

# Senate Bill 364

Sponsored by Senator BATES (Pre-session 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 Applied Behavior Analysts Board in Oregon Health Licensing Agency. Requires coverage of applied behavior analysis by health benefit plans, Public Employees' Benefit Board, Oregon Educators Benefit Board and medical assistance program. 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

1  
2 Relating to applied behavior analysis; creating new provisions; amending ORS 414.025, 676.150,  
3 676.160, 676.410, 676.606, 676.610, 676.612, 676.613, 676.622, 676.625, 676.992 and 743A.190; and  
4 declaring an emergency.

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

6 **SECTION 1. (1) There is established in the Oregon Health Licensing Agency the Applied**  
7 **Behavior Analysts Board consisting of five members appointed by the Governor.**

8 (2) **The term of office of each member is four years, but a member serves at the pleasure**  
9 **of the Governor. Before the expiration of the term of a member, the Governor shall appoint**  
10 **a successor whose term begins on October 1 next following. A member is eligible for reap-**  
11 **pointment. If there is a vacancy for any cause, the Governor shall make an appointment to**  
12 **become immediately effective for the unexpired term.**

13 (3) **The appointment of the members of the board is subject to confirmation by the Sen-**  
14 **ate in the manner prescribed in ORS 171.562 and 171.565.**

15 (4) **A member of the board is entitled to compensation and expenses as provided in ORS**  
16 **292.495.**

17 (5) **The members of the board must be residents of this state who are well informed on**  
18 **the principles of applied behavior analysis.**

19 (6) **The board shall select one of its members as chairperson and another as vice chair-**  
20 **person, for such terms and with duties and powers necessary for the performance of the**  
21 **functions of such offices as the board determines.**

22 (7) **A majority of the members of the board constitutes a quorum for the transaction of**  
23 **business.**

24 (8) **Official action by the board requires the approval of a majority of the members of the**  
25 **board.**

26 (9) **The board shall meet at a place, day and hour determined by the chairperson. The**  
27 **board may also meet at other times and places specified by the call of a majority of the**  
28 **members of the board.**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 (10) In accordance with applicable provisions of ORS chapter 183, the board may adopt  
 2 rules necessary for the administration of the laws that the board is charged with adminis-  
 3 tering.

4 **SECTION 2.** Notwithstanding the term of office specified by section 1 of this 2013 Act,  
 5 of the members first appointed to the Applied Behavior Analysts Board:

6 (1) One shall serve for a term ending October 1, 2014.

7 (2) One shall serve for a term ending October 1, 2015.

8 (3) One shall serve for a term ending October 1, 2016.

9 (4) Two shall serve for terms ending October 1, 2017.

10 **SECTION 3.** (1) The Applied Behavior Analysts Board shall establish by rule criteria for  
 11 the licensing of:

12 (a) Behavior analysts;

13 (b) Assistant behavior analysts; and

14 (c) Autism technicians.

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

17 (a) Been certified by the Behavior Analyst Certification Board as a “Board Certified Be-  
 18 havior Analyst”; and

19 (b) Successfully completed a criminal records check.

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

22 (a) Been certified by the Behavior Analyst Certification Board as a “Board Certified As-  
 23 sistant Behavior Analyst”; and

24 (b) Successfully completed a criminal records check.

25 (4) The criteria for the licensing of an autism technician must include, but are not lim-  
 26 ited to, the requirement that the applicant:

27 (a) Has completed:

28 (A) A minimum of 12 semester hours, or the equivalent of 12 semester hours, of college  
 29 coursework and is currently enrolled in a course of study leading to an associate’s or  
 30 bachelor’s degree in behavior analysis, psychology, education, social work, behavioral sci-  
 31 ence, human development or a related field; or

32 (B) A minimum of 48 semester hours, or the equivalent of 48 semester hours, of college  
 33 coursework in any field;

34 (b) Has completed 40 hours of training with a licensed behavior analyst or a licensed as-  
 35 sistant behavior analyst, or 40 hours of training with another licensed health care profes-  
 36 sional during which the services performed are within the licensed health care professional’s  
 37 scope of practice and are commensurate with the licensed health care professional’s post-  
 38 secondary education, training and supervised experience, and the training covers the follow-  
 39 ing topics:

40 (A) Introduction to autism spectrum disorder, applied behavior analysis, behavioral  
 41 interventions and child development;

42 (B) Principles and performance of applied behavior analysis or other behavioral inter-  
 43 ventions;

44 (C) Legal, ethical and safety issues related to working with families and vulnerable pop-  
 45 ulations; and

1           **(D) Professional standards and ethics;**

2           **(c) During a period of not more than 12 weeks, has completed 40 hours of work in applied**  
 3 **behavior analysis supervised by a licensed behavior analyst or a licensed assistant behavior**  
 4 **analyst, or 40 hours of work in applied behavior analysis supervised by another licensed**  
 5 **health care professional during which the services performed are within the licensed health**  
 6 **care professional's scope of practice and are commensurate with the licensed health care**  
 7 **professional's post-secondary education, training and supervised experience;**

8           **(d) Has successfully completed a criminal records check; and**

9           **(e) Receives ongoing oversight by a licensed behavior analyst or a licensed assistant be-**  
 10 **havior analyst, or by another licensed health care professional, as long as the services per-**  
 11 **formed under supervision are within the licensed health care professional's scope of practice**  
 12 **and are commensurate with the licensed health care professional's post-secondary education,**  
 13 **training and supervised experience.**

14           **SECTION 4. (1) In accordance with applicable provisions of ORS chapter 183, the Oregon**  
 15 **Health Licensing Agency, in consultation with the Applied Behavior Analysts Board, shall**  
 16 **adopt rules:**

17           **(a) Establishing standards for the licensing of behavior analysts, assistant behavior ana-**  
 18 **lysts and autism technicians in accordance with section 3 of this 2013 Act;**

19           **(b) Establishing guidelines for the professional methods and procedures to be used by**  
 20 **persons licensed under section 3 of this 2013 Act;**

21           **(c) Governing the examination of applicants for licenses issued under section 3 of this**  
 22 **2013 Act and the renewal, suspension and revocation of the licenses; and**

23           **(d) Establishing fees sufficient to cover the costs of the agency and the board for ad-**  
 24 **ministering the licensing program under section 3 of this 2013 Act.**

25           **(2) The Oregon Health Licensing Agency shall issue a license to an applicant who:**

26           **(a) Files an application in the form prescribed by the agency;**

27           **(b) Pays fees established by the agency; and**

28           **(c) Demonstrates to the satisfaction of the agency that the applicant meets the criteria**  
 29 **and standards adopted under this section and section 3 of this 2013 Act.**

30           **(3) All moneys received by the agency under subsection (2) of this section shall be paid**  
 31 **into the General Fund of the State Treasury and credited to the Oregon Health Licensing**  
 32 **Agency Account.**

33           **(4) An individual who has not been licensed by the agency under this section may not**  
 34 **claim reimbursement under ORS 743A.190 from a health benefit plan or a self-insured health**  
 35 **plan offered by the Public Employees' Benefit Board or the Oregon Educators Benefit Board.**

36           **SECTION 5. Notwithstanding section 4 (4) of this 2013 Act, an individual actively prac-**  
 37 **ticing applied behavior analysis on the effective date of this 2013 Act may continue to claim**  
 38 **reimbursement from a health benefit plan, the Public Employees' Benefit Board or the**  
 39 **Oregon Educators Board for services provided without a license before January 1, 2016.**

40           **SECTION 6. The Oregon Health Licensing Agency make take any action before January**  
 41 **1, 2014, that is necessary for the agency to implement the provisions of section 4 of this 2013**  
 42 **Act on and after January 1, 2014.**

43           **SECTION 7. In the manner prescribed in ORS chapter 183 for contested cases, the**  
 44 **Oregon Health Licensing Agency, in consultation with the Applied Behavior Analysts Board,**  
 45 **may impose a form of discipline listed in ORS 676.612 against any person licensed under**

