

April 15, 2013

To: Senate Committee On Health Care and Human Services  
From: Paul Terdal  
Re: Concerns with Proposed -3 Amendments to SB365

Dear Chair Monnes Anderson and members of the committee,

SB365 is an important bill that will reinforce the existing right of individuals with autism to access the medically necessary care that can make a big difference in their lives. It will:

- Clarify Oregon's existing laws mandating insurance coverage for autism, and provide specific requirements for coverage of Applied Behavior Analysis (ABA) therapy
- Provide state oversight of ABA providers through a new Behavior Analysis Regulatory Board under the Oregon Health Licensing Agency, to ensure that individuals with autism receive excellent, cost effective care
- Apply equally to commercial insurance plans, PEBB, and the Oregon Health Plan – so everyone in Oregon can access the national standard of care for treatment of autism

During the April 4, 2013 hearing, an initial set of “-3 amendments” were introduced with some clauses that could actually make it harder for individuals with autism to access the care that they need. These clauses:

- Remove coverage of Applied Behavior Analysis (ABA) services from Oregon's Mental Health Parity act (ORS 743A.168) – marking the first ever retreat from that landmark law
- Nullify the right of patients with autism to appeal adverse benefit denials to independent review organizations – a right mandated by Federal Law (Affordable Care Act)
- Even appear to allow insurers to exclude coverage of ABA altogether if schools, education service districts, the Oregon Health Authority, or Department of Human Services decide to use ABA-based techniques
- Postpone implementation on most plans until late 2014 or even 2015

The autism community understands the importance of reaching a consensus with the insurance industry if possible – but this isn't it.

Since we must now move forward into the Ways and Means process, we propose three alternatives:

- Option 1: move the original, un-amended SB365 to Ways and Means. We can finalize our discussions with the Insurance Industry and amend it once it is there
- Option 2: draft a new amendment that addresses our concerns, and move SB365 with that new amendment to Ways and Means. Again, we would be happy to continue our discussions with the Insurance Industry in hopes of finding mutually acceptable language that resolves their underlying concerns. Appendix A describes our proposed resolutions to these concerns; Appendix B contains model amendment language.

- Option 3: abandon attempts to revise the existing autism mandate, and proceed only with the licensing board language in Section 3, which we all agree is necessary. Appendix C contains model language.

We greatly appreciate the enormous amount of effort that Sen. Bates and the members of the legislative workgroup have put into this issue over the last year. We hope very much that we can move forward to enact a bill that will improve access to essential healthcare for individuals with autism. The unamended version of SB365, based on our discussions in the Legislative Work Group, will result in significant improvements in the identification of children who need these services, and will greatly improve access to services, ensuring that children with autism get effective treatment during early childhood, when it helps most. Unfortunately, the -3 amendments, which include terms not discussed in the Legislative Work Group, would do just the opposite—the amended bill would make it significantly more difficult than it is now for these individuals to access these much-needed services.

We believe that the best way forward would be to have a face-to-face meeting with the insurers to talk through the remaining issues and find alternative ways to address their concerns. We believe that an honest discussion will reveal middle ground that will permit us to reach a consensus on the remaining issues in Section 2.

Sincerely,

Paul Terdal

**Appendices:**

- Appendix A: Proposed Resolution to Concerns with SB365 -3 Amendments
- Appendix B: Proposed amendment addressing concerns with SB365 -3 Amendment
- Appendix C: Alternate amendment for licensing board with no revision to autism mandate

# Appendix A: Proposed Resolution to Concerns with SB365 -3 Amendments

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## **Summary:**

This appendix outlines the autism community's proposed resolution to concerns with the -3 amendments to SB365. There are four "critical issues", plus two "technical fixes" that we believe will not be controversial.

## **Critical Issues:**

### **Coverage of ABA Services Provided by the OHA, DHS, Schools, and ESD:**

#### ***Current Text in -3 Amendment (page 3, lines 27-39):***

Section 2(5)(b) This subsection does not require coverage of applied behavior analysis that is being provided by the Oregon Health Authority, the Department of Human Services, a school district or an education service district.

#### ***Comments:***

While we agree that insurers should not be financially responsible for ABA services provided by schools or government agencies, the attorneys we have consulted all believe that this could enable an insurer to exclude ABA altogether if a government agency was providing any form of ABA. We can envision a contractual exclusion that says: "ABA therapy is excluded if your school district is providing ABA therapy."

#### ***Recommendation:***

Replace Section 2(5)(b) (Page 3, lines 27-39) from the proposed -3 Amendment with this language, based on that used in Massachusetts:

"SECTION 2(6)(b) This section shall not affect an obligation to provide services to an individual under an individualized family service plan, an individualized education program or an individualized service plan. Applied behavior analysis services provided by the Oregon Health Authority, the Department of Human Services, a school district or an education service district under an individualized education program are not subject to reimbursement under this section."

## Relation to ORS 743A.168 (Mental Health Parity) and 743A.190:

### *Current Text in -3 Amendment (page 4, lines 15-17):*

Section 2(7) This section does not limit coverage for any services, other than applied behavior analysis, that are otherwise available to an individual under ORS 743A.168 or 743A.190.

### *Comments:*

This clause removes ABA from Oregon’s Mental Health Parity law (ORS 743A.168), stripping away protections that ABA will be provided “at the same level as, and subject to limitations no more restrictive than, those imposed on coverage or reimbursement of expenses arising from treatment for other medical conditions.” It also makes it difficult for consumers to enforce their right to access treatment. ABA would continue to be covered by the Federal Mental Health Parity and Addiction Equity Act, setting up a conflict between state and federal law.

### *Recommendation:*

Restore our original language to Section 2(7) (Page 4, lines 15-17 from the proposed -3 Amendment):

“SECTION 2(7) This section does not limit coverage that is otherwise available to an individual under the health benefit plan, or reduce benefits required under ORS 743A.168 or 743A.190.”

## Nullification of External Review rights:

### *Current Text in -3 Amendment (page 11, lines 17-21):*

Section 7(6) A health benefit plan that provides coverage of treatment for autism spectrum disorder in accordance with section 2 of this 2013 Act shall be deemed to be in compliance with this section notwithstanding any contrary decision of an independent review organization under ORS 743.857.

### *Comments:*

The autism community has been very clear in its opposition to any attempt to overturn existing External Review (IRO) decisions on coverage of ABA. This clause goes much, much further in that it effectively prevents any patient with autism from seeking external review of an adverse benefit denial.

This clause also violates Federal Law (PPACA), which guarantees the right to external review, and could jeopardize the state’s certification of compliance.

### *Recommendation:*

Delete this language (and Section 7 of the proposed -3 amendment) in its’ entirety.

## Effective Date:

### *Current Text in -3 Amendment (page 15, lines 25-27 and page 16, lines 1-2):*

SECTION 21. (1) Sections 2 and 9 of this 2013 Act and the amendments to ORS 414.710 and 743A.190 by sections 6 and 7 of this 2013 Act become operative July 1, 2014.

...

SECTION 22. Section 2 of this 2013 Act applies to insurance policies or certificates issued or renewed on or after July 1, 2014.

### *Comments:*

This section postpones implementation by six months, from January to July, 2014. Since most plans renew at the beginning of the year, this effectively postpones implementation by a full year, to 2015. Given the urgent need for improved ABA services, the fact that some key insurers (Kaiser and PacificSource) are already providing coverage ABA services, and the fact that that coverage of these services is almost certainly already mandated by ORS 743A.168, this delay is inappropriate.

### *Recommendation:*

Restore the original effective date of January 1, 2014 (page 15, lines 25-27 and page 16, lines 1-2 from the proposed -3 Amendment):

SECTION 21. (1) Sections 2 and 9 of this 2013 Act and the amendments to ORS 414.710 and 743A.190 by sections 6 and 7 of this 2013 Act become operative January 1, 2014.

...

SECTION 22. Section 2 of this 2013 Act applies to insurance policies or certificates issued or renewed on or after January 1, 2014.

