

Senate Bill 365

Sponsored by Senator BATES (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes requirements for coverage of autism spectrum disorders by health benefit plans, Public Employees' Benefit Board and Oregon Educators Benefit Board. Requires Oregon Health Licensing Agency to establish licensing procedures for providers of applied behavior analysis. Requires individual seeking reimbursement for applied behavior analysis from health benefit plan, Public Employees' Benefit Board or Oregon Educators Benefit Board to be licensed by agency. Grandfathers applied behavior analysis practitioners until January 1, 2016.

Declares emergency, effective on passage.

A BILL FOR AN ACT

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

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

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

6 **SECTION 2. (1) As used in this section:**

7 (a) **"Applied behavior analysis" means the design, implementation and evaluation of en-**
8 **vironmental modifications, using behavioral stimuli and consequences, to produce significant**
9 **improvement in human social behavior, including the use of direct observation, measurement**
10 **and functional analysis of the relationship between environment and behavior. The practice**
11 **of applied behavior analysis expressly excludes psychological testing, neuropsychology,**
12 **psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy and long-term**
13 **counseling as treatment modalities.**

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

18 (c) **"Behavioral health treatment" means counseling and treatment programs, including**
19 **applied behavior analysis and other evidence-based behavioral interventions, that are neces-**
20 **sary to develop, improve, maintain or restore the functioning of an individual to the maxi-**
21 **imum extent possible and that are provided by:**

22 (A) **A licensed health care professional, as long as the services performed are within the**
23 **licensed health care professional's scope of practice and are commensurate with the licensed**
24 **health care professional's post-secondary education, training and supervised experience;**

25 (B) **A behavior analyst licensed under section 3 of this 2013 Act;**

26 (C) **An assistant behavior analyst licensed under section 3 of this 2013 Act who is super-**
27 **vised by a licensed behavior analyst; or**

28 (D) **An autism technician, licensed under section 3 of this 2013 Act, who is supervised by**

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 a licensed behavior analyst or by another licensed health care professional, as long as the
2 services performed under supervision are within the licensed health care professional's scope
3 of practice and are commensurate with the licensed health care professional's post-
4 secondary education, training and supervised experience.

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

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

7 (f) "Medically necessary" means in accordance with the definition of medical necessity
8 that is specified in the policy or certificate for the health benefit plan and that applies uni-
9 formly to all covered services under the plan.

10 (g) "Pharmacy care" means medications prescribed by a licensed physician or another
11 health care professional licensed to prescribe medications, and any health-related services
12 deemed medically necessary to determine the need or effectiveness of the medications.

13 (h) "Rehabilitation and habilitative services" means physical therapy, occupational ther-
14 apy or speech therapy services to restore or improve function.

15 (i) "Treatment for autism spectrum disorder" includes, but is not limited to, the follow-
16 ing care prescribed, provided or ordered for an individual diagnosed with autism spectrum
17 disorder by a licensed physician or licensed psychologist who determines the care to be
18 medically necessary:

19 (A) Behavioral health treatment;

20 (B) Pharmacy care, to the same extent that pharmacy care is covered by the health
21 benefit plan for other medical conditions;

22 (C) Rehabilitative and habilitative services, to the same extent that other mental health
23 services are covered by the health benefit plan; and

24 (D) Any other medical services and mental health services that are medically necessary
25 and are otherwise covered by the health benefit plan.

26 (2) A health benefit plan shall provide coverage for the screening for, diagnosis of and
27 treatment for autism spectrum disorders. An insurer may not terminate coverage or refuse
28 to issue or renew coverage for an individual solely because the individual is diagnosed with
29 autism spectrum disorder or has received treatment for autism spectrum disorder.

30 (3) An insurer may require, as a condition of coverage for applied behavior analysis, that
31 an insured be diagnosed with autism spectrum disorder through a process meeting standards
32 established by the Oregon Commission on Autism Spectrum Disorder, provided that the re-
33 quirement does not delay the provision of applied behavior analysis services by more than
34 60 days.

35 (4) Coverage under this section may be subject to utilization controls that are reasonable
36 in the context of individual determinations of medical necessity. An insurer may not require
37 prior authorization for coverage of up to 25 hours per week of applied behavior analysis for
38 children under eight years of age.

39 (5) When an enrollee in a health benefit plan requests an external review of an adverse
40 benefit determination as defined in ORS 743.801 regarding services described in this section,
41 the insurer or the Director of the Department of Consumer and Business Services must ex-
42 pedite the enrollee's case pursuant to ORS 743.857 (5).

43 (6) Coverage under this section may not be subject to dollar limits, deductibles,
44 copayments or coinsurance provisions that are less favorable to an insured than the dollar
45 limits, deductibles, copayments or coinsurance provisions that apply to physical illness gen-

erally under the policy or certificate. Coverage under this section may be subject to requirements and limitations concerning participating or in-network providers that apply to physical illness generally under the health benefit plan.

