

**PROPOSED AMENDMENTS TO
SENATE BILL 365**

1 On page 1 of the printed bill, line 2, after “ORS” insert “414.710,”.

2 Delete lines 6 through 28 and delete pages 2 through 4.

3 On page 5, delete lines 1 through 15 and insert:

4 **“SECTION 2. (1) As used in this section and sections 3 and 3a of this**
5 **2013 Act:**

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

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

18 **“(c) ‘Behavioral health treatment’ means counseling and treatment**
19 **programs, including applied behavior analysis and other evidence-**
20 **based behavioral interventions, that are necessary to improve the**
21 **functioning of an individual with serious behavioral impairments and**
22 **that are provided by:**

1 **“(A) A licensed health care professional approved by the Behavior**
2 **Analyst Board under section 3 of this 2013 Act;**

3 **“(B) A behavior analyst or an assistant behavior analyst licensed**
4 **under section 3 of this 2013 Act; or**

5 **“(C) A behavior analysis interventionist registered under section 3**
6 **of this 2013 Act.**

7 **“(d) ‘Diagnosis’ means medically necessary assessment, evaluation**
8 **or testing.**

9 **“(e) ‘Health benefit plan’ has the meaning given that term in ORS**
10 **743.730.**

11 **“(f) ‘Medically necessary’ means in accordance with the definition**
12 **of medical necessity that is specified in the policy or certificate for the**
13 **health benefit plan and that applies to all covered services under the**
14 **plan.**

15 **“(g) ‘Treatment for autism spectrum disorder’ includes behavioral**
16 **health treatment and any mental health services or other medical**
17 **services identified in the individualized treatment plan, as described**
18 **in subsection (10) of this section.**

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

20 **“(a) The screening for and diagnosis of autism spectrum disorder**
21 **by a licensed neurologist, pediatric neurologist, developmental pedia-**
22 **trician, psychiatrist or psychologist, who has experience and training**
23 **in the diagnosis of autism spectrum disorder; and**

24 **“(b) Medically necessary treatment for autism spectrum disorder**
25 **and the management of care, including any periodic updating of an**
26 **individualized treatment plan that is required by the insurer.**

27 **“(3) An insurer may not terminate coverage or refuse to issue or**
28 **renew coverage for an individual solely because the individual has re-**
29 **ceived a diagnosis of autism spectrum disorder or has received treat-**
30 **ment for autism spectrum disorder.**

1 “(4) Coverage under this section may be subject to utilization con-
2 trols that are reasonable in the context of individual determinations
3 of medical necessity. An insurer may require:

4 “(a) Confirmation of an autism spectrum disorder diagnosis by a
5 professional described in subsection (2)(a) of this section if the original
6 diagnosis was not made by a professional described in subsection (2)(a)
7 of this section, provided the requirement does not delay the provision
8 of applied behavior analysis services by more than 60 days.

9 “(b) Prior authorization for coverage of 25 hours or less per week
10 of applied behavior analysis recommended in an individualized treat-
11 ment plan approved by a professional described in subsection (2)(a) of
12 this section for an individual with autism spectrum disorder who is
13 younger than nine years of age, as long as the insurer makes a prior
14 authorization determination no later than 30 calendar days after re-
15 ceiving the request for prior authorization.

16 “(c) Prior authorization, according to the terms of the policy that
17 apply to other medical conditions, for coverage of:

18 “(A) Hours in excess of 25 hours per week of applied behavior
19 analysis for individuals who are younger than nine years of age; or

20 “(B) Applied behavior analysis for individuals who are nine years
21 of age or older.

22 “(5)(a) Once coverage for applied behavior analysis has been ap-
23 proved, the coverage continues as long as:

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

26 “(B) Applied behavior analysis is medically necessary.

27 “(b) This subsection does not require coverage of applied behavior
28 analysis that is being provided by the Oregon Health Authority, the
29 Department of Human Services, a school district or an education ser-
30 vice district.

1 “(c) An insurer may require periodic review of an individualized
2 treatment plan, as described in subsection (10) of this section, and
3 modification of the individualized treatment plan if the review shows
4 that the individual receiving the treatment is not making substantial
5 progress toward the goals of the individualized treatment plan.

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

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

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

15 “(7) This section does not limit coverage for any services, other
16 than applied behavior analysis, that are otherwise available to an in-
17 dividual under ORS 743A.168 or 743A.190.

