

Enrolled House Bill 2421

Sponsored by Representative REYNOLDS; Representative NELSON (at the request of Paul Terdal)
(Pre-session filed.)

CHAPTER

AN ACT

Relating to applied behavior analysis; creating new provisions; amending ORS 109.675, 419B.005, 675.850, 676.150, 676.595, 676.802, 676.815, 676.825, 676.830 and 676.992 and section 2, chapter 771, Oregon Laws 2013; and prescribing an effective date.

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

SECTION 1. ORS 676.802 is amended to read:

676.802. As used in [this section, ORS 676.806 and 676.810 to 676.820] **ORS 676.802 to 676.830:**

(1)(a) “Applied behavior analysis” means the design, implementation and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce significant improvement in human social behavior, including the use of direct observation, measurement and functional analysis of the relationship between environment and behavior.

(b) “Applied behavior analysis” does not mean psychological testing, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy or long-term counseling as treatment modalities.

(2) “Licensed health care professional” means an individual whose scope of practice includes applied behavior analysis and who is licensed by:

- (a) The Occupational Therapy Licensing Board;
- (b) The Oregon Board of Licensed Professional Counselors and Therapists;
- (c) The Oregon Medical Board;
- (d) The Oregon State Board of Nursing;
- (e) The Oregon Board of Physical Therapy;
- (f) The State Board of Examiners for Speech-Language Pathology and Audiology;
- (g) The State Board of Licensed Social Workers; or
- (h) The Oregon Board of Psychology.

SECTION 2. ORS 676.815 is amended to read:

676.815. (1) The Health Licensing Office, **in consultation with the Behavior Analysis Regulatory Board**, shall establish by rule criteria for the registration of behavior analysis interventionists. The criteria must include, but are not limited to, the requirement that the applicant:

[(1)] (a) Have a high school diploma, a modified diploma, a certificate for passing an approved high school equivalency test such as the General Educational Development (GED) test or a degree from a post-secondary institution;

[(2)] (b) Be at least 18 years of age;

[(3)] (c) Have successfully completed a state and nationwide criminal records check that requires fingerprinting;

[(4)] (d) Have completed at least 40 hours of professional training in applied behavior analysis approved by the office by rule; and

[(5)] (e) Receive ongoing training and supervision by a licensed behavior analyst, by a licensed assistant behavior analyst or by another licensed health care professional.

(2) The office shall adopt rules to establish guidelines for the professional methods and procedures to be used by behavior analysis interventionists registered under this section.

SECTION 3. ORS 676.825 is amended to read:

676.825. In the manner prescribed in ORS chapter 183 for contested cases **and in consultation with the Behavior Analysis Regulatory Board**, the Health Licensing Office may impose a form of discipline listed in ORS 676.612 against any person licensed or registered under ORS 676.810 or 676.815 for any of the prohibited acts listed in ORS 676.612 and for any violation of a rule adopted under ORS [676.810 or 676.815] **676.802 to 676.830.**

SECTION 4. ORS 676.830 is amended to read:

676.830. A health benefit plan as defined in ORS 743B.005 may establish credentialing requirements for the provision of applied behavior analysis [as defined in ORS 676.802] by licensed health care professionals [as defined in ORS 676.802, by], behavior analysts or assistant behavior analysts licensed [by the Behavior Analysis Regulatory Board] **under ORS 676.810** or by behavior analysis interventionists registered by the Health Licensing Office **under 676.815.**

SECTION 5. 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 Health Licensing Office may impose a civil penalty not to exceed \$5,000 for each violation of the following statutes and any rule adopted under the following statutes:

- (a) ORS 688.701 to 688.734 (athletic training);
- (b) ORS 690.005 to 690.225 (cosmetology);
- (c) ORS 680.500 to 680.565 (denture technology);
- (d) Subject to ORS 676.616 and 687.445, ORS 687.405 to 687.495 (direct entry midwifery);
- (e) ORS 690.350 to 690.410 (tattooing, electrolysis, body piercing, earlobe piercing, dermal implanting and scarification);
- (f) ORS 694.015 to 694.170 (dealing in hearing aids);
- (g) ORS 688.800 to 688.840 (respiratory therapy and polysomnography);
- (h) ORS chapter 700 (environmental sanitation);
- (i) ORS 675.365 to 675.410 (sexual abuse specific treatment);
- (j) ORS 678.710 to 678.820 (nursing home administrators and residential care facility administrators);
- (k) ORS 691.405 to 691.485 (dietitians);
- (L) ORS 676.612 (prohibited acts);
- (m) ORS [676.810 and 676.815] **676.802 to 676.830** (applied behavior analysis);
- (n) ORS 681.700 to 681.730 (music therapy);
- (o) ORS 676.630 to 676.660 (advanced nonablative esthetics procedure);
- (p) ORS 681.740 to 681.758 (art therapy);
- (q) ORS 676.665 to 676.689 (lactation consultation); and
- (r) ORS 676.730 to 676.748 (genetic counseling).

