ Written feedback retained by both parties
▪ Supervisory responsibility over services and client consent for supervisor’s involvement
▪ Provision terms for supervision (fee for service)
▪ Termination and verification criteria

Virginia License

There shall be a written supervisory agreement between the licensed behavior analyst and the licensed assistant behavior analyst that shall address:

▪ The domains of competency within which services may be provided by the licensed assistant behavior analyst; and
▪ The nature and frequency of the supervision of the practice of the licensed assistant behavior analyst by the licensed behavior analyst.

Source: BACB Newsletter – 12/2014, BOM Regulations
18VAC85-150-130. Supervision of unlicensed personnel.

A. Unlicensed personnel may be supervised by a licensed behavior analyst or a licensed assistant behavior analyst.

B. Unlicensed personnel may be utilized to perform:

1. Nonclient-related tasks including, but not limited to, clerical and maintenance activities and the preparation of the work area and equipment; and

2. Certain routine client-related tasks that, in the opinion of and under the supervision of a licensed behavior analyst or a licensed assistant behavior analyst, have no potential to adversely impact the client or the client's treatment plan and do not constitute the practice of behavior analysis.
Section 5 in the Professional and Ethical Compliance Code for Behavior Analysts covers Behavior Analysts as Supervisors

5.01 – supervise only within area of defined competence

5.02 – volume must be commensurate with ability to be effective

5.03 – delegate only responsibilities that the supervisee can reasonably be expected to perform competently, ethically, and safely or provide conditions for acquisition of those skills
Unlicensed personnel work under the supervision of an LABA or LBA as is appropriate (following the VA Law and the BACB guidelines).

The unlicensed person must not write the plans, analyze the data, or do anything else that would be considered “practicing behavior analysis.”

There are no current requirements for the unlicensed person (such as RBT) because the licensed person is fully responsible for them. This may change in the future.

Source: EPSDT Supplement Behavioral Therapy Program 12/5/2014
CONFIDENTIALITY

BACB

• Confidentiality is addressed in Ethics Code 2.06. Disclosures are discussed in 2.08.

• BA’s have an obligation to take reasonable precautions to protect the confidentiality of clients.

• BA’s discuss confidentiality at the beginning of the relationship and during new circumstances.

• BA’s minimize the amount of private information they communicate

• Research is governed separately

• Sharing identifying info on social media is prohibited

Virginia License

A practitioner shall not willfully or negligently breach the confidentiality between a practitioner and a client. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.

Source: BACB 2016 Professional and Ethical Compliance Code for Behavior Analysts, BOM Regulations for Behavior Analysts
CLIENT RECORDS

BACB

• Maintaining Records is addressed in Ethics Codes 2.07 and 2.11

• Behavior analysts maintain appropriate confidentiality in handling records, but this is not specified.

• This code indicates that behavior analysts follow the law as well as corporate policies with regard to records

• Behavior analysts must retain records and data for at least 7 years and as otherwise required by law.

Virginia License

• There is a separate code relating to health records privacy: § 32.1-127.1:03.

• Practitioners need to provide records to other practitioners in a timely manner (following the above code).

• Practitioners shall properly manage and keep timely, accurate, legible, and complete client records.

• If a practitioner does not own the records (e.g. an agency does), then they need to comply with the owner’s procedures.

• But those who are self-employed shall:
  • Maintain records for a minimum of 6 years unless a minor or transferred to another practitioner. Minor’s records should be maintained until the child is 18, is emancipated, or at least 6 years. There may be other laws that extend the record-keeping time.
  • Practitioners also need to post or otherwise inform clients of the record-keeping time frame.
  • When records are destroyed, they need to be completely destroyed so the information can’t be stolen.
  • There is another code that governs the closing or selling of a practice: § 54.1-2405.

Source: BACB 2016 Professional and Ethical Compliance Code for Behavior Analysts, BOM Regulations for Behavior Analysts
DMAS has strict documentation requirements about what needs to be included in the member’s record. See the manual for more information.
CLIENT COMMUNICATION

BACB

Many of the Ethics Codes touch on this, however, these are the closest related:

3.03 – written approval must be acquired before the assessment

3.04 – explanations must be reasonably understandable

3.05 – consent must be gained prior to reviewing records.

