

B-Engrossed
Senate Bill 365

Ordered by the Senate June 27
Including Senate Amendments dated April 24 and June 27

Sponsored by Senators BATES, EDWARDS; Senator HASS (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.

Establishes requirements for coverage of applied behavior analysis for treatment of autism spectrum disorders by health benefit plans, health care service contractors, [*state medical assistance program*,] Public Employees' Benefit Board and Oregon Educators Benefit Board. Creates Behavior Analysis Regulatory Board to license providers of applied behavior analysis.

Requires individual seeking reimbursement for applied behavior analysis from health benefit plan, health care service contractor, [*state medical assistance program*,] Public Employees' Benefit Board or Oregon Educators Benefit Board to be licensed by Behavior Analysis Regulatory Board. Grandfathers applied behavior analysis practitioners until January 1, 2016. Specifies operative date of January 1, 2015, **for coverage offered by Public Employees' Benefit Board and Oregon Educators Benefit Board and January 1, 2016, for coverage otherwise offered.** Sunsets requirements for coverage of applied behavior analysis on January 2, 2022.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to treatment for autism spectrum disorders; creating new provisions; amending ORS
3 676.610, 676.612, 676.613, 676.622, 676.625, 676.992, 743A.190 and 750.055; and declaring an
4 emergency.

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

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

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

8 (a)(A) "Applied behavior analysis" means the design, implementation and evaluation of
9 environmental modifications, using behavioral stimuli and consequences, to produce signif-
10 icant improvement in human social behavior, including the use of direct observation, meas-
11 urement and functional analysis of the relationship between environment and behavior and
12 that is provided by:

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

14 (ii) A behavior analyst or an assistant behavior analyst licensed under section 3 of this
15 2013 Act; or

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

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

20 (b) "Autism spectrum disorder" has the meaning given that term in the fifth edition of
21 the Diagnostic and Statistical Manual of Mental Disorders (DSM-5) published by the Ameri-
22 can Psychiatric Association.

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

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

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

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

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

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

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

16 (3) This section does not require coverage for:

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

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

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

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

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

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

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

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

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

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

41 (6) If an individual is receiving applied behavior analysis, an insurer may require sub-
42 mission of an individualized treatment plan, which shall include all elements necessary for
43 the insurer to appropriately determine coverage under the health benefit plan. The individ-
44 ualized treatment plan must be based on evidence-based screening criteria. An insurer may
45 require an updated individualized treatment plan, not more than once every six months, that

1 includes observed progress as of the date the updated plan was prepared, for the purpose of
2 performing utilization review and medical management. The insurer may require the indi-
3 vidualized treatment plan to be approved by a professional described in subsection (2)(a) of
4 this section, and to include the:

5 (a) Diagnosis;

6 (b) Proposed treatment by type;

7 (c) Frequency and anticipated duration of treatment;

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

12 (e) Signature of the treating provider.

13 (7)(a) Once coverage for applied behavior analysis has been approved, the coverage con-
14 tinues as long as:

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

17 (B) Applied behavior analysis is medically necessary.

18 (b) An insurer may require periodic review of an individualized treatment plan, as de-
19 scribed in subsection (6) of this section, and modification of the individualized treatment plan
20 if the review shows that the individual receiving the treatment is not making substantial
21 clinical progress toward the goals of the individualized treatment plan.

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

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

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

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

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

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

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

37 (10) Coverage under this section includes treatment for autism spectrum disorder pro-
38 vided in the individual's home or a licensed health care facility or, for treatment provided
39 by a licensed health care professional registered with the Behavior Analysis Regulatory
40 Board or a behavior analyst or assistant behavior analyst licensed under section 3 of this
41 2013 Act, in a setting approved by the health care professional, behavior analyst or assistant
42 behavior analyst.

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

1 (7) of this section.

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

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

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

7 (b) One member who is a licensed psychiatrist or developmental pediatrician, with expe-
8 rience or training in treating autism spectrum disorder;

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

10 (d) One member who is a licensed speech-language pathologist registered with the board;
11 and

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

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

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

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

24 (5) The Behavior Analysis Regulatory Board shall select one of its members as chair-
25 person and another as vice chairperson, for such terms and with duties and powers neces-
26 sary for the performance of the functions of such offices as the board determines.

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

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

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

35 (a) Licensing of:

36 (A) Behavior analysts; and

37 (B) Assistant behavior analysts; and

38 (b) Registration of:

39 (A) Licensed health care professionals; and

40 (B) Behavior analysis interventionists.

