

# Enrolled Senate Bill 365

Sponsored by Senators BATES, EDWARDS; Senators DEVLIN, HASS, JOHNSON, Representatives CONGER, MCLANE, PARRISH (Presession filed.)

CHAPTER .....

## AN ACT

Relating to treatment for autism spectrum disorders; creating new provisions; amending ORS 676.610, 676.612, 676.613, 676.622, 676.625, 676.992, 743A.190 and 750.055; and declaring an emergency.

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

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

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

(a)(A) “Applied behavior analysis” means the design, implementation and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce significant improvement in human social behavior, including the use of direct observation, measurement and functional analysis of the relationship between environment and behavior and that is provided by:

(i) A licensed health care professional registered under section 3 of this 2013 Act;

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

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

(B) “Applied behavior analysis” excludes psychological testing, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy and long-term counseling as treatment modalities.

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

(c) “Diagnosis” means medically necessary assessment, evaluation or testing.

(d) “Health benefit plan” has the meaning given that term in ORS 743.730.

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

(f) “Treatment for autism spectrum disorder” includes applied behavior analysis for up to 25 hours per week and any other mental health or medical services identified in the individualized treatment plan, as described in subsection (6) of this section.

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

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

(b) Medically necessary treatment for autism spectrum disorder and the management of care, for an individual who begins treatment before nine years of age, subject to the requirements of this section.

(3) This section does not require coverage for:

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

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

(c) Custodial or respite care, equine assisted therapy, creative arts therapy, wilderness or adventure camps, social counseling, telemedicine, music therapy, neurofeedback, chelation or hyperbaric chambers;

(d) Services provided under an individual education plan in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq.;

(e) Services provided through community or social programs; or

(f) Services provided by the Department of Human Services or the Oregon Health Authority, other than employee benefit plans offered by the department and the authority.

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

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

(a) An autism spectrum disorder diagnosis by a professional described in subsection (2)(a) of this section if the original diagnosis was not made by a professional described in subsection (2)(a) of this section.

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

(6) If an individual is receiving applied behavior analysis, an insurer may require submission of an individualized treatment plan, which shall include all elements necessary for the insurer to appropriately determine coverage under the health benefit plan. The individualized treatment plan must be based on evidence-based screening criteria. An insurer may require an updated individualized treatment plan, not more than once every six months, that includes observed progress as of the date the updated plan was prepared, for the purpose of performing utilization review and medical management. The insurer may require the individualized treatment plan to be approved by a professional described in subsection (2)(a) of this section, and to include the:

(a) Diagnosis;

(b) Proposed treatment by type;

(c) Frequency and anticipated duration of treatment;

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

(e) Signature of the treating provider.

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

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

(B) Applied behavior analysis is medically necessary.

(b) An insurer may require periodic review of an individualized treatment plan, as described in subsection (6) of this section, and modification of the individualized treatment plan

if the review shows that the individual receiving the treatment is not making substantial clinical progress toward the goals of the individualized treatment plan.

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

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

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

(9) This section applies to coverage for up to 25 hours per week of applied behavior analysis for an individual if the coverage is first requested when the individual is under nine years of age. This section does not limit coverage for any services that are otherwise available to an individual under ORS 743A.168 or 743A.190, including but not limited to:

(a) Treatment for autism spectrum disorder other than applied behavior analysis or the services described in subsection (3) of this section.

(b) Applied behavior analysis for more than 25 hours per week; or

(c) Applied behavior analysis for an individual if the coverage is first requested when the individual is nine years of age or older.

(10) Coverage under this section includes treatment for autism spectrum disorder provided in the individual's home or a licensed health care facility or, for treatment provided by a licensed health care professional registered with the Behavior Analysis Regulatory Board or a behavior analyst or assistant behavior analyst licensed under section 3 of this 2013 Act, in a setting approved by the health care professional, behavior analyst or assistant behavior analyst.

(11) An insurer that provides coverage of applied behavior analysis in accordance with a decision of an independent review organization that was made prior to January 1, 2016, shall continue to provide coverage, subject to modifications made in accordance with subsection (7) of this section.

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

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

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

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

(c) One member who is a licensed psychologist 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 re-appointment. 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 Employees' Benefit Board or the Oregon Educators Benefit Board.

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

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

(b) One member who is a licensed psychiatrist or developmental pediatrician and who has experience or training in applied behavior analysis;

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

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

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

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

**SECTION 4.** Notwithstanding section 3 (16) of this 2013 Act, an individual actively practicing applied behavior analysis on the effective date of this 2013 Act may continue to claim reimbursement from a health benefit plan, the Public Employees' Benefit Board or the Oregon Educators Board for services provided without a license before January 1, 2016.