## Technical Fixes (Presumed non-controversial):

### Experience requirements for developmental pediatricians, psychiatrists, psychologists on the Behavior Analyst Board:

#### *Current Text in -3 Amendment (page 9, lines 19-22):*

Section 3a(1)(b) One member who is a licensed psychiatrist or developmental pediatrician with experience or training in applied behavior analysis;

Section 3a(1) (c) One member who is a licensed psychologist and who has experience in the diagnosis and treatment of autism spectrum disorders;

#### *Comments:*

In our meeting on 3/18/2013, we agreed that for the initial make-up of the board, the psychologist would be either a BCBA or a faculty member at an accredited university teaching a course sequence approved by the Behavior Analyst Certification Board, Inc., and this was inserted into the original working draft of the -3 amendments.

In our follow-up meeting on 3/28/2013, we requested a change to the requirements for the licensed psychiatrist or developmental pediatrician, noting that they are unlikely to have “experience or training in applied behavior analysis” and should merely be required to have “experience in the diagnosis and treatment of autism spectrum disorders.”

It appears that this fix was correctly applied to the permanent membership requirements in Section 3, but that the temporary requirements in Section 3a were reversed.

#### ***Recommendation:***

Replace the experience requirements for the licensed psychiatrist or developmental pediatrician and the licensed psychologist in Section 3a with (page 9, lines 19-22 from the proposed -3 Amendment):

Section 3a(1)(b) One member who is a licensed psychiatrist or developmental pediatrician with experience in the diagnosis and treatment of autism spectrum disorders;

Section 3a(1)(c) One member who is a licensed psychologist and who is:

(A) Certified by the Behavior Analyst Certification Board, Incorporated, as a Board Certified Behavior Analyst; or

(B) A faculty member at an accredited university and is teaching a course sequence that has been approved by the Behavior Analyst Certification Board, Incorporated;

**Change Name for “Behavior Analyst Board” to “Behavior Analysis Regulatory Board”**

***Current Text in -3 Amendment (page 5, lines 29-39):***

Section 3 (1) There is created, within the Oregon Health Licensing Agency, the Behavior Analyst Board consisting of seven...

***Comments:***

To avoid possible confusion between Oregon’s new board to regulate providers of Applied Behavior Analysis and the existing Behavior Analyst Certification Board, Inc., we would like to change the name of the board to the “Behavior Analysis Regulatory Board”.

***Recommendation:***

Change name of the new board from “Behavior Analyst Board” to “Behavior Analysis Regulatory Board”

Section 3 (1) There is created, within the Oregon Health Licensing Agency, the Behavior Analysis Regulatory Board consisting of seven...

Change must be made to all locations that reference the board by name.

# Appendix B: Proposed amendment addressing concerns with SB365 -3 Amendment

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SB 365-~~34~~  
(LC 1598)  
4/4/13 (LHF/ps - Paul  
Terdal)

## PROPOSED AMENDMENTS TO SENATE BILL 365

On page 1 of the printed bill, line 2, after “ORS” insert “414.710,”.

Delete lines 6 through 28 and delete pages 2 through 4.

On page 5, delete lines 1 through 15 and insert:

“SECTION 2. (1) As used in this section and sections 3 and 3a of this 2013 Act:

“(a) ‘Applied behavior analysis’ means the design, implementation and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce significant improvement in human social behavior, including the use of direct observation, measurement and functional analysis of the relationship between environment and behavior. The practice of applied behavior analysis expressly excludes psychological testing, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy and long-term counseling as treatment modalities.

“(b) ‘Autism spectrum disorder’ has the meaning given that term in the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) published by the American Psychiatric Association.

“(c) ‘Behavioral health treatment’ means counseling and treatment programs, including applied behavior analysis and other evidence based behavioral interventions, that are necessary to improve the functioning of an individual with serious behavioral impairments and that are provided by:

“(A) A licensed health care professional approved by the ~~Behavior Analyst Board~~Behavior Analysis Regulatory Board under section 3 of this 2013 Act;

“(B) A behavior analyst or an assistant behavior analyst licensed under section 3 of this 2013 Act; or

“(C) A behavior analysis interventionist registered under section 3 of this 2013 Act.

“(d) ‘Diagnosis’ means medically necessary assessment, evaluation or testing.

“(e) ‘Health benefit plan’ has the meaning given that term in ORS 743.730.

“(f) ‘Medically necessary’ means in accordance with the definition of medical necessity that is specified in the policy or certificate for the health benefit plan and that applies to all covered services under the plan.



“(g) ‘Treatment for autism spectrum disorder’ includes behavioral health treatment and any mental health services or other medical services identified in the individualized treatment plan, as described in subsection (10) of this section.

“(2) A health benefit plan shall provide coverage of:

“(a) The screening for and diagnosis of autism spectrum disorder by a licensed neurologist, pediatric neurologist, developmental pediatrician, psychiatrist or psychologist, who has experience and training in the diagnosis of autism spectrum disorder; and

“(b) Medically necessary treatment for autism spectrum disorder and the management of care, including any periodic updating of an individualized treatment plan that is required by the insurer.

“(3) An insurer may not terminate coverage or refuse to issue or renew coverage for an individual solely because the individual has received a diagnosis of autism spectrum disorder or has received treatment for autism spectrum disorder.

“(4) Coverage under this section may be subject to utilization controls that are reasonable in the context of individual determinations of medical necessity. An insurer may require:

“(a) Confirmation of an autism spectrum disorder diagnosis by a professional described in subsection (2)(a) of this section if the original diagnosis was not made by a professional described in subsection (2)(a) of this section, provided the requirement does not delay the provision of applied behavior analysis services by more than 60 days.

“(b) Prior authorization for coverage of 25 hours or less per week of applied behavior analysis recommended in an individualized treatment plan approved by a professional described in subsection (2)(a) of this section for an individual with autism spectrum disorder who is younger than nine years of age, as long as the insurer makes a prior authorization determination no later than 30 calendar days after receiving the request for prior authorization.

“(c) Prior authorization, according to the terms of the policy that apply to other medical conditions, for coverage of:

“(A) Hours in excess of 25 hours per week of applied behavior analysis for individuals who are younger than nine years of age; or

“(B) Applied behavior analysis for individuals who are nine years of age or older.

“(5)(a) Once coverage for applied behavior analysis has been approved, the coverage continues as long as:

“(A) The individual continues to make progress toward the majority of the goals of the individualized treatment plan; and

“(B) Applied behavior analysis is medically necessary.

“(b) This section shall not affect an obligation to provide services to an individual under an individualized family service plan, an individualized education program or an individualized service plan. Applied behavior analysis services provided by the Oregon Health Authority, the Department of Human Services, a school district or an education service district under an individualized education program are not subject to reimbursement under this section. This subsection does not require coverage of applied behavior analysis that is being provided by the Oregon Health Authority, the Department of Human Services, a school district or an education service district.

“(c) An insurer may require periodic review of an individualized treatment plan, as described in subsection (10) of this section, and modification of the individualized treatment plan if the review shows that the individual receiving the treatment is not making substantial progress toward the goals of the individualized treatment plan.

**Comment [PNT1]:** We are agreed that insurers do not need to reimburse the Oregon Health Authority, the Department of Human Services, a school district or an education service district for ABA services that they provide.

Under the original -3 amendment language, if a government agency or school district is providing any amount of ABA services for any purpose, insurers could argue that they are not obligated to provide coverage for ABA at all. We can envision a contractual exclusion that says: “ABA therapy is excluded if your school district is providing ABA therapy.” Since some schools or government agencies do (or at least should) provide some forms of ABA therapy within their programs – just as schools currently provide other medical services such as speech therapy, hearing exams, or even administration of insulin injections to diabetic children – this could nullify the bill, and make it impossible to enforce.

“(6) Coverage under this section may be subject to requirements and limitations no more restrictive than those imposed on coverage or reimbursement of expenses arising from the treatment of other medical conditions under the policy or certificate, including but not limited to:

“(a) Requirements and limitations regarding in-network providers; and

“(b) Provisions relating to deductibles, copayments and coinsurance.

“(7) ~~This section does not limit coverage that is otherwise available to an individual under the health benefit plan, or reduce benefits required under ORS 743A.168 or 743A.190. This section does not limit coverage for any services, other than applied behavior analysis, that are otherwise available to an individual under ORS 743A.168 or 743A.190.~~

“(8) A claim for services described in this section may not be denied on the basis that the service is habilitative or rehabilitative and does not fully restore function.