1 **section 4 of this 2013 Act for any of the prohibited acts listed in ORS 676.612 and for any vi-**  
 2 **olation of a rule adopted under section 4 of this 2013 Act.**

3 **SECTION 8.** ORS 743A.190 is amended to read:

4 743A.190. *[(1) A health benefit plan, as defined in ORS 743.730, must cover for a child enrolled in*  
 5 *the plan who is under 18 years of age and who has been diagnosed with a pervasive developmental*  
 6 *disorder all medical services, including rehabilitation services, that are medically necessary and are*  
 7 *otherwise covered under the plan.]*

8 *[(2) The coverage required under subsection (1) of this section, including rehabilitation services,*  
 9 *may be made subject to other provisions of the health benefit plan that apply to covered services, in-*  
 10 *cluding but not limited to:]*

11 *[(a) Deductibles, copayments or coinsurance;]*

12 *[(b) Prior authorization or utilization review requirements; or]*

13 *[(c) Treatment limitations regarding the number of visits or the duration of treatment.]*

14 *[(3) As used in this section:]*

15 *[(a) "Medically necessary" means in accordance with the definition of medical necessity that is*  
 16 *specified in the policy, certificate or contract for the health benefit plan and that applies uniformly to*  
 17 *all covered services under the health benefit plan.]*

18 *[(b) "Pervasive developmental disorder" means a neurological condition that includes Asperger's*  
 19 *syndrome, autism, developmental delay, developmental disability or mental retardation.]*

20 *[(c) "Rehabilitation services" means physical therapy, occupational therapy or speech therapy ser-*  
 21 *vices to restore or improve function.]*

22 *[(4) The provisions of ORS 743A.001 do not apply to this section.]*

23 *[(5) The definition of "pervasive developmental disorder" is not intended to apply to coverage re-*  
 24 *quired under ORS 743A.168.]*

25 **(1) As used in this section:**

26 **(a) "Applied behavior analysis" means the design, implementation and evaluation of en-**  
 27 **vironmental modifications, using behavioral stimuli and consequences, to produce significant**  
 28 **improvement in human social behavior, including the use of direct observation, measurement**  
 29 **and functional analysis of the relationship between environment and behavior.**

30 **(b) "Autism spectrum disorder" means a neurobiological condition that includes autistic**  
 31 **disorder, Asperger's disorder and pervasive developmental disorder not otherwise specified,**  
 32 **all as defined in the Diagnostic and Statistical Manual of Mental Disorders published by the**  
 33 **American Psychiatric Association.**

34 **(2) A health benefit plan, as defined in ORS 743.730, and any self-insured health plan of-**  
 35 **fered by the Public Employees' Benefit Board or the Oregon Educators Benefit Board shall**  
 36 **provide coverage for the screening for and diagnosis of autism spectrum disorder and for**  
 37 **applied behavior analysis that is medically necessary to treat identified autism spectrum**  
 38 **disorder.**

39 **(3) Coverage under this section is subject to confirmation of a diagnosis of autism spec-**  
 40 **trum disorder by a provider licensed under section 4 of this 2013 Act.**

41 **(4) This section does not require coverage of:**

42 **(a) Prescription drugs; or**

43 **(b) Services provided by a school district in accordance with an individualized education**  
 44 **program, as defined in ORS 343.035.**

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

1       **SECTION 9. The amendments to ORS 743A.190 by section 8 of this 2013 Act apply to**  
2 **policies or certificates issued or renewed on or after January 1, 2014.**

3       **SECTION 10.** ORS 414.025 is amended to read:

4       414.025. As used in this chapter and ORS chapters 411 and 413, unless the context or a specially  
5 applicable statutory definition requires otherwise:

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

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

10       (A) Shared savings arrangements;

11       (B) Bundled payments; and

12       (C) Payments based on episodes.

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

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

18       (a) Is receiving a category of aid.

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

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

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

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

27       (B) Is the spouse of the caretaker relative.

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

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

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

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

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

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

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

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

45       (L) Is under the age of 21 years and is in an independent living situation with all or part of the

1 maintenance cost paid by the Department of Human Services.

