



HEALTH LICENSING OFFICE

Kate Brown, Governor

Oregon
Health
Authority

700 Summer St NE, Suite 320
Salem, OR 97301-1287
Phone: (503)378-8667
Fax: (503)585-9114

<http://www.oregon.gov/OHLA/Pages/index.aspx>

WHO: Health Licensing Office
Behavior Analysis Regulatory Board

WHEN: 1:30 p.m. July 16, 2015

WHERE: Health Licensing Office
Rhoades Conference Room
700 Summer St. NE, Suite 320
Salem, Oregon

What is the purpose of the meeting?

The purpose of the meeting is to conduct board business. A working lunch may be served for board members and designated staff in attendance. A copy of the agenda is printed with this notice. Go to <http://www.oregon.gov/OHLA/BARB/Pages/meetings.aspx> for current meeting information.

May the public attend the meeting?

Members of the public and interested parties are invited to attend all board/council meetings. All audience members are asked to sign in on the attendance roster before the meeting. Public and interested parties' feedback will be heard during that part of the meeting.

May the public attend a teleconference meeting?

Members of the public and interested parties may attend a teleconference board meeting **in person** at the Health Licensing Office at 700 Summer St. NE, Suite 320, Salem, OR. All audience members are asked to sign in on the attendance roster before the meeting. Public and interested parties' feedback will be heard during that part of the meeting.

What if the board/council enters into executive session?

Prior to entering into executive session the board/council chairperson will announce the nature of and the authority for holding executive session, at which time all audience members are asked to leave the room with the exception of news media and designated staff. Executive session would be held according to ORS 192.660.

No final actions or final decisions will be made in executive session. The board/council will return to open session before taking any final action or making any final decisions.

Who do I contact if I have questions or need special accommodations?

The meeting location is accessible to persons with disabilities. A request for accommodations for persons with disabilities should be made at least 48 hours before the meeting. For questions or requests contact a board specialist at (503) 373-2049.

Approval of Agenda



Health Licensing Office
Behavior Analysis Regulatory Board



1:30 p.m., July 16, 2015
700 Summer St. NE, Suite 320
Salem, Oregon

Call to order

1. Items for board action

- ◆ Approval of agenda
- ◆ Approval of the minutes for April 16, 2015, and June 18, 2015
- ◆ Review of applications

2. Reports

- ◆ Director's report
Legislative update

3. Policy

- ◆ Rules advisory committee participants are chosen

4. Public/interested parties' feedback

5. Other board business

Agenda is subject to change.

For the most up to date information visit www.oregon.gov/OHLA

Approval of Minutes



Health Licensing Office
Behavior Analysis Regulatory Board

◆ ◆ ◆
April 16, 2015

700 Summer St. NE, Suite 320
Salem, Oregon

MINUTES

**MEMBERS PRESENT VIA
TELECONFERENCE**

Wendy Machalicek
Alice Austin
Michele Raddish
Harmony Miller

STAFF PRESENT

Holly Mercer, Director
Sylvie Donaldson, Fiscal Services and Licensing Manager
Joanna Tucker Davis, Assistant Attorney General, Oregon
Department of Justice
Anne Thompson, Policy Analyst
Maria Gutierrez, Board Specialist
Jennifer Lewis-Goff, Legislative Coordinator

MEMBERS ABSENT

Jenny Fischer, Chair
Kurt Freeman, Vice Chair
Amy Donaldson

Call to order

Health Licensing Director Holly Mercer called the Behavior Analysis Regulatory Board to order at 1:42 p.m. on April 16, 2015. Roll was taken.

Items for board action

◆ **Approval of agenda**

Harmony Miller made a motion, with a second by Michelle Raddish, to approve the agenda. The motion passed unanimously.

◆ **Approval of minutes**

Harmony Miller made a motion, with a second by Wendy Machalicek, to approve the minutes for March 31, 2015. The motion passed unanimously.

◆ **Applications**

The Health Licensing Office (HLO) received applications from:

- Toeknee Morales – Behavior Analysis Interventionist

The Board requested more information on this application.

- Jessica Chan – Behavior Analyst
- Chris Messina – Behavior Analyst

By consent agenda, Harmony Miller made a motion, with a second by Alice Austin, to approve the behavior analyst applications. Motion passed.

Reports

◆ Director's report

Director Holly Mercer told the Board that the Oregon Health Authority (OHA) is moving the Health Licensing Office (HLO) to the Division of Public Health by July 1, 2015.

Mercer told the Board that an amendment to Senate Bill 696 will be available soon. She said a work session was scheduled for Monday. Mercer gave a high-level overview of the concepts discussed in the proposed amendments, including that it would be a title act and that Board members would become Senate-confirmed positions.

Policy

Mercer outlined how a rules advisory committee (RAC) works, and said at the next meeting the Board would choose the types of stakeholders who would attend and the number of participants. She said the RAC was not a decision-making body; it is a way to gather ideas from people who are in the profession and those affected by it. She showed a time line prepared by staff that included potential dates for a RAC.

Austin said she has grave concerns about a RAC. She said that there are a few interested parties who are not behavior analysts who would guide the rules, that there are efforts in the legislative world to try to exclude behavior analysts. Austin said that while it was important to include some people who were not behavior analysts, the majority of the people on it should be people who practice behavior analysis.

Mercer said OHA policy is to have RACs gather a diversity of opinions and ideas in the rulemaking process. Mercer suggested that the Board members think about the groups they want to have included in the discussion and they can discuss it at the next meeting.

Raddish said that the Board hasn't heard much from consumers and that it would be helpful to have that voice at the RAC.

Public/interested parties' feedback

None.

Other board business

None.

The Board meeting was adjourned at 2:30 p.m.

Minutes prepared by Anne Thompson, Policy Analyst



Health Licensing Office
Behavior Analysis Regulatory Board



June 18, 2015
700 Summer St. NE, Suite 320
Salem, Oregon

MINUTES

**MEMBERS PRESENT VIA
TELECONFERENCE**

Jenny Fischer, Chair
Wendy Machalicek
Amy Donaldson
Alice Austin
Michele Raddish (joined at 1:40 p.m.)

STAFF PRESENT

Holly Mercer, Director
Sylvie Donaldson, Fiscal Services and Licensing Manager
Anne Thompson, Policy Analyst
Sarah Kelber, Communications Coordinator
Maria Gutierrez, Board Specialist
Jennifer Lewis-Goff, Legislative Coordinator

MEMBERS ABSENT

Kurt Freeman, Vice Chair
Harmony Miller

Call to order

Chair Jenny Fischer called the Behavior Analysis Regulatory Board to order at 1:34 p.m. on June 18, 2015. Roll was taken.

Items for board action

◆ **Approval of agenda**

Amy Donaldson made a motion, with a second by Alice Austin, to approve the agenda. The motion passed unanimously.

◆ **Approval of minutes**

Because of a lack of quorum, the approval of the minutes for April 16, 2015, were tabled for a future meeting. Alice Austin made a motion, with a second by Wendy Machalicek, to approve the minutes for May 29, 2015. The motion passed unanimously.

◆ **Applications**

The Health Licensing Office (HLO) received applications from:

- Shelby Bruner – Behavior Analysis Interventionist
- Christ Cottel – Behavior Analysis Interventionist
- Lauren Cruz – Behavior Analysis Interventionist
- Natasha Harrison – Behavior Analysis Interventionist

- Taylor Keenen – Behavior Analysis Interventionist

Michele Raddish made a motion, with a second by Alice Austin, to approve the behavior analyst interventionist applications from:

- Shelby Bruner
- Christ Cattel
- Lauren Cruz

Motion passed.

Michele Raddish made a motion, with a second by Wendy Machalicek, to approve the behavior analyst interventionist applications from:

- Natasha Harrison
- Taylor Keenen

Motion passed; Jenny Fischer recused from voting.

The Health Licensing Office (HLO) received applications from:

- Rachel Koontz – Behavior Analyst
- Dominique Randall – Behavior Analyst

By consent agenda, Michele Raddish made a motion, with a second by Alice Austin, to approve the behavior analyst applications. Motion passed.

Reports

◆ Director's report

Director Holly Mercer told the Board that the legislative session is winding down. House Bill 2642 – advanced esthetics – is still in process, as is the licensing of music therapists, House Bill 2796. The bill that impacts this Board, Senate Bill 696, had several hearings rescheduled due to the demands on the legislature, but Mercer said she expects the bill to continue through the process. With that in mind, Mercer said staff has been preparing to implement the bill's changes, some of which will have to be implemented on Nov. 1, 2015.

◆ Policy

Mercer transitioned into the policy discussion, focusing on the Board's input on the types of stakeholders who would send representatives to the Board's rules advisory committee (RAC) meeting. Interest forms will be sent out, and the board members will select who will attend the RAC at the July 16 meeting. The RAC had been tentatively scheduled for the first week in August. Staff presented the potential list of stakeholders for the Board's review; the list had been compiled from groups that had showed interest in SB 365 and SB 696. After a discussion, the Board settled on these stakeholders and the number of representatives from each:

1. Oregon Association for Behavior Analysis (2 representatives who practice behavior analysis)
2. Autism Speaks (1)
3. Oregon Insurance Division (1)

4. Insurance plan representative (1)
5. Autism Society of Oregon (1)
6. Consumer/parent of someone who uses ABA services (2)
7. Public member (1)
8. Faculty member from a 4-year accredited university with a program on behavior analysis (1)
9. Behavior Analysis Regulatory Board member (1) (Mercer will check with the Oregon Department of Justice to make sure this is permitted.)

After taking some questions about the function of the RAC, Mercer said the purpose was to gather feedback on the initial draft rules, not to make decisions. Interest forms will be distributed and posted online by staff in the next few days, and Mercer said the Board will see who returned forms at the next meeting.

Public/interested parties' feedback

None.

Other board business

None.

The Board meeting was adjourned at 2:43 p.m.

Minutes prepared by Anne Thompson, Policy Analyst

Application review

Issue Statement

HEALTH LICENSING OFFICE
Behavior Analysis Regulatory Board

Issue

The Behavior Analysis Regulatory Board must approve or deny licenses and registrations.

Recommendation

The Board moves to approve the applications from:

- Amber Crane – Behavior Analysis Interventionist
- Amy Tondreau – Behavior Analysis Interventionist
- Brooke Vera – Behavior Analysis Interventionist

By consent agenda, the Board moves to approve the applications from:

- Michael Carlip – Behavior Analyst
- Erin Clark – Behavior Analyst
- Lauren Gatten – Behavior Analyst
- Meghan Johns – Behavior Analyst
- Julia Linden – Behavior Analyst
- Gary Strange – Behavior Analyst

**Items Redacted
Available via Public
Records Request**

Director's report

Enrolled
Senate Bill 696

Sponsored by Senators BATES, HASS

CHAPTER

AN ACT

Relating to autism spectrum disorders; creating new provisions; amending ORS 676.160, 676.583, 676.610, 676.613, 676.622, 676.800, 676.805 and 676.992 and sections 2, 4 and 24, chapter 771, Oregon Laws 2013; and declaring an emergency.