“(9) Coverage under this section includes treatment provided in the individual’s home or a licensed health care facility or, for treatment provided by a licensed health care professional approved by the ~~Behavior Analyst Board~~ **Behavior Analysis Regulatory Board** under section 3 of this 2013 Act, at the office of the health care professional. This section may not be construed as affecting any obligation to provide services to an individual under an individualized family service plan or an individualized education program. Nothing in this section requires coverage for:

“(a) Services provided by a family or household member;

“(b) Services that are custodial in nature or that constitute marital, family, educational or training services;

“(c) Custodial or respite care, equine assisted therapy, creative arts therapy, wilderness or adventure camps, social counseling or telemedicine; or

“(d) Services or supplies that are not medically necessary.

“(10) If an individual is receiving treatment for autism spectrum disorder, an insurer may require submission of an individualized treatment plan, which shall include all elements necessary for the insurer to appropriately determine coverage under the health benefit plan. The individualized treatment plan must be based on evidence based screening criteria. An insurer may require an updated individualized treatment plan, not more than once every six months, that includes observed progress as of the date the updated plan was prepared, for the purpose of performing utilization review and medical management. The insurer may require the individualized treatment plan to include the:

“(a) Diagnosis;

“(b) Proposed treatment by type;

“(c) Frequency and anticipated duration of treatment;

“(d) Anticipated outcomes stated as goals, including specific cognitive, social, communicative, self-care and behavioral goals that are clearly stated, directly observed and continually measured and that address the characteristics of the autism spectrum disorder; and

“(e) Signature of the treating provider.

“(11) This section applies to health benefit plans and to self-insured health plans offered by the Public Employees’ Benefit Board and the Oregon Educators Benefit Board.

“(12) ORS 743A.001 does not apply to this section.

“SECTION 3. (1) There is created, within the Oregon Health Licensing Agency, the ~~Behavior Analyst Board~~ **Behavior Analysis Regulatory Board** consisting of seven members appointed by the Governor, including:

“(a) Three members who are licensed by the board;

**Comment [PNT2]:** The original -3 amendment language would effectively remove ABA therapy from Oregon’s Mental Health Parity law (743A.168).

Oregon’s Mental Health Parity law provides key consumer protections to ensure that coverage for mental or nervous conditions – including autism – is provided “at the same level as, and subject to limitations no more restrictive than, those imposed on coverage or reimbursement of expenses arising from treatment for other medical conditions.”

In drafting SB365, our assumption was that treatment for autism – including ABA – would continue to be bound by the requirement that it would be “subject to limitations no more restrictive than for other medical conditions.”

**Comment [PNT3]:** To avoid possible confusion between Oregon’s new board to regulate providers of Applied Behavior Analysis and the existing Behavior Analyst Certification Board, Inc., we would like to change the name of the board to the “Behavior Analysis Regulatory Board”.

“(b) One member who is a licensed psychiatrist or developmental pediatrician, with experience or training in treating autism spectrum disorder;

“(c) One member who is a licensed psychologist approved by the board;

“(d) One member who is a licensed speech-language pathologist approved by the board;  
and

“(e) One member of the general public who does not have a financial interest in the provision of applied behavior analysis and does not have a ward or family member who has been diagnosed with autism spectrum disorder.

“(2) Not more than one member of the ~~Behavior Analyst Board~~Behavior Analysis Regulatory Board may be an employee of an insurer.

“(3) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on November 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

“(4) A member of the ~~Behavior Analyst Board~~Behavior Analysis Regulatory Board is entitled to compensation and expenses as provided in ORS 292.495.

“(5) The ~~Behavior Analyst Board~~Behavior Analysis Regulatory Board shall select one of its members as chairperson and another as vice chairperson, for such terms and with duties and powers necessary for the performance of the functions of such offices as the board determines.

“(6) A majority of the members of the ~~Behavior Analyst Board~~Behavior Analysis Regulatory Board constitutes a quorum for the transaction of business.

“(7) The ~~Behavior Analyst Board~~Behavior Analysis Regulatory Board shall meet at least once every three months at a place, day and hour determined by the board. The board may also meet at other times and places specified by the call of the chairperson or of a majority of the members of the board.

“(8) In accordance with ORS chapter 183, the ~~Behavior Analyst Board~~Behavior Analysis Regulatory Board shall establish by rule criteria for the:

“(a) Licensing of:

“(A) Behavior analysts; and

“(B) Assistant behavior analysts;

“(b) Approval of licensed health care professionals; and

“(c) Registration of behavior analysis interventionists.

“(9) The criteria for the licensing of a behavior analyst must include, but are not limited to, the requirement that the applicant:

“(a) Be certified by the Behavior Analyst Certification Board, Incorporated, as a Board Certified Behavior Analyst; and

“(b) Have successfully completed a criminal records check.

“(10) The criteria for the licensing of an assistant behavior analyst must include, but are not limited to, the requirement that the applicant:

“(a) Be certified by the Behavior Analyst Certification Board, Incorporated, as a Board Certified Assistant Behavior Analyst;

“(b) Be supervised by a behavior analyst who is licensed by the ~~Behavior Analyst Board~~Behavior Analysis Regulatory Board; and

“(c) Have successfully completed a criminal records check.

“(11) The criteria for the approval of a licensed health care professional must ensure that the licensed health care professional has the appropriate experience, expertise or training in the diagnosis and treatment of autism spectrum disorders, including experience in applied behavior analysis.

“(12) The criteria for the registration of a behavior analysis interventionist must include, but are not limited to, the requirement that the applicant:

“(a) Have completed coursework and training prescribed by the ~~Behavior Analyst Board~~Behavior Analysis Regulatory Board by rule;

“(b) Receive ongoing oversight by a licensed behavior analyst or a licensed assistant behavior analyst, or by another licensed health care professional approved by the board; and

“(c) Have successfully completed a criminal records check.

“(13) In accordance with applicable provisions of ORS chapter 183, the ~~Behavior Analyst Board~~Behavior Analysis Regulatory Board shall adopt rules:

“(a) Establishing standards and procedures for the licensing of behavior analysts and assistant behavior analysts, the approval of licensed health care professionals and the registration of behavior analysis interventionists in accordance with this section;

“(b) Establishing guidelines for the professional methods and procedures to be used by individuals licensed, approved and registered under this section;

“(c) Governing the examination of applicants for licenses, approvals and registrations under this section and the renewal, suspension and revocation of the licenses, approvals and registrations; and

“(d) Establishing fees sufficient to cover the costs of administering the licensing, approval and registration procedures under this section.

“(14) The ~~Behavior Analyst Board~~Behavior Analysis Regulatory Board shall issue a license or a certificate of approval to an applicant who:

“(a) Files an application in the form prescribed by the board;

“(b) Pays fees established by the board; and

“(c) Demonstrates to the satisfaction of the board that the applicant meets the criteria adopted under this section.

“(15) The ~~Behavior Analyst Board~~Behavior Analysis Regulatory Board shall establish the procedures for the registration of behavior analysis interventionists.

“(16) All moneys received by the ~~Behavior Analyst Board~~Behavior Analysis Regulatory Board under subsection (14) of this section shall be paid into the General Fund of the State Treasury and credited to the Oregon Health Licensing Agency Account.

“(17) An individual who has not been licensed, approved or registered by the ~~Behavior Analyst Board~~Behavior Analysis Regulatory Board in accordance with criteria and standards adopted under this section may not claim reimbursement for applied behavior analysis services described in section 2 of this 2013 Act under a health benefit plan or under a self-insured health plan offered by the Public Employees’ Benefit Board or the Oregon Educators Benefit Board.

“SECTION 3a. (1) Notwithstanding the composition of the ~~Behavior Analyst Board~~Behavior Analysis Regulatory Board specified in section 3 of this 2013 Act, for the period beginning on the operative date of section 3 of this 2013 Act and ending on October 31, 2015, the board shall consist of seven members appointed by the Governor, including:

“(a) Three members who are certified by the Behavior Analyst Certification Board, Incorporated, as Board Certified Behavior Analysts;

~~“(b) One member who is a licensed psychiatrist or developmental pediatrician with experience in the diagnosis and treatment of autism spectrum disorders or training in applied behavior analysis;”~~

~~“(c) One member who is a licensed psychologist and who has experience in the diagnosis and treatment of autism spectrum disorders; is:”~~

~~“(A) Certified by the Behavior Analyst Certification Board, Incorporated, as a Board Certified Behavior Analyst; or”~~

~~“(B) A faculty member at an accredited university and is teaching a course sequence that has been approved by the Behavior Analyst Certification Board, Incorporated;”~~

“(d) One member who is a licensed speech-language pathologist with experience or training in applied behavior analysis; and

“(e) One member of the general public who does not have a financial interest in the provision of applied behavior analysis and does not have a ward or family member who has been diagnosed with autism spectrum disorder.

