HEALTH LICENSING OFFICE
Kate Brown, Governor

1430 Tandem Ave. NE, Suite 180
Salem, OR 97301-2192
Phone: (503) 378-8667
Fax: (503) 585-9114
www.oregon.gov/OHA/PH/HLO

WHO: **Health Licensing Office**
Behavior Analysis Regulatory Board
1430 Tandem Ave. NE, Suite 180 Salem, Oregon
TELECONFERENCE CALL ONLY

WHEN: **9 a.m. July 16, 2021**

In order to limit the exposure and spread of the COVID-19 virus and adhere to the Governor's social distancing measures the Health Licensing Office (Office) is prohibiting in-person attendance at the Board meeting. All audience members may attend the public meeting by telephone conference call. Conference call instructions are provided below.

What is the purpose of the meeting?
The purpose of the meeting is to conduct board business. A copy of the agenda is printed with this notice. Go to www.oregon.gov/OHA/PH/HLO for current meeting information.

May the public attend open sessions?
Telephone conference call instructions:

- Approximately five minutes prior to the start of the meeting dial (503) 934-3605 and enter the specific passcode listed on the agenda below. The passcode is different for each public meeting.
- You will be notified that you are connected to the conference call.
- The conference call line will stay connected for the duration of the meeting.
- For the courtesy of all participants on the call, keep your phone on mute during all times of the meeting, until your turn to speak during the Public and Interested Parties Feedback period.
- Email April Fleming at april.fleming@dhsoha.state.or.us stating you are logged in and whether or not you want to make public comment during the Public and Interested Parties Feedback period.

Audience members are asked to send email to April Fleming at april.fleming@dhsoha.state.or.us stating they are logged into the telephone conference call and whether they want to make a comment during the public and interested parties feedback period.

What if the board/council enters into executive session?
Prior to entering executive session, the board/council chairperson will announce the nature of and the authority for holding executive session. Board members, designated participants such as staff, and representatives of the news media shall be allowed to attend the executive session. All other audience members are not allowed to attend the executive session. Executive session would be held according to ORS 192.660.

Representatives of the news media who are interested in attending an executive session are asked to contact April Fleming at april.fleming@dhsoha.state.or.us prior to the meeting to make arrangements to attend Executive Session by telephone conference call. 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 April Fleming at April.fleming@dhsoha.state.or.us

Items for Board Action

Approval of Agenda

Health Licensing Office
Behavior Analysis Regulatory Board

◆◆◆

9 a.m. July 16, 2021

TELEPHONE CONFERENCE CALL ONLY

Conference call phone line number: 503-934-3605

Conference call passcode: 122953

Call to order

1. **Item for Board action**
   - ♦ Approval of agenda

2. **Items for Board action**
   - ♦ Approval of 2022 meeting dates
   - ♦ Approval of 2022 chair and vice chair

3. **Reports**
   - ♦ Director's report
   - ♦ Licensing and fiscal
   - ♦ Regulatory
   - ♦ Policy
     Review public comment on rule about restraints

4. **Item for Board action**
   - ♦ Vote to adopt permanent rule about restraints

5. **Legislation**
   - ♦ SB 358A – Paul Terdal
   - ♦ SB 355
   - ♦ SB 710

6. **Public/interested parties' feedback**

7. **Executive Session:** Pursuant to ORS 192.660(2)(f) and ORS 676.595 for the purpose of considering information exempt from public disclosure. (Cases)

8. **Item for Board action**
   - ♦ Vote on case(s)

9. **Other Board business**

Agenda is subject to change.
For the most up-to-date information, go to www.oregon.gov/OHA/HLO

Revised

2022 Meetings

HEALTH LICENSING OFFICE
Kate Brown, Governor

Oregon Health Authority

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2022 meeting dates

ISSUE

The Board must approve 2022 meeting times and dates. The Health Licensing Office proposes:

- 9 a.m. Jan. 21
- 9 a.m. July 15

BOARD ACTION

The Board approves the 2022 meeting times and dates:

2022 Chair and Vice Chair

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Chair and vice chair – 2022

BACKGROUND AND DISCUSSION

Meghan Johns has served as chair and Brenna Legaard has served as vice chair for the Behavior Analysis Regulatory Board during 2021.

ISSUE

The Board must nominate and elect a chair and vice chair for 2021.

Role of the chair in meetings

- Officially call the meeting to order.
- Keep order and impose any necessary restrictions for the efficient and orderly conduct of the meeting.
- Direct the "flow" of the meeting and to ensure the meeting is conducted in a professional manner. Some key points regarding meeting protocol include:
  - Board members wishing to speak must wait to be addressed by the chair.
  - Once addressed by the chair, the board member must state their last name for the record before speaking.
  - The chair guides members through the motion-making process.
  - If public comment is being accepted by the Board, audience members must wait to be addressed by the chair and state their full name and affiliation to the Board.
- Officially enter/exit executive session.
- Officially adjourn the meeting.