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

SECTION 1. As used in this section and sections 3 to 5 of this 2015 Act and ORS 676.800:

(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 Physical Therapist Licensing Board;**
- (f) The State Board of Examiners for Speech-Language Pathology and Audiology;**
- (g) The State Board of Licensed Social Workers; or**
- (h) The State Board of Psychologist Examiners.**

SECTION 2. ORS 676.800, as amended by section 19, chapter 771, Oregon Laws 2013, is amended to read:

676.800. (1) There is created, within the Health Licensing Office, the Behavior Analysis Regulatory Board consisting of [*seven*] **nine** members appointed by the Governor, including:

- (a) [*Three*] **Four** members who are licensed by the board **under section 3 of this 2015 Act;****
- (b) One member who is a licensed psychiatrist [*or developmental pediatrician*], with experience or training in treating autism spectrum disorder;**
- (c) One member who is a licensed psychologist [*registered with the board*], **with experience or training in treating autism spectrum disorder;****
- [(d) One member who is a licensed speech-language pathologist registered with the board; and]**
- (d) One member who is a licensed developmental pediatrician, with experience or training in treating autism spectrum disorder;**

(e) One member of the general public who does not have a financial interest in the provision of applied behavior analysis and does not have a ward or family member who has been diagnosed with autism spectrum disorder[.]; **and**

(f) One member who is a parent, guardian or family member of an individual who has been diagnosed with autism spectrum disorder and has received some form of applied behavior analysis therapy.

(2) Not more than one member of the [*Behavior Analysis Regulatory*] board may be an employee of an insurer.

(3) The appointments of the members of the board are subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

[(3)] (4) The term of office of each member is four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on November 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

[(4)] (5) A member of the [*Behavior Analysis Regulatory*] board is entitled to compensation and expenses as provided in ORS 292.495.

[(5)] (6) The [*Behavior Analysis Regulatory*] board shall select one of its members as chairperson and another as vice chairperson, for such terms and with duties and powers necessary for the performance of the functions of such offices as the board determines.

[(6)] (7) A majority of the members of the [*Behavior Analysis Regulatory*] board constitutes a quorum for the transaction of business.

[(7)] (8) The [*Behavior Analysis Regulatory*] board shall meet at least once every [*three months at a place, day and hour*] **year as** determined by the [*board*] **office**. The board may also meet at other times and places specified by the call of the chairperson or of a majority of the members of the board.

[(8) *In accordance with ORS chapter 183, the Behavior Analysis Regulatory Board shall establish by rule criteria for the:*]

[(a) *Licensing of:*]

[(A) *Behavior analysts; and*]

[(B) *Assistant behavior analysts; and*]

[(b) *Registration of:*]

[(A) *Licensed health care professionals; and*]

[(B) *Behavior analysis interventionists.*]

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

[(a) *Be certified by the Behavior Analyst Certification Board, Incorporated, as a Board Certified Behavior Analyst; and*]

[(b) *Have successfully completed a criminal records check.*]

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

[(a) *Be certified by the Behavior Analyst Certification Board, Incorporated, as a Board Certified Assistant Behavior Analyst;*]

[(b) *Be supervised by a behavior analyst who is licensed by the Behavior Analysis Regulatory Board; and*]

[(c) *Have successfully completed a criminal records check.*]

[(11) *The criteria for the registration of a behavior analysis interventionist must include, but are not limited to, the requirement that the applicant:*]

[(a) *Have completed coursework and training prescribed by the Behavior Analysis Regulatory Board by rule;*]

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

[(c) Have successfully completed a criminal records check.]

[(12) In accordance with applicable provisions of ORS chapter 183, the Behavior Analysis Regulatory Board shall adopt rules:]

[(a) Establishing standards and procedures for the licensing of behavior analysts and assistant behavior analysts and for the registration of licensed health care professionals and behavior analysis interventionists in accordance with this section;]

[(b) Establishing guidelines for the professional methods and procedures to be used by individuals licensed and registered under this section;]

[(c) Governing the examination of applicants for licenses and registrations under this section and the renewal, suspension and revocation of the licenses and registrations; and]

[(d) Establishing fees sufficient to cover the costs of administering the licensing and registration procedures under this section.]

[(13) The Behavior Analysis Regulatory Board shall issue a license to an applicant who:]

[(a) Files an application in the form prescribed by the board;]

[(b) Pays fees established by the board; and]

[(c) Demonstrates to the satisfaction of the board that the applicant meets the criteria adopted under this section.]

[(14) The Behavior Analysis Regulatory Board shall establish the procedures for the registration of licensed health care professionals and behavior analysis interventionists.]

[(15) All moneys received by the Behavior Analysis Regulatory Board under subsection (13) of this section shall be paid into the General Fund of the State Treasury and credited to the Health Licensing Office Account.]

SECTION 3. (1) The Behavior Analysis Regulatory Board shall establish by rule criteria and procedures for the licensing of:

(a) Behavior analysts; and

(b) Assistant behavior analysts.

(2) The criteria for the licensing of a behavior analyst:

(a) Must include the requirement that the applicant have successfully completed a state and nationwide criminal records check that requires fingerprinting; and

(b) May include, but are not limited to, the requirement that the applicant:

(A) Be certified by the Behavior Analyst Certification Board, Incorporated, or its successor agency, or another agency approved by the Behavior Analysis Regulatory Board, as a board certified behavior analyst or equivalent; or

(B) Meet other requirements of the board that include the submission of a declaration to the Health Licensing Office that satisfies the requirements of section 4, chapter 771, Oregon Laws 2013.

(3) The criteria for the licensing of an assistant behavior analyst:

(a) Must include the requirement that the applicant have successfully completed a state and nationwide criminal records check that requires fingerprinting; and

(b) May include, but are not limited to, the requirement that the applicant:

(A) Be certified by the Behavior Analyst Certification Board, Incorporated, or its successor agency, or another agency approved by the Behavior Analysis Regulatory Board, as a board certified assistant behavior analyst or equivalent; and

(B) Be supervised by a behavior analyst who is licensed by the board.

(4) The Behavior Analysis Regulatory Board shall adopt rules to establish guidelines for the professional methods and procedures to be used by individuals licensed under this section.

SECTION 4. The Health Licensing Office 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) Have a high school diploma or a General Educational Development (GED) certificate;

(2) Be at least 18 years of age;

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

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

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

SECTION 5. (1) An individual licensed under section 3 of this 2015 Act or registered under section 4 of this 2015 Act may practice applied behavior analysis.

(2) Only an individual who is licensed under section 3 of this 2015 Act or registered under section 4 of this 2015 Act may use the title “licensed behavior analyst,” “licensed assistant behavior analyst” or “registered behavior analysis interventionist.”

SECTION 6. Section 24, chapter 771, Oregon Laws 2013, is amended to read:

Sec. 24. The amendments to [section 3 of this 2013 Act by section 19 of this 2013 Act and the amendments to] ORS 743A.190 and 750.055 by sections 20 and 21, **chapter 771, Oregon Laws 2013,** [of this 2013 Act] become operative January 2, 2022.

SECTION 7. ORS 676.160 is amended to read:

676.160. As used in ORS 676.165 to 676.180, “health professional regulatory board” means the:

- (1) State Board of Examiners for Speech-Language Pathology and Audiology;
- (2) State Board of Chiropractic Examiners;
- (3) State Board of Licensed Social Workers;
- (4) Oregon Board of Licensed Professional Counselors and Therapists;
- (5) Oregon Board of Dentistry;
- (6) Board of Licensed Dietitians;
- (7) State Board of Massage Therapists;
- (8) State Mortuary and Cemetery Board;
- (9) Oregon Board of Naturopathic Medicine;
- (10) Oregon State Board of Nursing;
- (11) Nursing Home Administrators Board;
- (12) Oregon Board of Optometry;
- (13) State Board of Pharmacy;
- (14) Oregon Medical Board;
- (15) Occupational Therapy Licensing Board;
- (16) Physical Therapist Licensing Board;
- (17) State Board of Psychologist Examiners;
- (18) Board of Medical Imaging;
- (19) Oregon State Veterinary Medical Examining Board; [and]
- (20) Oregon Health Authority, to the extent that the authority licenses emergency medical services providers[.]; **and**

(21) Behavior Analysis Regulatory Board.

SECTION 8. ORS 676.583 is amended to read:

676.583. Pursuant to ORS 676.586, the Health Licensing Office shall provide administrative and regulatory oversight and centralized service for the following boards and councils:

- (1) Board of Athletic Trainers, as provided in ORS 688.701 to 688.734;
- (2) Board of Cosmetology, as provided in ORS 690.005 to 690.225;
- (3) State Board of Denture Technology, as provided in ORS 680.500 to 680.565;
- (4) State Board of Direct Entry Midwifery, as provided in ORS 687.405 to 687.495;
- (5) Respiratory Therapist and Polysomnographic Technologist Licensing Board, as provided in ORS 688.800 to 688.840;
- (6) Environmental Health Registration Board, as provided in ORS chapter 700;
- (7) Board of Body Art Practitioners, as provided in ORS 690.350 to 690.410;
- (8) Advisory Council on Hearing Aids, as provided in ORS 694.015 to 694.170;
- (9) Sex Offender Treatment Board, as provided in ORS 675.360 to 675.410;

- (10) Nursing Home Administrators Board, as provided in ORS 678.710 to 678.820; *[and]*
- (11) Board of Licensed Dietitians, as provided in ORS 691.405 to 691.485[.]; **and**
- (12) Behavior Analysis Regulatory Board, as provided in ORS 676.800.**

SECTION 9. Section 2, chapter 771, Oregon Laws 2013, is amended to read:

Sec. 2. (1) As used in this section and *[sections 3 and 3a of this 2013 Act]* **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 section 1 of this 2015 Act;**

(ii) **A behavior analyst or assistant behavior analyst licensed under section 3 of this 2015 Act; or**

(iii) **A behavior analysis interventionist registered under section 4 of this 2015 Act who receives ongoing training and supervision by a licensed behavior analyst, by a licensed assistant behavior analyst or by a licensed health care professional.** *[and that is provided by:]*

[(i) A licensed health care professional registered under section 3 of this 2013 Act;]

[(ii) A behavior analyst or an assistant behavior analyst licensed under section 3 of this 2013 Act; or]

[(iii) A behavior analysis interventionist registered under section 3 of this 2013 Act.]

(B) “Applied behavior analysis” *[excludes]* **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 743.730.

(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.

(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 [*registered with the Behavior Analysis Regulatory Board*] **as defined in section 1 of this 2015 Act** or a behavior analyst or assistant behavior analyst licensed under [*section 3 of this 2013 Act*] **section 3 of this 2015 Act**, 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 10. (1) Notwithstanding the term of office specified in ORS 676.800 or any provision of section 3a, chapter 771, Oregon Laws 2013, of the board members added to the Behavior Analysis Regulatory Board by the amendments to ORS 676.800 by section 2 of this 2015 Act:

(a) One shall serve for a term ending October 31, 2018.

(b) One shall serve for a term ending October 31, 2019.

(2) The terms of office specified in subsection (1) of this section commence on November 1, 2015.

(3) A person who is a member of the board as of the effective date of this 2015 Act is subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

SECTION 11. Section 4, chapter 771, Oregon Laws 2013, is amended to read:

Sec. 4. (1) [*Notwithstanding section 3 (16) of this 2013 Act,*] An individual actively practicing applied behavior analysis **as defined in section 1 of this 2015 Act on [*the effective date of this 2013 Act*] **August 14, 2013**, may continue to claim reimbursement from a health benefit plan, the Public Employees' Benefit Board or the Oregon Educators Board for services provided without a license before [*January 1, 2016*] **July 1, 2018**.**

(2) An individual may claim reimbursement under subsection (1) of this section only if the individual submits a satisfactory declaration and other required documentation to the Health Licensing Office not later than April 30, 2016.