“(2) Notwithstanding the term of office specified by section 3 of this 2013 Act, if members first appointed to the ~~Behavior Analyst Board~~ **Behavior Analysis Regulatory Board** under this section continue to serve after October 31, 2015, the board shall adopt a method for establishing the terms of office of board members so that the terms of office do not all expire on the same date.”.

In line 16, delete “(8)” and insert “(17)”.

In line 20, delete “make” and insert “may” and delete “January” and insert “November”.

In line 21, delete “2014” and insert “2013” and delete “section 3” and insert “sections 3 and 3a”.

In line 22, delete “January 1, 2014” and insert “November 1, 2013”.

Delete lines 23 through 45 and insert:

“**SECTION 6.** ORS 414.710 is amended to read:

“414.710. The following services are not subject to ORS 414.690:

“(1) Nursing facilities, institutional and home- and community-based waived services funded through the Department of Human Services; *[and]*

“(2) Services to children who are wards of the Department of Human Services by order of the juvenile court and services to children and families for health care or mental health care through the department[.]; **and**

“(3) Treatment for autism spectrum disorder, subject to the requirements and limitations described in section 2 of this 2013 Act.

~~“**SECTION 7.** ORS 743A.190 is amended to read:~~

~~“743A.190. (1) A health benefit plan, as defined in ORS 743.730, must cover for a child enrolled in the plan who is under 18 years of age and who has been diagnosed with a pervasive developmental disorder all medical services, including rehabilitation services, that are medically necessary and are otherwise covered under the plan.~~

~~“(2) The coverage required under subsection (1) of this section, including rehabilitation services, may be made subject to other provisions of the health benefit plan that apply to covered services, including but not limited to:~~

~~“(a) Deductibles, copayments or coinsurance;~~

~~“(b) Prior authorization or utilization review requirements; or~~

~~“(c) Treatment limitations regarding the number of visits or the duration of treatment.~~

**Comment [PNT4]:** As discussed in our 3/28/13 meeting, psychiatrists and developmental pediatricians are unlikely to have specific experience in ABA, so this shouldn't be a requirement for them. This now mirrors the language already in Section 3(1)(b) above.

**Comment [PNT5]:** Restores language from the 3/27/13 Work Draft of SB365-3. We believe this may have been changed due to a miscommunication in our 3/28/13 meeting.

~~“(3) As used in this section:~~

~~“(a) ‘Medically necessary’ means in accordance with the definition of medical necessity that is specified in the policy, certificate or contract for the health benefit plan and that applies uniformly to all covered services under the health benefit plan.~~

~~“(b) ‘Pervasive developmental disorder’ means a neurological condition that includes Asperger’s syndrome, autism, developmental delay, developmental disability or mental retardation.~~

~~“(c) ‘Rehabilitation services’ means physical therapy, occupational therapy or speech therapy services to restore or improve function.~~

~~“(4) The provisions of ORS 743A.001 do not apply to this section.~~

~~“(5) The definition of ‘pervasive developmental disorder’ is not intended to apply to coverage required under ORS 743A.168.~~

~~“(6) A health benefit plan that provides coverage of treatment for autism spectrum disorder in accordance with section 2 of this 2013 Act shall be deemed to be in compliance with this section notwithstanding any contrary decision of an independent review organization under ORS 743.857.”~~

On page 6, line 1, delete “7” and insert “8” and delete “8” and insert “9”.

In line 2, delete “8” and insert “9” and delete “3” and insert “2”.

In line 12, delete “9” and insert “10”.

In line 14, after “licensed” insert “, registered or approved”.

In line 16, delete “10” and insert “11”.

In line 35, delete “9” and insert “10”.

In line 40, delete “11” and insert “12”.

In line 43, delete “9” and insert “10”.

On page 8, line 25, delete “12” and insert “13”.

In line 37, delete “13” and insert “14”.

On page 9, line 1, delete “14” and insert “15”.

In line 28, delete “15” and insert “16”.

On page 10, line 21, delete “16” and insert “17”.

In line 22, delete “10 to 15” and insert “11 to 16”.

Delete lines 24 through 27 and insert:

“**SECTION 18.** Section 3 of this 2013 Act is amended to read:

“**Sec. 3.** (1) There is created, within the Oregon Health Licensing Agency, the ~~Behavior Analyst Board~~**Behavior Analysis Regulatory Board** consisting of seven members appointed by the Governor, including:

“(a) Three members who are licensed by the board;

“(b) One member who is a licensed psychiatrist or developmental pediatrician, with experience or training in treating autism spectrum disorder;

“(c) One member who is a licensed psychologist approved by the board;

“(d) One member who is a licensed speech-language pathologist approved by the board; and

**Comment [PNT6]:** This language would prohibit individuals with autism from using the External Review process. That violates Federal Law (PPACA), and is in any event unacceptable to the autism community.

Note that since we are deleting section 7 in its entirety, the section reference below this point will need to be adjusted.

“(e) One member of the general public who does not have a financial interest in the provision of applied behavior analysis and does not have a ward or family member who has been diagnosed with autism spectrum disorder.

“(2) Not more than one member of the ~~Behavior Analyst Board~~Behavior Analysis Regulatory Board may be an employee of an insurer.

“(3) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on November 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

“(4) A member of the ~~Behavior Analyst Board~~Behavior Analysis Regulatory Board is entitled to compensation and expenses as provided in ORS 292.495.

“(5) The ~~Behavior Analyst Board~~Behavior Analysis Regulatory Board shall select one of its members as chairperson and another as vice chairperson, for such terms and with duties and powers necessary for the performance of the functions of such offices as the board determines.

“(6) A majority of the members of the ~~Behavior Analyst Board~~Behavior Analysis Regulatory Board constitutes a quorum for the transaction of business.

“(7) The ~~Behavior Analyst Board~~Behavior Analysis Regulatory Board shall meet at least once every three months at a place, day and hour determined by the board. The board may also meet at other times and places specified by the call of the chairperson or of a majority of the members of the board.

“(8) In accordance with ORS chapter 183, the ~~Behavior Analyst Board~~Behavior Analysis Regulatory Board shall establish by rule criteria for the:

“(a) Licensing of:

“(A) Behavior analysts; and

“(B) Assistant behavior analysts;

“(b) Approval of licensed health care professionals; and

“(c) Registration of behavior analysis interventionists.

“(9) The criteria for the licensing of a behavior analyst must include, but are not limited to, the requirement that the applicant:

“(a) Be certified by the Behavior Analyst Certification Board, Incorporated, as a Board Certified Behavior Analyst; and

“(b) Have successfully completed a criminal records check.

“(10) The criteria for the licensing of an assistant behavior analyst must include, but are not limited to, the requirement that the applicant:

“(a) Be certified by the Behavior Analyst Certification Board, Incorporated, as a Board Certified Assistant Behavior Analyst;

“(b) Be supervised by a behavior analyst who is licensed by the ~~Behavior Analyst Board~~Behavior Analysis Regulatory Board; and

“(c) Have successfully completed a criminal records check.

“(11) The criteria for the approval of a licensed health care professional must ensure that the licensed health care professional has the appropriate experience, expertise or training in the diagnosis and treatment of autism spectrum disorders, including experience in applied behavior analysis.

“(12) The criteria for the registration of a behavior analysis interventionist must include, but are not limited to, the requirement that the applicant:



“(a) Have completed coursework and training prescribed by the ~~Behavior Analyst Board~~Behavior Analysis Regulatory Board by rule;

“(b) Receive ongoing oversight by a licensed behavior analyst or a licensed assistant behavior analyst, or by another licensed health care professional approved by the board; and

“(c) Have successfully completed a criminal records check.