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

**SECTION 6.** 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.

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

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

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

- (a) Deductibles, copayments or coinsurance;
  - (b) Prior authorization or utilization review requirements; or
  - (c) Treatment limitations regarding the number of visits or the duration of treatment.
- (3) As used in this section:

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

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

(c) "Rehabilitation services" means physical therapy, occupational therapy or speech therapy services to restore or improve function.

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

(5) The definition of "pervasive developmental disorder" is not intended to apply to coverage required under ORS 743A.168 **or section 2 of this 2013 Act.**

**SECTION 8.** ORS 750.055, as amended by section 3, chapter 21, Oregon Laws 2012, is amended to read:

750.055. (1) The following provisions of the Insurance Code apply to health care service contractors to the extent not inconsistent with the express provisions of ORS 750.005 to 750.095:

(a) ORS 705.137, 705.139, 731.004 to 731.150, 731.162, 731.216 to 731.362, 731.382, 731.385, 731.386, 731.390, 731.398 to 731.430, 731.428, 731.450, 731.454, 731.488, 731.504, 731.508, 731.509, 731.510, 731.511, 731.512, 731.574 to 731.620, 731.592, 731.594, 731.640 to 731.652, 731.730, 731.731, 731.735, 731.737, 731.750, 731.752, 731.804, 731.844 to 731.992, 731.870 and 743.061.

(b) ORS 732.215, 732.220, 732.230, 732.245, 732.250, 732.320, 732.325 and 732.517 to 732.592, not including ORS 732.582.

(c) ORS 733.010 to 733.050, 733.080, 733.140 to 733.170, 733.210, 733.510 to 733.680 and 733.695 to 733.780.

(d) ORS chapter 734.

(e) ORS 742.001 to 742.009, 742.013, 742.061, 742.065, 742.150 to 742.162, 742.400, 742.520 to 742.540, 743.010, 743.013, 743.018 to 743.030, 743.050, 743.100 to 743.109, 743.402, 743.472, 743.492, 743.495, 743.498, 743.499, 743.522, 743.523, 743.524, 743.526, 743.527, 743.528, 743.529, 743.549 to 743.552, 743.560, 743.600 to 743.610, 743.650 to 743.656, 743.764, 743.804, 743.807, 743.808, 743.814 to 743.839, 743.842, 743.845, 743.847, 743.854, 743.856, 743.857, 743.858, 743.859, 743.861, 743.862, 743.863, 743.864, 743.894, 743.911, 743.912, 743.913, 743.917, 743A.010, 743A.012, 743A.020, 743A.034, 743A.036, 743A.048, 743A.058, 743A.062, 743A.064, 743A.065, 743A.066, 743A.068, 743A.070, 743A.080, 743A.084, 743A.088, 743A.090, 743A.100, 743A.104, 743A.105, 743A.110, 743A.140, 743A.141, 743A.144, 743A.148, 743A.160, 743A.164, 743A.168, 743A.170, 743A.175, 743A.184, 743A.185, 743A.188, 743A.190 and 743A.192 and section 2, chapter 21, Oregon Laws 2012, **and section 2 of this 2013 Act.**

(f) The provisions of ORS chapter 744 relating to the regulation of insurance producers.

(g) ORS 746.005 to 746.140, 746.160, 746.220 to 746.370, 746.600, 746.605, 746.607, 746.608, 746.610, 746.615, 746.625, 746.635, 746.650, 746.655, 746.660, 746.668, 746.670, 746.675, 746.680 and 746.690.

(h) ORS 743A.024, except in the case of group practice health maintenance organizations that are federally qualified pursuant to Title XIII of the Public Health Service Act unless the patient is referred by a physician associated with a group practice health maintenance organization.

(i) ORS 735.600 to 735.650.

(j) ORS 743.680 to 743.689.

(k) ORS 744.700 to 744.740.

(L) ORS 743.730 to 743.773.

(m) ORS 731.485, except in the case of a group practice health maintenance organization that is federally qualified pursuant to Title XIII of the Public Health Service Act and that wholly owns and operates an in-house drug outlet.

(2) For the purposes of this section, health care service contractors shall be deemed insurers.

(3) Any for-profit health care service contractor organized under the laws of any other state that is not governed by the insurance laws of the other state is subject to all requirements of ORS chapter 732.

(4) The Director of the Department of Consumer and Business Services may, after notice and hearing, adopt reasonable rules not inconsistent with this section and ORS 750.003, 750.005, 750.025 and 750.045 that are deemed necessary for the proper administration of these provisions.

