

FISCAL IMPACT OF PROPOSED LEGISLATION**Measure: SB 365 - A6**Seventy-Seventh Oregon Legislative Assembly – 2013 Regular Session
Legislative Fiscal Office***Only Impacts on Original or Engrossed
Versions are Considered Official***

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Reviewed by: Linda Ames, Susie Jordan, John Terpening, Doug Wilson
Date: 6/6/13

Measure Description:

Establishes requirements for coverage of applied behavior analysis for treatment of autism spectrum disorders by health benefit plans, health care service contractors, state medical assistance program, Public Employees' Benefit Board and Oregon Educators Benefit Board.

Government Unit(s) Affected:

Department of Consumer and Business Services (DCBS), Oregon Health Authority (OHA), Oregon Health Licensing Agency (OHLA), Cities, Counties, Department of Education, Oregon Health Insurance Exchange (ORHIX) [Public Corporation], School Districts

Summary of Expenditure Impact:

Please see analysis

Local Government Mandate:

This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

Analysis:

The measure consists of two major components; requiring coverage for Autism Spectrum Disorders (ASD) to be included in all health benefit plans, and the establishment of the Behavior Analysis Regulatory Board (BARB) within the Oregon Health Licensing Agency (OHLA) to provide licensure and regulatory oversight for practitioners of Applied Behavior Analysis (ABA). The bill contains sunset provisions that remove the requirement for coverage of ASD by health benefit plans as of 1/2/2022, but retains provisions relating to the BARB and OHLA.

OHLA / Behavior Analysis Regulatory Board

The measure establishes the Behavior Analysis Regulatory Board (BARB) within the Oregon Health Licensing Agency (OHLA). The board is to consist of seven members, appointed by the Governor to four year terms. The measure allows the board to be compensated positions, receiving a statutory limit of \$30 a day or part of a day when engaged in board activities and receive reimbursement for actual expenses. OHLA is required to make rules, including the setting of licensing and/or registration fees for Behavior Analysts, Assistant Behavior Analysts, certain health care professionals, and Behavior Interventionists. The measure provides OHLA authority to take disciplinary action, refuse licensure or renewal, or to issue injunctions or restraint orders on individuals subject to licensure or registration under the act. The measure includes an emergency clause making the sections of the measure relating to OHLA and BARB effective on passage.

There are approximately 20 individuals currently practicing behavior analysis in Oregon and OHLA anticipates that all of these individuals will become licensed as either Behavior Analysts or Assistant Behavior Analysts by the BARB following passage of the bill. OHLA assumes each license/registration category to have three fees: application fee, license fee, and renewal fee. Included in the estimated revenue impact below, projected application fees range from \$75-\$150 and projected licensure and renewal fees range from \$150-\$300. Fee revenue anticipated by OHLA is skewed heavily to Behavior Analyst Interventionists because these individuals are anticipated to be the "line workers" delivering treatment services to patients. OHLA is projecting 200 interventionist licensees in the 2013-15 biennium.

OHLA Revenue Impact

	2013-15 Biennium	2015-17 Biennium
Other Funds	72,200	84,800
Total Funds	\$72,200	\$84,800

OHLA segregates expenditures into shared costs, which are general expenditures made by the agency to support activities that span all of the boards in the OHLA portfolio, and direct costs which are expenditures made to support a specific board. OHLA estimates that shared costs attributable to the BARB will be \$26,635 and direct costs will be \$44,000 during the 2013-15 biennium. These costs include compensation and expenses for board members, personal service expenses, and services and supplies including \$16,000 in estimated Attorney General expense. There may be some concern regarding costs of operating a board with few licensees since unforeseen expenditures may not be able to be reasonably recovered in the licensing fees of such few individuals.

Although not included in the estimates provided by OHLA, the Employment Department estimates a biennial cost for contested cases resulting from actions taken by the BARB in denying licensure or imposing disciplinary measures. The Office of Administrative Hearing's bills agencies for actual cost of hearings which are estimated to be \$12,625 per biennium and are included in the expenditure impact table for OHLA below.