2 (m) Is a member of a family that received aid in the preceding month under ORS 412.006 or  
3 412.014 and became ineligible for aid due to increased hours of or increased income from employ-  
4 ment. As long as the member of the family is employed, such families will continue to be eligible for  
5 medical assistance for a period of at least six calendar months beginning with the month in which  
6 such family became ineligible for assistance due to increased hours of employment or increased  
7 earnings.

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

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

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

16 (q) Is a pregnant woman who would be eligible for aid granted under ORS 412.001 to 412.069 and  
17 418.647, whether or not the woman is eligible for cash assistance.

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

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

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

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

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

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

33 (a) Has expertise or experience in public health;

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

36 (c) To the extent practicable, shares ethnicity, language, socioeconomic status and life experi-  
37 ences with the residents of the community where the worker serves;

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

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

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

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

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

45 (5) "Coordinated care organization" means an organization meeting criteria adopted by the

1 Oregon Health Authority under ORS 414.625.

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

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

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

7 (7) “Global budget” means a total amount established prospectively by the Oregon Health Au-  
8 thority to be paid to a coordinated care organization for the delivery of, management of, access to  
9 and quality of the health care delivered to members of the coordinated care organization.

10 (8) “Health services” means at least so much of each of the following as are funded by the  
11 Legislative Assembly based upon the prioritized list of health services compiled by the Health Evi-  
12 dence Review Commission under ORS 414.690:

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

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

18 (c) Prescription drugs;

19 (d) Laboratory and X-ray services;

20 (e) Medical equipment and supplies;

21 (f) Mental health services;

22 (g) Chemical dependency services;

23 (h) Emergency dental services;

24 (i) Nonemergency dental services;

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

28 (k) Emergency hospital services;

29 (L) Outpatient hospital services; [*and*]

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

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

32 (9) “Income” has the meaning given that term in ORS 411.704.

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

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

42 (12) “Medical assistance” includes any care or services for any individual who is a patient in  
43 a medical institution or any care or services for any individual who has attained 65 years of age  
44 or is under 22 years of age, and who is a patient in a private or public institution for mental dis-  
45 eases. “Medical assistance” does not include care or services for an inmate in a nonmedical public

1 institution.

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

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

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

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

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

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

26 (17) "Quality measure" means the measures and benchmarks identified by the authority in ac-  
27 cordance with ORS 414.638.

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

31 **SECTION 11.** ORS 676.150 is amended to read:

32 676.150. (1) As used in this section:

- 33 (a) "Board" means the:
  - 34 (A) State Board of Examiners for Speech-Language Pathology and Audiology;
  - 35 (B) State Board of Chiropractic Examiners;
  - 36 (C) State Board of Licensed Social Workers;
  - 37 (D) Oregon Board of Licensed Professional Counselors and Therapists;
  - 38 (E) Oregon Board of Dentistry;
  - 39 (F) Board of Licensed Dietitians;
  - 40 (G) State Board of Massage Therapists;
  - 41 (H) Oregon Board of Naturopathic Medicine;
  - 42 (I) Oregon State Board of Nursing;
  - 43 (J) Nursing Home Administrators Board;
  - 44 (K) Oregon Board of Optometry;
  - 45 (L) State Board of Pharmacy;