(2) The office 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 under this section, the office 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 office from civil penalties under this section shall be deposited in the Health Licensing Office Account and are continuously appropriated to the office for the administration and enforcement of the laws the office is charged with administering and enforcing that govern the person against whom the penalty was imposed.

SECTION 6. Section 2, chapter 771, Oregon Laws 2013, as amended by section 9, chapter 674, Oregon Laws 2015, and section 11, chapter 284, Oregon Laws 2019, is amended to read:

Sec. 2. (1) As used in this section and section 3a, chapter 771, Oregon Laws 2013:

(a)(A) “Applied behavior analysis” means the design, implementation and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce significant improvement in human social behavior, including the use of direct observation, measurement and functional analysis of the relationship between environment and behavior, that is provided by:

(i) A licensed health care professional as defined in ORS 676.802;

(ii) A behavior analyst or assistant behavior analyst licensed under ORS 676.810; or

(iii) A behavior analysis interventionist registered under ORS 676.815 who receives ongoing training and supervision by a licensed behavior analyst, by a licensed assistant behavior analyst or by a licensed health care professional.

(B) “Applied behavior analysis” does not mean psychological testing, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy and long-term counseling as treatment modalities.

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

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

(d) “Health benefit plan” has the meaning given that term in ORS 743B.005.

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

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

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

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

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

(3) This section does not require 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;

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

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

- (e) Services provided through community or social programs; or
- (f) Services provided by the Department of Human Services or the Oregon Health Authority, other than employee benefit plans offered by the department and the authority.

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

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

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

(b) Prior authorization for coverage of a maximum of 25 hours per week of applied behavior analysis recommended in an individualized treatment plan approved by a professional described in subsection (2)(a) of this section for an individual with autism spectrum disorder, as long as the insurer makes a prior authorization determination no later than 30 calendar days after receiving the request for prior authorization, notwithstanding ORS 743B.423.

(6) If an individual is receiving applied behavior analysis, an insurer may require submission of an individualized treatment plan, which shall include all elements necessary for the insurer to appropriately determine coverage under the health benefit plan. The individualized treatment plan must be based on evidence-based screening criteria. An insurer may require an updated individualized treatment plan, not more than once every six months, that includes observed progress as of the date the updated plan was prepared, for the purpose of performing utilization review and medical management. The insurer may require the individualized treatment plan to be approved by a professional described in subsection (2)(a) of this section, and 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; and
- (e) Signature of the treating provider.

(7)(a) Once coverage for applied behavior analysis has been approved, the coverage continues as long as:

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

(B) Applied behavior analysis is medically necessary.

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

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

- (a) Requirements and limitations regarding in-network providers; and
- (b) Provisions relating to deductibles, copayments and coinsurance.

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

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

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

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

(10) Coverage under this section includes treatment for autism spectrum disorder provided in the individual's home or a licensed health care facility or, for treatment provided by a licensed health care professional as defined in ORS 676.802 or a behavior analyst or assistant behavior analyst licensed under ORS 676.810 **or a behavior analysis interventionist registered under ORS 676.815**, in a setting approved by the health care professional, behavior analyst or assistant behavior analyst.

(11) An insurer that provides coverage of applied behavior analysis in accordance with a decision of an independent review organization that was made prior to January 1, 2016, shall continue to provide coverage, subject to modifications made in accordance with subsection (7) of this section.