“(13) In accordance with applicable provisions of ORS chapter 183, the ~~Behavior Analyst Board~~Behavior Analysis Regulatory Board shall adopt rules:

“(a) Establishing standards and procedures for the licensing of behavior analysts and assistant behavior analysts, the approval of licensed health care professionals and the registration of behavior analysis interventionists in accordance with this section;

“(b) Establishing guidelines for the professional methods and procedures to be used by individuals licensed, approved and registered under this section;

“(c) Governing the examination of applicants for licenses, approvals and registrations under this section and the renewal, suspension and revocation of the licenses, approvals and registrations; and

“(d) Establishing fees sufficient to cover the costs of administering the licensing, approval and registration procedures under this section.

“(14) The ~~Behavior Analyst Board~~Behavior Analysis Regulatory Board shall issue a license or a certificate of approval to an applicant who:

“(a) Files an application in the form prescribed by the board;

“(b) Pays fees established by the board; and

“(c) Demonstrates to the satisfaction of the board that the applicant meets the criteria adopted under this section.

“(15) The ~~Behavior Analyst Board~~Behavior Analysis Regulatory Board shall establish the procedures for the registration of behavior analysis interventionists.

“(16) All moneys received by the ~~Behavior Analyst Board~~Behavior Analysis Regulatory Board under subsection (14) of this section shall be paid into the General Fund of the State Treasury and credited to the Oregon Health Licensing Agency Account.

“(17) *An individual who has not been licensed, approved or registered by the ~~Behavior Analyst Board~~Behavior Analysis Regulatory Board in accordance with criteria and standards adopted under this section may not claim reimbursement for applied behavior analysis services described in section 2 of this 2013 Act under a health benefit plan or under a self-insured health plan offered by the Public Employees’ Benefit Board or the Oregon Educators Benefit Board.]*

“**SECTION 19.** ORS 414.710, as amended by section 6 of this 2013 Act, is amended to read:

“414.710. The following services are not subject to ORS 414.690:

“(1) Nursing facilities, institutional and home- and community-based waived services funded through the Department of Human Services; **and**

“(2) Services to children who are wards of the Department of Human Services by order of the juvenile court and services to children and families for health care or mental health care through the department[; *and*].

[“(3) *Treatment for autism spectrum disorder, subject to the requirements and limitations described in section 2 of this 2013 Act.*]

“**SECTION 20.** Section 2 of this 2013 Act is repealed January 2, 2022.

“**SECTION 21.** (1) Sections 2 and 9 of this 2013 Act and the amendments to ORS 414.710 and 743A.190 by sections 6 and 7 of this 2013 Act become operative ~~July 1, 2014~~January 1, 2014.”

**Comment [PNT7]:** This restores the original effective date. We don’t agree to postponing this by six months – which would effectively delay implementation on most plans to January 2015.



“(2) The amendments to section 3 of this 2013 Act by section 18 of this 2013 Act and the amendments to ORS 414.710 by section 19 of this 2013 Act become operative January 2, 2022.

“SECTION 22. Section 2 of this 2013 Act applies to insurance policies or certificates issued or renewed on or after ~~July 1, 2014~~ January 1, 2014”.

In line 28, delete “18” and insert “23”.

**Comment [PNT8]:** As above, this restores the original effective date.

# Appendix C: Alternate amendment for licensing board with no revision to autism mandate

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77th OREGON LEGISLATIVE ASSEMBLY--2013 Regular Session

## Senate Bill 365

Sponsored by Senator BATES (Presession filed.)

### SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes requirements for coverage of autism spectrum disorders by health benefit plans, Public Employees' Benefit Board and Oregon Educators Benefit Board. Requires Oregon Health Licensing Agency to establish licensing procedures for providers of applied behavior analysis. Requires individual seeking reimbursement for applied behavior analysis from health benefit plan, Public Employees' Benefit Board or Oregon Educators Benefit Board to be licensed by agency. Grandfathers applied behavior analysis practitioners until January 1, 2016.

Declares emergency, effective on passage.

### A BILL FOR AN ACT

Relating to treatment for autism spectrum disorders; creating new provisions; amending ORS 414.025, 676.610, 676.612, 676.613, 676.622, 676.625, and 676.992; and declaring an emergency.

**Be It Enacted by the People of the State of Oregon:**

**SECTION 1. Section 2 of this 2013 Act is added to and made a part of the Insurance Code.**

**SECTION 2. (1) As used in this section and sections 3 and 3a of this 2013 Act:**

(a) 'Applied behavior analysis' means the design, implementation and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce significant improvement in human social behavior, including the use of direct observation, measurement and functional analysis of the relationship between environment and behavior. The practice of applied behavior analysis expressly excludes psychological testing, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy and long-term counseling as treatment modalities.

(b) 'Autism spectrum disorder' has the meaning given that term in the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) published by the American Psychiatric Association.

(2) Whenever any health benefit plan, as defined in ORS 743.730, provides for payment or reimbursement for applied behavior analysis services, the insured shall be reimbursed for such services that are:

(a) Provided by a licensed health care professional approved by the Behavior Analysis Regulatory Board under section 3 of this 2013 Act;

(b) Provided by a behavior analyst or an assistant behavior analyst licensed under section 3 of this 2013 Act; or

(c) Provided by a behavior analysis interventionist registered under section 3 of this 2013 Act.

(3) Coverage under this section may be subject to in-network provider requirements and limitations that apply to coverage of physical illness generally under the health benefit plan.

(4) This section applies to health benefit plans and to self-insured health plans offered by the Public Employees' Benefit Board and the Oregon Educators Benefit Board.

(5) ORS 743A.001 does not apply to this section.

**SECTION 3. (1) There is created, within the Oregon Health Licensing Agency, the Behavior Analysis Regulatory Board consisting of seven members appointed by the Governor, including:**

(a) Three members who are licensed by the board;

(b) One member who is a licensed psychiatrist or developmental pediatrician, with experience or training in treating autism spectrum disorder;

(c) One member who is a licensed psychologist approved by the board;

(d) One member who is a licensed speech-language pathologist approved by the board;  
and

(e) One member of the general public who does not have a financial interest in the provision of applied behavior analysis and does not have a ward or family member who has been diagnosed with autism spectrum disorder.

(2) Not more than one member of the Behavior Analysis Regulatory Board may be an employee of an insurer.

(3) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on November 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(4) A member of the Behavior Analysis Regulatory Board is entitled to compensation and expenses as provided in ORS 292.495.

(5) The Behavior Analysis Regulatory Board shall select one of its members as chairperson and another as vice chairperson, for such terms and with duties and powers necessary for the performance of the functions of such offices as the board determines.

(6) A majority of the members of the Behavior Analysis Regulatory Board constitutes a quorum for the transaction of business.

(7) The Behavior Analysis Regulatory Board shall meet at least once every three months at a place, day and hour determined by the board. The board may also meet at other times and places specified by the call of the chairperson or of a majority of the members of the board.

(8) In accordance with ORS chapter 183, the Behavior Analysis Regulatory Board shall establish by rule criteria for the:

(a) Licensing of:

(A) Behavior analysts; and

(B) Assistant behavior analysts;

(b) Approval of licensed health care professionals; and

(c) Registration of behavior analysis interventionists.

(9) The criteria for the licensing of a behavior analyst must include, but are not limited to, the requirement that the applicant:

(a) Be certified by the Behavior Analyst Certification Board, Incorporated, as a Board Certified Behavior Analyst; and

(b) Have successfully completed a criminal records check.

(10) The criteria for the licensing of an assistant behavior analyst must include, but are not limited to, the requirement that the applicant:

(a) Be certified by the Behavior Analyst Certification Board, Incorporated, as a Board Certified Assistant Behavior Analyst;

(b) Be supervised by a behavior analyst who is licensed by the Behavior Analysis Regulatory Board; and

(c) Have successfully completed a criminal records check.

(11) The criteria for the approval of a licensed health care professional must ensure that the licensed health care professional has the appropriate experience, expertise or training in the diagnosis and treatment of autism spectrum disorders, including experience in applied behavior analysis.

(12) The criteria for the registration of a behavior analysis interventionist must include, but are not limited to, the requirement that the applicant:

(a) Have completed coursework and training prescribed by the Behavior Analysis Regulatory Board by rule;

(b) Receive ongoing oversight by a licensed behavior analyst or a licensed assistant behavior analyst, or by another licensed health care professional approved by the board; and

(c) Have successfully completed a criminal records check.