4.04 – written approval is required prior to making significant modifications to plans

8.01 – behavior analysts avoid false and deceptive statements about treatment

Virginia License

• Practitioners shall accurately present information in understandable terms and encourage participation in decisions regarding client care. There is another code that governs this: § 32.1-127.1:03 F
• Practitioners should not make false or misleading statements about their skills or the efficacy of treatment.
• Initial assessments require informed consent from client or guardian. They need to be informed about the risks, benefits, and alternatives of the recommended procedure that a reasonably prudent practitioner would tell a client.
• Intervention changes (that are not routine and are more restrictive) require informed consent.
• There is an exception to the consent requirement in an emergency situation or when delay would cause harm.
• There is a code that covers informed consent for human research (not including retrospective record reviews): § 32.1-162.18

Source: BACB 2016 Professional and Ethical Compliance Code for Behavior Analysts, BOM Regulations for Behavior Analysts
CLIENT TERMINATION

BACB

• Interrupting or Discontinuing Services is addressed in Ethics Code 2.15
• Behavior analysts act in the client’s best interest to avoid interruption of services and make reasonable and timely efforts to find other services.
• Contracts should stipulate what happens when the relationship ends with focus on the welfare of the client.
• Relationships are discontinued when the client doesn’t need the service any more, isn’t benefiting from the service, is being harmed by the service, or requests the end of the service.
• Behavior analysts do not abandon clients. All attempts are made to facilitate transition.

Virginia License

• Either practitioner or client may terminate the relationship.
• Client records need to be made available to the client except where prohibited by law.
• The practitioner must give document notice that allows for a reasonable time to find another provider.

Source: BACB 2016 Professional and Ethical Compliance Code for Behavior Analysts, BOM Regulations for Behavior Analysts
PRACTITIONER RESPONSIBILITY

BACB

Many of the Ethics Codes touch on this, however, these are the closest related:

1.02 – behavior analysts stay within the boundaries of their competence

5.03 – behavior analysts delegate only responsibilities that they think the subordinate can perform safely and provide training for skills the subordinate does not have

1.07 – behaviors analysts do not exploit the people with whom and for whom they work

Virginia License

Practitioners are prohibited from

- working outside the scope of his/her practice
- allowing a subordinate to jeopardize client safety or provide client care outside of his/her scope of practice
- delegating client care to someone who isn’t properly trained and supervised
- engaging in behavior that interferes with treatment or adversely impacts client care
- exploiting the relationship for personal gain

Advocating for client safety or improvement in client care within a health care entity shall not constitute disruptive behavior provided the practitioner does not engage in prohibited behavior.

Source: BACB 2016 Professional and Ethical Compliance Code for Behavior Analysts, BOM Regulations for Behavior Analysts
REFERRALS

BACB

• Referrals and fees is addressed in Ethics Codes 2.07 and 2.11
• Behavior analysts must not receive or provide money, gifts, or other enticements for any professional referrals.
• Referrals should include multiple options and be made based on objective determination of the client need and subsequent alignment with the repertoire of the referee.
• When providing or receiving a referral, the extent of any relationship between the two parties is disclosed to the client

Virginia License

• A practitioner shall not receive cash or other compensation for a referral to a facility, institution, or hospital
• Payments, business arrangements, or payment practices allowed by 42 USC § 1320 a-7b(b) do not apply

Source: BACB 2016 Professional and Ethical Compliance Code for Behavior Analysts, BOM Regulations for Behavior Analysts
SEXUAL CONTACT

BACB

• Sexual Contact is addressed in Ethics Code 1.07
• Behavior analysts do not engage in sexual relationships with clients, students, or supervisees, because such relationships easily impair judgment or become exploitative.
• Behavior analysts refrain from any sexual relationships with clients, students, or supervisees, for at least two years after the date the professional relationship has formally ended.

Virginia License

• Sexual behavior is defined as verbal or physical behavior that may be interpreted as intended for sexual arousal of either party or may be interpreted as romantic involvement with a client regardless of the setting (professional or otherwise).
• This section states that the determination of when a person is a client is made on a case-by-case basis. It does not limit the definition of client to someone who is actively receiving treatment, but the person is only no longer considered a client when the contract is terminated.
• Who initiated or consented does not change the prohibition.
• Sexual contact with a former client after termination of the relationship, key third party (spouse or partner, parent or child, guardian, or legal representative), or a subordinate may still be prohibited if the relationship is found to exploit trust, knowledge, or influence of emotions derived from the relationship or the relationship has an adverse effect on client care.

Source: BACB 2016 Professional and Ethical Compliance Code for Behavior Analysts, BOM Regulations for Behavior Analysts
REFUSAL TO PROVIDE INFO

BACB

• Disclosures are addressed in Ethics Code 2.08
• Behavior analysts never disclose confidential information without the consent of the client, except as mandated by law, or where permitted by law for a valid purpose, such as providing services to the client, professional consultations, protecting the client or others from harm, and obtaining payment for services.
• Behavior analysts need to obtain consent for disclosure at the beginning of the relationship and in an ongoing manner as necessary.

Virginia License

• A practitioner shall not willfully refuse to provide information or records as requested or required by the board or its representative pursuant to an investigation or to the enforcement of a statute or regulation.

Source: BACB 2016 Professional and Ethical Compliance Code for Behavior Analysts, BOM Regulations for Behavior Analysts