SECTION 12. ORS 676.610 is amended to read:

676.610. (1)(a) The Health Licensing Office is under the supervision and control of a director, who is responsible for the performance of the duties, functions and powers and for the organization of the office.

(b) The Director of the Oregon Health Authority shall establish the qualifications for and appoint the Director of the Health Licensing Office, who holds office at the pleasure of the Director of the Oregon Health Authority.

(c) The Director of the Health Licensing Office shall receive a salary as provided by law or, if not so provided, as prescribed by the Director of the Oregon Health Authority.

(d) The Director of the Health Licensing Office is in the unclassified service.

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

(3) The Director of the Health Licensing Office is responsible for carrying out the duties, functions and powers under ORS 675.360 to 675.410, 676.575 to 676.625, [*676.800,*] 676.805, 676.992, 678.710 to 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 to 690.225, 690.350 to 690.410, 691.405 to 691.485 and 694.015 to 694.170 and ORS chapter 700 **and sections 3 and 4 of this 2015 Act**.

(4) The enumeration of duties, functions and powers in subsection (3) of this section is not intended to be exclusive or to limit the duties, functions and powers imposed on or vested in the office by other statutes.

SECTION 13. ORS 676.613 is amended to read:

676.613. (1) In addition to all other remedies, when it appears to the Health Licensing Office that a person is engaged in, has engaged in or is about to engage in any act, practice or transaction that violates any provision of ORS 675.360 to 675.410, [676.800,] 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, 690.005 to 690.225, 690.350 to 690.410, 691.405 to 691.485 or 694.015 to 694.170 or ORS chapter 700 **or section 3 or 4 of this 2015 Act**, the office may, through the Attorney General or the district attorney of the county in which the act, practice or transaction occurs or will occur, apply to the court for an injunction restraining the person from the act, practice or transaction.

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

SECTION 14. ORS 676.622 is amended to read:

676.622. (1) A transaction conducted through a state or local system or network that provides electronic access to the Health Licensing Office information and services is exempt from any requirement under ORS 675.360 to 675.410, 676.575 to 676.625, [676.800,] 676.992, 680.500 to 680.565, 687.405 to 687.495, 688.701 to 688.734, 688.800 to 688.840, 690.005 to 690.225, 690.350 to 690.410, 691.405 to 691.485 and 694.015 to 694.170 and ORS chapter 700 **and sections 3 and 4 of this 2015 Act**, and rules adopted thereunder, requiring an original signature or the submission of handwritten materials.

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

SECTION 15. ORS 676.805 is amended to read:

676.805. In the manner prescribed in ORS chapter 183 for contested cases, the Health Licensing Office may impose a form of discipline listed in ORS 676.612 against any person licensed or registered under [ORS 676.800] **section 3 or 4 of this 2015 Act** for any of the prohibited acts listed in ORS 676.612 and for any violation of a rule adopted under [ORS 676.800] **section 3 or 4 of this 2015 Act**.

SECTION 16. 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 thereunder:

- (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 675.360 to 675.410 (sex offender treatment);
- (j) ORS 678.710 to 678.820 (nursing home administrators);
- (k) ORS 691.405 to 691.485 (dietitians);
- (L) ORS 676.612 (prohibited acts); and
- (m) [ORS 676.800] **Sections 3 and 4 of this 2015 Act** (applied behavior analysis).

(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 pursuant to 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 17. A health benefit plan as defined in ORS 743.730 may establish credentialing requirements for the provision of applied behavior analysis as defined in section 1 of this 2015 Act by licensed health care professionals as defined in section 1 of this 2015 Act, by behavior analysts or assistant behavior analysts licensed by the Behavior Analysis Regulatory Board or by behavior analysis interventionists registered by the Health Licensing Office.

SECTION 18. Sections 1 and 3 to 5 of this 2015 Act and the amendments to ORS 676.160, 676.583, 676.610, 676.613, 676.622, 676.800, 676.805 and 676.992 and sections 2, 4 and 24, chapter 771, Oregon Laws 2013, by sections 2, 6 to 9 and 11 to 16 of this 2015 Act apply to an individual licensed as a behavior analyst or assistant behavior analyst by the Behavior Analysis Regulatory Board or registered as a behavior analysis interventionist by the Health Licensing Office on or after the operative date specified in section 19 of this 2015 Act.

SECTION 19. (1) Sections 1, 3 to 5, 10 and 18 of this 2015 Act and the amendments to ORS 676.160, 676.583, 676.610, 676.613, 676.622, 676.800, 676.805 and 676.992 and sections 2, 4 and 24, chapter 771, Oregon Laws 2013, by sections 2, 6 to 9 and 11 to 16 of this 2015 Act become operative on November 1, 2015.

(2) The Behavior Analysis Regulatory Board, the Governor 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, the Governor or the office to exercise, on or after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the board, the Governor and the office by sections 1, 3 to 5, 10 and 18 of this 2015 Act and the amendments to ORS 676.160, 676.583, 676.610, 676.613, 676.622, 676.800, 676.805 and 676.992 and sections 2, 4 and 24, chapter 771, Oregon Laws 2013, by sections 2, 6 to 9 and 11 to 16 of this 2015 Act.

SECTION 20. This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.

Passed by Senate June 10, 2015

.....
Lori L. Brocker, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House June 23, 2015

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2015

Approved:

.....M,....., 2015

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2015

.....
Jeanne P. Atkins, Secretary of State

Policy



Rulemaking schedule

HEALTH LICENSING OFFICE
Behavior Analysis Regulatory Board

Date	Action	Time
July 6, 2015	SB 696 signed	
June 18, 2015	List RAC stakeholders	1:30 p.m.
June 19, 2015	Public communication with interest forms	1:30 p.m.
July 16, 2015	board meeting – administrative rules work and vote on RAC representatives	1:30 p.m.
Aug. 4, 2015	RAC meeting to discuss portions of draft rules	9 a.m. to noon
Aug. 13, 2015	In-person board meeting – approve proposed rules and new application/declaration forms and materials	1:30 p.m.
Sept. 1, 2015	Proposed rules in the Oregon Bulletin	8 a.m.
Sept. 10, 2015	Board meeting	1:30 p.m.
Sept. 30, 2015	Public hearing for rules	9 a.m. 11 a.m.
Oct. 29, 2015	Board meeting – approve permanent rules	1:30 p.m.
Nov. 1, 2015	New rules take effect – start taking declarations	

Please send all public comment or questions to:

Anne Thompson, Policy Analyst

700 Summer St NE, Suite 320, Salem, OR 97301-1287

anne.p.thompson@state.or.us . Work: (503) 373-1917

All meetings are held at the Health Licensing Office, Rhoades Conference Room, 700 Summer St, Suite 320, Salem, OR 97301, unless otherwise specified. Members of the public are invited and encouraged to attend all board and committee meetings. However, audience members will not be allowed to participate.

Rules Advisory Committee



June 26, 2015

A Rules Advisory Committee is being formed to provide consultation and recommendations to the Health Licensing Office (Office) and the Behavior Analysis Regulatory Board. The RAC will meet from 9 a.m. to noon on Aug. 4, 2015, at the Health Licensing Office in Salem. A teleconference option will be available for RAC members only.

The composition is:

1. Oregon Association for Behavior Analysis (2 representatives who practice behavior analysis)
2. Autism Speaks (1)
3. Oregon Insurance Division (1)
4. Insurance plan representative (1)
5. Autism Society of Oregon (1)
6. Consumer/parent of someone who uses ABA services (2)
7. Public member (1)
8. Faculty member from a 4-year accredited university with a program in behavior analysis (1)
9. Behavior Analysis Regulatory Board member (1)

If you would like to participate in the RAC, fill out the attached interest form and send it to:

Anne Thompson

700 Summer St. NE Suite 320

Salem, OR 97301-1287 or anne.p.thompson@state.or.us

Forms will be accepted until 2 p.m. on July 10, 2015. If you are selected to be on the RAC, you will be notified by July 24, 2015.

Regards,

Anne Thompson

Policy Analyst



July 8, 2015

<http://www.oregon.gov/OHLA/Pages/index.aspx>

A Rules Advisory Committee is being formed to provide consultation and recommendations to the Health Licensing Office (Office) and the Behavior Analysis Regulatory Board. The RAC will meet from 9 a.m. to noon on Aug. 4, 2015, at the Health Licensing Office in Salem. A teleconference option will be available for RAC members only. The Office is adding two more people to the RAC. **They are marked in yellow, and the deadline for submitting the attached interest form is 2 p.m. on July 15, 2015.**

The deadline for the other members of the RAC is unchanged; it is 2 p.m. on July 10, 2015.

The composition is:

1. Oregon Association for Behavior Analysis (2 representatives who practice behavior analysis)
2. Autism Speaks (1)
3. Oregon Insurance Division (1)
4. Insurance plan representative (1)
5. Autism Society of Oregon (1)
6. Consumer/parent of someone who uses ABA services (2)
7. Public member (1)
8. Faculty member from a 4-year accredited university with a program in behavior analysis (1)
9. Behavior Analysis Regulatory Board member (1)
- 10. Behavior Analysis Interventionist – (1)**
- 11. An individual who was actively practicing applied behavior analysis on Aug. 14, 2013. (1)**

If you would like to participate in the RAC, fill out the attached interest form and send it to:

Anne Thompson

700 Summer St. NE Suite 320

Salem, OR 97301-1287 or anne.p.thompson@state.or.us

If you are selected to be on the RAC, you will be notified by July 24, 2015.

Regards,

Anne Thompson

Policy Analyst

Issue Statement

Issue

The Behavior Analysis Regulatory Board must choose who will attend the Aug. 4, 2015, rules advisory committee (RAC).

Sent in applications on time

- Barbara Avila – Behavior analysis interventionist
- Jenny Fischer – BCBA/Board chair
- Richard Fulton – Actively practicing on Aug. 14, 2013
- Melissa Gard – BCBA/clinician
- Audra Jensen – Practitioner and parent
- Emily Kearney – Interventionist
- Maria Lynn Kessler – ABA program faculty member (Oregon Institute of Technology)/ORABA vice president
- Julie Kornack – Center for Autism and Related Disorders (CARD)
- Amy Loukus – BCBA/assistant professor of applied psychology with an emphasis on applied behavior analysis
- Carol Markovics – developmental and clinical psychologist/service provider who uses Early Start Denver Model
- Tashia Sample – DCBS/insurance division, sitting in for Jeannette Holman
- Paul Terdal – Autism Speaks Oregon Chapter/consumer advocate

Categories	Name	Received late
Oregon Association for Behavior Analysis (2 practitioners)	Kessler	Gard
Autism Speaks (1)	Terdal	
Oregon Insurance Division (1)	Sample	
Insurance plan rep (1)		Tom Holt/Baker
Autism Society of Oregon (1)		Rates
Consumer/parent of someone who uses ABA services (2)	Jensen	
Public member (1)		
Faculty member/4-year accredited university with program in behavior analysis (1)	Loukus	Kessler?
BARB member (1)	Fischer	
Interventionist (1)	Avila	Kearney
Actively practicing ABA on Aug. 14, 2013 (1)	Fulton	
Other	Markovics	Kornack



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APPLICATION TO SERVE ON RULES ADVISORY COMMITTEE (RAC)

HLO Scheduling Information

Board/Council Name: Behavior Analysis Regulatory Board

Subject Matter: Rulemaking

Applications accepted through: 2 p.m. July 10, 2015

HLO's proposed time(s) and date(s) of commitment to the RAC process are:

Hours Per For the period/dates of: 9 a.m. to noon. Aug. 4, 2015

Applicant Information

Are you available for the time and date commitment indicated above: Yes No – If no, what dates would you be available:

Applicant Name: Barbara Avila

Address: 7739 SW Capitol Hwy, Suite 220

City: Portland

State: OR

Zip: 97219

Phone: Home Cell
503-349-5982

Business Phone:
503-432-8760

Email:
synergyautismcenter@gmail.com

Organization: Synergy Autism Center

Title: Owner & Family Social - Behavior Consultant

What perspective do you represent?