(7) This section does not limit coverage that is otherwise available to an individual under the health benefit plan or reduce benefits required under ORS 743A.168.

(8) A claim for services described in this section may not be denied on the basis that the service is habilitative or rehabilitative and does not fully restore function.

(9) Coverage under this section includes medically necessary treatment provided in the home and in the community. This section may not be construed as affecting any obligation to provide services to an individual under an individualized family service plan or an individualized education program. Nothing in this section requires 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; or

(c) Services or supplies that are not medically necessary.

(10) Except for inpatient services, if an individual is receiving treatment for autism spectrum disorder, an insurer may require submission of a treatment plan, which shall include all elements necessary for the health benefit plan to appropriately determine coverage under the health benefit plan. The treatment plan must be based on evidence-based screening criteria. An insurer may require an updated treatment plan, not more than once every six months and at the expense of the insurer, for the purpose of performing utilization review and medical management. The insurer may require the treatment plan 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;

(e) Frequency with which the plan will be updated; and

(f) Signature of the treating provider.

(11) Subsections (1) to (10) of this section apply to health benefit plans and to self-insured health plans offered by the Public Employees' Benefit Board and the Oregon Educators Benefit Board.

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

SECTION 3. (1) The Oregon Health Licensing Agency shall establish by rule criteria for the licensing of:

(a) Behavior analysts;

(b) Assistant behavior analysts; and

(c) Autism technicians.

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

(a) Been certified by the Behavior Analyst Certification Board as a "Board Certified Behavior Analyst"; and

(b) Successfully completed a criminal records check.

(3) The criteria for the licensing of an assistant behavior analyst must include, but are

1 not limited to, the requirement that the applicant has:

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

4 (b) Successfully completed a criminal records check.

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

7 (a) Has completed:

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

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

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

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

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

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

26 (D) Professional standards and ethics;

27 (c) During a period of not more than 12 weeks, has completed 40 hours of work in applied
28 behavior analysis supervised by a licensed behavior analyst or a licensed assistant behavior
29 analyst, or 40 hours of work in applied behavior analysis supervised by another licensed
30 health care professional during which the services performed are within the licensed health
31 care professional’s scope of practice and are commensurate with the licensed health care
32 professional’s post-secondary education, training and supervised experience;

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

34 (e) Receives ongoing oversight by a licensed behavior analyst or a licensed assistant be-
35 havior analyst, or by another licensed health care professional, as long as the services per-
36 formed under supervision are within the licensed health care professional’s scope of practice
37 and are commensurate with the licensed health care professional’s post-secondary education,
38 training and supervised experience.

39 (5) In accordance with applicable provisions of ORS chapter 183, the agency shall adopt
40 rules:

41 (a) Establishing standards for the licensing of behavior analysts, assistant behavior ana-
42 lysts and autism technicians in accordance with this section;

43 (b) Establishing guidelines for the professional methods and procedures to be used by
44 persons licensed under this section;

45 (c) Governing the examination of applicants for licenses issued under this section and the

1 **renewal, suspension and revocation of the licenses; and**

2 **(d) Establishing fees sufficient to cover the costs of administering the licensing program**
3 **under this section.**

4 **(6) The agency shall issue a license to an applicant who:**

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

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

7 **(c) Demonstrates to the satisfaction of the agency that the applicant meets the criteria**
8 **adopted under this section.**

9 **(7) All moneys received by the agency under subsection (6) of this section shall be paid**
10 **into the General Fund of the State Treasury and credited to the Oregon Health Licensing**
11 **Agency Account.**

12 **(8) An individual who has not been licensed by the agency in accordance with criteria and**
13 **standards adopted under this section may not claim reimbursement for services described in**
14 **section 2 of this 2013 Act under a health benefit plan or under a self-insured health plan of-**
15 **fered by the Public Employees' Benefit Board or the Oregon Educators Benefit Board.**

16 **SECTION 4. Notwithstanding section 3 (8) of this 2013 Act, an individual actively prac-**
17 **ticing applied behavior analysis on the effective date of this 2013 Act may continue to claim**
18 **reimbursement from a health benefit plan, the Public Employees' Benefit Board or the**
19 **Oregon Educators Board for services provided without a license before January 1, 2016.**

20 **SECTION 5. The Oregon Health Licensing Agency make take any action before January**
21 **1, 2014, that is necessary for the agency to implement the provisions of section 3 of this 2013**
22 **Act on and after January 1, 2014.**

23 **SECTION 6. ORS 743A.190 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**
39 **Asperger's syndrome, autism, developmental delay, developmental disability [*or*] and mental retar-**
40 **dation.**

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

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

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

1 **SECTION 7.** Section 8 of this 2013 Act is added to and made a part of ORS chapter 343.