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

SECTION 7. ORS 109.675 is amended to read:

109.675. (1) A minor 14 years of age or older may obtain, without parental knowledge or consent[,]:

(a) Outpatient diagnosis or treatment of a mental or emotional disorder or a chemical dependency, excluding methadone maintenance, by a physician or physician assistant licensed by the Oregon Medical Board, a psychologist licensed by the Oregon Board of Psychology, a nurse practitioner registered by the Oregon State Board of Nursing, a clinical social worker licensed by the State Board of Licensed Social Workers, a professional counselor or marriage and family therapist licensed by the Oregon Board of Licensed Professional Counselors and Therapists, a naturopathic physician licensed by the Oregon Board of Naturopathic Medicine or a community mental health program established and operated pursuant to ORS 430.620 when approved to do so by the Oregon Health Authority pursuant to rule.

(b) **Outpatient applied behavior analysis, as defined in ORS 676.802, as a treatment of a mental or emotional disorder or a chemical dependency, excluding methadone maintenance, by a behavior analyst or assistant behavior analyst licensed under ORS 676.810 or a behavior analysis interventionist registered by the Health Licensing Office under ORS 676.815 if the treatment is within the scope of practice of the behavior analyst, assistant behavior analyst or behavior analysis interventionist.**

(2) However, the person providing treatment shall have the parents of the minor involved before the end of treatment unless the parents refuse or unless there are clear clinical indications to the contrary, which shall be documented in the treatment record. The provisions of this subsection do not apply to:

(a) A minor who has been sexually abused by a parent; or

(b) An emancipated minor, whether emancipated under the provisions of ORS 109.510 and 109.520 or 419B.550 to 419B.558 or, for the purpose of this section only, emancipated by virtue of having lived apart from the parents or legal guardian while being self-sustaining for a period of 90 days prior to obtaining treatment as provided by this section.

SECTION 7a. If House Bill 2395 becomes law, section 7 of this 2023 Act (amending ORS 109.675) is repealed and ORS 109.675, as amended by section 17, chapter ___, Oregon Laws 2023 (Enrolled House Bill 2395), is amended to read:

109.675. (1)(a) A minor may obtain, without parental knowledge or consent[,]:

(A) Outpatient diagnosis or treatment of a substance use disorder, excluding methadone treatment, by a mental health care provider.

(B) **Outpatient applied behavior analysis, as defined in ORS 676.802, as a treatment of a substance use disorder, excluding methadone treatment, by a behavior analyst or assistant behavior analyst licensed under ORS 676.810 or a behavior analysis interventionist registered by the Health Licensing Office under ORS 676.815 if the treatment is within the scope of practice of the behavior analyst, assistant behavior analyst or behavior analysis interventionist.**

(b) A minor 14 years of age or older may obtain, without parental knowledge or consent[,]:

(A) Outpatient diagnosis or treatment of a mental or emotional disorder by a mental health care provider.

(B) Outpatient applied behavior analysis, as defined in ORS 676.802, as a treatment of a mental or emotional disorder by a behavior analyst or assistant behavior analyst licensed under ORS 676.810 or a behavior analysis interventionist registered by the Health Licensing Office under ORS 676.815 if the treatment is within the scope of practice of the behavior analyst, assistant behavior analyst or behavior analysis interventionist.

(2) The person providing treatment under this section shall have the parents of the minor involved before the end of treatment unless the parents refuse or unless there are clear clinical indications to the contrary, which shall be documented in the treatment record. The provisions of this subsection do not apply to:

(a) A minor who has been sexually abused by a parent; or

(b) An emancipated minor, whether emancipated under the provisions of ORS 109.510 and 109.520 or 419B.550 to 419B.558 or, for the purpose of this section only, emancipated by virtue of having lived apart from the parents or legal guardian while being self-sustaining for a period of 90 days prior to obtaining treatment as provided by this section.

SECTION 8. ORS 419B.005, as amended by section 8, chapter 90, Oregon Laws 2022, is amended to read:

419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

(1)(a) "Abuse" means:

(A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.

(B) Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.

(C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration and incest, as those acts are described in ORS chapter 163.

(D) Sexual abuse, as described in ORS chapter 163.

(E) Sexual exploitation, including but not limited to:

(i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or other exhibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not including any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or which is designed to serve educational or other legitimate purposes; and

(ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution as described in ORS 167.007 or a commercial sex act as defined in ORS 163.266, to purchase sex with a minor as described in ORS 163.413 or to engage in commercial sexual solicitation as described in ORS 167.008.

(F) Negligent treatment or maltreatment of a child, including but not limited to the failure to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of the child.

(G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.

(H) Buying or selling a person under 18 years of age as described in ORS 163.537.