(13) In accordance with applicable provisions of ORS chapter 183, the Behavior Analysis Regulatory Board shall adopt rules:

(a) Establishing standards and procedures for the licensing of behavior analysts and assistant behavior analysts, the approval of licensed health care professionals and the registration of behavior analysis interventionists in accordance with this section;

(b) Establishing guidelines for the professional methods and procedures to be used by individuals licensed, approved and registered under this section;

(c) Governing the examination of applicants for licenses, approvals and registrations under this section and the renewal, suspension and revocation of the licenses, approvals and registrations; and

(d) Establishing fees sufficient to cover the costs of administering the licensing, approval and registration procedures under this section.

(14) The Behavior Analysis Regulatory Board shall issue a license or a certificate of approval to an applicant who:

(a) Files an application in the form prescribed by the board;

(b) Pays fees established by the board; and

(c) Demonstrates to the satisfaction of the board that the applicant meets the criteria adopted under this section.

(15) The Behavior Analysis Regulatory Board shall establish the procedures for the registration of behavior analysis interventionists.

(16) All moneys received by the Behavior Analysis Regulatory Board under subsection (14) of this section shall be paid into the General Fund of the State Treasury and credited to the Oregon Health Licensing Agency Account.

(17) An individual who has not been licensed, approved or registered by the Behavior Analysis Regulatory Board in accordance with criteria and standards adopted under this section may not claim reimbursement for applied behavior analysis services described in section 2 of this 2013 Act under a health benefit plan or under a self-insured health plan offered by the Public Employees' Benefit Board or the Oregon Educators Benefit Board.

**SECTION 3a. (1)** Notwithstanding the composition of the Behavior Analysis Regulatory Board specified in section 3 of this 2013 Act, for the period beginning on the operative date of section 3 of this 2013 Act and ending on October 31, 2015, the board shall consist of seven members appointed by the Governor, including:

(a) Three members who are certified by the Behavior Analyst Certification Board, Incorporated, as Board Certified Behavior Analysts;

(b) One member who is a licensed psychiatrist or developmental pediatrician with experience in the diagnosis and treatment of autism spectrum disorders;

(c) One member who is a licensed psychologist and who is:

“(A) Certified by the Behavior Analyst Certification Board, Incorporated, as a Board Certified Behavior Analyst; or

“(B) A faculty member at an accredited university and is teaching a course sequence that has been approved by the Behavior Analyst Certification Board, Incorporated;

(d) One member who is a licensed speech-language pathologist with experience or training in applied behavior analysis; and

(e) One member of the general public who does not have a financial interest in the provision of applied behavior analysis and does not have a ward or family member who has been diagnosed with autism spectrum disorder.

(2) Notwithstanding the term of office specified by section 3 of this 2013 Act, if members first appointed to the Behavior Analysis Regulatory Board under this section continue to serve after October 31, 2015, the board shall adopt a method for establishing the terms of office of board members so that the terms of office do not all expire on the same date.”

**SECTION 4.** Notwithstanding section 3 (17) of this 2013 Act, an individual actively practicing applied behavior analysis on the effective date of this 2013 Act may continue to claim reimbursement from a health benefit plan, the Public Employees' Benefit Board or the Oregon Educators Board for applied behavior analysis services provided without a license before January 1, 2016.

**SECTION 5.** The Oregon Health Licensing Agency may take any action before November 1, 2014, that is necessary for the agency to implement the provisions of sections 3 and 3a of this 2013 Act on and after November 1, 2013.

**SECTION 6.** ORS 414.025 is amended to read:

414.025. As used in this chapter and ORS chapters 411 and 413, unless the context or a specially applicable statutory definition requires otherwise:

(1)(a) “Alternative payment methodology” means a payment other than a fee-for-services payment, used by coordinated care organizations as compensation for the provision of integrated and coordinated health care and services.

(b) “Alternative payment methodology” includes, but is not limited to:

(A) Shared savings arrangements;

(B) Bundled payments; and

(C) Payments based on episodes.

(2) "Category of aid" means assistance provided by the Oregon Supplemental Income Program, aid granted under ORS 412.001 to 412.069 and 418.647 or federal Supplemental Security Income payments.

(3) "Categorically needy" means, insofar as funds are available for the category, a person who is a resident of this state and who:

(a) Is receiving a category of aid.

(b) Would be eligible for a category of aid but is not receiving a category of aid.

(c) Is in a medical facility and, if the person left such facility, would be eligible for a category of aid.

(d) Is under the age of 21 years and would be a dependent child as defined in ORS 412.001 except for age and regular attendance in school or in a course of professional or technical training.

(e)(A) Is a caretaker relative, as defined in ORS 412.001, who cares for a child who would be a dependent child except for age and regular attendance in school or in a course of professional or technical training; or

(B) Is the spouse of the caretaker relative.

(f) Is under the age of 21 years and:

(A) Is in a foster family home or licensed child-caring agency or institution and is one for whom a public agency of this state is assuming financial responsibility, in whole or in part; or

(B) Is 18 years of age or older, is one for whom federal financial participation is available under Title XIX or XXI of the federal Social Security Act and who met the criteria in subparagraph (A) of this paragraph immediately prior to the person's 18th birthday.

(g) Is a spouse of an individual receiving a category of aid and who is living with the recipient of a category of aid, whose needs and income are taken into account in determining the cash needs of the recipient of a category of aid, and who is determined by the Department of Human Services to be essential to the well-being of the recipient of a category of aid.

(h) Is a caretaker relative as defined in ORS 412.001 who cares for a dependent child receiving aid granted under ORS 412.001 to 412.069 and 418.647 or is the spouse of the caretaker relative.

(i) Is under the age of 21 years, is in a youth care center and is one for whom a public agency of this state is assuming financial responsibility, in whole or in part.

(j) Is under the age of 21 years and is in an intermediate care facility which includes institutions for persons with developmental disabilities.

(k) Is under the age of 22 years and is in a psychiatric hospital.

(L) Is under the age of 21 years and is in an independent living situation with all or part of the maintenance cost paid by the Department of Human Services.

(m) Is a member of a family that received aid in the preceding month under ORS 412.006 or 412.014 and became ineligible for aid due to increased hours of or increased income from employment. As long as the member of the family is employed, such families will continue to be eligible for medical assistance for a period of at least six calendar months beginning with the month in which such family became ineligible for assistance due to increased hours of employment or increased earnings.

(n) Is an adopted person under 21 years of age for whom a public agency is assuming financial responsibility in whole or in part.

(o) Is an individual or is a member of a group who is required by federal law to be included in the state's medical assistance program in order for that program to qualify for federal funds.

(p) Is an individual or member of a group who, subject to the rules of the department or the Oregon Health Authority, may optionally be included in the state's medical assistance program under federal law and regulations concerning the availability of federal funds for the expenses of that individual or group.

(q) Is a pregnant woman who would be eligible for aid granted under ORS 412.001 to 412.069 and 418.647, whether or not the woman is eligible for cash assistance.

(r) Except as otherwise provided in this section, is a pregnant woman or child for whom federal financial participation is available under Title XIX or XXI of the federal Social Security Act.

(s) Is not otherwise categorically needy and is not eligible for care under Title XVIII of the federal Social Security Act or is not a full-time student in a post-secondary education program as defined by the department or the authority by rule, but whose family income is at or below the federal poverty level and whose family investments and savings equal less than the investments and savings limit established by the department or the authority by rule.

(t) Would be eligible for a category of aid but for the receipt of qualified long term care insurance benefits under a policy or certificate issued on or after January 1, 2008. As used in this paragraph, "qualified long term care insurance" means a policy or certificate of insurance as defined in ORS 743.652 (7).

(u) Is eligible for the Health Care for All Oregon Children program established in ORS 414.231.

(v) Is dually eligible for Medicare and Medicaid and receiving care through a coordinated care organization.

(4) "Community health worker" means an individual who:

(a) Has expertise or experience in public health;

(b) Works in an urban or rural community, either for pay or as a volunteer in association with a local health care system;

(c) To the extent practicable, shares ethnicity, language, socioeconomic status and life experiences with the residents of the community where the worker serves;

(d) Assists members of the community to improve their health and increases the capacity of the community to meet the health care needs of its residents and achieve wellness;

(e) Provides health education and information that is culturally appropriate to the individuals being served;

(f) Assists community residents in receiving the care they need;

(g) May give peer counseling and guidance on health behaviors; and

(h) May provide direct services such as first aid or blood pressure screening.