Role of the chair outside of meetings

- Collaborate with the director regarding the Board budget. The director may contact the chair to discuss the Board budget regarding revenue, expenditures and possible fee changes.
- Assist in generating meeting agendas. The board specialist or analyst may contact the chair to discuss the agenda for an upcoming meeting. The chair may be asked to comment on topics to be discussed and the format or order in which the topics should be presented at the meeting.

Role of the vice chair

The vice chair must assume the responsibilities of the chair if there is an absence or if the chair is no longer a member of the Board.

BOARD ACTION

The Board nominates and elects:

Chair:
Vice chair:

Director’s Report

Licensing and Fiscal Statistical Reports

Behavior Analysis Regulatory Board (BARB)

Report Date: **13-Jul-21**

(data as of most recently closed month to Report Date)

Licensing Statistics

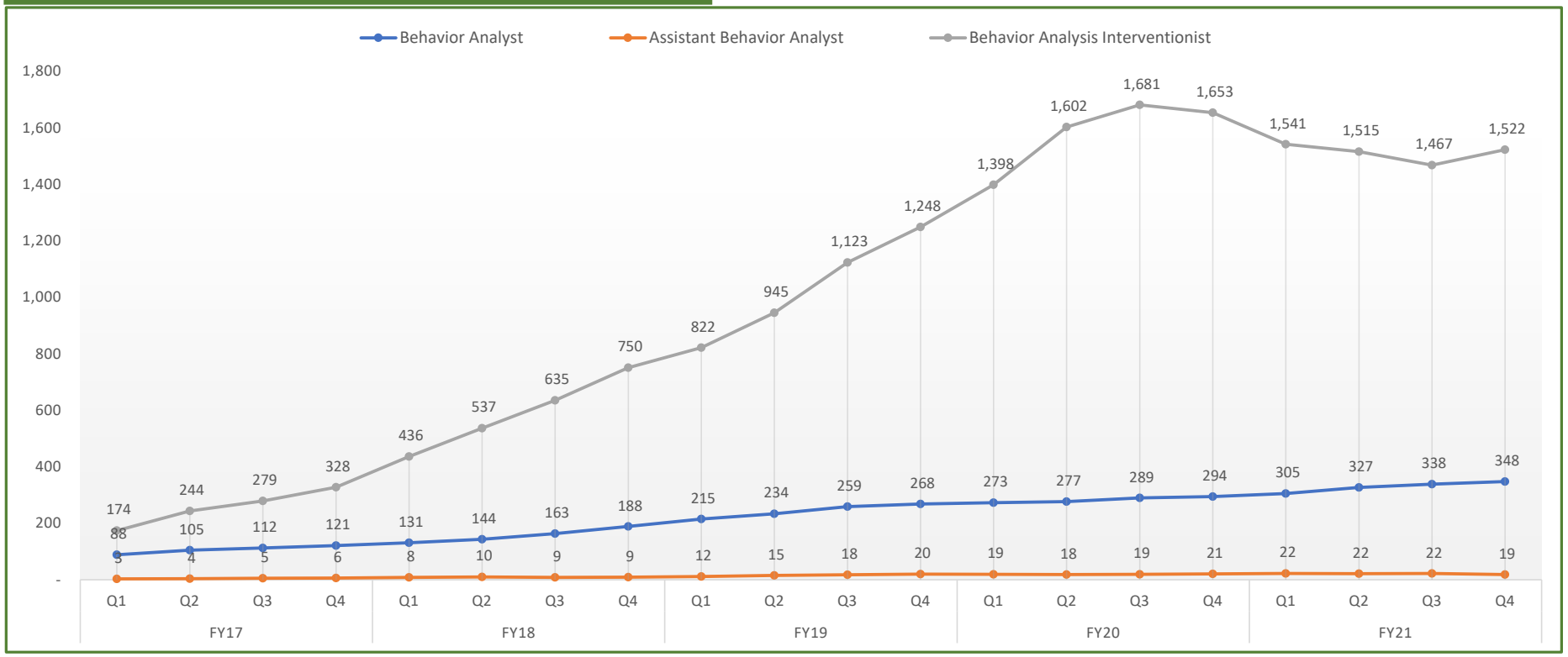
Fiscal Year	Qtr	Behavior Analyst	Assistant Behavior Analyst	Behavior Analysis Interventionist	Total
AUTHORIZATIONS ISSUED					
2020	**Q1**	21	1	328	*350*
	Q2	23	1	291	*315*
	Q3	24	4	214	*242*
	Q4	11	4	109	*124*
2021	**Q1**	35	1	200	*236*
	Q2	21	4	193	*218*
	Q3	25	-	241	*266*
	Q4	18	2	161	*181*
Total:		135	15	1,335	*2,549*
RENEWALS PROCESSED					
2020	**Q1**	42	4	128	*174*
	Q2	47	3	173	*223*
	Q3	71	2	138	*211*
	Q4	56	4	159	*219*
2021	**Q1**	55	7	227	*289*
	Q2	65	2	192	*259*
	Q3	81	2	198	*281*
	Q4	36	3	99	*138*
Total:		610	37	1,674	*2,321*