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

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

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

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

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

5 (b) Be supervised by a behavior analyst who is licensed by the Behavior Analysis Regu-
6 latory Board; and

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

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

10 (a) Have completed coursework and training prescribed by the Behavior Analysis Regu-
11 latory Board by rule;

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

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

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

17 (a) Establishing standards and procedures for the licensing of behavior analysts and as-
18 sistant behavior analysts and for the registration of licensed health care professionals and
19 behavior analysis interventionists in accordance with this section;

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

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

24 (d) Establishing fees sufficient to cover the costs of administering the licensing and reg-
25 istration procedures under this section.

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

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

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

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

31 (14) The Behavior Analysis Regulatory Board shall establish the procedures for the reg-
32 istration of licensed health care professionals and behavior analysis interventionists.

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

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

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

45 (a) Three members who are certified by the Behavior Analyst Certification Board, In-

1 **corporated, as Board Certified Behavior Analysts;**

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

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

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

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

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

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

19 **SECTION 5. The Oregon Health Licensing Agency may take any action before November**
20 **1, 2013, that is necessary for the agency to implement the provisions of sections 3 and 3a of**
21 **this 2013 Act on and after November 1, 2013.**

22 **SECTION 6. Not later than August 30, 2013, the Health Evidence Review Commission**
23 **shall begin the process of evaluating applied behavior analysis, as defined in section 2 of this**
24 **2013 Act, as a treatment for autism spectrum disorder, as defined in section 2 of this 2013**
25 **Act, for the purpose of updating the list of health services recommended under ORS 414.690.**
26 **Any adjustments to the list of health services that result from the evaluation process must**
27 **be implemented not later than:**

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

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

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

33 **743A.190. (1) A health benefit plan, as defined in ORS 743.730, must cover for a child enrolled**
34 **in the plan who is under 18 years of age and who has been diagnosed with a pervasive develop-**
35 **mental disorder all medical services, including rehabilitation services, that are medically necessary**
36 **and are otherwise covered under the plan.**

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

40 **(a) Deductibles, copayments or coinsurance;**

41 **(b) Prior authorization or utilization review requirements; or**

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

43 **(3) As used in this section:**

44 **(a) "Medically necessary" means in accordance with the definition of medical necessity that is**
45 **specified in the policy, certificate or contract for the health benefit plan and that applies uniformly**

1 to all covered services under the health benefit plan.

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

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

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

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

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

12 750.055. (1) The following provisions of the Insurance Code apply to health care service con-
13 tractors to the extent not inconsistent with the express provisions of ORS 750.005 to 750.095:

14 (a) ORS 705.137, 705.139, 731.004 to 731.150, 731.162, 731.216 to 731.362, 731.382, 731.385, 731.386,
15 731.390, 731.398 to 731.430, 731.428, 731.450, 731.454, 731.488, 731.504, 731.508, 731.509, 731.510,
16 731.511, 731.512, 731.574 to 731.620, 731.592, 731.594, 731.640 to 731.652, 731.730, 731.731, 731.735,
17 731.737, 731.750, 731.752, 731.804, 731.844 to 731.992, 731.870 and 743.061.

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

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

22 (d) ORS chapter 734.

23 (e) ORS 742.001 to 742.009, 742.013, 742.061, 742.065, 742.150 to 742.162, 742.400, 742.520 to
24 742.540, 743.010, 743.013, 743.018 to 743.030, 743.050, 743.100 to 743.109, 743.402, 743.472, 743.492,
25 743.495, 743.498, 743.499, 743.522, 743.523, 743.524, 743.526, 743.527, 743.528, 743.529, 743.549 to
26 743.552, 743.560, 743.600 to 743.610, 743.650 to 743.656, 743.764, 743.804, 743.807, 743.808, 743.814 to
27 743.839, 743.842, 743.845, 743.847, 743.854, 743.856, 743.857, 743.858, 743.859, 743.861, 743.862, 743.863,
28 743.864, 743.894, 743.911, 743.912, 743.913, 743.917, 743A.010, 743A.012, 743A.020, 743A.034, 743A.036,
29 743A.048, 743A.058, 743A.062, 743A.064, 743A.065, 743A.066, 743A.068, 743A.070, 743A.080, 743A.084,
30 743A.088, 743A.090, 743A.100, 743A.104, 743A.105, 743A.110, 743A.140, 743A.141, 743A.144, 743A.148,
31 743A.160, 743A.164, 743A.168, 743A.170, 743A.175, 743A.184, 743A.185, 743A.188, 743A.190 and
32 743A.192 and section 2, chapter 21, Oregon Laws 2012, **and section 2 of this 2013 Act.**

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

34 (g) ORS 746.005 to 746.140, 746.160, 746.220 to 746.370, 746.600, 746.605, 746.607, 746.608, 746.610,
35 746.615, 746.625, 746.635, 746.650, 746.655, 746.660, 746.668, 746.670, 746.675, 746.680 and 746.690.