- 1 (M) Oregon Medical Board;
- 2 (N) Occupational Therapy Licensing Board;
- 3 (O) Physical Therapist Licensing Board;
- 4 (P) State Board of Psychologist Examiners;
- 5 (Q) Board of Medical Imaging;
- 6 (R) State Board of Direct Entry Midwifery;
- 7 (S) State Board of Denture Technology;
- 8 (T) Respiratory Therapist and Polysomnographic Technologist Licensing Board;
- 9 (U) Oregon Health Authority, to the extent that the authority licenses emergency medical ser-
- 10 vices providers;
- 11 (V) Oregon State Veterinary Medical Examining Board; *[or]*
- 12 (W) State Mortuary and Cemetery Board; **or**
- 13 **(X) Applied Behavior Analysts Board.**
- 14 (b) “Licensee” means a health professional licensed or certified by or registered with a board.
- 15 (c) “Prohibited conduct” means conduct by a licensee that:
- 16 (A) Constitutes a criminal act against a patient or client; or
- 17 (B) Constitutes a criminal act that creates a risk of harm to a patient or client.
- 18 (d) “Unprofessional conduct” means conduct unbecoming a licensee or detrimental to the best
- 19 interests of the public, including conduct contrary to recognized standards of ethics of the licensee’s
- 20 profession or conduct that endangers the health, safety or welfare of a patient or client.
- 21 (2) Unless state or federal laws relating to confidentiality or the protection of health information
- 22 prohibit disclosure, a licensee who has reasonable cause to believe that another licensee has en-
- 23 gaged in prohibited or unprofessional conduct shall report the conduct to the board responsible for
- 24 the licensee who is believed to have engaged in the conduct. The reporting licensee shall report the
- 25 conduct without undue delay, but in no event later than 10 working days after the reporting licensee
- 26 learns of the conduct.
- 27 (3) A licensee who is convicted of a misdemeanor or felony or who is arrested for a felony crime
- 28 shall report the conviction or arrest to the licensee’s board within 10 days after the conviction or
- 29 arrest.
- 30 (4) The board responsible for a licensee who is reported to have engaged in prohibited or un-
- 31 professional conduct shall investigate in accordance with the board’s rules. If the board has rea-
- 32 sonable cause to believe that the licensee has engaged in prohibited conduct, the board shall present
- 33 the facts to an appropriate law enforcement agency without undue delay, but in no event later than
- 34 10 working days after the board finds reasonable cause to believe that the licensee engaged in pro-
- 35 hibited conduct.
- 36 (5) A licensee who fails to report prohibited or unprofessional conduct as required by subsection
- 37 (2) of this section or the licensee’s conviction or arrest as required by subsection (3) of this section
- 38 is subject to discipline by the board responsible for the licensee.
- 39 (6) A licensee who fails to report prohibited conduct as required by subsection (2) of this section
- 40 commits a Class A violation.
- 41 (7) Notwithstanding any other provision of law, a report under subsection (2) or (3) of this sec-
- 42 tion is confidential under ORS 676.175. A board may disclose a report as provided in ORS 676.177.
- 43 (8) Except as part of an application for a license or for renewal of a license and except as pro-
- 44 vided in subsection (3) of this section, a board may not require a licensee to report the licensee’s
- 45 criminal conduct.

1 (9) The obligations imposed by this section are in addition to and not in lieu of other obligations  
2 to report unprofessional conduct as provided by statute.

3 (10) A licensee who reports to a board in good faith as required by subsection (2) of this section  
4 is immune from civil liability for making the report.

5 (11) A board and the members, employees and contractors of the board are immune from civil  
6 liability for actions taken in good faith as a result of a report received under subsection (2) or (3)  
7 of this section.

8 **SECTION 12.** ORS 676.160 is amended to read:

9 676.160. As used in ORS 676.165 to 676.180, “health professional regulatory board” means the:

10 (1) State Board of Examiners for Speech-Language Pathology and Audiology;

11 (2) State Board of Chiropractic Examiners;

12 (3) State Board of Licensed Social Workers;

13 (4) Oregon Board of Licensed Professional Counselors and Therapists;

14 (5) Oregon Board of Dentistry;

15 (6) Board of Licensed Dietitians;

16 (7) State Board of Massage Therapists;

17 (8) State Mortuary and Cemetery Board;

18 (9) Oregon Board of Naturopathic Medicine;

19 (10) Oregon State Board of Nursing;

20 (11) Nursing Home Administrators Board;

21 (12) Oregon Board of Optometry;

22 (13) State Board of Pharmacy;

23 (14) Oregon Medical Board;

24 (15) Occupational Therapy Licensing Board;

25 (16) Physical Therapist Licensing Board;

26 (17) State Board of Psychologist Examiners;

27 (18) Board of Medical Imaging;

28 (19) Oregon State Veterinary Medical Examining Board; *[and]*

29 **(20) Applied Behavior Analysts Board; and**

30 *[(20)]* **(21) Oregon Health Authority**, to the extent that the authority licenses emergency medical  
31 services providers.