Behavior Analysis Regulatory Board (BARB)

Report Date: **13-Jul-21**

(data as of most recently closed month to Report Date)

License Volume Trends *(averages by State Fiscal Year/Quarter)*



License Volume Trends Year-to-Year Growth Rate

State Fiscal Year	2017 *(Jul16-Jun17)*	2018 *(Jul17-Jul19)*	2019 *(Jul18-Jun19)*	2020 *(Jul19-Jul20)*	2021 *(Jul20-Current*)*
Behavior Analyst	68.1%	48.3%	54.3%	15.0%	17.0%
Assistant Behavior Analyst	8.2%	100.0%	82.2%	18.1%	13.0%
Behavior Analysis Interventionist	273.3%	133.5%	73.6%	51.6%	-4.4%

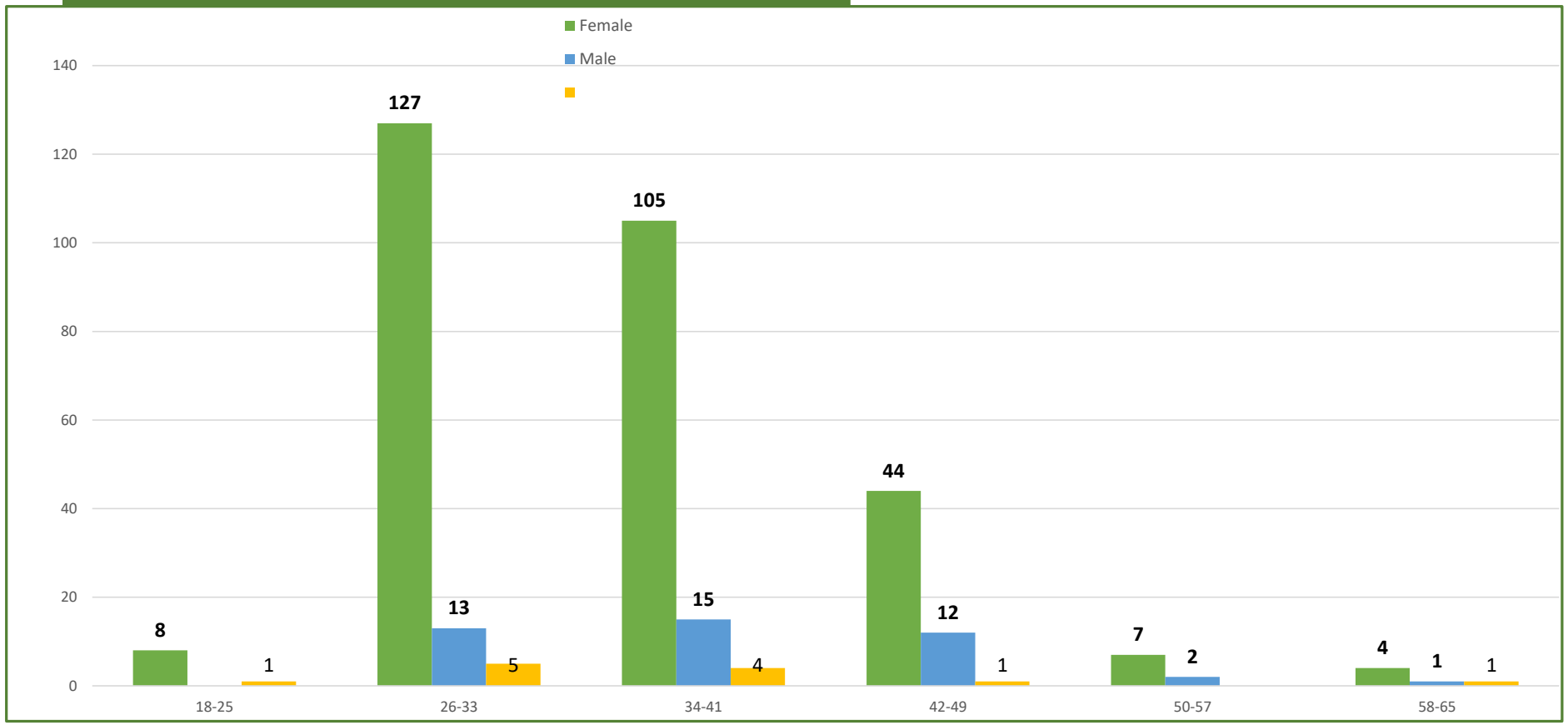
Behavior Analysis Regulatory Board (BARB)

Report Date: 13-Jul-21

(data as of most recently closed month to Report Date)