(5) "Coordinated care organization" means an organization meeting criteria adopted by the Oregon Health Authority under ORS 414.625.

(6) "Dually eligible for Medicare and Medicaid" means, with respect to eligibility for enrollment in a coordinated care organization, that an individual is eligible for health services funded by Title XIX of the Social Security Act and is:

(a) Eligible for or enrolled in Part A of Title XVIII of the Social Security Act; or

(b) Enrolled in Part B of Title XVIII of the Social Security Act.

(7) "Global budget" means a total amount established prospectively by the Oregon Health Authority to be paid to a coordinated care organization for the delivery of, management of, access to and quality of the health care delivered to members of the coordinated care organization.

(8) "Health services" means at least so much of each of the following as are funded by the Legislative Assembly based upon the prioritized list of health services compiled by the Health Evidence Review Commission under ORS 414.690:

(a) Services required by federal law to be included in the state's medical assistance program in order for the program to qualify for federal funds;

(b) Services provided by a physician as defined in ORS 677.010, a nurse practitioner certified under ORS 678.375 or other licensed practitioner within the scope of the practitioner's practice as defined by state law, and ambulance services;

(c) Prescription drugs;

(d) Laboratory and X-ray services;

(e) Medical equipment and supplies;

(f) Mental health services;

(g) Chemical dependency services;

(h) Emergency dental services;

(i) Nonemergency dental services;

(j) Provider services, other than services described in paragraphs (a) to (i)[, (k), (L) and (m)] **and (k) to (n)** of this subsection, defined by federal law that may be included in the state's medical assistance program;

(k) Emergency hospital services;

(L) Outpatient hospital services; [and]

(m) Inpatient hospital services; **and**

**(n) Applied behavior analysis for the treatment of autism spectrum disorder.**

(9) "Income" has the meaning given that term in ORS 411.704.

(10) "Investments and savings" means cash, securities as defined in ORS 59.015, negotiable instruments as defined in ORS 73.0104 and such similar investments or savings as the department or the authority may establish by rule that are available to the applicant or recipient to contribute toward meeting the needs of the applicant or recipient.

(11) "Medical assistance" means so much of the medical, mental health, preventive, supportive, palliative and remedial care and services as may be prescribed by the authority according to the standards established pursuant to ORS 414.065, including premium assistance and payments made for services provided under an insurance or other contractual arrangement and money paid directly to the recipient for the purchase of health services and for services described in ORS 414.710.

(12) "Medical assistance" includes any care or services for any individual who is a patient in a medical institution or any care or services for any individual who has attained 65 years of age or is under 22 years of age, and who is a patient in a private or public institution for mental diseases. "Medical assistance" does not include care or services for an inmate in a nonmedical public institution.

(13) "Patient centered primary care home" means a health care team or clinic that is organized in accordance with the standards established by the Oregon Health Authority under ORS 414.655 and that incorporates the following core attributes:



- (a) Access to care;
- (b) Accountability to consumers and to the community;
- (c) Comprehensive whole person care;
- (d) Continuity of care;
- (e) Coordination and integration of care; and
- (f) Person and family centered care.

(14) "Peer wellness specialist" means an individual who is responsible for assessing mental health service and support needs of the individual's peers through community outreach, assisting individuals with access to available services and resources, addressing barriers to services and providing education and information about available resources and mental health issues in order to reduce stigmas and discrimination toward consumers of mental health services and to provide direct services to assist individuals in creating and maintaining recovery, health and wellness.

(15) "Person centered care" means care that:

- (a) Reflects the individual patient's strengths and preferences;
- (b) Reflects the clinical needs of the patient as identified through an individualized assessment; and
- (c) Is based upon the patient's goals and will assist the patient in achieving the goals.

(16) "Personal health navigator" means an individual who provides information, assistance, tools and support to enable a patient to make the best health care decisions in the patient's particular circumstances and in light of the patient's needs, lifestyle, combination of conditions and desired outcomes.

(17) "Quality measure" means the measures and benchmarks identified by the authority in accordance with ORS 414.638.

(18) "Resources" has the meaning given that term in ORS 411.704. For eligibility purposes, "resources" does not include charitable contributions raised by a community to assist with medical expenses.

**SECTION 7. In the manner prescribed in ORS chapter 183 for contested cases, the Oregon Health Licensing Agency may impose a form of discipline listed in ORS 676.612 against any person licensed, registered or approved under section 3 of this 2013 Act for any of the prohibited acts listed in ORS 676.612 and for any violation of a rule adopted under section 3 of this 2013 Act.**

**SECTION 8.** ORS 676.610 is amended to read:

676.610. (1)(a) The Oregon Health Licensing Agency is under the supervision and control of a director, who is responsible for the performance of the duties, functions and powers and for the organization of the agency.

(b) The Director of the Oregon Department of Administrative Services shall establish the qualifications for and appoint the Director of the Oregon Health Licensing Agency, who holds office at the pleasure of the Director of the Oregon Department of Administrative Services.

(c) The Director of the Oregon Health Licensing Agency shall receive a salary as provided by law or, if not so provided, as prescribed by the Director of the Oregon Department of Administrative Services.

(d) The Director of the Oregon Health Licensing Agency is in the unclassified service.

(2) The Director of the Oregon Health Licensing Agency shall provide the boards, councils and programs administered by the agency with such services and employees as the agency requires to carry out the agency's duties. Subject to any applicable provisions of the State Personnel Relations Law, the Director of the Oregon Health Licensing Agency shall appoint all subordinate officers and employees of the agency, prescribe their duties and fix their compensation.

(3) The Director of the Oregon Health Licensing Agency is responsible for carrying out the duties, functions and powers under ORS 675.360 to 675.410, 676.605 to 676.625, 676.992, 678.710 to 678.820, 680.500 to 680.565, 687.405 to 687.495, 687.895, 688.701 to 688.734, 688.800 to 688.840, 690.005 to 690.235, 690.350 to 690.415, 691.405 to 691.485 and 694.015 to 694.185 **and sections 3 and 7 of this 2013 Act** and ORS chapter 700.

(4) The enumeration of duties, functions and powers in subsection (3) of this section is not intended to be exclusive or to limit the duties, functions and powers imposed on or vested in the Oregon Health Licensing Agency by other statutes.

**SECTION 9.** ORS 676.612 is amended to read:

676.612. (1) In the manner prescribed in ORS chapter 183 for contested cases and as specified in ORS 675.385, 678.780, 680.535, 687.445, 688.734, 688.836, 690.167, 690.407, 691.477, 694.147 and 700.111 **and section 7 of this 2013 Act**, the Oregon Health Licensing Agency may refuse to issue or renew, may suspend or revoke or may otherwise condition or limit a certificate, license, permit or registration to practice issued by the agency or may discipline or place on probation a holder of a certificate, license, permit or registration for commission of the prohibited acts listed in subsection (2) of this section.

(2) A person subject to the authority of a board, council or program listed in ORS 676.606 commits a prohibited act if the person engages in:

(a) Fraud, misrepresentation, concealment of material facts or deception in applying for or obtaining an authorization to practice in this state, or in any written or oral communication to the agency concerning the issuance or retention of the authorization.

(b) Using, causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, insignia or any other representation, however disseminated or published, that is false, misleading or deceptive.

(c) Making a representation that the certificate, license, permit or registration holder knew or should have known is false or misleading regarding skill or the efficacy or value of treatment or remedy administered by the holder.

(d) Practicing under a false, misleading or deceptive name, or impersonating another certificate, license, permit or registration holder.

(e) Permitting a person other than the certificate, license, permit or registration holder to use the certificate, license, permit or registration.

(f) Practicing with a physical or mental condition that presents an unreasonable risk of harm to the holder of a certificate, license, permit or registration or to the person or property of others in the course of performing the holder's duties.

(g) Practicing while under the influence of alcohol, controlled substances or other skill-impairing substances, or engaging in the illegal use of controlled substances or other skill-impairing substances so as to create a risk of harm to the person or property of others in the course of performing the duties of a holder of a certificate, license, permit or registration.

(h) Failing to properly and reasonably accept responsibility for the actions of employees.

(i) Employing, directly or indirectly, any suspended, uncertified, unlicensed or unregistered person to practice a regulated occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.606.