(I) Permitting a person under 18 years of age to enter or remain in or upon premises where methamphetamines are being manufactured.

(J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, or to the unlawful manufacturing of a cannabinoid extract, as defined in ORS 475C.009, that subjects a child to a substantial risk of harm to the child's health or safety.

(b) "Abuse" does not include reasonable discipline unless the discipline results in one of the conditions described in paragraph (a) of this subsection.

(2) "Child" means an unmarried person who:

(a) Is under 18 years of age; or

(b) Is under 21 years of age and residing in or receiving care or services at a child-caring agency as that term is defined in ORS 418.205.

(3) "Higher education institution" means:

(a) A community college as defined in ORS 341.005;

(b) A public university listed in ORS 352.002;

(c) The Oregon Health and Science University; and

(d) A private institution of higher education located in Oregon.

(4)(a) "Investigation" means a detailed inquiry into or assessment of the safety of a child alleged to have experienced abuse.

(b) "Investigation" does not include screening activities conducted upon the receipt of a report.

(5) "Law enforcement agency" means:

(a) A city or municipal police department.

(b) A county sheriff's office.

(c) The Oregon State Police.

(d) A police department established by a university under ORS 352.121 or 353.125.

(e) A county juvenile department.

(6) "Public or private official" means:

(a) Physician or physician assistant licensed under ORS chapter 677 or naturopathic physician, including any intern or resident.

(b) Dentist.

(c) School employee, including an employee of a higher education institution.

(d) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide or employee of an in-home health service.

(e) Employee of the Department of Human Services, Oregon Health Authority, Early Learning Division, Department of Education, Youth Development Division, Office of Child Care, the Oregon Youth Authority, a local health department, a community mental health program, a community developmental disabilities program, a county juvenile department, a child-caring agency as that term is defined in ORS 418.205 or an alcohol and drug treatment program.

(f) Peace officer.

(g) Psychologist.

(h) Member of the clergy.

(i) Regulated social worker.

(j) Optometrist.

(k) Chiropractor.

(L) Certified provider of foster care, or an employee thereof.

(m) Attorney.

(n) Licensed professional counselor.

(o) Licensed marriage and family therapist.

(p) Firefighter or emergency medical services provider.

(q) A court appointed special advocate, as defined in ORS 419A.004.

(r) A child care provider registered or certified under ORS 329A.030 and 329A.250 to 329A.450.

(s) An elected official of a branch of government of this state or a state agency, board, commission or department of a branch of government of this state or of a city, county or other political subdivision in this state.

(t) Physical, speech or occupational therapist.

(u) Audiologist.

(v) Speech-language pathologist.

(w) Employee of the Teacher Standards and Practices Commission directly involved in investigations or discipline by the commission.

(x) Pharmacist.

(y) An operator of a preschool recorded program under ORS 329A.255.

(z) An operator of a school-age recorded program under ORS 329A.255.

(aa) Employee of a private agency or organization facilitating the provision of respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056.

(bb) An employee of a public or private organization providing child-related services or activities:

(A) Including but not limited to an employee of a:

(i) Youth group or center;

(ii) Scout group or camp;

(iii) Summer or day camp;

(iv) Survival camp; or

(v) Group, center or camp that is operated under the guidance, supervision or auspices of a religious, public or private educational system or a community service organization; and

(B) Excluding an employee of a qualified victim services program as defined in ORS 147.600 that provides confidential, direct services to victims of domestic violence, sexual assault, stalking or human trafficking.

(cc) A coach, assistant coach or trainer of an amateur, semiprofessional or professional athlete, if compensated and if the athlete is a child.

(dd) Personal support worker, as defined in ORS 410.600.

(ee) Home care worker, as defined in ORS 410.600.

(ff) Animal control officer, as defined in ORS 609.500.

(gg) Member of a school district board, an education service district board or a public charter school governing body.

(hh) An individual who is paid by a public body, in accordance with ORS 430.215, to provide a service identified in an individualized written service plan of a child with a developmental disability.

(ii) Referral agent, as defined in ORS 418.351.

(jj) Behavior analyst or assistant behavior analyst licensed under ORS 676.810 or behavior analysis interventionist registered by the Health Licensing Office under ORS 676.815.

SECTION 9. ORS 419B.005, as amended by section 58, chapter 631, Oregon Laws 2021, section 16, chapter 27, Oregon Laws 2022, and section 7, chapter 90, Oregon Laws 2022, is amended to read: 419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

(1)(a) "Abuse" means:

(A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.