Active Behavior Analysts - Grouped by Age and Gender

TOTAL 350



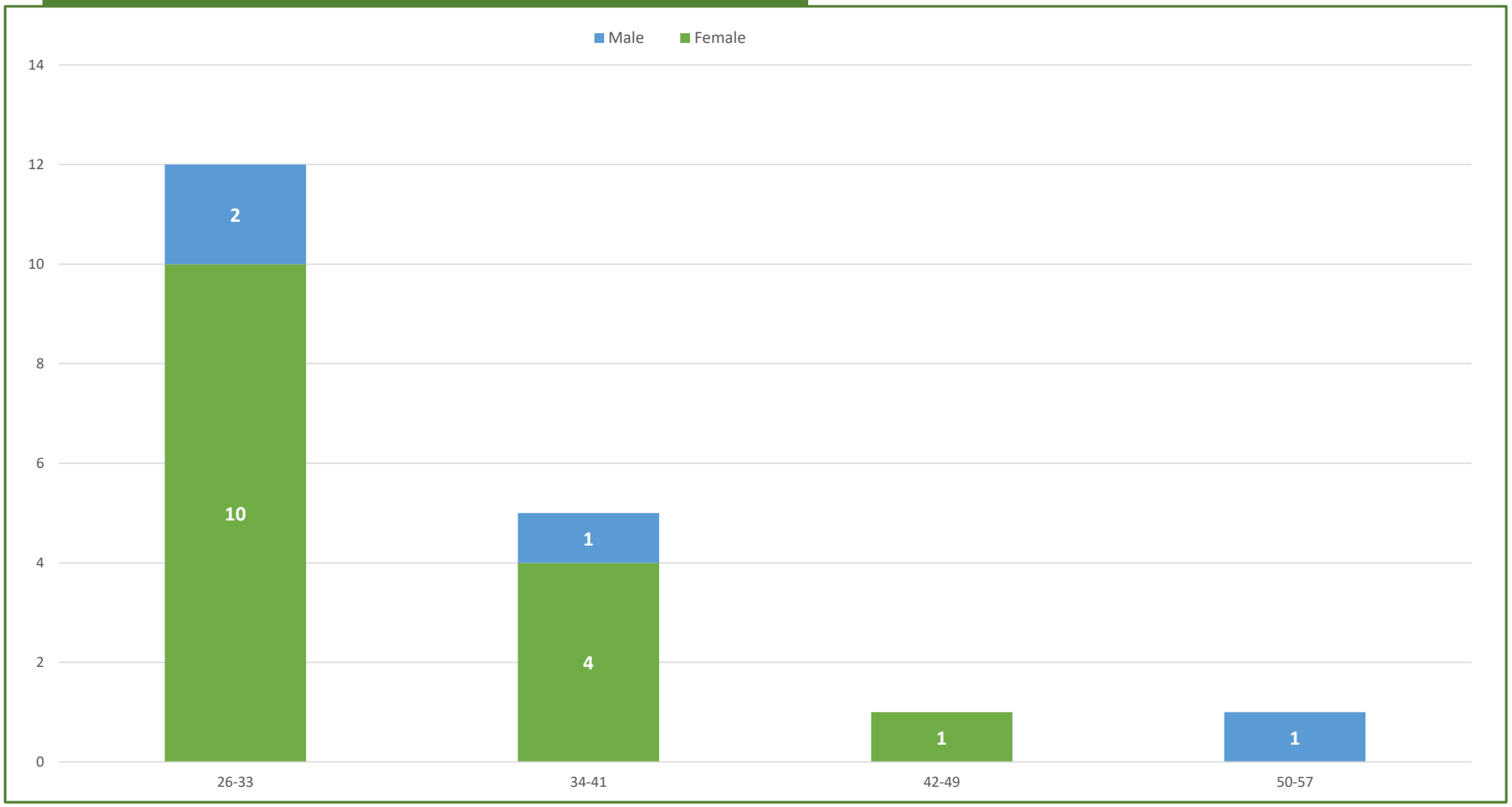
Behavior Analysis Regulatory Board (BARB)

Report Date: 13-Jul-21

(data as of most recently closed month to Report Date)