32 **SECTION 13.** ORS 676.410 is amended to read:

33 676.410. (1) As used in this section, “healthcare workforce regulatory board” means the:

34 (a) Occupational Therapy Licensing Board;

35 (b) Oregon Medical Board;

36 (c) Oregon State Board of Nursing;

37 (d) Oregon Board of Dentistry;

38 (e) Physical Therapist Licensing Board;

39 (f) State Board of Pharmacy; *[and]*

40 (g) Board of Licensed Dietitians; **and**

41 **(h) Applied Behavior Analysts Board.**

42 (2)(a) An applicant for a license from a healthcare workforce regulatory board or renewal of a  
43 license by a healthcare workforce regulatory board shall provide the information prescribed by the  
44 Office for Oregon Health Policy and Research pursuant to subsection (3) of this section.

45 (b) Except as provided in subsection (4) of this section, a healthcare workforce regulatory board

1 may not approve a subsequent application for a license or renewal of a license until the applicant  
2 provides the information.

3 (3) The Administrator for the Office for Oregon Health Policy and Research shall collaborate  
4 with the healthcare workforce regulatory boards to adopt rules for the manner, form and content  
5 for reporting, and the information that must be provided to a healthcare workforce regulatory board  
6 under subsection (2) of this section, which may include:

- 7 (a) Demographics, including race and ethnicity.
- 8 (b) Education information.
- 9 (c) License information.
- 10 (d) Employment information.
- 11 (e) Primary and secondary practice information.
- 12 (f) Anticipated changes in the practice.
- 13 (g) Languages spoken.

14 (4)(a) A healthcare workforce regulatory board shall report healthcare workforce information  
15 collected under subsection (2) of this section to the Office for Oregon Health Policy and Research.

16 (b) A healthcare workforce regulatory board shall keep confidential and not release personally  
17 identifiable data collected under this section for a person licensed, registered or certified by a board.  
18 This paragraph does not apply to the release of information to a law enforcement agency for in-  
19 vestigative purposes or to the release to the Office for Oregon Health Policy and Research for state  
20 health planning purposes.

21 (5) The requirements of subsection (2) of this section apply to an applicant for issuance or re-  
22 newal of a license who is or who is applying to become:

- 23 (a) An occupational therapist or certified occupational therapy assistant as defined in ORS  
24 675.210;
- 25 (b) A physician as defined in ORS 677.010;
- 26 (c) A physician assistant as defined in ORS 677.495;
- 27 (d) A nurse or nursing assistant licensed or certified under ORS 678.010 to 678.410;
- 28 (e) A dentist or dental hygienist as defined in ORS 679.010;
- 29 (f) A physical therapist or physical therapist assistant as defined in ORS 688.010;
- 30 (g) A pharmacist or pharmacy technician as defined in ORS 689.005; [or]
- 31 (h) A licensed dietitian, as defined in ORS 691.405[.]; **or**
- 32 (i) **A behavior analyst, assistant behavior analyst or autism technician licensed under**  
33 **section 4 of this 2013 Act.**

34 (6) A healthcare workforce regulatory board may adopt rules as necessary to perform the  
35 board's duties under this section.

36 (7) In addition to licensing fees that may be imposed by a healthcare workforce regulatory  
37 board, the Oregon Health Policy Board shall establish fees to be paid by applicants for issuance or  
38 renewal of licenses reasonably calculated to reimburse the actual cost of obtaining or reporting in-  
39 formation as required by subsection (2) of this section.