(B) Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.

(C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration and incest, as those acts are described in ORS chapter 163.

(D) Sexual abuse, as described in ORS chapter 163.

(E) Sexual exploitation, including but not limited to:

(i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or other exhibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not in-

cluding any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or which is designed to serve educational or other legitimate purposes; and

(ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution as described in ORS 167.007 or a commercial sex act as defined in ORS 163.266, to purchase sex with a minor as described in ORS 163.413 or to engage in commercial sexual solicitation as described in ORS 167.008.

(F) Negligent treatment or maltreatment of a child, including but not limited to the failure to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of the child.

(G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.

(H) Buying or selling a person under 18 years of age as described in ORS 163.537.

(I) Permitting a person under 18 years of age to enter or remain in or upon premises where methamphetamines are being manufactured.

(J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, or to the unlawful manufacturing of a cannabinoid extract, as defined in ORS 475C.009, that subjects a child to a substantial risk of harm to the child's health or safety.

(b) "Abuse" does not include reasonable discipline unless the discipline results in one of the conditions described in paragraph (a) of this subsection.

(2) "Child" means an unmarried person who:

(a) Is under 18 years of age; or

(b) Is under 21 years of age and residing in or receiving care or services at a child-caring agency as that term is defined in ORS 418.205.

(3) "Higher education institution" means:

(a) A community college as defined in ORS 341.005;

(b) A public university listed in ORS 352.002;

(c) The Oregon Health and Science University; and

(d) A private institution of higher education located in Oregon.

(4)(a) "Investigation" means a detailed inquiry into or assessment of the safety of a child alleged to have experienced abuse.

(b) "Investigation" does not include screening activities conducted upon the receipt of a report.

(5) "Law enforcement agency" means:

(a) A city or municipal police department.

(b) A county sheriff's office.

(c) The Oregon State Police.

(d) A police department established by a university under ORS 352.121 or 353.125.

(e) A county juvenile department.

(6) "Public or private official" means:

(a) Physician or physician assistant licensed under ORS chapter 677 or naturopathic physician, including any intern or resident.

(b) Dentist.

(c) School employee, including an employee of a higher education institution.

(d) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide or employee of an in-home health service.

(e) Employee of the Department of Human Services, Oregon Health Authority, Department of Early Learning and Care, Department of Education, Youth Development Division, Office of Child Care, the Oregon Youth Authority, a local health department, a community mental health program, a community developmental disabilities program, a county juvenile department, a child-caring agency as that term is defined in ORS 418.205 or an alcohol and drug treatment program.

(f) Peace officer.

(g) Psychologist.

(h) Member of the clergy.

- (i) Regulated social worker.
- (j) Optometrist.
- (k) Chiropractor.
- (L) Certified provider of foster care, or an employee thereof.
- (m) Attorney.
- (n) Licensed professional counselor.
- (o) Licensed marriage and family therapist.
- (p) Firefighter or emergency medical services provider.
- (q) A court appointed special advocate, as defined in ORS 419A.004.
- (r) A child care provider registered or certified under ORS 329A.250 to 329A.450.
- (s) An elected official of a branch of government of this state or a state agency, board, commission or department of a branch of government of this state or of a city, county or other political subdivision in this state.
- (t) Physical, speech or occupational therapist.
- (u) Audiologist.
- (v) Speech-language pathologist.
- (w) Employee of the Teacher Standards and Practices Commission directly involved in investigations or discipline by the commission.
- (x) Pharmacist.
- (y) An operator of a preschool recorded program under ORS 329A.255.
- (z) An operator of a school-age recorded program under ORS 329A.255.
- (aa) Employee of a private agency or organization facilitating the provision of respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056.
- (bb) An employee of a public or private organization providing child-related services or activities:
 - (A) Including but not limited to an employee of a:
 - (i) Youth group or center;
 - (ii) Scout group or camp;
 - (iii) Summer or day camp;
 - (iv) Survival camp; or
 - (v) Group, center or camp that is operated under the guidance, supervision or auspices of a religious, public or private educational system or a community service organization; and
 - (B) Excluding an employee of a qualified victim services program as defined in ORS 147.600 that provides confidential, direct services to victims of domestic violence, sexual assault, stalking or human trafficking.
- (cc) A coach, assistant coach or trainer of an amateur, semiprofessional or professional athlete, if compensated and if the athlete is a child.
- (dd) Personal support worker, as defined in ORS 410.600.
- (ee) Home care worker, as defined in ORS 410.600.
- (ff) Animal control officer, as defined in ORS 609.500.
- (gg) Member of a school district board, an education service district board or a public charter school governing body.
- (hh) An individual who is paid by a public body, in accordance with ORS 430.215, to provide a service identified in an individualized written service plan of a child with a developmental disability.
- (ii) Referral agent, as defined in ORS 418.351.

