77th OREGON LEGISLATIVE ASSEMBLY – 2013 Session **MEASURE: SB 365 A9**
STAFF MEASURE SUMMARY

Joint Committee on Ways and Means **Carrier – House: Rep.**
Carrier – Senate: Sen.

Revenue:
Fiscal:

Action:
Vote:
House
Yeas:
Nays:
Exc:
Senate
Yeas:
Nays:
Exc:

Prepared By: Matt Stayner, Legislative Fiscal Office
Meeting Date: June 20, 2013

WHAT THE MEASURE DOES:
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; Requires insurers cover, with prior authorization, up to 25 hours per week of applied behavioral analysis (ABA) services through age of 8; Establishes the Behavior Analysis Regulatory Board in Oregon Health Licensing Agency; Authorizes Board to issue license and collect fees; Establishes operative dates; Declares emergency, effective on passage.

ISSUES DISCUSSED:
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EFFECT OF COMMITTEE AMENDMENT:
The A9 amendments remove the mandatory coverage by coordinated care organizations under the state Medical Assistance Program (MAP); Extends the timeframe by one year for a decision made by an independent review organization that requires an insurer to continue providing applied behavior analysis; Removes provision that unlicensed practitioner of ABA may claim reimbursement from the MAP prior to 1/1/2016; eliminates changes to ORS 414.710; Requires the Health Evidence Review Commission to evaluate applied behavior analysis as defined in the bill for the Prioritized List of Health Services; Sets fort implementation dates for adjustment to list of health services resulting from HERC review; Requires coverage as provided in the bill by PEBB and OEBB for policy periods beginning on or after Jan. 1, 2015 and all carriers for policies beginning on or after Jan. 1, 2016

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.

FISCAL IMPACT OF PROPOSED LEGISLATION **Measure: SB 365 - A9**

Seventy-Seventh Oregon Legislative Assembly – 2013 Regular Session
Legislative Fiscal Office

Only Impacts on Original or Engrossed Versions are Considered Official

Prepared by: Matt Stayner
Reviewed by: Linda Ames, Susie Jordan, John Terpening, Doug Wilson
Date: 6/20/13

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 three major components: requiring coverage for Autism Spectrum Disorders (ASD) to be included in health benefit plans; 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); and a requirement that the Health Evidence Review Commission evaluate ABA as a treatment for ASD for the purpose of updating the list of health services recommended under ORS 414.890. 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 heath 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 that the additional coverage is to be provided in heath benefit plans operated by the Public Employees Benefit Board (PEBB) and the Oregon Educators Benefit Board (OEBB) for health plan policies and certificates beginning on or after January 1, 2015. 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.

Any proposed legislation resulting in a fiscal impact on revenues or expenditures with regard to insurance premiums provided by OEBB will impact any educational entity that has mandated or elective coverage under OEBB. This includes school districts, community colleges, education service districts and some charter schools. The revenue sources for these educational entities should be evaluated for a possible Ballot Measure 30 impact under section 15, Article XI of the Oregon Constitution.

Health Evidence Review Commission

The measure requires the Health Evidence Review Commission (HERC) to begin the process of evaluation applied behavior analysis as defined in the bill as a treatment for ASD for the purpose of updating the list of health services ranked by priority, representing the comparative benefits of each service to the population being served. The Oregon Health Authority (OHA) reports no fiscal impact to the Medical Assistance Program due to this requirement, but the consideration of the treatment and the placement of the treatment on the prioritized list may make the treatment available under the state's Medicaid and Oregon Health Plan programs. The treatment of Autism Spectrum Disorders is in line 334 of the April 1, 2013 list. Guideline note 75 for the April 2013 list states that "there is limited evidence of the effectiveness of treatment (e.g., Applied Behavioral Analysis) for Autism Spectrum Disorders (ASD)" and OHA considers this guideline note to exclude coverage of ABA for a primary diagnosis of ASD.

Oregon Health Plan / Coordinated Care Organizations

If the evaluation of ABA required by the measure results in the treatment without the restrictions noted above falling above the funding line on the prioritized list, OHA would be required to obtain approval from the Centers for Medicare and Medicaid Services for coverage of the treatment.

The Medical Assistance Program (MAP) states that it has chosen to mirror the ABA protocol that the State of Washington has recently implemented for children diagnosed with ASD to determine an actual or proposed billing amount per billing per service for this analysis, but the detail of that protocol and the underlying calculations were not included in the agency's analysis. Assuming treatment authorization for the last six months of the 2013-15 biennium and the current utilization rate of 12.9 percent of children with an ASD diagnosis who have been receiving services covered by the bill, the estimated fiscal impact is $2,101,886 or $0.97 per child per month. This estimate is based on the current number of eligible children for whom at least two claims with an autism diagnosis have been submitted over the past three years. Using an estimate of 33 percent utilization in 15-17, the estimated fiscal impact is $21,563,675 million $2.48 per child per month. Since the bill applies to children covered by both fee-for-service OHP and those covered by coordinated care organizations (CCOs), the fiscal impact estimate uses current statistical and pricing data to project the potential impact across both populations.