Behavior Analysis Interventionist. I provide behavior consultation for county and state families (K plan and CIIS). I feel it is a fundamental right that families continue to access our behavioral support services through medicaid and other types of insurance. I also represent the perspective of a small business owner holding contracts that would be severed if I am not grandfathered in – losing a large part of my business. There are several of us in the state who provide these services via contracts with the counties and state.

Describe your related experience and content expertise that would assist in this process.

I have almost 30 years of providing ABA and family support in the field of autism. Not only do I have long term perspective but I also have the training and experience in providing hands on behavior support in classrooms, clinics, and now in private practice with contracts with the county, state, public school system. I provide parent training in the use of ABA (tools and techniques) for getting out of crisis while understanding and targeting challenging behaviors for the long term.

Why are you interested in participating in this exercise?

I am extremely dedicated to continuing to be able to serve families through medicaid (county and state funding) who would not otherwise be able to afford behavioral training and support. I also provide services to private pay clients (training and guidance, also) who should be able to access my services via their insurance. I have been in the field for almost 30 years, trained in ABA, serving children for most of my career before turning to training parents. It is my strong professional opinion that training parents is KEY to children's success and needs to be available to parents via insurance.

Are you able to commit to reviewing materials resulting from committee meetings?

Yes No: Comments?

Describe other collaborative efforts you have been involved in and how you contributed.

I have twice been president of the Autism Society of Oregon and on the board on and off for the last 15 years. I have been deeply involved with the autism community on many levels. I also started and coordinated the Portland Autism Group: www.portlandautism.com approximately 7 years ago. This has been a wonderful collaborative process in ensuring high quality services to the Portland Metro community.



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Hours Per For the period/dates of: 9 a.m. to noon. Aug. 4, 2015

Applicant Information

Are you available for the time and date commitment indicated above: Yes No – If no, what dates would you be available:

Applicant Name: Jenny Fischer

Address: 905 NE 9th St

City: Bend **State:** OR **Zip:** 97701

Phone: Home Cell **Business Phone:** **Email:**
541-480-2570 jenny.fischer@cascadebehavior.com

Organization: BARB, Cascade Behavioral Intervention **Title:** BCBA/LBA

What perspective do you represent?

I am a Licensed Behavior Analyst/BCBA and Chair of the Behavior Analysis Regulatory Board. I am also the owner of an agency providing ABA services in Central and Southern Oregon, and can provide information about the issues affecting rural providers.

Describe your related experience and content expertise that would assist in this process.

As a member of the BARB, I can offer insight into the rulemaking process to date. Additionally, I was actively involved in the legislative process for SB365 and SB696. As a provider working in rural areas, I can provide input about issues affecting consumers and providers who work outside of metropolitan areas.

Why are you interested in participating in this exercise?

Having been actively involved in the development of ABA in Oregon Over the past 8 years, the development of rules that affect the field, behavior analysts, and consumers is of great interest to me. I would like to work with the committee to develop rules that protect consumers and the integrity of the field.

Are you able to commit to reviewing materials resulting from committee meetings?

Yes No: Comments?

Describe other collaborative efforts you have been involved in and how you contributed.

I was involved in the legislative workgroup for SB365, and have been on the BARB since it was created. I also participated in an ethics workgroup for the Behavior Analyst Certification Board in 2014. When contributing to collaborative efforts, I work to understand the potential short and long term impacts for all parties involved, with a particular focus on protecting consumers and the quality of services.



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APPLICATION TO SERVE ON RULES ADVISORY COMMITTEE (RAC)

HLO Scheduling Information

Board/Council Name: Behavior Analysis Regulatory Board

Subject Matter: Rulemaking

Applications accepted through: 2 p.m. July 10, 2015

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Hours Per For the period/dates of: 9 a.m. to noon. Aug. 4, 2015

Applicant Information

Are you available for the time and date commitment indicated above: Yes No – If no, what dates would you be available:

Applicant Name: Richard H. Fulton

Address: 8902 NE Sacramento St.

City: Portland

State: OR

Zip: 97220

Phone: Home Cell
503-758-1098

Business Phone:
same

Email:
consultingforsuccesspdx@gmail.com

Organization: Independent contractor, behavior consultant

Title: Behavior consultant

What perspective do you represent?

I'm not sure I understand this question, but I am trained in positive behavior supports and I use ABA-based interventions. I am a former special education teacher. From email: I would fall under 11. An individual who was actively practicing applied behavior analysis on Aug. 14, 2013.

Describe your related experience and content expertise that would assist in this process.

I have recently begun using my knowledge of behavior intervention in private practice as a behavior consultant. I am working towards BCBA certification.

Why are you interested in participating in this exercise?

This committee will be advising on rules that may affect me and my business.

Are you able to commit to reviewing materials resulting from committee meetings?

Yes No: Comments?

Describe other collaborative efforts you have been involved in and how you contributed.

Currently involved with Oregon Behavior Consultants Coalition and am acting as liaison (SIC) to OIS steering committee. I am an original member.



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Applicant Information

Are you available for the time and date commitment indicated above: Yes No – If no, what dates would you be available:

Applicant Name: Melissa Gard

Address: 2525 SE 41st Ave.

City: Portland **State:** OR **Zip:** 97202

Phone: Home Cell **Business Phone:** **Email:**
612-432-4135 melissa4135@gmail.com

Organization: ORABA/Building Bridges **Title:** BCBA

What perspective do you represent?

Professional behavior analyst/clinician

Describe your related experience and content expertise that would assist in this process.

I have been providing intensive ABA treatment for children with autism for 15 years. I also am a part of training therapists within a clinic setting and via graduate classes.

Why are you interested in participating in this exercise?

Because it is my civic duty. Also the rules developed by the BARB will directly impact the quality of ABA care that Oregonians can access, and it is my hope that the perspective I could provide (based on my experience and expertise) would be useful for the BARB.

Are you able to commit to reviewing materials resulting from committee meetings?

Yes No: Comments?

Describe other collaborative efforts you have been involved in and how you contributed.

From a clinical perspective, I collaborate regularly with other care providers, including schools, OTs, SLPs, and medical professionals. Contributions include dissemination of information regarding treatment with me, and working with different environments to accommodate the specific needs of those environments while maintaining consistency of the child's treatment.



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Hours Per For the period/dates of: 9 a.m. to noon. Aug. 4, 2015

Applicant Information

Are you available for the time and date commitment indicated above: Yes No – If no, what dates would you be available:

Applicant Name: Audra Jensen

Address: 9901 NE 7th Ave. Suite C-116

City: Vancouver **State:** WA **Zip:** 98685

Phone: Home Cell **Business Phone:** **Email:**
360-619-2462 360-571-2440 audra@autismabc.org

Organization: Autism Behavioral Consulting **Title:** executive director

What perspective do you represent?

Parent of a young man with autism, certified behavior analyst and owner of ABA clinic in Vancouver and Portland.

Describe your related experience and content expertise that would assist in this process.

I bring the perspective of both parent and practitioner.

Why are you interested in participating in this exercise?

To help develop rules and regulations to further assist families to receive high-quality and effective services for their children with disabilities.

Are you able to commit to reviewing materials resulting from committee meetings?

Yes No: Comments?

Describe other collaborative efforts you have been involved in and how you contributed.

In addition to being a parent and behavior analyst and having those collaborative experiences, I was also a special education teacher and worked extensively in that collaborative field.



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Board/Council Name: Behavior Analysis Regulatory Board

Subject Matter: Rulemaking

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Hours Per For the period/dates of: 9 a.m. to noon. Aug. 4, 2015

Applicant Information

Are you available for the time and date commitment indicated above: Yes No – If no, what dates would you be available:

Applicant Name: Emily Kearney

Address: 5606 NE 34th Avenue

City: Portland **State:** OR **Zip:** 97211

Phone: Home Cell **Business Phone:** **Email:**
503-703-1067 emilyr Kearney@gmail.com

Organization: Building Bridges **Title:** Behavior Interventionist

What perspective do you represent?

Behavior Analysis Interventionist

Describe your related experience and content expertise that would assist in this process.

I have been an interventionist practicing ABA since 1999. I have a Master's degree in special education and have practiced ABA with a wide range of ages (2-13) and diagnoses (Autism, Down Syndrome, epilepsy, Fragile X, ADHD, etc.). I have worked in the public school system and private agencies teaching social skills groups, conducting 1:1 ABA therapy, and providing parent and staff training. I am currently enrolled in the last class of a Master's level course sequence in ABA at Florida Institute of Technology.

Why are you interested in participating in this exercise?

As I near completion of my ABA course certificate, I realize that even when I had 14 years of experience as an interventionist, I still had so much more to learn about the science and application of ABA, not just the intervention techniques. I believe that it is important for our clients to receive the best therapy possible, which means creating achievable yet high standards for the licensure of behavior analysts. I would love to use my experience working under supervisors with varying qualifications, and in different environments to work on the committee guiding these rules.

Are you able to commit to reviewing materials resulting from committee meetings?

Yes No: Comments?

Describe other collaborative efforts you have been involved in and how you contributed.



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Applicant Information

Are you available for the time and date commitment indicated above: Yes No – If no, what dates would you be available:

Applicant Name: Maria Lynn Kessler

Address: 27500 Parkway Ave.

City: Wilsonville **State:** OR **Zip:** 97070

Phone: Home Cell **Business Phone:** **Email:**
541-892-1181 503-821-1308 marialynn.kessler@oit.edu

Organization: Oregon Institute of Technology/ORABA **Title:** Professor/vice president

What perspective do you represent?

Faculty member in an ABA program and VP of ORABA (professional organization)

Describe your related experience and content expertise that would assist in this process.

30 years of experience in behavior analysis; 12 years experience teaching behavior analysis at under graduate and graduate levels
MS and PhD in behavior analysis

Why are you interested in participating in this exercise?

I am interested in the development of the profession of behavior analysis in Oregon and access to quality services for families with autism. There is an obvious connection between the rules that the BARB and HLO establish and the academic training that Oregonians will need. It is important that we are all informed about the process to ensure that the training and the provisions for licensure are aligned.

Are you able to commit to reviewing materials resulting from committee meetings?

Yes No: Comments?

Describe other collaborative efforts you have been involved in and how you contributed.