(jj) Behavior analyst or assistant behavior analyst licensed under ORS 676.810 or behavior analysis interventionist registered by the Health Licensing Office under ORS 676.815.

SECTION 10. ORS 675.850 is amended to read:

675.850. (1) A mental health care or social health professional may not practice conversion therapy if the recipient of the conversion therapy is under 18 years of age.

(2) As used in this section:

(a)(A) “Conversion therapy” means providing professional services for the purpose of attempting to change a person’s sexual orientation or gender identity, including attempting to change behaviors or expressions of self or to reduce sexual or romantic attractions or feelings toward individuals of the same gender.

(B) “Conversion therapy” does not mean:

(i) Counseling that assists a client who is seeking to undergo a gender transition or who is in the process of undergoing a gender transition; or

(ii) Counseling that provides a client with acceptance, support and understanding, or counseling that facilitates a client’s coping, social support and identity exploration or development, including counseling in the form of sexual orientation-neutral or gender identity-neutral interventions provided for the purpose of preventing or addressing unlawful conduct or unsafe sexual practices, as long as the counseling is not provided for the purpose of attempting to change the client’s sexual orientation or gender identity.

(b)(A) “Mental health care or social health professional” means:

(i) A licensed psychologist as defined in ORS 675.010;

(ii) A psychologist associate licensed by the Oregon Board of Psychology before January 1, 2022;

(iii) An occupational therapist or occupational therapy assistant both as defined in ORS 675.210;

(iv) A regulated social worker as defined in ORS 675.510;

(v) A licensed marriage and family therapist or licensed professional counselor both as defined in ORS 675.705; [and]

(vi) An individual who provides counseling as part of an educational or training program necessary to practice any of the professions described in sub-subparagraphs (i) to (v) of this subparagraph[.]; and

(vii) A behavior analyst or assistant behavior analyst licensed under ORS 676.810 or a behavior analysis interventionist registered under ORS 676.815.

(B) “Mental health care or social health professional” includes any individual not described in this paragraph who is licensed in this state and whose license authorizes the individual to provide mental health care or social health counseling services.

(3) Any state board that regulates licensees described in subsection (2)(b)(B) of this section may impose any form of discipline that the board may impose on a licensee under the laws of this state for violating a law of this state or a rule adopted by the board.

SECTION 11. ORS 676.150 is amended to read:

676.150. (1) As used in this section:

(a) “Board” means the:

(A) State Board of Examiners for Speech-Language Pathology and Audiology;

(B) State Board of Chiropractic Examiners;

(C) State Board of Licensed Social Workers;

(D) Oregon Board of Licensed Professional Counselors and Therapists;

(E) Oregon Board of Dentistry;

(F) Board of Licensed Dietitians;

(G) State Board of Massage Therapists;

(H) Oregon Board of Naturopathic Medicine;

(I) Oregon State Board of Nursing;

(J) Long Term Care Administrators Board;

(K) Oregon Board of Optometry;

(L) State Board of Pharmacy;

(M) Oregon Medical Board;

(N) Occupational Therapy Licensing Board;

(O) Oregon Board of Physical Therapy;

(P) Oregon Board of Psychology;

(Q) Board of Medical Imaging;

(R) State Board of Direct Entry Midwifery;

(S) State Board of Denture Technology;
(T) Respiratory Therapist and Polysomnographic Technologist Licensing Board;
(U) Oregon Health Authority, to the extent that the authority licenses emergency medical services providers;

(V) Oregon State Veterinary Medical Examining Board; [or]

(W) State Mortuary and Cemetery Board[.]; or

(X) Behavior Analysis Regulatory Board.

(b) "Licensee" means a health professional licensed or certified by or registered with a board.