OHLA Expenditure Impact

	2013-15 Biennium	2015-17 Biennium
Other Funds	83,260	98,128
Total Funds	\$83,260	\$98,128
Positions	0	0
FTE	0.00	0.00

Required Coverage by Health Benefit Plans

The measure requires health benefit plans to provide coverage for the screening for and diagnosis of autism spectrum disorder, the medically necessary treatment of ASD, and the management of care for an individual who begins treatment before nine years of age. The treatment of ASD under the bill includes applied behavior analysis for up to 25 hours per week.

The definition of "health benefit plan" used in the bill excludes a number of items including Medicare Services and TRICARE services. In addition, the bill explicitly excludes a number of services that are exempt from the required coverage for ASD including services provided by family, services that are custodial in nature, special education services provided by schools, community or social program services, and any services provided by the Department of Human Services (DHS) and Oregon Health Authority (OHA) other than employee benefit plans.

Current policies generally cover testing and medical treatment, including rehabilitative services that are medically necessary to improve the health of the individual. One of the therapies generally not covered but specifically included in the bill is Applied Behavior Analysis (ABA). These therapies are most cost intensive up to the age of seven; additional therapies that continue between the ages of seven and 18 are of significantly lower cost. The measure allows for up to 25 hours per week of ABA therapy coverage if the coverage is first requested by and individual under the age of 9, but does not prohibit additional hours or the provision of coverage if requested at age 9 or older.

The Cost of Applied Behavior Analysis

The overall fiscal impact of the measure is indeterminate, significantly due to the unknown cost of providing ABA therapy coverage which is the primary driver of costs to health benefit plan providers in the measure. The following list includes the essential variables that go into estimating the potential cost to health benefit plans for the coverage of ABA.

- a. Treated prevalence of ASD
- b. Prevalence rates by diagnostic subtype
- c. Distribution by diagnosed age
- d. Percentage diagnosed at each age anticipated to receive ABA therapy program
- e. Time of program continuance
- f. Hours of ABA utilization at each age
- g. Delivery of ABA services
- h. Management of care
- i. Covered population

To estimate the costs of ABA coverage, an assumed value for each of the variables must be assigned so that a basic formula can be calculated that delivers a cost that can be described in terms of per population unit per month or percentage change in premium rates. A small change in the input cost of any of the variables may have a significant impact on the overall cost. The key differences in estimates provided for this fiscal impact were the range of delivery costs (items e, f, and g) and the utilization of the services (items b, c, and d). Delivery costs varied between \$20,000 and \$75,000 per year for the estimates provided. An actuarial cost estimate prepared for Autism Speaks by Marc Lambright (Oliver Wyman Consulting, Inc.) dated February 24, 2011 estimates the average costs of ABA services for children ages 0-6 (peak utilization age) to be \$65,000 each year.

The Insurance Division of the Department of Consumer and Business Services (DCBS) took an informal survey of other states and found that both Maine and Missouri provide plans covering ABA, but with annual limits of \$36,000 and \$40,000 respectively. Maine estimates that the per-member monthly premium increase attributable to the coverage is \$1.65 and Missouri estimates that there is no appreciable impact to premium costs. It is important to note however that the details of the coverage in these states was not included and may vary significantly from the coverage mandated in the measure.

Public Employees' Benefit Board (PEBB) and Oregon Educators Benefit Board (OEBB)

The measure mandates coverage to be provided in health benefit plans operated by the Public Employees Benefit Board (PEBB) and the Oregon Educators Benefit Board (OEBB). Local Governments and other public body employers are assumed to require coverage as well. PEBB provides health benefit plans administered by Kaiser and Providence. Kaiser plans currently cover autism spectrum disorders and ABA that is not substantially different than what is required by the measure. Kaiser plan enrollees account for about 15% of the individuals covered by health plans of PEBB. The remaining 85% are enrolled in Providence plans that do not currently cover ABA service as required by the bill. The costs estimated by PEBB only include increased premium costs for the Providence plans. OEBB has a similar distribution, with Kaiser plans accounting for 20% of the individuals covered and 80% enrolled in Moda Health (formerly ODS) plans, which currently do not cover ABA services.