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

21 “(9) Coverage under this section includes treatment provided in the
22 individual’s home or a licensed health care facility or, for treatment
23 provided by a licensed health care professional approved by the Be-
24 havior Analyst Board under section 3 of this 2013 Act, at the office of
25 the health care professional. This section may not be construed as
26 affecting any obligation to provide services to an individual under an
27 individualized family service plan or an individualized education pro-
28 gram. Nothing in this section requires coverage for:

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

30 “(b) Services that are custodial in nature or that constitute marital,

1 family, educational or training services;

2 “(c) Custodial or respite care, equine assisted therapy, creative arts
3 therapy, wilderness or adventure camps, social counseling or tele-
4 medicine; or

5 “(d) Services or supplies that are not medically necessary.

6 “(10) If an individual is receiving treatment for autism spectrum
7 disorder, an insurer may require submission of an individualized
8 treatment plan, which shall include all elements necessary for the
9 insurer to appropriately determine coverage under the health benefit
10 plan. The individualized treatment plan must be based on evidence-
11 based screening criteria. An insurer may require an updated individ-
12 ualized treatment plan, not more than once every six months, that
13 includes observed progress as of the date the updated plan was pre-
14 pared, for the purpose of performing utilization review and medical
15 management. The insurer may require the individualized treatment
16 plan to include the:

17 “(a) Diagnosis;

18 “(b) Proposed treatment by type;

19 “(c) Frequency and anticipated duration of treatment;

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

24 “(e) Signature of the treating provider.

25 “(11) This section applies to health benefit plans and to self-insured
26 health plans offered by the Public Employees’ Benefit Board and the
27 Oregon Educators Benefit Board.

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

29 **“SECTION 3. (1) There is created, within the Oregon Health Li-
30 censing Agency, the Behavior Analyst Board consisting of seven**

1 **members appointed by the Governor, including:**

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

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

6 **“(c) One member who is a licensed psychologist approved by the**
7 **board;**

8 **“(d) One member who is a licensed speech-language pathologist**
9 **approved by the board; and**

10 **“(e) One member of the general public who does not have a finan-**
11 **cial interest in the provision of applied behavior analysis and does not**
12 **have a ward or family member who has been diagnosed with autism**
13 **spectrum disorder.**

14 **“(2) Not more than one member of the Behavior Analyst Board may**
15 **be an employee of an insurer.**

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

23 **“(4) A member of the Behavior Analyst Board is entitled to com-**
24 **penetration and expenses as provided in ORS 292.495.**

25 **“(5) The Behavior Analyst Board shall select one of its members as**
26 **chairperson and another as vice chairperson, for such terms and with**
27 **duties and powers necessary for the performance of the functions of**
28 **such offices as the board determines.**

29 **“(6) A majority of the members of the Behavior Analyst Board**
30 **constitutes a quorum for the transaction of business.**

1 **“(7) The Behavior Analyst Board shall meet at least once every**
2 **three months at a place, day and hour determined by the board. The**
3 **board may also meet at other times and places specified by the call**
4 **of the chairperson or of a majority of the members of the board.**

5 **“(8) In accordance with ORS chapter 183, the Behavior Analyst**
6 **Board shall establish by rule criteria for the:**

7 **“(a) Licensing of:**

8 **“(A) Behavior analysts; and**

9 **“(B) Assistant behavior analysts;**

10 **“(b) Approval of licensed health care professionals; and**

11 **“(c) Registration of behavior analysis interventionists.**

12 **“(9) The criteria for the licensing of a behavior analyst must in-**
13 **clude, but are not limited to, the requirement that the applicant:**

14 **“(a) Be certified by the Behavior Analyst Certification Board, In-**
15 **corporated, as a Board Certified Behavior Analyst; and**

16 **“(b) Have successfully completed a criminal records check.**

17 **“(10) The criteria for the licensing of an assistant behavior analyst**
18 **must include, but are not limited to, the requirement that the appli-**
19 **cant:**

20 **“(a) Be certified by the Behavior Analyst Certification Board, In-**
21 **corporated, as a Board Certified Assistant Behavior Analyst;**

22 **“(b) Be supervised by a behavior analyst who is licensed by the**
23 **Behavior Analyst Board; and**