(c) "Prohibited conduct" means conduct by a licensee that:

(A) Constitutes a criminal act against a patient or client; or

(B) Constitutes a criminal act that creates a risk of harm to a patient or client.

(d) "Unprofessional conduct" means conduct unbecoming a licensee or detrimental to the best interests of the public, including conduct contrary to recognized standards of ethics of the licensee's profession or conduct that endangers the health, safety or welfare of a patient or client.

(2) Unless state or federal laws relating to confidentiality or the protection of health information prohibit disclosure, a licensee who has reasonable cause to believe that another licensee has engaged in prohibited or unprofessional conduct shall report the conduct to the board responsible for the licensee who is believed to have engaged in the conduct. The reporting licensee shall report the conduct without undue delay, but in no event later than 10 working days after the reporting licensee learns of the conduct.

(3) A licensee who is convicted of a misdemeanor or felony or who is arrested for a felony crime shall report the conviction or arrest to the licensee's board within 10 days after the conviction or arrest.

(4) The board responsible for a licensee who is reported to have engaged in prohibited or unprofessional conduct shall investigate in accordance with the board's rules. If the board has reasonable cause to believe that the licensee has engaged in prohibited conduct, the board shall present the facts to an appropriate law enforcement agency without undue delay, but in no event later than 10 working days after the board finds reasonable cause to believe that the licensee engaged in prohibited conduct.

(5) A licensee who fails to report prohibited or unprofessional conduct as required by subsection (2) of this section or the licensee's conviction or arrest as required by subsection (3) of this section is subject to discipline by the board responsible for the licensee.

(6) A licensee who fails to report prohibited conduct as required by subsection (2) of this section commits a Class A violation.

(7)(a) Notwithstanding any other provision of law, a report under subsection (2) or (3) of this section is confidential under ORS 676.175.

(b) A board may disclose a report as provided in ORS 676.177.

(c) If the Health Licensing Office receives a report described in this subsection, the report is confidential and the office may only disclose the report pursuant to ORS 676.595 and 676.599.

(8) Except as part of an application for a license or for renewal of a license and except as provided in subsection (3) of this section, a board may not require a licensee to report the licensee's criminal conduct.

(9) The obligations imposed by this section are in addition to and not in lieu of other obligations to report unprofessional conduct as provided by statute.

(10) A licensee who reports to a board in good faith as required by subsection (2) of this section is immune from civil liability for making the report.

(11) A board and the members, employees and contractors of the board are immune from civil liability for actions taken in good faith as a result of a report received under subsection (2) or (3) of this section.

SECTION 12. ORS 676.595 is amended to read:

676.595. (1) As used in this section, "board" means the:

(a) Sexual Offense Treatment Board established under ORS 675.395.

- (b) Behavior Analysis Regulatory Board created under ORS 676.806.
- (c) Long Term Care Administrators Board established under ORS 678.800.
- (d) State Board of Denture Technology established under ORS 680.556.
- (e) State Board of Direct Entry Midwifery established under ORS 687.470.
- (f) Board of Athletic Trainers established under ORS 688.705.
- (g) Respiratory Therapist and Polysomnographic Technologist Licensing Board established under ORS 688.820.

(h) Board of Licensed Dietitians established under ORS 691.485.

(i) Environmental Health Registration Board established under ORS 700.210.

(2) Except to the extent that disclosure is necessary to conduct a full and proper investigation, the Health Licensing Office may not disclose information, including complaints and information identifying complainants, obtained by the office as part of an investigation conducted under:

(a) ORS 675.365 to 675.410, [676.810 to 676.820, 676.825, 676.830] **676.802 to 676.830**, 678.710 to 678.820, 680.500 to 680.565, 687.405 to 687.495, 688.701 to 688.734, 688.800 to 688.840 or 691.405 to 691.485 or ORS chapter 700.

(b) ORS 676.560 to 676.625 if the investigation is related to the regulation of:

(A) Sexual abuse specific treatment under ORS 675.365 to 675.410;

(B) Applied behavior analysis under ORS [676.810 to 676.820, 676.825 and 676.830] **676.802 to 676.830**;

(C) Nursing home administration and residential care facility administration under ORS 678.710 to 678.820;

(D) The practice of denture technology under ORS 680.500 to 680.565;

(E) Direct entry midwifery under ORS 687.405 to 687.495;

(F) Athletic training under ORS 688.701 to 688.734;

(G) Respiratory care and polysomnography under ORS 688.800 to 688.840;

(H) Dietetics under ORS 691.405 to 691.485; or

(I) Environmental or waste water sanitation under ORS chapter 700.