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

39 (i) ORS 735.600 to 735.650.

40 (j) ORS 743.680 to 743.689.

41 (k) ORS 744.700 to 744.740.

42 (L) ORS 743.730 to 743.773.

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

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

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

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

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

9 **SECTION 10. (1) Section 2 of this 2013 Act does not limit, replace or affect any obligation**
10 **of a school district to provide services under an individualized education program to a child**
11 **with a disability in accordance with the Individuals with Disabilities Education Act, 20 U.S.C.**
12 **1400 et seq., or other publicly funded programs to assist individuals with autism spectrum**
13 **disorder.**

14 (2) Any governmental or educational entity providing services as required under the In-
15 dividuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., as amended, or other state
16 or federal law requiring the provision of services to individuals with disabilities, is prohibited
17 from reducing, eliminating or shifting required services to coverage provided under section
18 2 of this 2013 Act.

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

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

25 676.610. (1)(a) The Oregon Health Licensing Agency is under the supervision and control of a
26 director, who is responsible for the performance of the duties, functions and powers and for the or-
27 ganization of the agency.

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

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

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

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

40 (3) The Director of the Oregon Health Licensing Agency is responsible for carrying out the
41 duties, functions and powers under ORS 675.360 to 675.410, 676.605 to 676.625, 676.992, 678.710 to
42 678.820, 680.500 to 680.565, 687.405 to 687.495, 687.895, 688.701 to 688.734, 688.800 to 688.840, 690.005
43 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**
44 **this 2013 Act** and ORS chapter 700.

45 (4) The enumeration of duties, functions and powers in subsection (3) of this section is not in-

1 tended to be exclusive or to limit the duties, functions and powers imposed on or vested in the
2 Oregon Health Licensing Agency by other statutes.

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

4 676.612. (1) In the manner prescribed in ORS chapter 183 for contested cases and as specified
5 in ORS 675.385, 678.780, 680.535, 687.445, 688.734, 688.836, 690.167, 690.407, 691.477, 694.147 and
6 700.111 **and section 11 of this 2013 Act**, the Oregon Health Licensing Agency may refuse to issue
7 or renew, may suspend or revoke or may otherwise condition or limit a certificate, license, permit
8 or registration to practice issued by the agency or may discipline or place on probation a holder
9 of a certificate, license, permit or registration for commission of the prohibited acts listed in sub-
10 section (2) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

45 (L) Failing to report any adverse action, as required by statute or rule, taken against the cer-

1 tificate, license, permit or registration holder by another regulatory jurisdiction or any peer review
2 body, health care institution, professional association, governmental agency, law enforcement agency
3 or court for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary
4 action as described in this section.

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

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

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

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

14 (q) Selling or fraudulently obtaining or furnishing any record related to practice in a regulated
15 occupation or profession subject to the authority of the boards, councils and programs listed in ORS
16 676.606, or aiding or abetting such an act.

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

19 (3) For the purpose of requesting a state or nationwide criminal records check under ORS
20 181.534, the agency may require the fingerprints of a person who is:

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

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

24 (c) Under investigation by the agency.

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

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

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

34 676.613. (1) In addition to all other remedies, when it appears to the Oregon Health Licensing
35 Agency that a person is engaged in, has engaged in or is about to engage in any act, practice or
36 transaction that violates any provision of ORS 675.360 to 675.410, 676.617, 678.710 to 678.820, 680.500
37 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
38 690.415, 691.405 to 691.485 or 694.015 to 694.185 **or section 3 of this 2013 Act** or ORS chapter 700,
39 the agency may, through the Attorney General or the district attorney of the county in which the
40 act, practice or transaction occurs or will occur, apply to the court for an injunction restraining the
41 person from the act, practice or transaction.