40 **SECTION 14.** ORS 676.606 is amended to read:

41 676.606. Pursuant to ORS 676.607, the Oregon Health Licensing Agency shall provide adminis-  
42 trative and regulatory oversight and centralized service for the following boards, advisory councils  
43 and programs:

- 44 (1) Board of Athletic Trainers, as provided in ORS 688.701 to 688.734;
- 45 (2) Board of Cosmetology, as provided in ORS 690.005 to 690.235;

1 (3) State Board of Denture Technology, as provided in ORS 680.500 to 680.565;

2 (4) State Board of Direct Entry Midwifery, as provided in ORS 687.405 to 687.495;

3 (5) Respiratory Therapist and Polysomnographic Technologist Licensing Board, as provided in  
4 ORS 688.800 to 688.840;

5 (6) Environmental Health Registration Board, as provided in ORS chapter 700;

6 (7) Board of Body Art Practitioners, as provided in ORS 690.350 to 690.415;

7 (8) Advisory Council on Hearing Aids, as provided in ORS 694.015 to 694.185;

8 (9) Sex Offender Treatment Board, as provided in ORS 675.360 to 675.410;

9 (10) Nursing Home Administrators Board, as provided in ORS 678.710 to 678.820; *[and]*

10 (11) Board of Licensed Dietitians, as provided in ORS 691.405 to 691.485[.]; **and**

11 **(12) Applied Behavior Analysts Board, as provided in sections 4 and 7 of this 2013 Act.**

12 **SECTION 15.** ORS 676.610 is amended to read:

13 676.610. (1)(a) The Oregon Health Licensing Agency is under the supervision and control of a  
14 director, who is responsible for the performance of the duties, functions and powers and for the or-  
15 ganization of the agency.

16 (b) The Director of the Oregon Department of Administrative Services shall establish the qual-  
17 ifications for and appoint the Director of the Oregon Health Licensing Agency, who holds office at  
18 the pleasure of the Director of the Oregon Department of Administrative Services.

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

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

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

28 (3) The Director of the Oregon Health Licensing Agency is responsible for carrying out the  
29 duties, functions and powers under ORS 675.360 to 675.410, 676.605 to 676.625, 676.992, 678.710 to  
30 678.820, 680.500 to 680.565, 687.405 to 687.495, 687.895, 688.701 to 688.734, 688.800 to 688.840, 690.005  
31 to 690.235, 690.350 to 690.415, 691.405 to 691.485 and 694.015 to 694.185 **and sections 4 to 7 of this**  
32 **2013 Act** and ORS chapter 700.

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

36 **SECTION 16.** ORS 676.612 is amended to read:

37 676.612. (1) In the manner prescribed in ORS chapter 183 for contested cases and as specified  
38 in ORS 675.385, 678.780, 680.535, 687.445, 688.734, 688.836, 690.167, 690.407, 691.477, 694.147 and  
39 700.111 **and section 7 of this 2013 Act**, the Oregon Health Licensing Agency may refuse to issue  
40 or renew, may suspend or revoke or may otherwise condition or limit a certificate, license, permit  
41 or registration to practice issued by the agency or may discipline or place on probation a holder  
42 of a certificate, license, permit or registration for commission of the prohibited acts listed in sub-  
43 section (2) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (o) Failing to cooperate with the agency in any investigation, inspection or request for infor-  
43 mation.

44 (p) Selling or fraudulently obtaining or furnishing any certificate, license, permit or registration  
45 to practice in a regulated occupation or profession subject to the authority of the boards, councils

1 and programs listed in ORS 676.606, or aiding or abetting such an act.

2 (q) Selling or fraudulently obtaining or furnishing any record related to practice in a regulated  
3 occupation or profession subject to the authority of the boards, councils and programs listed in ORS  
4 676.606, or aiding or abetting such an act.

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

7 (3) For the purpose of requesting a state or nationwide criminal records check under ORS  
8 181.534, the agency may require the fingerprints of a person who is:

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

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

12 (c) Under investigation by the agency.

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

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

21 **SECTION 17.** ORS 676.613 is amended to read:

22 676.613. (1) In addition to all other remedies, when it appears to the Oregon Health Licensing  
23 Agency that a person is engaged in, has engaged in or is about to engage in any act, practice or  
24 transaction that violates any provision of ORS 675.360 to 675.410, 676.617, 678.710 to 678.820, 680.500  
25 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  
26 690.415, 691.405 to 691.485 or 694.015 to 694.185 **or section 4 of this 2013 Act** or ORS chapter 700,  
27 the agency may, through the Attorney General or the district attorney of the county in which the  
28 act, practice or transaction occurs or will occur, apply to the court for an injunction restraining the  
29 person from the act, practice or transaction.