(j) Unprofessional conduct, negligence, incompetence, repeated violations or any departure from or failure to conform to standards of practice in performing services or practicing in a regulated occupation or profession subject to the authority of the boards, councils and programs listed under ORS 676.606.

(k) Conviction of any criminal offense, subject to ORS 670.280. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence of the conviction. A plea of no contest or an admission of guilt shall be considered a conviction for purposes of this paragraph.

(L) Failing to report any adverse action, as required by statute or rule, taken against the certificate, license, permit or registration holder by another regulatory jurisdiction or any peer review body, health care institution, professional association, governmental agency, law enforcement agency or court for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action as described in this section.

(m) Violation of a statute regulating an occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.606.

(n) Violation of any rule regulating an occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.606.

(o) Failing to cooperate with the agency in any investigation, inspection or request for information.

(p) Selling or fraudulently obtaining or furnishing any certificate, license, permit or registration to practice in a regulated occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.606, or aiding or abetting such an act.

(q) Selling or fraudulently obtaining or furnishing any record related to practice in a regulated occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.606, or aiding or abetting such an act.

(r) Failing to pay an outstanding civil penalty or fee that is due or failing to meet the terms of any order issued by the agency that has become final.

(3) For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the agency may require the fingerprints of a person who is:

(a) Applying for a certificate, license, permit or registration that is issued by the agency;

(b) Applying for renewal of a certificate, license, permit or registration that is issued by the agency; or

(c) Under investigation by the agency.

(4) If the agency places a holder of a certificate, license, permit or registration on probation under subsection (1) of this section, the agency, in consultation with the appropriate board, council or program, may determine and at any time modify the conditions of the probation.

(5) If a certificate, license, permit or registration is suspended, the holder may not practice during the term of suspension. Upon the expiration of the term of suspension, the certificate, license, permit or registration may be reinstated by the agency if the conditions of suspension no longer exist and the holder has satisfied all requirements in the relevant statutes or administrative rules for issuance, renewal or reinstatement.

**SECTION 10.** ORS 676.613 is amended to read:

676.613. (1) In addition to all other remedies, when it appears to the Oregon Health Licensing Agency that a person is engaged in, has engaged in or is about to engage in any act, practice or transaction that violates any provision of ORS 675.360 to 675.410, 676.617, 678.710 to 678.820, 680.500 to 680.565, 687.405 to 687.495, 688.701 to 688.734, 688.800 to 688.840, 690.005 to 690.235, 690.350 to 690.415, 691.405 to 691.485 or 694.015 to 694.185 or **section 3 of this 2013 Act** or ORS chapter 700, the agency may, through the Attorney General or the district attorney of the county in which the act, practice or transaction occurs or will occur, apply to the court for an injunction restraining the person from the act, practice or transaction.

(2) A court may issue an injunction under this section without proof of actual damages. An injunction issued under this section does not relieve a person from any other prosecution or enforcement action taken for violation of statutes listed in subsection (1) of this section.

**SECTION 11.** ORS 676.622 is amended to read:

676.622. (1) A transaction conducted through a state or local system or network that provides electronic access to the Oregon Health Licensing Agency information and services is exempt from any requirement under ORS 675.360 to 675.410, 676.605 to 676.625, 676.992, 680.500 to 680.565, 687.405 to 687.495, 688.701 to 688.734, 688.800 to 688.840, 690.005 to 690.235, 690.350 to 690.415, 691.405 to 691.485 and 694.015 to 694.185 **and section 3 of this 2013 Act** and ORS chapter 700, and rules adopted thereunder, requiring an original signature or the submission of handwritten materials.

(2) Electronic signatures subject to ORS 84.001 to 84.061 and facsimile signatures are acceptable and have the same force as original signatures.

**SECTION 12.** ORS 676.625 is amended to read:

676.625. (1) The Oregon Health Licensing Agency shall establish by rule and shall collect fees and charges to carry out the agency's responsibilities under ORS 676.605 to 676.625 and 676.992 and any responsibility imposed on the agency pertaining to the boards, councils and programs administered and regulated by the agency pursuant to ORS 676.606.

(2) The Oregon Health Licensing Agency Account is established in the General Fund of the State Treasury. The account shall consist of the moneys credited to the account by the Legislative Assembly. All moneys in the account are appropriated continuously to and shall be used by the Oregon Health Licensing Agency for payment of expenses of the agency in carrying out the duties, functions and obligations of the agency, and for payment of the expenses of the boards, councils and programs administered and regulated by the agency pursuant to ORS 676.606. The agency shall keep a record of all moneys credited to the account and report the source from which the moneys are derived and the activity of each board, council or program that generated the moneys.

(3) Subject to prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting fees and charges credited to the account, the fees and charges may not exceed the cost of administering the agency and the boards, councils and programs within the agency, as authorized by the Legislative Assembly within the agency's budget, as the budget may be modified by the Emergency Board.

(4) All moneys credited to the account pursuant to ORS 675.405, 676.617, 680.525, 687.435, 688.728, 688.834, 690.235, 690.415, 691.479, 694.185 and 700.080 **and section 3 of this 2013 Act**, and moneys credited to the account from other agency and program fees established by the agency by rule, are continuously appropriated to the agency for carrying out the duties, functions and powers of the agency under ORS 676.605 to 676.625 and 676.992 **and section 3 of this 2013 Act**.

(5) The moneys received from civil penalties assessed under ORS 676.992 shall be deposited and accounted for as are other moneys received by the agency and shall be for the administration and enforcement of the statutes governing the boards, councils and programs administered by the agency.

**SECTION 13.** ORS 676.992 is amended to read:

676.992. (1) Except as provided in subsection (3) of this section, and in addition to any other penalty or remedy provided by law, the Oregon Health Licensing Agency may impose a civil penalty not to exceed \$5,000 for each violation of the following statutes and any rule adopted thereunder:

- (a) ORS 688.701 to 688.734 (athletic training);
- (b) ORS 690.005 to 690.235 (cosmetology);
- (c) ORS 680.500 to 680.565 (denture technology);

- (d) ORS 687.405 to 687.495 (direct entry midwifery);
- (e) ORS 690.350 to 690.415 (tattooing, electrolysis, body piercing, dermal implanting and scarification);
- (f) ORS 694.015 to 694.185 (dealing in hearing aids);
- (g) ORS 688.800 to 688.840 (respiratory therapy and polysomnography);
- (h) ORS chapter 700 (environmental sanitation);
- (i) ORS 676.617 (single facility licensure);
- (j) ORS 675.360 to 675.410 (sex offender treatment);
- (k) ORS 678.710 to 678.820 (nursing home administrators);
- (L) ORS 691.405 to 691.485 (dietitians); [and]
- (m) ORS 676.612 (prohibited acts); **and**

**(n) Section 3 of this 2013 Act (applied behavior analysis).**

(2) The agency may take any other disciplinary action that it finds proper, including but not limited to assessment of costs of disciplinary proceedings, not to exceed \$5,000, for violation of any statute listed in subsection (1) of this section or any rule adopted under any statute listed in subsection (1) of this section.

(3) Subsection (1) of this section does not limit the amount of the civil penalty resulting from a violation of ORS 694.042.

(4) In imposing a civil penalty pursuant to this section, the agency shall consider the following factors:

- (a) The immediacy and extent to which the violation threatens the public health or safety;
- (b) Any prior violations of statutes, rules or orders;
- (c) The history of the person incurring a penalty in taking all feasible steps to correct any violation; and
- (d) Any other aggravating or mitigating factors.

(5) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(6) The moneys received by the agency from civil penalties under this section shall be paid into the General Fund of the State Treasury and credited to the Oregon Health Licensing Agency Account established under ORS 676.625. Such moneys are continuously appropriated to the agency for the administration and enforcement of the laws the agency is charged with administering and enforcing that govern the person against whom the penalty was imposed.

**SECTION 14. Section 3 of this 2013 Act and the amendments to ORS 676.610, 676.612, 676.613, 676.622, 676.625 and 676.992 by sections 8 to 13 of this 2013 Act become operative November 1, 2013.**

**SECTION 15. Section of this 2013 Act and the amendments to ORS 414.025 by section 6 of this 2013 Act become operative January 1, 2014.**

**SECTION 16. Section 2 of this 2013 Act applies to insurance policies or certificates issued or renewed on or after January 1, 2014."**

**SECTION 17. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.**