Active Asst Behavior Analysts - Grouped by Age and Gender

TOTAL 19



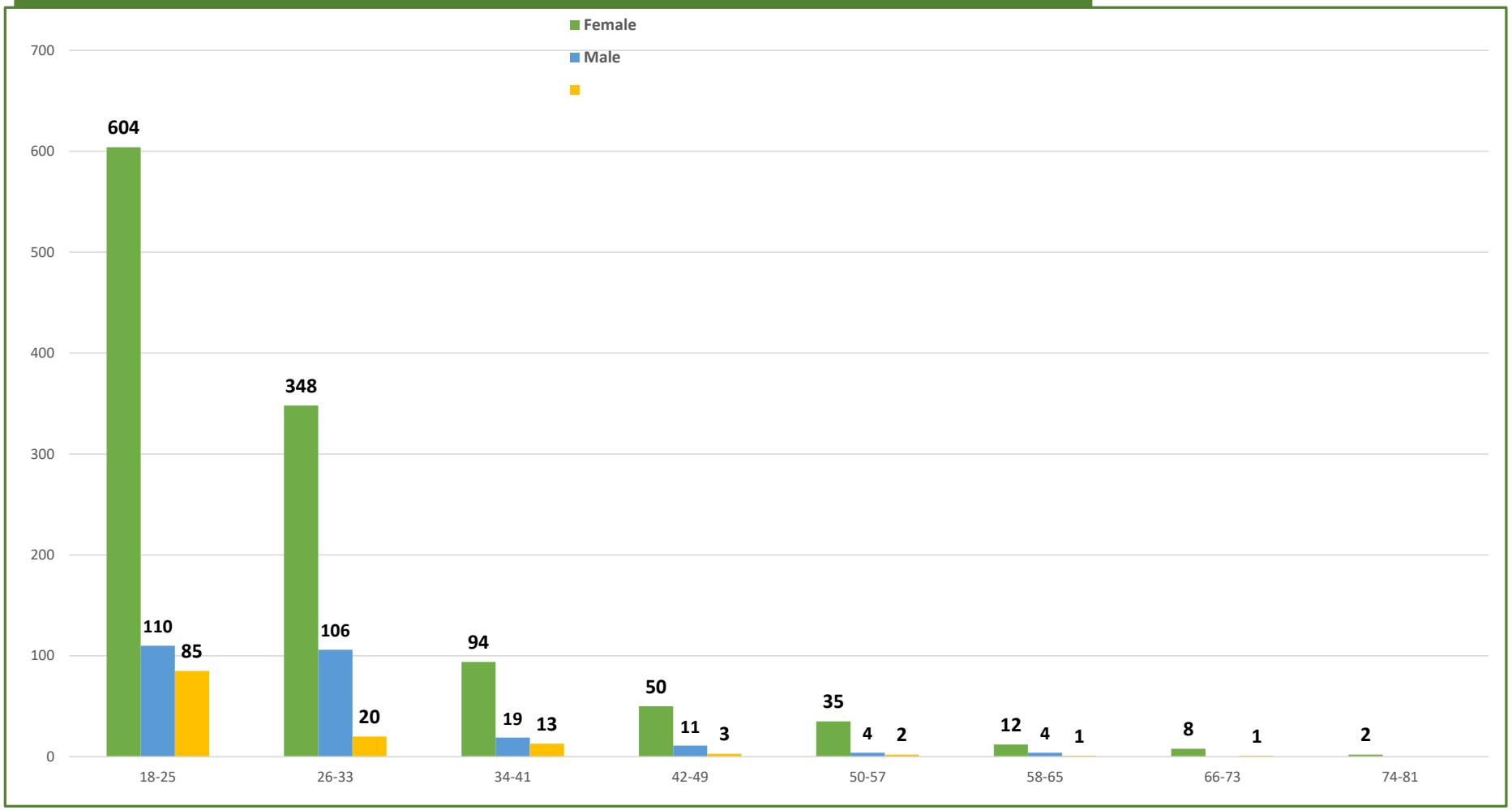
Behavior Analysis Regulatory Board (BARB)

Report Date: 13-Jul-21

(data as of most recently closed month to Report Date)

Active Behavior Analysis Interventionist - Grouped by Age and Gender

TOTAL 1532



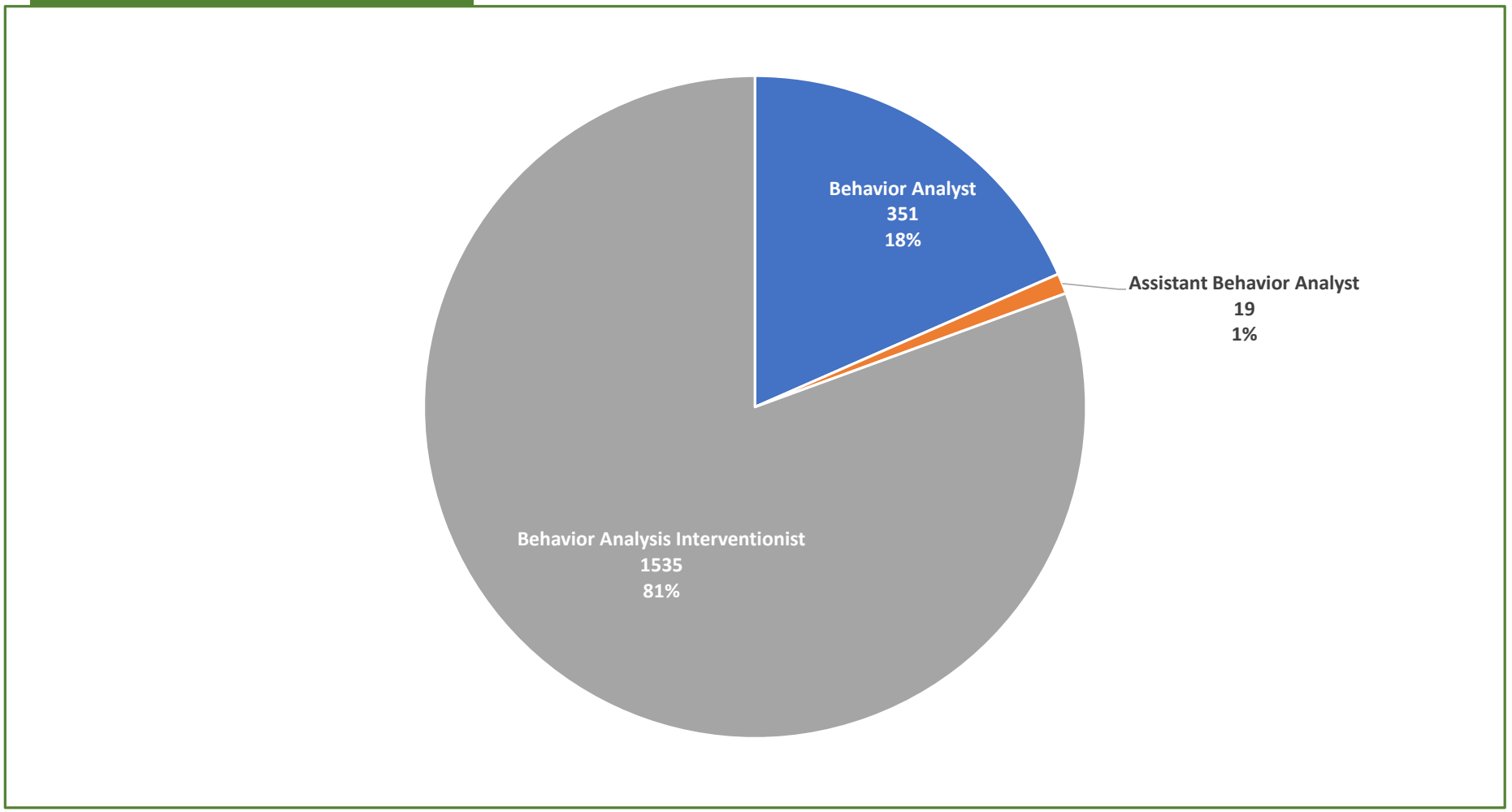
Behavior Analysis Regulatory Board (BARB)