**SECTION 9. Section 10 of this 2013 Act is added to and made a part of ORS chapter 343.**

**SECTION 10. (1) Section 2 of this 2013 Act does not limit, replace or affect any obligation of a school district to provide services under an individualized education program to a child with a disability in accordance with the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., or other publicly funded programs to assist individuals with autism spectrum disorder.**

**(2) Any governmental or educational entity providing services as required under the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., as amended, or other state or federal law requiring the provision of services to individuals with disabilities, is prohibited from reducing, eliminating or shifting required services to coverage provided under section 2 of this 2013 Act.**

**SECTION 11. In the manner prescribed in ORS chapter 183 for contested cases, the Oregon Health Licensing Agency may impose a form of discipline listed in ORS 676.612 against any person licensed or registered under section 3 of this 2013 Act for any of the prohibited acts listed in ORS 676.612 and for any violation of a rule adopted under section 3 of this 2013 Act.**

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

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

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

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

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

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

(3) The Director of the Oregon Health Licensing Agency is responsible for carrying out the duties, functions and powers under ORS 675.360 to 675.410, 676.605 to 676.625, 676.992, 678.710 to 678.820, 680.500 to 680.565, 687.405 to 687.495, 687.895, 688.701 to 688.734, 688.800 to 688.840, 690.005 to 690.235, 690.350 to 690.415, 691.405 to 691.485 and 694.015 to 694.185 **and sections 3 and 11 of this 2013 Act** and ORS chapter 700.

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

**SECTION 13.** ORS 676.612 is amended to read:

676.612. (1) In the manner prescribed in ORS chapter 183 for contested cases and as specified in ORS 675.385, 678.780, 680.535, 687.445, 688.734, 688.836, 690.167, 690.407, 691.477, 694.147 and 700.111 **and section 11 of this 2013 Act**, the Oregon Health Licensing Agency may refuse to issue or renew, may suspend or revoke or may otherwise condition or limit a certificate, license, permit or registration to practice issued by the agency or may discipline or place on probation a holder

of a certificate, license, permit or registration for commission of the prohibited acts listed in subsection (2) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Under investigation by the agency.

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

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

**SECTION 14.** ORS 676.613 is amended to read:

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

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

**SECTION 15.** ORS 676.622 is amended to read:

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

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

**SECTION 16.** ORS 676.625 is amended to read:

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

(2) The Oregon Health Licensing Agency Account is established in the General Fund of the State Treasury. The account shall consist of the moneys credited to the account by the Legislative Assembly. All moneys in the account are appropriated continuously to and shall be used by the Oregon Health Licensing Agency for payment of expenses of the agency in carrying out the duties, functions and obligations of the agency, and for payment of the expenses of the boards, councils and programs administered and regulated by the agency pursuant to ORS 676.606. The agency shall keep

a record of all moneys credited to the account and report the source from which the moneys are derived and the activity of each board, council or program that generated the moneys.

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

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

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

**SECTION 17.** ORS 676.992 is amended to read:

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

- (a) ORS 688.701 to 688.734 (athletic training);
- (b) ORS 690.005 to 690.235 (cosmetology);
- (c) ORS 680.500 to 680.565 (denture technology);
- (d) ORS 687.405 to 687.495 (direct entry midwifery);
- (e) ORS 690.350 to 690.415 (tattooing, electrolysis, body piercing, dermal implanting and scarification);
- (f) ORS 694.015 to 694.185 (dealing in hearing aids);
- (g) ORS 688.800 to 688.840 (respiratory therapy and polysomnography);
- (h) ORS chapter 700 (environmental sanitation);
- (i) ORS 676.617 (single facility licensure);
- (j) ORS 675.360 to 675.410 (sex offender treatment);
- (k) ORS 678.710 to 678.820 (nursing home administrators);
- (L) ORS 691.405 to 691.485 (dietitians); [and]
- (m) ORS 676.612 (prohibited acts); **and**
- (n) **Section 3 of this 2013 Act (applied behavior analysis).**

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

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

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

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

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

(6) The moneys received by the agency from civil penalties under this section shall be paid into the General Fund of the State Treasury and credited to the Oregon Health Licensing Agency Account established under ORS 676.625. Such moneys are continuously appropriated to the agency for

the administration and enforcement of the laws the agency is charged with administering and enforcing that govern the person against whom the penalty was imposed.

**SECTION 18. Section 3 of this 2013 Act and the amendments to ORS 676.610, 676.612, 676.613, 676.622, 676.625 and 676.992 by sections 12 to 17 of this 2013 Act become operative November 1, 2013.**

**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 Employees' Benefit Board or the Oregon Educators Benefit Board.]*

**SECTION 20.** ORS 743A.190, as amended by section 7 of this 2013 Act, is amended to read:

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

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

(a) Deductibles, copayments or coinsurance;

(b) Prior authorization or utilization review requirements; or

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

(3) As used in this section:

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

(b) "Pervasive developmental disorder" means a neurological condition that includes autism spectrum disorder, developmental delay, developmental disability or mental retardation.