PEBB and OEBB based their calculation of increased premium costs due to the required ASD coverage mandated in the measure on actuarial analysis provided by third party consultants. Based on the information provided by the agency, each of the analyses adopted the general assumptions provided in the Wyman Consulting analysis noted above, but appear to depart from the methodology in the Wyman analysis by applying the ABA utilization by age to the diagnosed occurrence of ASD generally (1 in 110) instead of the applying the ABA utilization by age to the Autistic Disorder diagnostic subtype (Wyman estimated to be 1 in 450). This variance in the application of cost components used to estimate the cost of the measure illustrates the way in which using different assumptions within the same cost model can result in large disparities in cost estimates.

The measure requires health benefit policies that are issued or renewed on or after January 1, 2015 to include the provisions for ASD coverage. PEBB renewals are effective January 1st of each year and therefore would incur costs for ASD benefit coverage for six months of the 2013-15 biennium. The cost estimates provided by PEBB make an allowance for lack of use of the available benefit due to a small

number of projected services providers initially available. This allowance assumes that only one-third of the expected users will access the benefit during this period. PEBB estimates that the 2013-15 biennium fiscal impact is roughly \$700,000 using the reduced utilization noted. This represents a 0.1% increase in total plan costs. For the 2015-17 biennium PEBB estimates a \$9.1 million impact representing a 0.6% increase in total plan costs using the utilization model and assumptions discussed above.

OEBB policies renew October 1st of each year and therefore the coverage requirements of the bill will not impact the cost of OEBB plans in the 2013-15 biennium. OEBB cost estimates do not account for a ramp-up period as provided in the PEBB estimates as the number of providers are expected to be sufficient at the time OEBB coverage begins to service all beneficiaries. OEBB uses the same higher level of occurrence as PEBB in calculating their estimated costs. It is notable that the OEBB covered population skews younger than the PEBB population and is therefore expected that the cost estimate for OEBB policies be higher than PEBB. Additionally, unlike the self-insured policies provided by PEBB through Providence, the Moda Healthcare (ODS) plans provided by OEBB are fully insured and therefore a premium of 0.1% is added to the cost estimate. OEBB has estimated that the ABA coverage requirements of the bill will result in a 1.2% to 1.7% increase in premium rates for medical plans administered by Moda Healthcare in the 2015-17 biennium. This increase equates to a \$9.1 to \$12.9 million increase in premiums during the 21 month effective period of the biennium.

Oregon Health Insurance Exchange

The Oregon Health Insurance Exchange is required by federal rule to adopt a “benchmark” plan for essential health benefits. If the state adopts a law that requires coverage that is in addition to the coverage provided in the benchmark plan, then the state is obligated to reimburse insurers for the difference in the rate attributable to the required coverage of the policy. According to federal rule, the state insurance exchange is required to determine if the coverage contemplated in the measure is included in the benchmark plan. While it appears that some aspects of the bills coverage requirement may be included, an analysis of the benchmark policy is currently underway with regard to the bill. It is currently unknown whether or not the Oregon benchmark plan provides the coverage required by the bill and therefore, the fiscal impact to the Oregon Health Insurance Exchange and the state is indeterminate.

Local Governments

Detailed information regarding the calculation of cost estimates for cities and counties were not available, but it is assumed that county and municipal plans that don't currently cover ABA would experience the same range of cost increases (0.2% to 1.7%) described for PEBB and OEBB above. The Association of Oregon Counties reported that for local governments insured by CityCounty Insurance Services (CIS), the annual estimated impact of the bill would be \$829,476. No percentage cost increase was provided. CIS covers about 80% of the city and county employees in Oregon. Multnomah County is self-insured and reports that they currently provide coverage for ASD. During the period between 7/1/2012 and 4/30/2013 Multnomah County had 18 unique members filing 101 claims related to autism services totaling \$13,130.