I have participated in multiple meetings with various parties (service providers, consumers, representatives from insurance, representatives from ASO, Autism Speaks) regarding the legislative process - including the work that has contributed to the passage of SB 365 and SB 696 as well as the HERC review process. I contribute expertise about the profession of behavior analysis and about the academic training to prepare behavior analysts.



HEALTH LICENSING OFFICE

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APPLICATION TO SERVE ON RULES ADVISORY COMMITTEE (RAC)

HLO Scheduling Information

Board/Council Name: Behavior Analysis Regulatory Board

Subject Matter: Rulemaking

Applications accepted through: 2 p.m. July 10, 2015

HLO's proposed time(s) and date(s) of commitment to the RAC process are:

Hours Per For the period/dates of: 9 a.m. to noon. Aug. 4, 2015

Applicant Information

Are you available for the time and date commitment indicated above: Yes No – If no, what dates would you be available:

Applicant Name: Julie Kornack

Address: 6400 SW Rosewood Street

City: Lake Oswego

State: OR

Zip: 97035

Phone: Home Cell
818-419-8199

Business Phone:
818-345-2345

Email:
J.Kornack@centerforautism.com

Organization: Center for Autism and Related Disorders

Title: Sr. Public Policy Analyst

What perspective do you represent?

I represent the provider prospective with the goal of understanding other stakeholder perspectives and working collaboratively to identify and disseminate best practices. The Center for Autism and Related Disorders (CARD) is among the world's largest providers of evidence-based autism treatment. I work with legislatures, advocates, and providers across the United States to ensure that legislation, insurance industry practices, and implementation of Medicaid benefits facilitate access to evidence-based autism treatment.

Describe your related experience and content expertise that would assist in this process.

I have served on several state government and national workgroups that were created to draft, analyze, clarify, and/or amend autism-related statutes and billing practices. I have expertise in state and federal mental health parity laws and state autism insurance reform mandates. Most recently, I provided input on SB 696 regarding requirements for the BAI; served on the State of Oregon Insurance Division Advisory Committee on Mental Health Parity; was co-editor of the book Evidence-Based Treatment for Children with Autism; currently serve on California's Department of Health Care Services Pre-Planning Advisory Group to implement the Medicaid benefit for children with autism; and am a member of the Applied Behavior Analysis CPT Code Revision Workgroup.

Why are you interested in participating in this exercise?

Autism treatment is somewhat unique, making stakeholder involvement all the more critical. Oregon has a long history of working to provide services to individuals with autism, even before its mandate facilitated funding for these services. I am hopeful that my participation will help the committee craft rules that ensure unbridled access to top-quality, evidence-based autism treatment. Rule-making often impacts the autism community more than the actual statutes that engender the rule-making, and I think my background can contribute meaningfully to this process in Oregon.

Are you able to commit to reviewing materials resulting from committee meetings?

Yes No: Comments?

Describe other collaborative efforts you have been involved in and how you contributed.

3/15: State of Oregon Insurance Division Advisory Committee on Mental Health Parity -- worked with the committee to clarify the difference between educational and medically necessary benefits, as well as appropriate locations of service

02/15 to Present: Provider Representative, Applied Behavior Analysis CPT Code Revision Workgroup-- collaborating with providers, insurance industry representatives, and ABA organizations to analyze and amend new AMA billing codes

09/14 to Present: Provider Representative, State of CA Pre-Planning Advisory Group of the Department of Health Care Services Medicaid Autism Benefit Implementation - Identified service gaps in transition from regional centers to MCOs

02/14 - Analyzed network adequacy for State of California Senate Select Committee on Autism Spectrum Disorders



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Applicant Information

Are you available for the time and date commitment indicated above: Yes No – If no, what dates would you be available:

Applicant Name: Amy Loukus, MS, BCBA

Address: 2910 Front St.

City: Klamath Falls **State:** OR **Zip:** 97601-1276

Phone: Home Cell **Business Phone:** **Email:**
(562) 508-7939 akloukus@me.com

Organization: **Title:**

What perspective do you represent?

As an independent consultant and Assistant Professor of Applied Psychology (emphasis: Applied Behavior Analysis) at Oregon Institute of Technology, I represent the perspective of the Southern Oregon region.

Describe your related experience and content expertise that would assist in this process.

In the past 7 years, I have developed/delivered courses at the undergraduate and graduate levels, have served as a supervisor for candidates seeking certification as a BCBA and BCaBA through the Behavior Analysis Certification Board. I have engaged in behavioral consultation in three states, applying behavior analytic methods at the individual (consumer), supervisory (departmental), and organizational levels to promote positive changes in behavior.

Why are you interested in participating in this exercise?

I wish to extend my understanding of the various positions being taken with respect to the rules for practicing ABA in Oregon, and hope to provide additional insight from my experience practicing outside of the state to inform the collaborative.

Are you able to commit to reviewing materials resulting from committee meetings?

Yes No: Comments?

Describe other collaborative efforts you have been involved in and how you contributed.

Throughout my graduate and professional training, I have delivered presentations as part of collaborative symposia, and participated in various professional workshops designed to disseminate information regarding the practice of Applied Behavior Analysis. My role has varied from coordinator to presenter, and I have often been asked to review documents resulting from such collaborations for accuracy.



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Applicant Information

Are you available for the time and date commitment indicated above: Yes No – If no, what dates would you be available:

Applicant Name: Carol B. Markovics, Ph.D.

Address: Ste. 130, 8050 SW Warm Springs St.

City: Tualatin

State: OR

Zip: 97062

Phone: Home Cell
503-655-2128

Business Phone:
503-563-5280

Email:
dr.carol@me.com

Organization: Play2Grow Behavioral Therapy

Title: Psychologist/Owner

What perspective do you represent?

I am a developmental and clinical psychologist with 19 years experience in working with individuals with autism and their families (more than 40 years as a child and adult psychologist). My colleagues and I are providing intensive behavioral therapy using the Early Start Denver Model, an ABA approach using naturalistic environments.

Describe your related experience and content expertise that would assist in this process.

I have worked with individuals with autism for 19 years and bring a developmental and behavioral perspective to the diagnosis and treatment of those on the spectrum. I have been involved with the effort to extend and support intensive treatment since my move to Oregon 6 yrs. ago. As a psychologist, I think I offer a broader perspective to the issues of treatment and training.

Why are you interested in participating in this exercise?

I want to be involved with setting reasonable guidelines for those involved with treating individuals with ASD since I will be supervising and training paraprofessionals and interfacing with other professionals serving this population.

Are you able to commit to reviewing materials resulting from committee meetings?

Yes No: Comments?

Describe other collaborative efforts you have been involved in and how you contributed.

I have been a member of the subcommittee of the Oregon Commission on Autism whose task was to make recommendations regarding insurance coverage for treatment of those with ASD. I am a member of the Oregon Association for Behavioral Analysis, a group consisting of BCBA's and BCaBA's. I am a cofounder of a therapy practice consisting of an interdisciplinary, collaborative team of professionals who treat children.



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Applicant Information

Are you available for the time and date commitment indicated above: Yes No – If no, what dates would you be available:

Applicant Name: Tashia Sample

Address: 350 Winter St NE

City: Salem

State: Oregon

Zip: 97301

Phone: Home Cell
503-983-0253

Business Phone:
503-947-7210

Email:
tashia.m.sample@oregon.gov

Organization: State of Oregon - DCBS - Insurance Division

Title: Compliance Specialist 3,
Lead Health Forms Analyst

What perspective do you represent?

As an employee of the Oregon Insurance Division (OID) I will represent the OID's mission to protect consumers and regulate the insurance industry. As a Forms Analyst, I will provide perspective of insurance coverage language and how providers are portrayed in insurance contracts.

Describe your related experience and content expertise that would assist in this process.

The Oregon Insurance Division (OID) regulates many aspects of insurance coverage - including ensuring that insurance contract language complies with coverage requirements found in state and federal law. Mental Health Parity, and access to services and providers, has become a constant topic of discussion at the OID as we move carriers into compliance. As part of reviewing insurance contracts and policies I have experience with how carriers construct benefit and provider access for all conditions, including mental health conditions. To determine compliance I have studied state and federal law (including laws on Mental Health Parity); read the Diagnostic and Statistical Manual of Mental Disorders; and researched treatment issues and options. In early 2015, I participated in OID's Mental Health Rulemaking Advisory committee (which revised OAR 836-053-1404) as a Internal Advisory committee member. I provide information and research on conditions and treatment to Oregon insurers as well as coworkers in various sections of OID.

Prior to working in the Forms Section at OID I worked in the Senior Health Insurance Benefits Assistance Program (SHIBA) which provides information and expertise to individuals on Medicare due to both age and disability. Medicare beneficiaries under 65 may be eligible for Medicare due to a number of disabling conditions - including mental health conditions. While with SHIBA I worked with consumers on provider access; understanding Medicare billing and payment of mental health conditions; and, medication management. Prior to working with SHIBA I volunteered with the program in rural Harney County assisting residents with gaining access to coverage of prescription drugs and learning about provider access in rural Oregon.

Why are you interested in participating in this exercise?

Jeannette Holman asked that I fill her place for the August 4th meeting. SB 365 (2013) and SB 696 (2015) provides an access route for ABA therapy - which is a coverage requirement for insurance companies offering health benefit plans in Oregon. As an Oregon Insurance Division (OID) employee and Forms Analyst I have a strong interest in understanding the requirements the Behavior Analysis Regulatory Board (BARB) sets for licensure of behavior analysts and assistant behavior analysts. As an OID Forms Analyst I am also interested in providing any insight or answering any questions the board members may have in Jeannette's place.

Are you able to commit to reviewing materials resulting from committee meetings?

Yes No: Comments?

Describe other collaborative efforts you have been involved in and how you contributed.

Daily I work with a team of five individuals in charge of reviewing and approving health insurance contracts. I currently serve as an Oregon Insurance Division (OID) Health Forms Analyst Lead where I am in charge of reading state and federal law and providing determinations on how regulations impact contract language. I utilize internal policy resources (including policy analysts) and external resources when necessary (including OID counsel at the Department of Justice) to help with my daily work. When necessary I provide briefing papers OID staff regarding different topics of interest in health insurance.

In 2015, I was involved with the Discretionary Clause, Mental Health Parity, and Essential Health Benefit Plan Internal Advisory Committees for OID rulemaking. As an Internal Advisor, I answered questions presented by the committee and provided research materials when necessary. I also provide updates to my managers or other OID employees regarding current work on various committees or projects.

During my time with the Senior Health Insurance Benefits Assistance Program (SHIBA) I was involved with organizing a state training for Long Term Care Ombudsmen and SHIBA volunteers. For several months I worked with a cross-agency team to develop a conference designed to educate volunteers in both organizations. My work included recruiting experts to speak, organizing meeting space, making conference lodging arrangements for approximately 100 SHIBA volunteers, and creating the meeting agenda and necessary handouts for participants.



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Applicant Information

Are you available for the time and date commitment indicated above: Yes No – If no, what dates would you be available:

Applicant Name: Paul Terdal

Address: 700 NW Macleay Blvd

City: Portland

State: OR

Zip: 97210

Phone: Home Cell
(503)984-2950

Business Phone:
(503)984-2950

Email:
paul@terdal.org

Organization: Autism Speaks / Parent of Children using ABA

Title: Oregon Policy Chair

What perspective do you represent?

I am the Autism Speaks Oregon Chapter Policy Chair, and the parent of two children who use ABA services. I am a consumer advocate.