24 **“(c) Have successfully completed a criminal records check.**

25 **“(11) The criteria for the approval of a licensed health care profes-**
26 **sional must ensure that the licensed health care professional has the**
27 **appropriate experience, expertise or training in the diagnosis and**
28 **treatment of autism spectrum disorders, including experience in ap-**
29 **plied behavior analysis.**

30 **“(12) The criteria for the registration of a behavior analysis**

1 **interventionist must include, but are not limited to, the requirement**
2 **that the applicant:**

3 **“(a) Have completed coursework and training prescribed by the**
4 **Behavior Analyst Board by rule;**

5 **“(b) Receive ongoing oversight by a licensed behavior analyst or a**
6 **licensed assistant behavior analyst, or by another licensed health care**
7 **professional approved by the board; and**

8 **“(c) Have successfully completed a criminal records check.**

9 **“(13) In accordance with applicable provisions of ORS chapter 183,**
10 **the Behavior Analyst Board shall adopt rules:**

11 **“(a) Establishing standards and procedures for the licensing of be-**
12 **havior analysts and assistant behavior analysts, the approval of li-**
13 **icensed health care professionals and the registration of behavior**
14 **analysis interventionists in accordance with this section;**

15 **“(b) Establishing guidelines for the professional methods and pro-**
16 **cedures to be used by individuals licensed, approved and registered**
17 **under this section;**

18 **“(c) Governing the examination of applicants for licenses, approvals**
19 **and registrations under this section and the renewal, suspension and**
20 **revocation of the licenses, approvals and registrations; and**

21 **“(d) Establishing fees sufficient to cover the costs of administering**
22 **the licensing, approval and registration procedures under this section.**

23 **“(14) The Behavior Analyst Board shall issue a license or a certif-**
24 **icate of approval to an applicant who:**

25 **“(a) Files an application in the form prescribed by the board;**

26 **“(b) Pays fees established by the board; and**

27 **“(c) Demonstrates to the satisfaction of the board that the appli-**
28 **cant meets the criteria adopted under this section.**

29 **“(15) The Behavior Analyst Board shall establish the procedures for**
30 **the registration of behavior analysis interventionists.**

1 **“(16) All moneys received by the Behavior Analyst Board under**
2 **subsection (14) of this section shall be paid into the General Fund of**
3 **the State Treasury and credited to the Oregon Health Licensing**
4 **Agency Account.**

5 **“(17) An individual who has not been licensed, approved or regis-**
6 **tered by the Behavior Analyst Board in accordance with criteria and**
7 **standards adopted under this section may not claim reimbursement for**
8 **services described in section 2 of this 2013 Act under a health benefit**
9 **plan or under a self-insured health plan offered by the Public**
10 **Employees’ Benefit Board or the Oregon Educators Benefit Board.**

11 **“SECTION 3a. (1) Notwithstanding the composition of the Behavior**
12 **Analyst Board specified in section 3 of this 2013 Act, for the period**
13 **beginning on the operative date of section 3 of this 2013 Act and ending**
14 **on October 31, 2015, the board shall consist of seven members ap-**
15 **pointed by the Governor, including:**

16 **“(a) Three members who are certified by the Behavior Analyst**
17 **Certification Board, Incorporated, as Board Certified Behavior Ana-**
18 **lysts;**

19 **“(b) One member who is a licensed psychiatrist or developmental**
20 **pediatrician with experience or training in applied behavior analysis;**

21 **“(c) One member who is a licensed psychologist and who has expe-**
22 **rience in the diagnosis and treatment of autism spectrum disorders;**

23 **“(d) One member who is a licensed speech-language pathologist**
24 **with experience or training in applied behavior analysis; and**

25 **“(e) One member of the general public who does not have a finan-**
26 **cial interest in the provision of applied behavior analysis and does not**
27 **have a ward or family member who has been diagnosed with autism**
28 **spectrum disorder.**

29 **“(2) Notwithstanding the term of office specified by section 3 of this**
30 **2013 Act, if members first appointed to the Behavior Analyst Board**

1 **under this section continue to serve after October 31, 2015, the board**
2 **shall adopt a method for establishing the terms of office of board**
3 **members so that the terms of office do not all expire on the same**
4 **date.”.**