Report Date: 13-Jul-21

(data as of most recently closed month to Report Date)

License Volume by License Type

TOTAL 1905



Behavior Analysis Regulatory Board (BARB)

Report Date: 13-Jul-21

(data as of most recently closed month to Report Date)

Biennium	2017-19 >		2019-21 >	
Cash Flow by State Fiscal Year/Biennium	2019 (Jul18-Jun19)		2020 (Jul19-Jul20)	2021 (Jul20-Current*)
Beginning Cash Balance	$ 86,587	$ 220,301	$ 409,908	$ 557,338
Revenues	$ 181,810	$ 290,640	$ 311,757	$ 296,464
Expenditures	$ 48,096	$ 101,033	$ 164,328	$ 150,181
Net Operations (Rev - Exp Only)	$ *133,714*	$ *189,607*	$ *147,429*	$ *146,283*
Ending Cash Balance (Beg Cash + Rev - Exp)	$ 220,301	$ 409,908	$ 557,337	$ 703,620

HLO Pooled Expenditures Allocation Share for Board (allocated based on average license volume and inspections/examinations counts)				
Shared Assessment	0.400%	1.330%	1.759%	2.455%
Small Board	5.049%	9.426%	14.735%	17.970%
Examinations				
Inspections				

* As noted in header, to ensure consistency 'Current' data in all reports are based on data from the most recently closed month to the report date.

Behavior Analysis Regulartory Board Summary
July 2021 as of 05/31/21

Fiscal Year	2019	2020	2021
Starting Balance	**220,301**	**409,908**	**557,337**
1a. Cash Revenue	290,640	311,757	296,464
2a. Salaries	(25,550)	(42,530)	(48,748)
2b. OPE	(14,543)	(24,276)	(27,213)
3a. S&S: Travel, In State	(867)	(389)	(1,243)
3b. S&S: Travel, Out of State	(0)	0	0
3c. S&S: Travel, Employee Training	(26)	0	0
3e. S&S: Expendable Property >$5000	(291)	(113)	(28)
3f. S&S: Equipment Rental	(42)	(116)	(155)
3g. S&S: Office Supplies	(2,178)	(1,346)	(789)
3i. S&S: Office Services	(6)	0	(2)
3k. S&S: Professional Svcs Contracts, Non-IT	(14)	0	0
3l. S&S: Professional Svcs, Other, Non-IT	(22)	0	0
3m. S&S: Employee Training, Non-Travel	(13)	(29)	0
3n. S&S: Telecom Services & Supplies	(30)	(74)	(87)
3o. S&S: Attorney General Legal Fees	(1,924)	(9,448)	(5,485)
3p. S&S: Dues & Subscriptions	(0)	(77)	0
3q. S&S: Publicity & Publications	(26)	(12)	0
3r. S&S: Other Services & Supplies	(39,747)	(59,888)	(41,396)
Allocated Direct: Grouped	(3,806)	(8,141)	(6,745)
Indirect: Grouped	(11,949)	(17,890)	(18,290)
Net Operations	**189,607**	**147,429**	**146,283**
Ending Cash Balance	**409,908**	**557,337**	**703,620**

Regulatory Report

HEALTH LICENSING OFFICE
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Board Report