Describe your related experience and content expertise that would assist in this process.

I was active in writing the 2013 SB365 which created the BARB, and 2015 SB696 which revised it. I have been leading consumer advocacy for coverage of ABA services in Oregon since 2009, and have assisted consumers and providers with appeals resulting in well over \$1 million in reimbursements for ABA. I led consumer and provider advocacy for the HERC review of ABA coverage in OHP.

Why are you interested in participating in this exercise?

I have worked closely in developing the underlying statutes that these rules will implement. Providing advice through the RAC process is the final step in that policy making process.

I have also worked with many consumers and providers of ABA services and can provide feedback reflecting the different perspectives and needs of these varying constituencies.

Are you able to commit to reviewing materials resulting from committee meetings?

Yes No: Comments?

Describe other collaborative efforts you have been involved in and how you contributed.

Helped develop 2013 SB365 and 2015 SB696. Represented consumers on Rules Advisory Committees for DCBS (Essential Health Benefits / External Review, Discretionary Clauses, SB414, Mental Health Parity, others) and OHA (ABA coverage in OHP).



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Applicant Information

Are you available for the time and date commitment indicated above: Yes No – If no, what dates would you be available:

Applicant Name: Jennifer Baker, Cambia Health Solutions

Address: 200 SW Market St, M/S E12A

City: Portland **State:** OR **Zip:** 97201

Phone: Home Cell **Business Phone:** **Email:**
503-577-8856 503-525-6523 Jennifer.baker@cambiahealth.com

Organization: Cambia Health Solutions **Title:** Regulatory Affairs Specialist

What perspective do you represent?

We represent the health benefit insurance plan perspective.

Describe your related experience and content expertise that would assist in this process.

I participated in all the rulemaking workgroups related to implementation of mental health parity and SB 365. I am familiar with the networking issues related to BARB.

Why are you interested in participating in this exercise?

I am interested in participating so we can better implement a network approval process for BARB at Cambia Health Solutions (Regence BlueCross BlueShield and Bridgespan).

Are you able to commit to reviewing materials resulting from committee meetings?

Yes No: Comments?

Describe other collaborative efforts you have been involved in and how you contributed.

I have participated in countless rulemakings with the Oregon Insurance Division, particularly those related to mental health parity and ABA Therapy.



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Applicant Information

Are you available for the time and date commitment indicated above: Yes No – If no, what dates would you be available:

Applicant Name: Tobi Rates

Address: PO Box 69635

City: Portland

State: OR

Zip: 97239

Phone: Home Cell
503-821-9707

Business Phone:
503-636-1676

Email:
Tobi@AutismSocietyOregon.org

Organization: Autism Society of Oregon

Title: Executive Director

What perspective do you represent?

Autism Society of Oregon (representing parents and individuals impacted by autism)

Describe your related experience and content expertise that would assist in this process.

As Executive Director of the Autism Society of Oregon, I was part of the workgroup that led to SB 365 and have been involved in legislative efforts under SB 696. I am also the parent of two children on the autism spectrum.

Why are you interested in participating in this exercise?

Have been involved with SB365 and SB 696 as part of advocacy efforts of the Autism Society of Oregon

Are you able to commit to reviewing materials resulting from committee meetings?

Yes No: Comments?

Describe other collaborative efforts you have been involved in and how you contributed.

working collaboratively with other autism groups (example, Autism Speaks, Portland Asperger's Network), governmental agencies (ex, ODDS, OHA), and provider organizations (ex, ORABA).

Public/Interested Parties' Feedback

July 15, 2015

Paul Terdal
700 NW Macleay Blvd
Portland, OR 97210

Holly Mercer, Director
Health Licensing Office, Behavior Analysis Regulatory Board,
700 Summer St. NE, Suite 320,
Salem, OR 97301

Regarding: Appointment of Rules Advisory Committee

Dear Behavior Analysis Regulatory Board and Health Licensing Office,

I appreciate the decision of the Health Licensing Office (HLO) and Behavior Analysis Regulatory Board (BARB) to appoint a Rules Advisory Committee (RAC).

From a review of the BARB meeting minutes from 5/29/2015 and 6/18/2015, my understanding is that the first phase of the RAC will cover three topics:

- Development of the declaration that an individual was actively practicing applied behavior analysis as of Aug. 14, 2013;
- The registration of behavior analysis interventionists;
- Renewals and continuing education

I understand that the BARB intends to “select who will attend the RAC at the July 16 meeting” (per 6/18/2015 meeting minutes).

I have two concerns, and some recommendations.

Mixed Jurisdiction between BARB and HLO

First, of the three topics, only one – “renewals and continuing education” – is under the jurisdiction of the BARB. The BARB should of course be responsible for selecting and managing a RAC to consider “renewals and continuing education” for those individuals licensed by the BARB, consistent with requirements in ORS 183.333 and other regulations (see below).

However, the other two topics (“Development of the declaration that an individual was actively practicing applied behavior analysis as of Aug. 14, 2013” and “The registration of behavior analysis interventionists”) are not under the BARB’s jurisdiction – under SB696, they are now directly under the jurisdiction of the Health Licensing Office. The BARB has no role in approving rules on these topics, except as one of many stakeholders. The BARB should not, therefore, be making decisions about “who will attend the RAC” (with the exception of its own delegate).

Representation by Key Stakeholders

Second, the list of participants may be appropriate for evaluation of “renewals and continuing education” for BARB-licensed behavior analysis or licensed assistant behavior analysts, but is not appropriate for issuing advice on “Development of the declaration that an individual was actively practicing applied behavior analysis as of Aug. 14, 2013” and “The registration of behavior analysis interventionists.”

ORS 183.333 specifies that the RAC should “represent the interests of persons likely to be affected by the rule...” and the RAC will provide recommendations on “whether the rule will have a significant adverse impact on small businesses....” Executive Order EO 03-01 also requires “input from regulated entities, other stakeholders, and citizens regarding the impact of current regulatory processes and the impact of making changes.” The members of the RAC, therefore, should be those who will be affected by the rule, with special consideration for small businesses that may be financially impacted.

Stakeholders for “Development of the declaration” for grandfathering:

The rules on “Development of the declaration” for grandfathering will primarily affect those individuals who were practicing ABA on August 14, 2013 who do not otherwise have recourse to licensure by the BARB or by another agency, due to current rules requiring BCBA certification. There are several small businesses in Oregon that provide ABA services by grandfathered but unlicensed and uncertified providers that will be greatly affected by these rules – *they* are the primary stakeholders.

Consumers, who may be receiving services from a grandfathered provider, and Insurers, who may be asked to pay for services from a grandfathered provider, are also relevant stakeholders.

Many of the other individuals listed in the RAC – such as licensed behavior analysts – may be useful for technical advice, but don’t meet the legal criteria as stakeholders under ORS 183.333 or EO 03-01, since they won’t be affected by the rule on the grandfathering declaration.

Stakeholders for “registration of behavior analysis interventionists”:

For the rules on “registration of behavior analysis interventionists,” the list of stakeholders is appropriate, but incomplete: the licensed behavior analysts included in the RAC membership list will of course train and supervise interventionists, but other SB696 licensed health care professionals – such as psychologists, SLPs, or OTs who practice ABA – should be included as well. These SB696 licensed healthcare professionals – who have been omitted from the RAC membership list – may also train or employ interventionists, and their interests will need to be considered to comply with the requirements of ORS 183.333 and EO 03-01.

Recommendations:

- Since the rules are distinct, have separate groups of stakeholders, and by statute are to be enacted by different government agencies (BARB vs. HLO), there should really be two RACs:
 - One RAC under the jurisdiction of the BARB, covering “renewals and continuing education,” with members to be selected by the BARB
 - One RAC under the jurisdiction of the HLO, covering “Development of the declaration...” and “The registration of behavior analysis interventionists,” with members selected by HLO.
- Membership of the HLO’s RAC on “Development of the declaration...” and “The registration of behavior analysis interventionists” should be revised:
 - Increase the number of “individuals who were actively practicing applied behavior analysis on Aug. 14, 2013” from one to at least two or more – and include only those who would not meet current BARB licensing or registration requirements (e.g., without a BCBA or other health license)
 - Add one or two licensed healthcare professionals who may need to train or supervise an interventionist
 - The five consumer / public members (Autism Speaks, Autism Society, consumers, other members of the public) can be consolidated if necessary to reduce excess headcount
- For RACs under the BARB’s jurisdiction (e.g., the proposed rules on “renewals and continuing education”), BARB members who are making decisions about rules should view this as an opportunity to interact directly with key stakeholders to get ideas, and discuss alternatives.
 - BARB members should take an active role in managing or leading the RAC discussion, with assistance from staff to organize, plan, and give procedural advice.

Summary:

Again, I appreciate the decision by the BARB and Health Licensing Office to appoint a Rules Advisory Committee to seek input from stakeholders on rules – this is an excellent step, and I encourage you to make the most of this opportunity to seek input and interact with those who will be impacted by the rules.

Sincerely,

Paul Terdal

Attachments:

- Exhibit A: ORS 183.333 on Rules Advisory Committees
- Exhibit B: Executive Order EO 03-01 on Regulatory Streamlining
- Exhibit C: Excerpts from DoJ Administrative Law Manual on Rules Advisory Committees

ORS 183.333 on Rules Advisory Committees

ORS 183.333 Policy statement

- public involvement in development of policy and drafting of rules
- advisory committees

(1) The Legislative Assembly finds and declares that it is the policy of this state that whenever possible the public be involved in the development of public policy by agencies and in the drafting of rules. The Legislative Assembly encourages agencies to seek public input to the maximum extent possible before giving notice of intent to adopt a rule. **The agency may appoint an advisory committee that will represent the interests of persons likely to be affected by the rule,** or use any other means of obtaining public views that will assist the agency in drafting the rule.

(2) Any agency in its discretion may develop a list of interested parties and inform those parties of any issue that may be the subject of rulemaking and invite the parties to make comments on the issue.

(3) If an agency appoints an advisory committee for consideration of a rule under subsection (1) of this section, **the agency shall seek the committees recommendations on whether the rule will have a fiscal impact, what the extent of that impact will be and whether the rule will have a significant adverse impact on small businesses. If the committee indicates that the rule will have a significant adverse impact on small businesses, the agency shall seek the committees recommendations on compliance with ORS 183.540 (Reduction of economic impact on small business).**

(4) An agency shall consider an advisory committees recommendations provided under subsection (3) of this section in preparing the statement of fiscal impact required by ORS 183.335 (Notice) (2)(b)(E).

(5) If an agency does not appoint an advisory committee for consideration of a permanent rule under subsection (1) of this section and 10 or more persons likely to be affected by the rule object to the agency's statement of fiscal impact as required by ORS 183.335 (Notice) (2)(b)(E) or an association with at least 10 members likely to be affected by the rule objects to the statement, the agency shall appoint a fiscal impact advisory committee to provide recommendations on whether the rule will have a fiscal impact and what the extent of that impact will be. An objection under this subsection must be made not later than 14 days after the notice required by ORS 183.335 (Notice) (1) is given. If the agency determines that the statement does not adequately reflect the rule's fiscal impact, the agency shall extend the period for submission of data or views under ORS 183.335 (Notice) (3)(a) by at least 20 days. The agency shall include any recommendations from the committee in the record maintained by the agency for the rule.