(3) Notwithstanding subsection (2) of this section, if the office or board decides not to impose a disciplinary sanction after conducting an investigation described in subsection (2) of this section:

(a) The office shall disclose information obtained as part of the investigation if the person requesting the information demonstrates by clear and convincing evidence that the public interest in disclosure outweighs other interests in nondisclosure, including the public interest in nondisclosure.

(b) The office may disclose to a complainant who made a complaint related to the investigation a written summary of information obtained as part of the investigation to the extent that disclosure is necessary to explain the office's or board's decision. The person who is the subject of the investigation may review and obtain a copy of a written summary disclosed under this paragraph after the office has redacted any information identifying the complainant.

(4) Notwithstanding subsection (2) of this section, if a decision is made to impose a disciplinary sanction and to issue a notice of intent to impose a disciplinary sanction after conducting an investigation described in subsection (2) of this section, upon written request by the person who is the subject of the investigation, the office shall disclose to the person all information obtained by the office or board during the investigation, except that the office may not disclose:

(a) Information that is otherwise privileged or confidential under state or federal law.

(b) Information identifying a person who provided information that led to the investigation, unless the person will provide testimony at a hearing arising out of the investigation.

(c) Information identifying a complainant.

(d) Reports of expert witnesses.

(5) Information disclosed to a person under subsection (4) of this section may be further disclosed by the person only to the extent that disclosure is necessary to prepare for a hearing arising out of the investigation.

(6) The office shall disclose:

(a) Any notice related to the imposition of a disciplinary sanction.

- (b) A final order related to the imposition of a disciplinary sanction.
- (c) An emergency suspension order.
- (d) A consent order or stipulated agreement that involves the conduct of a person against whom discipline is sought.
- (e) Information to further an investigation into board conduct under ORS 192.685.
- (7) The office or board must summarize the factual basis for the office's or board's disposition of:
 - (a) A final order related to the imposition of a disciplinary sanction;
 - (b) An emergency suspension order; or
 - (c) A consent order or stipulated agreement that involves the conduct of a person against whom discipline is sought.
- (8)(a) An office or board record or order, or any part of an office or board record or order, that is obtained during an investigation described in subsection (2) of this section, during a contested case proceeding or as a result of entering into a consent order or stipulated agreement is not admissible as evidence and may not preclude an issue or claim in a civil proceeding.
- (b) This subsection does not apply to a proceeding between the office or board and a person against whom discipline is sought as otherwise authorized by law.
- (9)(a) Notwithstanding subsection (2) of this section, the office is not publicly disclosing information when the office permits other public officials and members of the press to attend executive sessions where information obtained as part of an investigation is discussed. Public officials and members of the press attending such executive sessions may not disclose information obtained as part of an investigation to any other member of the public.
- (b) For purposes of this subsection, "public official" means a member, member-elect or employee of a public entity as defined in ORS 676.177.
- (10) The office may establish fees reasonably calculated to reimburse the actual cost of disclosing information to a person against whom discipline is sought as required by subsection (4) of this section.

SECTION 13. (1) The amendments to ORS 109.675, 419B.005, 675.850, 676.150, 676.595, 676.802, 676.815, 676.825, 676.830 and 676.992 and section 2, chapter 771, Oregon Laws 2013, by sections 1 to 12 of this 2023 Act become operative on January 1, 2024.

(2) The Behavior Analysis Regulatory Board and the Health Licensing Office may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the board and the office to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the board and the office by the amendments to ORS 109.675, 419B.005, 675.850, 676.150, 676.595, 676.802, 676.815, 676.825, 676.830 and 676.992 and section 2, chapter 771, Oregon Laws 2013, by sections 1 to 12 of this 2023 Act.

SECTION 14. This 2023 Act takes effect on the 91st day after the date on which the 2023 regular session of the Eighty-second Legislative Assembly adjourns sine die.

Passed by House April 13, 2023

Repassed by House June 22, 2023

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Dan Rayfield, Speaker of House

Passed by Senate June 21, 2023

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Rob Wagner, President of Senate

Received by Governor:

.....M.,....., 2023

Approved:

.....M.,....., 2023

.....
Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M.,....., 2023

.....
Secretary of State