Behavior Analysis Regulatory Board

7/13/2021

CASES BY LICENSE TYPE AND OPEN/CLOSED STATUS

	2017	2019	2021	Grand Total
OPEN				
Assistant Behavior Analyst	0	0	2	2
Behavior Analysis Interventionist	0	1	5	6
Behavior Analyst	0	2	7	9
TOTAL	**0**	**3**	**14**	**17**
CLOSED				
Behavior Analysis Interventionist	1	4	0	5
Behavior Analyst	2	1	7	10
UNLICENSED - Behavior Analysis	0	5	6	11
TOTAL	**3**	**10**	**13**	**26**
Grand Total	**3**	**13**	**27**	**43**

COMPLAINTS BY TYPE

	2017	2019	2021	Grand Total
Critical Complaint regarding licensing		1		1
Licensing Concern	1	4	7	12
Services Provided	2	8	20	30
Grand Total	**3**	**13**	**27**	**43**

COMPLAINANTS BY TYPE

ANONYMOUS	0
CLIENT	3
OTHER	40

Policy

Rules

DIVISION 60

STANDARDS OF PRACTICE, PROFESSIONAL METHODS AND PROCEDURES

824-060-0010

(1) In Oregon, the statutory definition of applied behavior analysis is stated in 676.802 (1)(a)-(b).

(2) For both behavior analysts and assistant behavior analysts, the Board adopts sections 1-9 of the 2016 “BACB Professional and Ethical Compliance Code for Behavior Analysts.”

(3) Licensed behavior analysts and licensed assistant behavior analysts must have a policy in place for the use of restraints. A copy of the policy must be given to the client’s parent or guardian at the beginning of the service agreement. The policy will be one piece of information considered by the Board or Office in determining whether a restraint used on a client constitutes unprofessional conduct, negligence, incompetence, or a failure to conform to standards of practice under ORS 676.612(2)(j).

HEALTH LICENSING OFFICE
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Oregon Health Authority

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DATE: March 3, 2021

TO: Health Licensing Office (HLO), Behavior Analysis Regulatory Board (Board)

FROM: Anne Thompson, hearing officer

SUBJECT: Report on rules public comment

Background

The Behavior Analysis Regulatory Board decided to add a rule around the use of restraints.

Written comments

Dear Members of the BARB,
Upon review of the proposed rules related to standards of practice for restraint and seclusion, ORABA would like to recommend that a Rules Advisory Committee be developed to support the development of rules appropriate for our community of behavior analysts to ensure the safety and dignity of our clients and ensure that providers have guidance regarding what elements must be contained within their restraint and seclusion policies.

Has the development of a Rules Advisory Committee for review of this topic been considered?

Please feel free to reach out to ORABA through our Public Policy Committee email: publicpolicycommittee@oraba.org.

Thank you for your time and consideration,

Analise Herrera, BCBA, LBA

Jaclyn Connelly, BCBA, LBA

Public Policy Committee Co-Chair

Oral comments

None

Item for Board Action

Issue statement

HEALTH LICENSING OFFICE
Behavior Analysis Regulatory Board

Issue

The Behavior Analysis Regulatory Board wants to add a rule requiring licensees to have a policy on the use of restraints on clients.

Recommendation

Vote to adopt permanent rule.

Legislation

Enrolled
Senate Bill 358

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with presession filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Health Care for Paul Terdal)

CHAPTER .....

AN ACT

Relating to applied behavior analysis; amending sections 22 and 24, chapter 771, Oregon Laws 2013.

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

SECTION 1. Section 22, chapter 771, Oregon Laws 2013, is amended to read:

Sec. 22. Section 2 [*of this 2013 Act*]**, chapter 771, Oregon Laws 2013,** is repealed January 2, [*2022*] **2030**.

SECTION 2. Section 24, chapter 771, Oregon Laws 2013, as amended by section 6, chapter 674, Oregon Laws 2015, is amended to read:

Sec. 24. The amendments to ORS 743A.190 and 750.055 by sections 20 and 21, chapter 771, Oregon Laws 2013, become operative January 2, [*2022*] **2030**.

Passed by Senate June 24, 2021

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

.....
Peter Courtney, President of Senate

Passed by House June 25, 2021

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

.....
Shemia Fagan, Secretary of State

Senate Bill 355

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Health Care for Paul Terdal)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced.**

Delays sunset of requirement that health insurance reimburse cost of applied behavior analysis for autism spectrum disorder.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to applied behavior analysis; amending section 22, chapter 771, Oregon Laws 2013; and declaring an emergency.

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

SECTION 1. Section 22, chapter 771, Oregon Laws 2013, is amended to read:

Sec. 22. Section 2**, chapter 771, Oregon Laws 2013,** [*of this 2013 Act*] is repealed January 2, [*2022*] **2030**.

SECTION 2. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

Enrolled
Senate Bill 710

Sponsored by Senators GELSER, MANNING JR; Senator FREDERICK

CHAPTER .....

AN ACT

Relating to children in care; creating new provisions; amending ORS 418.205, 418.257 and 418.259; and declaring an emergency.

