

Support SB355 and SB358: Autism Insurance Coverage, Regulation of ABA Providers

Testimony to Senate Committee
on Health Care by

Paul Terdal

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Introduction – Paul Terdal

- Resident of Northwest Portland, Senate District 18 / House District 36
- 25+ years of professional experience in regulated environments
 - Lead critical projects; develop business processes, systems
 - MBA, Yale School of Management
 - John M. Olin Fellow in the Study of Markets and Regulatory Behavior
- Lead consumer advocate on key autism legislation
 - SB365 (2013) – Autism Health Insurance Reform
 - SB696 (2015) – Behavior Analysis Regulatory Board
 - HB2931 (2017) – Behavior Analysis Interventionist Educational Requirements
 - HB2839 (2017) – Prohibits discrimination in organ transplantation

Both SB355 and SB358 Postpone the Sunset of Autism Health Insurance Reform SB365(2013) to 2030

- SB365 (2013) established requirements for insurance coverage of medically necessary treatment for autism spectrum disorder, including Applied Behavior Analysis (ABA) and any other mental or medical services identified in an individualized treatment plan.
 - SB365 passed unanimously, with endorsement of both consumer advocates and most of Oregon's health insurers
- As of 3/1/2021, there are 1,832 ABA providers actively licensed / registered by the Oregon Health Licensing Office to provide medically necessary services for autism under SB365
 - This represents 1,832 living wage jobs providing critical services to thousands of individuals with autism, through Medicaid (OHP) and commercial insurance
- The insurance coverage provisions of SB365 will sunset on January 2, 2022
- Both SB355 and SB358 postpone the sunset to January 2, 2030
 - If SB358 is adopted, then SB355 would be moot

SB365 should eventually be aligned with Federal law and other applicable Oregon statutes

- Coverage requirements for treatment of autism are governed by a complex weave of state and federal laws, as described in a set of bulletins published by DCBS
 - <https://dfr.oregon.gov/business/reg/health/Pages/mental-health-parity.aspx>
- Many provisions of SB365 are superseded or modified by the Federal Mental Health Parity and Addiction Equity Act and Affordable Care act, such as:

SB365 Provision	MHPAEA / PPACA Impact
Requires coverage only for “an individual who begins treatment before nine years of age”	Age limits are prohibited
“coverage of a maximum of 25 hours per week of applied behavior analysis”	Quantitative treatment limits prohibited unless they apply to substantially all medical / surgical conditions, so this becomes a floor (minimum)
Require autism diagnosis by “a licensed neurologist, pediatric neurologist, developmental pediatrician, psychiatrist or psychologist”	Non-Quantitative Treatment Limit prohibited by MHPAEA unless the same limit is applied to substantially all medical / surgical conditions
Insurer may require prior authorization for coverage of ABA	Non-Quantitative Treatment Limit prohibited by MHPAEA unless prior authorization is required for substantially all medical / surgical conditions
insurer may require submission of an individualized treatment plan	Non-Quantitative Treatment Limit prohibited by MHPAEA unless treatment plans are required for substantially all medical / surgical conditions

- Extending the sunset preserves the status quo and allows time to review and resolve these issues before a decision to make this permanent

SB358 also fixes gaps and technical issues with regulation of ABA Professionals (1 of 2)

- Child abuse reporting: behavior analysts aren't on the list of professionals that must report child abuse (see <https://www.oregonlaws.org/ors/419B.005>)
- Prohibition on the practice of conversion therapy: Oregon prohibits gay conversion therapy by psychologists, occupational therapists, and other professionals but not specifically by behavior analysts (see <https://www.oregonlaws.org/ors/675.850>)
- Duty to report unprofessional conduct, arrests, and convictions: Oregon requires all other health professionals to report prohibited or unprofessional conduct by other licensees or their own criminal convictions, but this doesn't apply to behavior analysts (see <https://www.oregonlaws.org/ors/676.150>)
- Right to behavioral health treatment without parental consent: Oregon allows youth as young as 14 to seek treatment without parental consent from essentially any other type of behavioral health provider -- but not from a behavior analyst.
 - Currently, a 14 year old child could seek ABA therapy without parental consent from a psychologist, LPC, LCSW or other mental health professional, but not from a licensed behavior analyst (see <https://www.oregonlaws.org/ors/109.675>)
 - The practical effect is to allow (but not require) a stronger patient -provider relationship for teens, such as enabling them to sign approval for their own behavior change program

SB358 also fixes gaps and technical issues with regulation of ABA Professionals (2 of 2)

- Clarify and refine the Health Licensing Office’s enforcement authority, which currently has numerous small quirks and gaps
 - As one example, it is unlawful under ORS 676.820 to use the title of “Licensed Behavior Analyst” if it hasn’t been officially granted – but there is no penalty for doing so and HLO doesn’t have specific enforcement authority.
- Require the Health Licensing Office to consult with the Behavior Analysis Regulatory Board (BARB) regarding enforcement actions
 - Currently, the BARB’s only statutory role is in adopting administrative rules on licensing and the practice of ABA – the board itself has no role whatsoever in enforcement.
 - All enforcement authority resides with the staff of the Health Licensing Office. As a matter of practice, the HLO staff consults with the BARB before taking action, but nothing in the statute requires or even encourages this.
 - SB358 will specifically require the HLO staff to consult with the BARB on enforcement issues, as it is required to do with most other boards.

Affect of -1 Amendments

For both SB355 and SB358:

- Applies sunset extension on insurance coverage provisions to Health Care Service Contractors regulated under ORS Chapter 750
 - More Oregon “health insurers” are organized as Health Care Service Contractors

For SB358:

- Removes provision renaming the technician title “Registered Behavior Analysis Interventionist” to “Licensed Behavior Analysis Interventionist”
 - This was originally proposed to align title with requirements of a Medicaid State Plan Amendment allowing schools to be reimbursed by Medicaid for school-based ABA
 - See: <https://www.oregon.gov/oha/HSD/Medicaid-Policy/StatePlans/19-0011.pdf>, page 3
 - On further analysis, it is clear that this nomenclature change isn’t needed
 - “Registered Behavior Analysis Interventionists” already are “licensed” under Oregon law
 - A “license” is “A permit, granted by an appropriate governmental body ... to a person ... to pursue some occupation...” (Black’s Law Dictionary). ORS 676.820 permits RBAI’s to practice ABA
 - ORS 676.150(1)(b): “Licensee” means a health professional licensed or certified by or registered with a board.
- Fixes inconsistencies regarding scope of health licensing’s enforcement authority
 - Enables Health Licensing to enforce 676.802 to 676.830 and associated rules