5 In line 16, delete “(8)” and insert “(17)”.

6 In line 20, delete “make” and insert “may” and delete “January” and in-
7 sert “November”.

8 In line 21, delete “2014” and insert “2013” and delete “section 3” and in-
9 sert “sections 3 and 3a”.

10 In line 22, delete “January 1, 2014” and insert “November 1, 2013”.

11 Delete lines 23 through 45 and insert:

12 **“SECTION 6.** ORS 414.710 is amended to read:

13 “414.710. The following services are not subject to ORS 414.690:

14 “(1) Nursing facilities, institutional and home- and community-based
15 waived services funded through the Department of Human Services; [and]

16 “(2) Services to children who are wards of the Department of Human
17 Services by order of the juvenile court and services to children and families
18 for health care or mental health care through the department[.]; **and**

19 **“(3) Treatment for autism spectrum disorder, subject to the re-**
20 **quirements and limitations described in section 2 of this 2013 Act.**

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

22 “743A.190. (1) A health benefit plan, as defined in ORS 743.730, must cover
23 for a child enrolled in the plan who is under 18 years of age and who has
24 been diagnosed with a pervasive developmental disorder all medical services,
25 including rehabilitation services, that are medically necessary and are oth-
26 erwise covered under the plan.

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

30 “(a) Deductibles, copayments or coinsurance;

1 “(b) Prior authorization or utilization review requirements; or
2 “(c) Treatment limitations regarding the number of visits or the duration
3 of treatment.

4 “(3) As used in this section:

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

9 “(b) ‘Pervasive developmental disorder’ means a neurological condition
10 that includes Asperger’s syndrome, autism, developmental delay, develop-
11 mental disability or mental retardation.

12 “(c) ‘Rehabilitation services’ means physical therapy, occupational ther-
13 apy or speech therapy services to restore or improve function.

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

15 “(5) The definition of ‘pervasive developmental disorder’ is not intended
16 to apply to coverage required under ORS 743A.168.

17 **“(6) A health benefit plan that provides coverage of treatment for
18 autism spectrum disorder in accordance with section 2 of this 2013 Act
19 shall be deemed to be in compliance with this section notwithstanding
20 any contrary decision of an independent review organization under
21 ORS 743.857.”.**

22 On page 6, line 1, delete “7” and insert “8” and delete “8” and insert
23 “9”.

24 In line 2, delete “8” and insert “9” and delete “3” and insert “2”.

25 In line 12, delete “9” and insert “10”.

26 In line 14, after “licensed” insert “, registered or approved”.

27 In line 16, delete “10” and insert “11”.

28 In line 35, delete “9” and insert “10”.

29 In line 40, delete “11” and insert “12”.

30 In line 43, delete “9” and insert “10”.

1 On page 8, line 25, delete “12” and insert “13”.

2 In line 37, delete “13” and insert “14”.

3 On page 9, line 1, delete “14” and insert “15”.

4 In line 28, delete “15” and insert “16”.

5 On page 10, line 21, delete “16” and insert “17”.

6 In line 22, delete “10 to 15” and insert “11 to 16”.

7 Delete lines 24 through 27 and insert:

8 **“SECTION 18.** Section 3 of this 2013 Act is amended to read:

9 **“Sec. 3.** (1) There is created, within the Oregon Health Licensing Agency,
10 the Behavior Analyst Board consisting of seven members appointed by the
11 Governor, including:

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

13 “(b) One member who is a licensed psychiatrist or developmental pedia-
14 trician, with experience or training in treating autism spectrum disorder;

15 “(c) One member who is a licensed psychologist approved by the board;

16 “(d) One member who is a licensed speech-language pathologist approved
17 by the board; and

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

21 “(2) Not more than one member of the Behavior Analyst Board may be
22 an employee of an insurer.

23 “(3) The term of office of each member is four years, but a member serves
24 at the pleasure of the Governor. Before the expiration of the term of a
25 member, the Governor shall appoint a successor whose term begins on No-
26 vember 1 next following. A member is eligible for reappointment. If there is
27 a vacancy for any cause, the Governor shall make an appointment to become
28 immediately effective for the unexpired term.

29 “(4) A member of the Behavior Analyst Board is entitled to compensation
30 and expenses as provided in ORS 292.495.

1 “(5) The Behavior Analyst Board shall select one of its members as
2 chairperson and another as vice chairperson, for such terms and with duties
3 and powers necessary for the performance of the functions of such offices
4 as the board determines.

5 “(6) A majority of the members of the Behavior Analyst Board constitutes
6 a quorum for the transaction of business.