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

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

(5) The definition of “pervasive developmental disorder” is not intended to apply to coverage required under ORS 743A.168 [or section 2 of this 2013 Act].

**SECTION 21.** ORS 750.055, as amended by section 3, chapter 21, Oregon Laws 2012, and section 8 of this 2013 Act, is amended to read:

750.055. (1) The following provisions of the Insurance Code apply to health care service contractors to the extent not inconsistent with the express provisions of ORS 750.005 to 750.095:

(a) ORS 705.137, 705.139, 731.004 to 731.150, 731.162, 731.216 to 731.362, 731.382, 731.385, 731.386, 731.390, 731.398 to 731.430, 731.428, 731.450, 731.454, 731.488, 731.504, 731.508, 731.509, 731.510, 731.511, 731.512, 731.574 to 731.620, 731.592, 731.594, 731.640 to 731.652, 731.730, 731.731, 731.735, 731.737, 731.750, 731.752, 731.804, 731.844 to 731.992, 731.870 and 743.061.

(b) ORS 732.215, 732.220, 732.230, 732.245, 732.250, 732.320, 732.325 and 732.517 to 732.592, not including ORS 732.582.

(c) ORS 733.010 to 733.050, 733.080, 733.140 to 733.170, 733.210, 733.510 to 733.680 and 733.695 to 733.780.

(d) ORS chapter 734.

(e) ORS 742.001 to 742.009, 742.013, 742.061, 742.065, 742.150 to 742.162, 742.400, 742.520 to 742.540, 743.010, 743.013, 743.018 to 743.030, 743.050, 743.100 to 743.109, 743.402, 743.472, 743.492, 743.495, 743.498, 743.499, 743.522, 743.523, 743.524, 743.526, 743.527, 743.528, 743.529, 743.549 to 743.552, 743.560, 743.600 to 743.610, 743.650 to 743.656, 743.764, 743.804, 743.807, 743.808, 743.814 to 743.839, 743.842, 743.845, 743.847, 743.854, 743.856, 743.857, 743.858, 743.859, 743.861, 743.862, 743.863, 743.864, 743.894, 743.911, 743.912, 743.913, 743.917, 743A.010, 743A.012, 743A.020, 743A.034, 743A.036, 743A.048, 743A.058, 743A.062, 743A.064, 743A.065, 743A.066, 743A.068, 743A.070, 743A.080, 743A.084, 743A.088, 743A.090, 743A.100, 743A.104, 743A.105, 743A.110, 743A.140, 743A.141, 743A.144, 743A.148, 743A.160, 743A.164, 743A.168, 743A.170, 743A.175, 743A.184, 743A.185, 743A.188, 743A.190 and 743A.192 and section 2, chapter 21, Oregon Laws 2012[, and section 2 of this 2013 Act].

(f) The provisions of ORS chapter 744 relating to the regulation of insurance producers.

(g) ORS 746.005 to 746.140, 746.160, 746.220 to 746.370, 746.600, 746.605, 746.607, 746.608, 746.610, 746.615, 746.625, 746.635, 746.650, 746.655, 746.660, 746.668, 746.670, 746.675, 746.680 and 746.690.

(h) ORS 743A.024, except in the case of group practice health maintenance organizations that are federally qualified pursuant to Title XIII of the Public Health Service Act unless the patient is referred by a physician associated with a group practice health maintenance organization.

(i) ORS 735.600 to 735.650.

(j) ORS 743.680 to 743.689.

(k) ORS 744.700 to 744.740.

(L) ORS 743.730 to 743.773.

(m) ORS 731.485, except in the case of a group practice health maintenance organization that is federally qualified pursuant to Title XIII of the Public Health Service Act and that wholly owns and operates an in-house drug outlet.

(2) For the purposes of this section, health care service contractors shall be deemed insurers.

(3) Any for-profit health care service contractor organized under the laws of any other state that is not governed by the insurance laws of the other state is subject to all requirements of ORS chapter 732.

(4) The Director of the Department of Consumer and Business Services may, after notice and hearing, adopt reasonable rules not inconsistent with this section and ORS 750.003, 750.005, 750.025 and 750.045 that are deemed necessary for the proper administration of these provisions.

**SECTION 22. Section 2 of this 2013 Act is repealed January 2, 2022.**

**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.

**SECTION 25.** This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

**Passed by Senate June 29, 2013**

.....  
Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House July 1, 2013**

.....  
Tina Kotek, Speaker of House

**Received by Governor:**

.....M,....., 2013

**Approved:**

.....M,....., 2013

.....  
John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2013

.....  
Kate Brown, Secretary of State