2 **SECTION 8.** (1) Section 3 of this 2013 Act does not limit, replace or affect any obligation
3 of a school district to provide services under an individualized education program to a child
4 with a disability in accordance with the Individuals with Disabilities Education Act, 20 U.S.C.
5 1400 et seq., or other publicly funded programs to assist individuals with autism spectrum
6 disorder.

7 (2) Any governmental or educational entity providing services as required under the In-
8 dividuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., as amended, or other state
9 or federal law requiring the provision of services to individuals with disabilities, is prohibited
10 from reducing, eliminating or shifting required services to coverage provided under section
11 2 of this 2013 Act.

12 **SECTION 9.** In the manner prescribed in ORS chapter 183 for contested cases, the
13 Oregon Health Licensing Agency may impose a form of discipline listed in ORS 676.612
14 against any person licensed under section 3 of this 2013 Act for any of the prohibited acts
15 listed in ORS 676.612 and for any violation of a rule adopted under section 3 of this 2013 Act.

16 **SECTION 10.** ORS 676.610 is amended to read:

17 676.610. (1)(a) The Oregon Health Licensing Agency is under the supervision and control of a
18 director, who is responsible for the performance of the duties, functions and powers and for the or-
19 ganization of the agency.

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

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

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

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

32 (3) The Director of the Oregon Health Licensing Agency is responsible for carrying out the
33 duties, functions and powers under ORS 675.360 to 675.410, 676.605 to 676.625, 676.992, 678.710 to
34 678.820, 680.500 to 680.565, 687.405 to 687.495, 687.895, 688.701 to 688.734, 688.800 to 688.840, 690.005
35 to 690.235, 690.350 to 690.415, 691.405 to 691.485 and 694.015 to 694.185 **and sections 3 and 9 of this**
36 **2013 Act** and ORS chapter 700.

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

40 **SECTION 11.** ORS 676.612 is amended to read:

41 676.612. (1) In the manner prescribed in ORS chapter 183 for contested cases and as specified
42 in ORS 675.385, 678.780, 680.535, 687.445, 688.734, 688.836, 690.167, 690.407, 691.477, 694.147 and
43 700.111 **and section 9 of this 2013 Act**, the Oregon Health Licensing Agency may refuse to issue
44 or renew, may suspend or revoke or may otherwise condition or limit a certificate, license, permit
45 or registration to practice issued by the agency or may discipline or place on probation a holder

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (q) Selling or fraudulently obtaining or furnishing any record related to practice in a regulated
7 occupation or profession subject to the authority of the boards, councils and programs listed in ORS
8 676.606, or aiding or abetting such an act.

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

11 (3) For the purpose of requesting a state or nationwide criminal records check under ORS
12 181.534, the agency may require the fingerprints of a person who is:

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

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

16 (c) Under investigation by the agency.

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

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

25 **SECTION 12.** ORS 676.613 is amended to read:

26 676.613. (1) In addition to all other remedies, when it appears to the Oregon Health Licensing
27 Agency that a person is engaged in, has engaged in or is about to engage in any act, practice or
28 transaction that violates any provision of ORS 675.360 to 675.410, 676.617, 678.710 to 678.820, 680.500
29 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
30 690.415, 691.405 to 691.485 or 694.015 to 694.185 **or section 3 of this 2013 Act** or ORS chapter 700,
31 the agency may, through the Attorney General or the district attorney of the county in which the
32 act, practice or transaction occurs or will occur, apply to the court for an injunction restraining the
33 person from the act, practice or transaction.

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

37 **SECTION 13.** ORS 676.622 is amended to read:

38 676.622. (1) A transaction conducted through a state or local system or network that provides
39 electronic access to the Oregon Health Licensing Agency information and services is exempt from
40 any requirement under ORS 675.360 to 675.410, 676.605 to 676.625, 676.992, 680.500 to 680.565, 687.405
41 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
42 691.485 and 694.015 to 694.185 **and section 3 of this 2013 Act** and ORS chapter 700, and rules
43 adopted thereunder, requiring an original signature or the submission of handwritten materials.

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

SECTION 14. 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 15. 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 16. 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 10 to 15 of this 2013 Act become operative November 1, 2013.

SECTION 17. (1) Sections 2, 4 and 8 of this 2013 Act and the amendments to ORS 743A.190 by section 6 of this 2013 Act become operative January 1, 2014.

(2) Sections 2 and 4 of this 2013 Act and the amendments to ORS 743A.190 by section 6 of this 2013 Act apply to policies or certificates issued or renewed on or after January 1, 2014.

SECTION 18. 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.