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

33 **SECTION 18.** ORS 676.622 is amended to read:

34 676.622. (1) A transaction conducted through a state or local system or network that provides  
35 electronic access to the Oregon Health Licensing Agency information and services is exempt from  
36 any requirement under ORS 675.360 to 675.410, 676.605 to 676.625, 676.992, 680.500 to 680.565, 687.405  
37 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  
38 691.485 and 694.015 to 694.185 **and section 4 of this 2013 Act** and ORS chapter 700, and rules  
39 adopted thereunder, requiring an original signature or the submission of handwritten materials.

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

42 **SECTION 19.** ORS 676.625 is amended to read:

43 676.625. (1) The Oregon Health Licensing Agency shall establish by rule and shall collect fees  
44 and charges to carry out the agency's responsibilities under ORS 676.605 to 676.625 and 676.992 and  
45 any responsibility imposed on the agency pertaining to the boards, councils and programs adminis-

1 tered and regulated by the agency pursuant to ORS 676.606.

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

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

15 (4) All moneys credited to the account pursuant to ORS 675.405, 676.617, 680.525, 687.435,  
 16 688.728, 688.834, 690.235, 690.415, 691.479, 694.185 and 700.080 **and section 4 of this 2013 Act**, and  
 17 moneys credited to the account from other agency and program fees established by the agency by  
 18 rule, are continuously appropriated to the agency for carrying out the duties, functions and powers  
 19 of the agency under ORS 676.605 to 676.625 and 676.992 **and section 4 of this 2013 Act**.

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

24 **SECTION 20.** ORS 676.992 is amended to read:

25 676.992. (1) Except as provided in subsection (3) of this section, and in addition to any other  
 26 penalty or remedy provided by law, the Oregon Health Licensing Agency may impose a civil penalty  
 27 not to exceed \$5,000 for each violation of the following statutes and any rule adopted thereunder:

- 28 (a) ORS 688.701 to 688.734 (athletic training);
- 29 (b) ORS 690.005 to 690.235 (cosmetology);
- 30 (c) ORS 680.500 to 680.565 (denture technology);
- 31 (d) ORS 687.405 to 687.495 (direct entry midwifery);
- 32 (e) ORS 690.350 to 690.415 (tattooing, electrolysis, body piercing, dermal implanting and  
 33 scarification);
- 34 (f) ORS 694.015 to 694.185 (dealing in hearing aids);
- 35 (g) ORS 688.800 to 688.840 (respiratory therapy and polysomnography);
- 36 (h) ORS chapter 700 (environmental sanitation);
- 37 (i) ORS 676.617 (single facility licensure);
- 38 (j) ORS 675.360 to 675.410 (sex offender treatment);
- 39 (k) ORS 678.710 to 678.820 (nursing home administrators);
- 40 (L) ORS 691.405 to 691.485 (dietitians); [and]
- 41 (m) ORS 676.612 (prohibited acts); **and**
- 42 **(n) Section 4 of this 2013 Act (applied behavior analysis).**

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

1 section (1) of this section.

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

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

6 (a) The immediacy and extent to which the violation threatens the public health or safety;

7 (b) Any prior violations of statutes, rules or orders;

8 (c) The history of the person incurring a penalty in taking all feasible steps to correct any vio-  
9 lation; and

10 (d) Any other aggravating or mitigating factors.

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

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

17 **SECTION 21. (1) Sections 4, 5 and 7 of this 2013 Act become operative November 1, 2013.**

18 **(2) The amendments to ORS 414.025 and 743A.190 by sections 8 and 10 of this 2013 Act**  
19 **become operative January 1, 2014.**

20 **SECTION 22. This 2013 Act being necessary for the immediate preservation of the public**  
21 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
22 **on its passage.**