7 “(7) The Behavior Analyst Board shall meet at least once every three
8 months at a place, day and hour determined by the board. The board may
9 also meet at other times and places specified by the call of the chairperson
10 or of a majority of the members of the board.

11 “(8) In accordance with ORS chapter 183, the Behavior Analyst Board
12 shall establish by rule criteria for the:

13 “(a) Licensing of:

14 “(A) Behavior analysts; and

15 “(B) Assistant behavior analysts;

16 “(b) Approval of licensed health care professionals; and

17 “(c) Registration of behavior analysis interventionists.

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

20 “(a) Be certified by the Behavior Analyst Certification Board, Incorporated,
21 as a Board Certified Behavior Analyst; and

22 “(b) Have successfully completed a criminal records check.

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

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

27 “(b) Be supervised by a behavior analyst who is licensed by the Behavior
28 Analyst Board; and

29 “(c) Have successfully completed a criminal records check.

30 “(11) The criteria for the approval of a licensed health care professional

1 must ensure that the licensed health care professional has the appropriate
2 experience, expertise or training in the diagnosis and treatment of autism
3 spectrum disorders, including experience in applied behavior analysis.

4 “(12) The criteria for the registration of a behavior analysis
5 interventionist must include, but are not limited to, the requirement that the
6 applicant:

7 “(a) Have completed coursework and training prescribed by the Behavior
8 Analyst Board by rule;

9 “(b) Receive ongoing oversight by a licensed behavior analyst or a li-
10 censed assistant behavior analyst, or by another licensed health care pro-
11 fessional approved by the board; and

12 “(c) Have successfully completed a criminal records check.

13 “(13) In accordance with applicable provisions of ORS chapter 183, the
14 Behavior Analyst Board shall adopt rules:

15 “(a) Establishing standards and procedures for the licensing of behavior
16 analysts and assistant behavior analysts, the approval of licensed health care
17 professionals and the registration of behavior analysis interventionists in
18 accordance with this section;

19 “(b) Establishing guidelines for the professional methods and procedures
20 to be used by individuals licensed, approved and registered under this sec-
21 tion;

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

25 “(d) Establishing fees sufficient to cover the costs of administering the
26 licensing, approval and registration procedures under this section.

27 “(14) The Behavior Analyst Board shall issue a license or a certificate
28 of approval to an applicant who:

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

30 “(b) Pays fees established by the board; and

1 “(c) Demonstrates to the satisfaction of the board that the applicant
2 meets the criteria adopted under this section.

3 “(15) The Behavior Analyst Board shall establish the procedures for the
4 registration of behavior analysis interventionists.

5 “(16) All moneys received by the Behavior Analyst Board under sub-
6 section (14) of this section shall be paid into the General Fund of the State
7 Treasury and credited to the Oregon Health Licensing Agency Account.

8 “[*(17) An individual who has not been licensed, approved or registered by*
9 *the Behavior Analyst Board in accordance with criteria and standards adopted*
10 *under this section may not claim reimbursement for services described in sec-*
11 *tion 2 of this 2013 Act under a health benefit plan or under a self-insured*
12 *health plan offered by the Public Employees’ Benefit Board or the Oregon*
13 *Educators Benefit Board.*]

14 **“SECTION 19.** ORS 414.710, as amended by section 6 of this 2013 Act, is
15 amended to read:

16 “414.710. The following services are not subject to ORS 414.690:

17 “(1) Nursing facilities, institutional and home- and community-based
18 waived services funded through the Department of Human Services; **and**

19 “(2) Services to children who are wards of the Department of Human
20 Services by order of the juvenile court and services to children and families
21 for health care or mental health care through the department[; *and*].

22 [*(3) Treatment for autism spectrum disorder, subject to the requirements*
23 *and limitations described in section 2 of this 2013 Act.*]

24 **“SECTION 20. Section 2 of this 2013 Act is repealed January 2, 2022.**

25 **“SECTION 21. (1) Sections 2 and 9 of this 2013 Act and the amend-**
26 **ments to ORS 414.710 and 743A.190 by sections 6 and 7 of this 2013 Act**
27 **become operative July 1, 2014.**

28 **“(2) The amendments to section 3 of this 2013 Act by section 18 of**
29 **this 2013 Act and the amendments to ORS 414.710 by section 19 of this**
30 **2013 Act become operative January 2, 2022.**