(6) Subsection (5) of this section does not apply to any rule adopted by an agency to comply with a judgment or a settlement of a judicial proceeding.

(7) If an agency is required by law to appoint an advisory committee under this section, the agency may not appoint an officer, employee or other agent of the agency to serve as a member of the advisory committee. [2003 c.749 §4; 2005 c.807 §4; 2013 c.273 §1]



EXECUTIVE ORDER NO. EO 03-01

REGULATORY STREAMLINING

Pursuant to my authority as Governor of the State of Oregon, I find that:

Oregon's economy is in distress. To meet this challenge, it is my highest priority over the next four years to facilitate the growth of jobs and stimulate the economy. The private sector is the engine of growth for the economy. As such, my economic development agenda seeks to create a stable climate for investment and a secure environment for business.

Governmental regulatory programs serve important goals in protecting Oregon citizens and making our state a better place to live. But, over time, regulatory processes can become outdated and inflexible. When this happens, those regulations impose unnecessary burdens on those who are regulated. Moreover, overlapping regulations and those which are inconsistently applied can result in confusion, wasted time, and duplication of effort.

The state must become more efficient and accountable to facilitate the growth of jobs and create a business suitable environment as well as to appropriately protect its citizens and our quality of life. To enable the private sector to more easily do business, and to encourage economic investment and opportunity in Oregon, state government must streamline its regulatory processes and eliminate duplicative practices. To continue protecting Oregon and our quality of life, streamlining must be accomplished without compromising necessary standards in areas such as environmental protection, land use, consumer rights, and health and safety.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. All state agencies that regulate business activities in Oregon shall review their regulations and regulatory processes and identify opportunities to streamline those processes to reduce regulatory burdens without compromising regulatory standards. A reviewing agency shall look for ways to achieve:
 - a. Consistency in interpretation and predictability in application of regulations on a statewide basis;
 - b. Flexible and problem-solving approaches in applying regulatory requirements, while maintaining compliance with underlying standards;
 - c. Better coordination and communication where government agencies have overlapping regulatory authority;



EXECUTIVE ORDER NO. 03-01
PAGE TWO

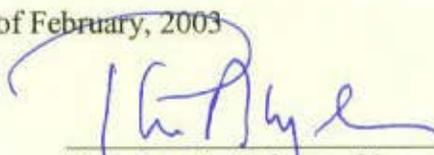
- d. Faster resolution of conflicting standards;
 - e. More timely, understandable and fair permit and approval processes;
 - f. Elimination of any unnecessary paperwork, reporting or review requirements;
 - g. "User-friendly" processes, including increased use of technology to facilitate doing business with government; and
 - h. Rapid implementation of necessary changes to regulations and processes that achieve the purpose of this Executive Order.
2. All state agencies that regulate business activities in Oregon shall review and evaluate their delivery of customer service and customer satisfaction. Upon completion of review, each state agency shall develop and submit a plan to address any identified weakness and improve customer service. Agencies shall design customer surveys and other means of measuring customer satisfaction to ensure open, honest and constructive feedback. Each agency's plan shall be submitted to the Office of Regulatory Streamlining for inclusion in its annual report to the Governor as set forth in paragraph 6 of this Executive Order.
 3. There is established an Office of Regulatory Streamlining, reporting to the Director of the Department of Consumer and Business Services. The Office of Regulatory Streamlining shall work with state agencies and other public and private sector stakeholders to oversee the development and execution of actions to carry out this Executive Order. The Office of Regulatory Streamlining shall:
 - a. Assist agencies in identifying opportunities for streamlining regulations and regulatory processes;
 - b. Assist agencies to execute appropriate changes to reduce regulatory burdens;
 - c. Collect and share information concerning streamlining efforts and best practices;
 - d. Work with agencies to clarify and streamline regulatory and permitting processes that may benefit from a coordinated approach, including processes that cross agency lines, processes that involve other levels of government, or those that have been identified as creating significant and recurring barriers to economic development;
 - e. Investigate possible changes to administrative procedure laws to increase flexibility in administering regulations;



EXECUTIVE ORDER NO. 03-01
PAGE THREE

- f. Assist each agency in establishing its customer surveys and reports to be provided to the Office of Regulatory Streamlining under paragraph 2 of this Executive Order; and
- g. Take all other necessary actions within the statutory authority of the Department of Consumer and Business Services to fulfill the purpose of this Executive Order.
4. The Community Solutions Office is directed to work with and provide assistance to the Office of Regulatory Streamlining in carrying out this Executive Order.
5. To fulfill the purposes of this Executive Order, the Office of Regulatory Streamlining and state agencies shall seek input from regulated entities, other stakeholders, and citizens regarding the impact of current regulatory processes and the impact of making changes.
6. All state agencies that regulate business activities in Oregon shall make regulatory streamlining efforts a priority, and shall periodically report to the Office of Regulatory Streamlining, as requested and in a form to be established by that Office, concerning regulatory streamlining activities and results achieved. The Office of Regulatory Streamlining shall report to the Governor, annually or as requested, concerning regulatory streamlining activities and accomplishments in accordance with the intent of this Executive Order.
7. By separate Executive Order ("EO 03-02"), a Blue Ribbon Commission, to be known as the Industrial Lands Taskforce is established to address issues relating to the permitting of industrial lands. The focus of the Office of Regulatory Streamlining will be on permitting and regulatory streamlining in areas not addressed by EO 03-02.

Done at Salem, Oregon this ____ day of February, 2003



Theodore R. Kulongoski
GOVERNOR

ATTEST:


Bill Bradbury
SECRETARY OF STATE



OREGON

ATTORNEY GENERAL'S

ADMINISTRATIVE LAW MANUAL

AND

UNIFORM AND MODEL RULES OF

PROCEDURE

UNDER THE

ADMINISTRATIVE PROCEDURES ACT



HARDY MYERS
Attorney General

Christine A. Chute, Assistant Attorney General
Editor-in-Chief

January 1, 2008

these exceptions to the notice and comment requirements narrowly. When in doubt, agencies should favor providing notice and an opportunity for public comment on rule changes. Even rule corrections allowed by ORS 183.335(7) must be filed with Legislative Counsel within ten (10) days. See p. 45 for a description of what to file with Legislative Counsel.

1. Advisory Committees and Public Input

Agencies are encouraged to seek public input to the maximum extent possible before giving notice of intent to adopt, amend or repeal a rule. ORS 183.333(1). Agencies may seek public input in any of a number of ways, including by using an advisory committee or asking interested parties for their comments before rulemaking begins. ORS 183.333(1) and (2). Governor has instructed agencies that regulate business activities to seek input from regulated entities, other stakeholders, and citizens on the impact of potential rule changes. EO 03-01.¹⁶ Agencies should also consider whether any of Oregon's nine federally recognized tribes may be affected by possible rulemaking and include tribal representatives when appropriate.¹⁷

The APA identifies two types of advisory committees: those involved in the development of the rule including the fiscal impact statement ("advisory committee") and those created, after rulemaking has started, to review the fiscal impact statement ("fiscal impact advisory committee"). ORS 183.333(1) and (5).

If an agency uses an advisory committee to develop the rules, the agency must seek the advisory committee's recommendations on the fiscal impact of any potential rule. If the advisory committee thinks that the potential rule will have a significant adverse fiscal impact on small businesses, the agency must seek the advisory committee's recommendations on mitigating the cost of compliance, as required by ORS 183.540. ORS 183.333(3). The agency must consider the advisory

¹⁶ See http://governor.oregon.gov/Gov/exec_orders.shtml.

¹⁷ ORS 182.164(2) requires state agencies to make a "reasonable effort to cooperate with [Oregon] tribes in the development and implementation of programs that affect tribes." See ORS 182.162 to 183.168 (requiring agencies to develop and implement policies that promote communication and positive government to government relations with tribes.)

committee's recommendations when developing the statement of fiscal impact required by ORS 183.335(2)(b)(E). ORS 183.333(4).¹⁸

If an agency does not consult an advisory committee to develop the proposed rule, the agency may be required to appoint a fiscal impact advisory committee. When ten or more persons likely to be affected by a rule (or an organization with at least ten members likely to be affected by the rule) object to an agency's fiscal impact statement, the agency must appoint a fiscal impact advisory committee. ORS 183.333(5).¹⁹ The fiscal impact advisory committee must provide recommendations on whether the rule will have a fiscal impact and, if so, what the extent of the fiscal impact will be. See Model Rule 137-001-0087. If, after consulting with a fiscal impact advisory committee, the agency decides that its original fiscal impact statement is inadequate, the agency must extend the public comment period by at least 20 days. ORS 183.333(5).

Model Rule 137-001-0007(2) provides that if the agency appoints an advisory committee, the advisory committee's meetings are open to the public. The Model Rule does not itself require compliance with the notice and other requirements of the Public Meetings Law,²⁰ but only that the public be allowed to attend advisory committee meetings.

The APA does not specify how advisory committees may be structured. Absent direction from the agency's enabling statutes or rules, the agency has broad discretion in that regard. As an example, an agency could solicit committee member nominations from stakeholders for particular "interest slots" on the committee. Or, the agency could identify and invite knowledgeable people to participate on the advisory committee.

¹⁸ See pp. 32 to 36 for a discussion of fiscal impact statements.

¹⁹ The procedure for objecting to fiscal impact statements and appointing a fiscal impact advisory committee does not apply to any rule adopted by an agency to comply with a court judgment or with the settlement of a court proceeding. ORS 183.333(6).

²⁰ ORS 192.610 to 192.710.

Practice Tip

If an advisory committee has authority to make recommendations to a public body, rather than a single agency head, and the committee makes its recommendations as a group, rather than as individuals, the advisory committee meetings will likely be subject to the Public Meetings Law. In that case, the committee must give notice of its meeting "to interested persons including news media," and minutes must be taken. See the OREGON ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL for more information.

The advisory committee must meet (by telephone or in person) before the rulemaking notice is finalized and filed. Other than the requirement to advise on fiscal impact, the APA requires no particular agenda.

Failure to use an advisory committee is not a basis for invalidating a rule, but agencies may find that using an advisory committee provides certain advantages. The advisory committee may be in a good position to assist with developing an effective rule and with the fiscal impact statement, based upon the members' expertise. In addition, if an agency uses an advisory committee, the agency may use an amended rule filing to correct any errors or deficiencies in the statement of fiscal impact. ORS 183.335(12)(b).²¹

If the agency does not use an advisory committee, its notice of rulemaking must explain why it did not use an advisory committee in developing the proposed rule. ORS 183.335(2)(b)(F). Failure to appoint an advisory committee to develop a rule could delay rulemaking if those likely to be affected by the rule object to the fiscal impact statement. As noted above, ten or more persons likely to be affected by a rule (or an organization with at least ten members likely to be affected by the rule) can require the agency to appoint a fiscal impact advisory committee while a rulemaking process is already underway. Appointing a fiscal impact advisory committee at that point could delay the effective date of the rule, if the agency determines that its original fiscal impact statement

²¹An agency that does not use an advisory committee or fiscal impact advisory committee may not be able to correct an inadequate fiscal impact statement without starting the rulemaking process over. *See* pp. 32 to 36 discussing fiscal impact statements.

was inadequate, because the agency must, in that case, extend the comment period by at least 20 days. ORS 183.333(5).