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

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

1 676.622. (1) A transaction conducted through a state or local system or network that provides
2 electronic access to the Oregon Health Licensing Agency information and services is exempt from
3 any requirement under ORS 675.360 to 675.410, 676.605 to 676.625, 676.992, 680.500 to 680.565, 687.405
4 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
5 691.485 and 694.015 to 694.185 **and section 3 of this 2013 Act** and ORS chapter 700, and rules
6 adopted thereunder, requiring an original signature or the submission of handwritten materials.

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

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

10 676.625. (1) The Oregon Health Licensing Agency shall establish by rule and shall collect fees
11 and charges to carry out the agency's responsibilities under ORS 676.605 to 676.625 and 676.992 and
12 any responsibility imposed on the agency pertaining to the boards, councils and programs adminis-
13 tered and regulated by the agency pursuant to ORS 676.606.

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

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

27 (4) All moneys credited to the account pursuant to ORS 675.405, 676.617, 680.525, 687.435,
28 688.728, 688.834, 690.235, 690.415, 691.479, 694.185 and 700.080 **and section 3 of this 2013 Act**, and
29 moneys credited to the account from other agency and program fees established by the agency by
30 rule, are continuously appropriated to the agency for carrying out the duties, functions and powers
31 of the agency under ORS 676.605 to 676.625 and 676.992 **and section 3 of this 2013 Act**.

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

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

37 676.992. (1) Except as provided in subsection (3) of this section, and in addition to any other
38 penalty or remedy provided by law, the Oregon Health Licensing Agency may impose a civil penalty
39 not to exceed \$5,000 for each violation of the following statutes and any rule adopted thereunder:

40 (a) ORS 688.701 to 688.734 (athletic training);

41 (b) ORS 690.005 to 690.235 (cosmetology);

42 (c) ORS 680.500 to 680.565 (denture technology);

43 (d) ORS 687.405 to 687.495 (direct entry midwifery);

44 (e) ORS 690.350 to 690.415 (tattooing, electrolysis, body piercing, dermal implanting and
45 scarification);

- 1 (f) ORS 694.015 to 694.185 (dealing in hearing aids);
- 2 (g) ORS 688.800 to 688.840 (respiratory therapy and polysomnography);
- 3 (h) ORS chapter 700 (environmental sanitation);
- 4 (i) ORS 676.617 (single facility licensure);
- 5 (j) ORS 675.360 to 675.410 (sex offender treatment);
- 6 (k) ORS 678.710 to 678.820 (nursing home administrators);
- 7 (L) ORS 691.405 to 691.485 (dietitians); [and]
- 8 (m) ORS 676.612 (prohibited acts); **and**
- 9 **(n) Section 3 of this 2013 Act (applied behavior analysis).**

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

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

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

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

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

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

29 **SECTION 18. Section 3 of this 2013 Act and the amendments to ORS 676.610, 676.612,**
30 **676.613, 676.622, 676.625 and 676.992 by sections 12 to 17 of this 2013 Act become operative**
31 **November 1, 2013.**

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

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

- 35 (a) Three members who are licensed by the board;
- 36 (b) One member who is a licensed psychiatrist or developmental pediatrician, with experience
37 or training in treating autism spectrum disorder;
- 38 (c) One member who is a licensed psychologist registered with the board;
- 39 (d) One member who is a licensed speech-language pathologist registered with the board; and
- 40 (e) One member of the general public who does not have a financial interest in the provision
41 of applied behavior analysis and does not have a ward or family member who has been diagnosed
42 with autism spectrum disorder.

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

45 (3) The term of office of each member is four years, but a member serves at the pleasure of the

1 Governor. Before the expiration of the term of a member, the Governor shall appoint a successor
2 whose term begins on November 1 next following. A member is eligible for reappointment. If there
3 is a vacancy for any cause, the Governor shall make an appointment to become immediately effec-
4 tive for the unexpired term.

5 (4) A member of the Behavior Analysis Regulatory Board is entitled to compensation and ex-
6 penses as provided in ORS 292.495.

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

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

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

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

17 (a) Licensing of:

18 (A) Behavior analysts; and

19 (B) Assistant behavior analysts; and

20 (b) Registration of:

21 (A) Licensed health care professionals; and

22 (B) Behavior analysis interventionists.