REVENUE: No revenue impact

FISCAL: Fiscal statement issued

Action:	Do Pass as Amended and Be Printed Engrossed and Be Referred to the Committee on Ways and Means
Vote:	5 - 0 - 0
Yeas:	Knopp, Kruse, Shields, Steiner Hayward, Monnes Anderson
Nays:	0
Exc.:	0
Prepared By:	Sandy Thiele-Cirka, Administrator
Meeting Dates:	4/4, 4/15, 4/16, 4/18

WHAT THE MEASURE DOES: Requires insurers cover, with prior authorization, up to 25 hours per week of applied behavioral analysis (ABA) services through age of 8 with diagnosis from licensed qualified provider and is under approved treatment plan. Provides definitions. Establishes seven member Behavior Analysis Regulatory Board, in Oregon Health Licensing Agency, be appointed by Governor. Specifies membership, duties, term of office, and rule criteria. Authorizes Board to issue license and collect fees. Establishes operative dates. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- Autism spectrum
- Applied behavior therapy (ABA) expenses
- Review of ABA training and qualifications
- Autism treatment and diagnosis
- Personal experiences with autistic children and insurance companies
- Proposed amendment

EFFECT OF COMMITTEE AMENDMENT: Requires insurers cover, with prior authorization, up to 25 hours per week of applied behavioral analysis (ABA) services through age of 8 with diagnosis from licensed qualified provider and is under approved treatment plan. Provides definitions. Establishes seven member Behavior Analysis Regulatory Board, in Oregon Health Licensing Agency, be appointed by Governor. Specifies membership, duties, term of office, and rule criteria. Authorizes Board to issue license and collect fees.

BACKGROUND: Autism spectrum disorder (ASD) and autism are general terms for a group of complex disorders of brain development. These disorders are characterized, in varying degrees, by difficulties in social interaction, verbal and nonverbal communication and repetitive behaviors. They include autistic disorder, Rett syndrome, childhood disintegrative disorder, pervasive developmental disorder-not otherwise specified (PDD-NOS) and Asperger syndrome. ASD can be associated with intellectual disability, difficulties in motor coordination and attention and physical health issues such as sleep and gastrointestinal disturbances. Some persons with ASD excel in visual skills, music, math and art. Autism appears to have its roots in very early brain development. However, the most obvious signs of autism and symptoms of autism tend to emerge between 2 and 3 years of age.

Senate Bill 365-A is the product of the insurers and advocate workgroup.

6/11/2013 1:20:00 PM *

This summary has not been adopted or officially endorsed by action of the committee.

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 365**

- 1 On page 1 of the printed A-engrossed bill, line 3, delete “414.710,”.
2 In line 7, delete “3a” and insert “4”.
3 On page 3, line 43, delete the comma and insert “and”.
4 In line 44, after the second “Board” delete the rest of the line and delete
5 line 45 and insert a period.
6 On page 5, line 42, delete the comma and insert “or”.
7 In line 43, delete “or under the state medical assistance program”.
8 In line 44, delete “3a” and insert “4”.
9 On page 6, line 18, delete “4” and insert “5”.
10 In line 20, delete the second comma and insert “or”.
11 In line 21, delete “or the state medical assistance program”.
12 In line 23, delete “5” and insert “6”.
13 In line 24, delete “3a” and insert “4”.
14 Delete lines 26 through 34.
15 On page 12, delete lines 35 through 45 and delete page 13.
16 On page 14, delete lines 1 through 34 and insert:
17 **“SECTION 19.** Section 3 of this 2013 Act is amended to read:
18 **“Sec. 3.** (1) There is created, within the Oregon Health Licensing Agency,
19 the Behavior Analysis Regulatory Board consisting of seven members ap-
20 pointed by the Governor, including:
21 “(a) Three members who are licensed by the board;
22 “(b) One member who is a licensed psychiatrist or developmental pedia-