The Medical Assistance Program is funded with a two-thirds / one-third split between federal and state sources. There is currently a $2.9 billion (inflation adjusted) funding cap on the program and any changes in therapies covered by the plans would continue to be subject to the available funding.

Oregon Health Insurance Exchange

The Oregon Health Insurance Exchange (ORHIX) is required by federal rule to adopt a "benchmark" plan for essential health benefits. Under current federal rule, if the state adopts a law or other mandate on or after January 1, 2012 that requires coverage that is in addition to the coverage provided in the benchmark plan, then the state is obligated to reimburse the premium payer or insurers on behalf of the premium payer 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. ORHIX notes that federal comments filed during the Affordable Care Act (ACA) rulemaking process state that this policy regarding state-required benefits is intended to apply for at least plan years 2014 and 2015; further rulemaking and guidance is expected by ORHIX for plan year 2016 and beyond. This anticipated rulemaking may or may not include these restrictions on additions to the essential benefit package. While it appears that some aspects of the bills coverage requirement may be included in the state's current benchmark plan, 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 whether or not the federal guidance or rules will be changed with regard to the state's obligation to pick up the premium difference beginning in 2016, when the measure requires all carriers to provide the ABA coverage contained in the bill 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 once coverage requirements begin 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 including coverage of ABA therapy. During the period between 7/1/2012 and 4/30/2013 Multnomah County had 18 unique members filing 101claims related to autism services totaling $13,130.

SB 365-A9
(LC 1598)
6/18/13 (LHF/ps)

PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 365

On page 1 of the printed A-engrossed bill, line 3, delete "414.710,".

On page 3, delete lines 43 through 45.

On page 4, line 1, delete "(12)" and insert "(11)".

In line 2, delete "2015" and insert "2016".

In line 5, delete "(13)" and insert "(12)".

On page 5, line 42, delete the comma and insert "or".

In line 43, delete "or under the state medical assistance program".

On page 6, line 20, delete the second comma and insert "or".

In line 21, delete "or the state medical assistance program".

Delete lines 26 through 34 and insert:

"SECTION 6. Not later than August 30, 2013, the Health Evidence Review Commission shall begin the process of evaluating applied behavior analysis, as defined in section 2 of this 2013 Act, as a treatment for autism spectrum disorder, as defined in section 2 of this 2013 Act, for the purpose of updating the list of health services recommended under ORS 414.690. Any adjustments to the list of health services that result from the evaluation process must be implemented not later than:

"(1) October 1, 2014, if the adjustments do not require the development of new medical coding; and

"(2) April 1, 2015, if the adjustments require the development or adoption of new medical coding.".

On page 12, delete lines 35 through 45 and delete page 13.

On page 14, delete lines 1 through 34 and insert:

"**SECTION 19.** Section 3 of this 2013 Act is amended to read:

"**Sec. 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 registered with the board;

"(d) One member who is a licensed speech-language pathologist registered with 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; and

"(b) Registration of:

"(A) Licensed health care professionals; and

"(B) 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 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.

"(12) 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 and for the registration of licensed health care professionals and behavior analysis interventionists in accordance with this section;

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

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

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

"(13) The Behavior Analysis Regulatory Board shall issue a license 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.

"(14) The Behavior Analysis Regulatory Board shall establish the procedures for the registration of licensed health care professionals and behavior analysis interventionists.

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

"[*(16) An individual who has not been licensed or registered by the Behavior Analysis Regulatory Board in accordance with criteria and standards adopted under this section may not claim reimbursement for 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 Employee's Benefit Board or the Oregon Educators Benefit Board.*]".

In line 35, delete "20a" and insert "20".

On page 16, delete lines 11 through 17 and insert:

"SECTION 23. Sections 2 and 10 of this 2013 Act and the amendments to ORS 743A.190 and 750.055 by sections 7 and 8 of this 2013 Act apply to health benefit plan policies and certificates:

"(1) Offered by the Public Employees' Benefit Board or the Oregon Educators Benefit Board for coverage beginning on or after January 1, 2015; and

"(2) Other than for plans offered by the Public Employees' Benefit Board or the Oregon Educators Benefit Board, for coverage beginning on or after January 1, 2016.

"SECTION 24. The amendments to section 3 of this 2013 Act by section 19 of this 2013 Act and the amendments to ORS 743A.190 and 750.055 by sections 20 and 21 of this 2013 Act become operative January 2, 2022.".