In addition to an advisory committee, agencies may seek public input in a variety of ways. For example, the agency may consult with knowledgeable individuals, meet separately with different interest groups, or use a facilitator to conduct public meetings. See ORS 183.333.

In some cases, the agency may need more than input and may seek the agreement or consensus of the affected interests. The agency may wish to use a collaborative rulemaking process to develop permanent rules. ORS 183.502. Collaborative rulemaking may be a form of advisory committee, so long as the process involves a review of the fiscal impact statement, including the cost of compliance. Like all advisory committees, collaborative rulemaking provides an opportunity for agencies to inform and to become informed, to involve members of the public, and to conduct government business in public.

However, the two approaches may also differ. The primary purpose of advisory committees is to seek public input early in the rulemaking process. Although advisory committee members anticipate that the agency will give careful consideration to their views, they do not necessarily expect agencies to adopt all views expressed by the committee. In contrast, the purpose of a collaborative rulemaking committee is to search for a single recommendation agreed upon by interests represented on the committee. As a result, collaborative rulemaking committees may entail a substantially greater initial time commitment than other types of advisory committees, but the consensus-building process may result in final rules that are less subject to court challenge and more amenable to compliance.

2. Collaborative Rulemaking

At its best, collaborative rulemaking (sometimes referred to as negotiated rulemaking) provides an opportunity for the kind of input and analysis that an agency would be unable to attain through any other means. Interest groups may be more likely to support the rulemaking action, difficult and technical issues can be fully explored, the relationship between the agency and interested parties may be improved, and the affected parties have a substantial role in the process. If not carefully implemented, however, collaborative rulemaking could drain

agency resources, disappoint or anger interest groups, or permit a few groups to exert control over a rule to the detriment of the public interest.

A checklist of the steps in a collaborative rulemaking, discussed below, may be found at p. A-4.

a. Assessment for Collaborative Rulemaking

Model Rule 137-001-0008 provides for an assessment before establishing a collaborative rulemaking committee. An assessment should help the agency evaluate the feasibility of convening interested parties to negotiate a proposed rulemaking action. OAR 137-001-0008 provides only an outline of what the assessment should cover. The agency may use the services of a convener who may offer additional suggestions for designing and implementing the assessment process. OAR 137-001-0008(1)(a)-(h) highlight eight important questions the agency should answer before deciding whether collaborative rulemaking is appropriate.

- Is there a need for collaborative rulemaking? The assessment helps to ascertain whether a collaborative rulemaking committee would be the most efficient and most effective rulemaking process. The extent of support for a negotiated rulemaking process, the political environment associated with the issues and the interest groups, and statutory or court-imposed deadlines may dictate whether a collaborative rulemaking committee is practical.

- Is there a manageable number of identifiable interests? A collaborative rulemaking committee must be limited to the number of persons who can meaningfully negotiate with each other. Some suggest an upper limit of 15 persons; others go as high as 25. If the number of interested persons is too great, and may not be reduced without excluding an important interest group, a collaborative rulemaking committee is not appropriate.

Practice Tip

When there are many interested parties, one option is to select leaders or spokespersons of large organizations and constituent groups, or to set up working groups or subcommittees that interact with the committee.

- Does the committee include the right people? For a collaborative process to be successful, all significant interests must be represented.
- Are representatives of the various interests willing to participate in the process and to negotiate in good faith? The interest groups must be willing at least to consider negotiating with the agency and the other interests. When they do negotiate, will the representatives of each interest have sufficient authority to bind their group or organization to a durable agreement?

Practice Tip

Typically, willingness to negotiate is guarded at first, but improves as the process evolves. A successful collaborative rulemaking should allow the various interests to develop confidence in the process and foster a more cooperative negotiating atmosphere.

- Do interested parties have sufficient resources to see a collaborative process through to completion? Persons without experience in these processes often underestimate the time and resources needed to reach a collaborative resolution to a complex problem.
- Is consensus needed and is it likely to be achieved? If the agency needs only consultation and information, rather than consensus, a collaborative rulemaking committee may be unnecessary. If the agency is willing to share some of the control over the process and its outcome, a collaborative rulemaking may result in a more broadly accepted and better-crafted rulemaking action.

Practice Tip

To avoid participant frustration, the agency must clearly identify the decision-making process it intends to follow in proposing and adopting a rule after the committee develops a consensus recommendation. The agency should always be clear that final decision-making authority resides with the agency.

- Does the agency have sufficient resources for collaborative rulemaking? Although it may ultimately save agency time and resources by fostering more durable and effective rulemaking actions, collaborative rulemaking typically takes more time and resources than rulemaking using an advisory committee. The assessment should determine whether the agency can commit sufficient resources to a collaborative rulemaking process. The agency may incur clerical, transportation or technical expenses. Costs may be reduced by finding an efficient venue for the

committee process, with access to computers, printers and copiers. If the agency hires an outside convener or facilitator, the agency must enter into a personal services contract as described in Model Rule 137-005-0040.

Practice Tip

The agency should ask the convener to estimate the time and money needed to complete the project.

- Can and will the agency use the consensus of the committee as the basis for a proposed rule? The agency may have legal obligations that limit its ability to adopt some rules, regardless of any consensus among stakeholders.

b. Concluding the Assessment for Collaborative Rulemaking

After concluding the assessment, the convener should provide the agency with a report on the feasibility of using a collaborative rulemaking committee. If the convener recommends using a collaborative rulemaking committee, the report should suggest how that might be done, including the number of committee members (based on the range and number of major interest groups), the process for identifying and selecting representatives of the appropriate interest groups, the structure of the process, the number and frequency of meetings, the resources needed and available to support the process, the potential roles of the sponsoring agency and the other participants and facilitator, the meeting protocols, and a draft agenda for the first meeting.

c. The Collaborative Rulemaking Committee

If the agency proceeds with the collaborative rulemaking, the next step is to convene the committee. Model Rule 137-001-0009 describes the procedures for forming and operating the committee. The potential committee members are asked to commit to the process, and the committee develops ground rules. The convener, who has likely met with many of the interest groups already, begins to “convene” or bring the groups together. The convener then hands off the process to a facilitator, or the convener may be asked to assume the facilitator role.

- Notice of formation of a rulemaking committee. Model Rule 137-001-0009(1) permits the agency to inform persons on the agency’s mailing list maintained under ORS 183.335(8) and legislators specified

in ORS 183.335(15) that the agency will use a collaborative rulemaking committee. This is not the notice of rulemaking action required by ORS 183.335(1). The notice may describe the interests that are likely to be significantly affected by the rulemaking, a proposed agenda and schedule for completing the work of the committee, and the membership of the committee. Because the notice may generate comments and identify previously unknown affected entities and issues, the agency may wish to provide a means for parties who believe they are significantly affected, but not otherwise represented, to participate on the committee. Model Rule 137-001-0009(1) applies only to agencies that have adopted it. Agencies that have not adopted the rule may nevertheless opt to provide notice of the formation of a rulemaking committee.

- Convening the committee and developing ground rules. The agency will bring the committee together in an organizational meeting, perhaps with the help of the convener. Model Rule 137-001-0009(1) requires the agency to inform each committee member of the committee membership, agenda and whether or not the agency will be a member of the committee. In collaborative rulemaking, there is an expectation that the agency will be part of the collaboration, negotiating the agency's interests as a member of the committee. The agency should carefully consider the advantages and disadvantages of participating as a member of a collaborative rulemaking committee.

Practice Tip

While not being on the committee may allow the agency the ability to change or reject the product of a collaborative rulemaking committee, such an action may conflict with the expectations of the committee and the spirit of a collaborative process. If the agency does not wish to be a member of the committee, the agency should consider whether an advisory committee may be more appropriate than collaborative rulemaking.

The Model Rules do not prescribe the actual conduct of the committee because the committee is expected to develop its own ground rules. A list of items typically included in ground rules is found at p. A-74. The ground rules are an important instrument for ensuring that the participants have realistic expectations of the process and the roles of the committee members. The ground rules should explain how the final agreement or recommendation will be implemented. In practice, the

committee may find that the ground rules will need to be flexible and may have to be modified periodically.

Practice Tip

The agency should also use the ground rules to establish realistic timelines for the process.

- The facilitator. Neither the committee, the facilitator nor the convener has authority to make decisions that are binding on the agency. The facilitator manages the collaborative rulemaking process, ensuring that the committee sticks to its ground rules and that the negotiations proceed in a cooperative atmosphere. The facilitator will search for common ground and conduct group processes designed to move the parties towards consensus. The facilitator is accountable to all the committee members.

Practice Tip

An employee of the agency or of any other interest group on the committee is unlikely to be an effective facilitator, especially if the person attempts to run the process in an impartial manner, while representing the interests of the agency or group. Even if this arrangement is acceptable to the participants, the credibility of the process could be undermined later by perceptions that the facilitator had a conflict of interest.

- Agreement and termination of the committee. The final product of the collaborative rulemaking committee should be an agreement, report or recommendation to the agency that is agreed to by all committee members. Any agreement should clearly state the tasks needed to implement the agreement, any deadlines and who will be responsible for overseeing the implementation.

Practice Tip

The agency can encourage consensus by making clear that majority/minority reports are not an acceptable alternative to a consensus-based outcome.

The committee may be terminated by the agency or by consensus of the committee. Once the committee makes its report, the agency may terminate the committee or reconvene it to consider public comments, following the publication of a notice of rulemaking action. If the agency reconvenes the committee after the deadline for comment on the proposed rulemaking, the agency must extend the comment deadline to

receive any further input from the committee. ORS 183.335(14); Model Rule 137-001-0009(11). To do so, the agency must provide notice of the extended deadline to persons on the agency's mailing list maintained pursuant to ORS 183.335(8), to the legislators specified in ORS 183.335(15), and to persons identified in its notice rule adopted under ORS 183.341(4).

Of course, as with any agency rulemaking, the rules that result from negotiation or other form of alternative dispute resolution must be within the agency's statutory authority. Moreover, after drafting the proposed rule, the agency still must follow the rulemaking procedures in ORS 183.325 to 183.355, discussed below.

3. Rule Drafting

Agencies may wish to use an advisory committee of persons likely to be affected by the rule to assist the agency in drafting the rule. See the discussion of Advisory Committees, above. In some cases, statutes or rules may require advisory boards or advisory commissions to approve a draft rule.

Agency rules must use language that is clear and simple. ORS 183.750.²² Agencies must also use terms carefully and consistently. Absent some specific indication to the contrary, terms will be read consistently throughout the rule.²³ Similarly, if a term is used in one section of a statute or rule, but not in a related section, a court will infer that the legislature or agency did not intend to use the term in the section where it was omitted.²⁴ See Appendix B for tips on Rule Writing.

Retroactive application of administrative rules is permissible and appropriate, in some circumstances. Determining whether it is appropriate, however, involves analyzing both the intent of the agency in promulgating the rule and the reasonableness of the retroactivity. See

²² See also Or Laws 2007, Ch 142 (written documents of Executive Department agencies should be in "plain language").

²³ *Columbia Steel Castings Co. v. City of Portland*, 314 Or 424, 430, 840 P2d 71 (1992) (no usage in other portions of rule to indicate that similar words were intended to have different meanings).

²⁴ *Perlenfein and Perlenfein*, 316 Or 16, 22, 848 P2d 604 (1993).

Items for Board Action