1 trician, with experience or training in treating autism spectrum disorder;

2 “(c) One member who is a licensed psychologist registered with the board;

3 “(d) One member who is a licensed speech-language pathologist registered
4 with the board; and

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

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

10 “(3) The term of office of each member is four years, but a member serves
11 at the pleasure of the Governor. Before the expiration of the term of a
12 member, the Governor shall appoint a successor whose term begins on No-
13 vember 1 next following. A member is eligible for reappointment. If there is
14 a vacancy for any cause, the Governor shall make an appointment to become
15 immediately effective for the unexpired term.

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

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

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

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

28 “(8) In accordance with ORS chapter 183, the Behavior Analysis Regula-
29 tory Board shall establish by rule criteria for the:

30 “(a) Licensing of:

1 “(A) Behavior analysts; and
2 “(B) Assistant behavior analysts; and
3 “(b) Registration of:
4 “(A) Licensed health care professionals; and
5 “(B) Behavior analysis interventionists.
6 “(9) The criteria for the licensing of a behavior analyst must include, but
7 are not limited to, the requirement that the applicant:
8 “(a) Be certified by the Behavior Analyst Certification Board, Incorporated, as a Board Certified Behavior Analyst; and
9 “(b) Have successfully completed a criminal records check.
10 “(10) The criteria for the licensing of an assistant behavior analyst must
11 include, but are not limited to, the requirement that the applicant:
12 “(a) Be certified by the Behavior Analyst Certification Board, Incorporated, as a Board Certified Assistant Behavior Analyst;
13 “(b) Be supervised by a behavior analyst who is licensed by the Behavior
14 Analysis Regulatory Board; and
15 “(c) Have successfully completed a criminal records check.
16 “(11) The criteria for the registration of a behavior analysis
17 interventionist must include, but are not limited to, the requirement that the
18 applicant:
19 “(a) Have completed coursework and training prescribed by the Behavior
20 Analysis Regulatory Board by rule;
21 “(b) Receive ongoing oversight by a licensed behavior analyst or a li-
22 censed assistant behavior analyst, or by another licensed health care pro-
23 fessional approved by the board; and
24 “(c) Have successfully completed a criminal records check.
25 “(12) In accordance with applicable provisions of ORS chapter 183, the
26 Behavior Analysis Regulatory Board shall adopt rules:
27 “(a) Establishing standards and procedures for the licensing of behavior
28 analysts and assistant behavior analysts and for the registration of licensed
29 analysts and assistant behavior analysts and for the registration of licensed
30 analysts and assistant behavior analysts and for the registration of licensed

1 health care professionals and behavior analysis interventionists in accord-
2 ance with this section;

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

5 “(c) Governing the examination of applicants for licenses and registra-
6 tions under this section and the renewal, suspension and revocation of the
7 licenses and registrations; and

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

10 “(13) The Behavior Analysis Regulatory Board shall issue a license to an
11 applicant who:

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

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

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

16 “(14) The Behavior Analysis Regulatory Board shall establish the proce-
17 dures for the registration of licensed health care professionals and behavior
18 analysis interventionists.

19 “(15) All moneys received by the Behavior Analysis Regulatory Board
20 under subsection (13) of this section shall be paid into the General Fund of
21 the State Treasury and credited to the Oregon Health Licensing Agency
22 Account.

23 “[*(16) An individual who has not been licensed or registered by the Be-*
24 *havior Analysis Regulatory Board in accordance with criteria and standards*
25 *adopted under this section may not claim reimbursement for services described*
26 *in section 2 of this 2013 Act under a health benefit plan or under a self-insured*
27 *health plan offered by the Public Employees’ Benefit Board or the Oregon*
28 *Educators Benefit Board.].”*

29 In line 35, delete “20a” and insert “20”.

30 On page 16, line 11, delete “414.710,”.

- 1 In line 12, delete “6,”.
- 2 In line 14, delete “414.710,” and delete “, 20a”.
- 3 _____