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

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

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

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

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

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

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

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

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

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

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

42 (12) In accordance with applicable provisions of ORS chapter 183, the Behavior Analysis Regu-
43 latory Board shall adopt rules:

44 (a) Establishing standards and procedures for the licensing of behavior analysts and assistant
45 behavior analysts and for the registration of licensed health care professionals and behavior analysis

1 interventionists in accordance with this section;

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

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

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

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

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

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

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

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

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

18 *[(16) An individual who has not been licensed or registered by the Behavior Analysis Regulatory*
19 *Board in accordance with criteria and standards adopted under this section may not claim reimburse-*
20 *ment for services described in section 2 of this 2013 Act under a health benefit plan or under a self-*
21 *insured health plan offered by the Public Employees' Benefit Board or the Oregon Educators Benefit*
22 *Board.]*

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

24 743A.190. (1) A health benefit plan, as defined in ORS 743.730, must cover for a child enrolled
25 in the plan who is under 18 years of age and who has been diagnosed with a pervasive develop-
26 mental disorder all medical services, including rehabilitation services, that are medically necessary
27 and are otherwise covered under the plan.

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

31 (a) Deductibles, copayments or coinsurance;

32 (b) Prior authorization or utilization review requirements; or

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

34 (3) As used in this section:

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

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

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

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

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

45 **SECTION 21.** ORS 750.055, as amended by section 3, chapter 21, Oregon Laws 2012, and section

1 8 of this 2013 Act, is amended to read:

2 750.055. (1) The following provisions of the Insurance Code apply to health care service con-
3 tractors to the extent not inconsistent with the express provisions of ORS 750.005 to 750.095:

4 (a) ORS 705.137, 705.139, 731.004 to 731.150, 731.162, 731.216 to 731.362, 731.382, 731.385, 731.386,
5 731.390, 731.398 to 731.430, 731.428, 731.450, 731.454, 731.488, 731.504, 731.508, 731.509, 731.510,
6 731.511, 731.512, 731.574 to 731.620, 731.592, 731.594, 731.640 to 731.652, 731.730, 731.731, 731.735,
7 731.737, 731.750, 731.752, 731.804, 731.844 to 731.992, 731.870 and 743.061.

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

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

12 (d) ORS chapter 734.

13 (e) ORS 742.001 to 742.009, 742.013, 742.061, 742.065, 742.150 to 742.162, 742.400, 742.520 to
14 742.540, 743.010, 743.013, 743.018 to 743.030, 743.050, 743.100 to 743.109, 743.402, 743.472, 743.492,
15 743.495, 743.498, 743.499, 743.522, 743.523, 743.524, 743.526, 743.527, 743.528, 743.529, 743.549 to
16 743.552, 743.560, 743.600 to 743.610, 743.650 to 743.656, 743.764, 743.804, 743.807, 743.808, 743.814 to
17 743.839, 743.842, 743.845, 743.847, 743.854, 743.856, 743.857, 743.858, 743.859, 743.861, 743.862, 743.863,
18 743.864, 743.894, 743.911, 743.912, 743.913, 743.917, 743A.010, 743A.012, 743A.020, 743A.034, 743A.036,
19 743A.048, 743A.058, 743A.062, 743A.064, 743A.065, 743A.066, 743A.068, 743A.070, 743A.080, 743A.084,
20 743A.088, 743A.090, 743A.100, 743A.104, 743A.105, 743A.110, 743A.140, 743A.141, 743A.144, 743A.148,
21 743A.160, 743A.164, 743A.168, 743A.170, 743A.175, 743A.184, 743A.185, 743A.188, 743A.190 and
22 743A.192 and section 2, chapter 21, Oregon Laws 2012[, *and section 2 of this 2013 Act*].

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

24 (g) ORS 746.005 to 746.140, 746.160, 746.220 to 746.370, 746.600, 746.605, 746.607, 746.608, 746.610,
25 746.615, 746.625, 746.635, 746.650, 746.655, 746.660, 746.668, 746.670, 746.675, 746.680 and 746.690.

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

29 (i) ORS 735.600 to 735.650.

30 (j) ORS 743.680 to 743.689.

31 (k) ORS 744.700 to 744.740.

32 (L) ORS 743.730 to 743.773.

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

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

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

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

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

44 **SECTION 23. Sections 2 and 10 of this 2013 Act and the amendments to ORS 743A.190 and**
45 **750.055 by sections 7 and 8 of this 2013 Act apply to health benefit plan policies and certif-**

1 **icates:**

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

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

6 **SECTION 24.** The amendments to section 3 of this 2013 Act by section 19 of this 2013 Act
7 and the amendments to ORS 743A.190 and 750.055 by sections 20 and 21 of this 2013 Act be-
8 come operative January 2, 2022.

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

12
