

Senate Bill 381

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 licensure of providers of applied behavior analysis services. Requires insurer that covers applied behavior analysis to cover services provided by individuals licensed to perform that analysis.

A BILL FOR AN ACT

1
2 Relating to providers of applied behavior analysis services; creating new provisions; and amending
3 ORS 676.610, 676.612, 676.622, 676.625 and 676.992.

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

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

7 (a) **Behavior analysts;**

8 (b) **Assistant behavior analysts; and**

9 (c) **Autism technicians.**

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

12 (a) **Been certified by the Behavior Analyst Certification Board as a "Board Certified Be-**
13 **havior Analyst"; and**

14 (b) **Successfully completed a criminal records check.**

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

17 (a) **Been certified by the Behavior Analyst Certification Board as a "Board Certified As-**
18 **stant Behavior Analyst"; and**

19 (b) **Successfully completed a criminal records check.**

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

22 (a) **Has completed:**

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

27 (B) **A minimum of 48 semester hours, or the equivalent of 48 semester hours, of college**
28 **coursework in any field;**

29 (b) **Has completed 40 hours of training with a licensed behavior analyst or a licensed as-**
30 **stant behavior analyst, or 40 hours of training with another licensed health care profes-**
31 **sional during which the services performed are within the licensed health care professional's**

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 scope of practice and are commensurate with the licensed health care professional's post-
 2 secondary education, training and supervised experience, and the training covers the follow-
 3 ing topics:

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

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

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

10 (D) Professional standards and ethics;

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

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

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

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

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

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

29 (c) Governing the examination of applicants for licenses issued under this section and the
 30 renewal, suspension and revocation of the licenses; and

31 (d) Establishing fees sufficient to cover the costs of administering the licensing program
 32 under this section.

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

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

35 (b) Pays fees established by the agency; and

36 (c) Demonstrates to the satisfaction of the agency that the applicant meets the criteria
 37 adopted under this section.

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

41 **SECTION 2.** In the manner prescribed in ORS chapter 183 for contested cases, the
 42 Oregon Health Licensing Agency may impose a form of discipline listed in ORS 676.612
 43 against any person licensed under section 1 of this 2013 Act for any of the prohibited acts
 44 listed in ORS 676.612 and for any violation of a rule adopted under section 1 of this 2013 Act.

45 **SECTION 3.** ORS 676.610 is amended to read:

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

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

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

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

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

16 (3) The Director of the Oregon Health Licensing Agency is responsible for carrying out the
17 duties, functions and powers under ORS 675.360 to 675.410, 676.605 to 676.625, 676.992, 678.710 to
18 678.820, 680.500 to 680.565, 687.405 to 687.495, 687.895, 688.701 to 688.734, 688.800 to 688.840, 690.005
19 to 690.235, 690.350 to 690.415, 691.405 to 691.485 and 694.015 to 694.185 **and sections 1 and 2 of this**
20 **2013 Act** and ORS chapter 700.

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

24 **SECTION 4.** ORS 676.612 is amended to read:

25 676.612. (1) In the manner prescribed in ORS chapter 183 for contested cases and as specified
26 in ORS 675.385, 678.780, 680.535, 687.445, 688.734, 688.836, 690.167, 690.407, 691.477, 694.147 and
27 700.111 **and section 2 of this 2013 Act**, the Oregon Health Licensing Agency may refuse to issue
28 or renew, may suspend or revoke or may otherwise condition or limit a certificate, license, permit
29 or registration to practice issued by the agency or may discipline or place on probation a holder
30 of a certificate, license, permit or registration for commission of the prohibited acts listed in sub-
31 section (2) of this section.

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

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

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

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

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

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

1 the certificate, license, permit or registration.

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

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

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

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

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

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

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

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

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

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

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

35 (q) Selling or fraudulently obtaining or furnishing any record related to practice in a regulated
36 occupation or profession subject to the authority of the boards, councils and programs listed in ORS
37 676.606, or aiding or abetting such an act.

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

40 (3) For the purpose of requesting a state or nationwide criminal records check under ORS
41 181.534, the agency may require the fingerprints of a person who is:

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

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

45 (c) Under investigation by the agency.

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

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

9 **SECTION 5.** ORS 676.622 is amended to read:

10 676.622. (1) A transaction conducted through a state or local system or network that provides
 11 electronic access to the Oregon Health Licensing Agency information and services is exempt from
 12 any requirement under ORS 675.360 to 675.410, 676.605 to 676.625, 676.992, 680.500 to 680.565, 687.405
 13 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
 14 691.485 and 694.015 to 694.185 **and section 1 of this 2013 Act** and ORS chapter 700, and rules
 15 adopted thereunder, requiring an original signature or the submission of handwritten materials.

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

18 **SECTION 6.** ORS 676.625 is amended to read:

19 676.625. (1) The Oregon Health Licensing Agency shall establish by rule and shall collect fees
 20 and charges to carry out the agency's responsibilities under ORS 676.605 to 676.625 and 676.992 and
 21 any responsibility imposed on the agency pertaining to the boards, councils and programs adminis-
 22 tered and regulated by the agency pursuant to ORS 676.606.

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

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

36 (4) All moneys credited to the account pursuant to ORS 675.405, 676.617, 680.525, 687.435,
 37 688.728, 688.834, 690.235, 690.415, 691.479, 694.185 and 700.080 **and section 1 of this 2013 Act**, and
 38 moneys credited to the account from other agency and program fees established by the agency by
 39 rule, are continuously appropriated to the agency for carrying out the duties, functions and powers
 40 of the agency under ORS 676.605 to 676.625 and 676.992 **and section 1 of this 2013 Act**.

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

45 **SECTION 7.** ORS 676.992 is amended to read:

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

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

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

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

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

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

10 (f) ORS 694.015 to 694.185 (dealing in hearing aids);

11 (g) ORS 688.800 to 688.840 (respiratory therapy and polysomnography);

12 (h) ORS chapter 700 (environmental sanitation);

13 (i) ORS 676.617 (single facility licensure);

14 (j) ORS 675.360 to 675.410 (sex offender treatment);

15 (k) ORS 678.710 to 678.820 (nursing home administrators);

16 (L) ORS 691.405 to 691.485 (dietitians); [and]

17 (m) ORS 676.612 (prohibited acts); **and**

18 **(n) Section 1 of this 2013 Act (applied behavior analysis).**

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

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

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

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

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

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

31 (d) Any other aggravating or mitigating factors.

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

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

38 **SECTION 8. Section 9 of this 2013 Act is added to and made a part of the Insurance Code.**

39 **SECTION 9. (1) Whenever any health benefit plan, as defined in ORS 743.730, provides for
 40 payment or reimbursement for applied behavior analysis services, the insured shall be re-
 41 imursed for such services that are:**

42 **(a) Provided by a behavior analyst licensed under section 1 of this 2013 Act;**

43 **(b) Provided by an assistant behavior analyst licensed under section 1 of this 2013 Act;**

44 **or**

45 **(c) Provided by an autism technician licensed under section 1 of this 2013 Act and**

1 supervised by a licensed behavior analyst or a licensed assistant behavior analyst.

2 (2) Coverage under this section may be subject to in-network provider requirements and
3 limitations that apply to coverage of physical illness generally under the health benefit plan.

4 SECTION 10. Section 9 of this 2013 Act applies to health insurance policies or certificates
5 issued or renewed on or after the effective date of this 2013 Act.

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