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

RESTRAINT AND INVOLUNTARY SECLUSION

SECTION 1. Definitions. As used in sections 1 to 11 of this 2021 Act:

(1) "Certified foster home" means a foster home subject to ORS 418.625 to 418.645.

(2) "Chemical restraint" means a drug or medication that is administered to a child in care to control behavior or restrict freedom of movement.

(3) "Child-caring agency" has the meaning given that term in ORS 418.205.

(4) "Child in care" has the meaning given that term in ORS 418.257.

(5) "Children's emergency safety intervention specialist" means a qualified mental health professional licensed to order, monitor and evaluate the use of seclusion and restraint in accredited and certified facilities that provide intensive mental health treatment services to individuals under 21 years of age.

(6) "Developmental disabilities residential facility" has the meaning given that term in ORS 418.257.

(7)(a) "Involuntary seclusion" means the confinement of a child in care alone in a room from which the child in care is prevented from leaving by any means.

(b) "Involuntary seclusion" does not include age-appropriate discipline, including, but not limited to, time-out if the time-out is in a setting from which the child in care is not prevented from leaving.

(8) "Mechanical restraint" means a device used to restrict the movement of a child in care or the movement or normal function of a portion of the body of a child in care.

(9) "Proctor foster home" means a foster home certified by a child-caring agency under ORS 418.248.

(10) "Program" means:

(a) A child-caring agency;

(b) A proctor foster home; or

(c) A developmental disabilities residential facility that is a residential training home or facility licensed under ORS 443.415 to serve children under 18 years of age.

(11) "Prone restraint" means a restraint in which a child in care is held face down on the floor.

(12) "Reportable injury" means any type of injury to a child in care, including but not limited to rug burns, fractures, sprains, bruising, pain, soft tissue injury, punctures, scratches, concussions, abrasions, dizziness, loss of consciousness, loss of vision, visual disturbance or death.

(13) "Restraint" means the physical restriction of a child in care's actions or movements by holding the child in care or using pressure or other means.

(14) "Secure adolescent inpatient treatment program" means a child-caring agency that is an intensive treatment services program, as described by the Oregon Health Authority by rule, that provides inpatient psychiatric stabilization and treatment services to individuals under 21 years of age who require a secure intensive treatment setting.

(15) "Secure children's inpatient treatment program" means a child-caring agency that is an intensive treatment services program, as described by the authority by rule, that provides inpatient psychiatric stabilization and treatment services to children under 14 years of age who require a secure intensive treatment setting.

(16) "Serious bodily injury" means any significant impairment of the physical condition of an individual, as determined by qualified medical personnel, whether self-inflicted or inflicted by someone else.

(17) "Supine restraint" means a restraint in which a child in care is held face up on the floor.

SECTION 2. Prohibitions on restraint or involuntary seclusion. (1) A child-caring agency, proctor foster home, certified foster home or developmental disabilities residential facility may not place a child in care in a restraint or involuntary seclusion as a form of discipline, punishment or retaliation or for the convenience of staff, contractors or volunteers of the child-caring agency, proctor foster home, certified foster home or developmental disabilities residential facility.

(2) Except as provided in section 3 (4) of this 2021 Act, the use of the following types of restraint of a child in care are prohibited:

(a) Chemical restraint.

(b) Mechanical restraint.

(c) Prone restraint.

(d) Supine restraint.

(e) Any restraint that includes the nonincidental use of a solid object, including the ground, a wall or the floor, to impede a child in care's movement.

(f) Any restraint that places, or creates a risk of placing, pressure on a child in care's neck or throat.

(g) Any restraint that places, or creates a risk of placing, pressure on a child in care's mouth.

(h) Any restraint that impedes, or creates a risk of impeding, a child in care's breathing.

(i) Any restraint that involves the intentional placement of hands, feet, elbows, knees or any object on a child in care's neck, throat, genitals or other intimate parts.

(j) Any restraint that causes pressure to be placed, or creates a risk of causing pressure to be placed, on a child in care's stomach, chest, joints, throat or back by a knee, foot or elbow.

(k) Any other restraint, the primary purpose of which is to inflict pain.

SECTION 3. Permissible use of restraint or involuntary seclusion. (1) Except as otherwise provided in this section, a child-caring agency, proctor foster home or developmental disabilities residential facility may only place a child in care in a restraint or involuntary seclusion if the child in care's behavior poses a reasonable risk of imminent serious bodily injury to the child in care or others and less restrictive interventions would not effectively reduce that risk.

(2) A certified foster home may not place a child in care in a restraint or involuntary seclusion.

(3) Notwithstanding subsection (1) or (2) of this section, a child-caring agency, proctor foster home, certified foster home or developmental disabilities residential facility may use the following types of restraints on a child in care:

(a) Holding the child in care's hand or arm to escort the child in care safely and without the use of force from one area to another;

(b) Assisting the child in care to complete a task if the child in care does not resist the physical contact; or

(c) Using a physical intervention if:

(A) The intervention is necessary to break up a physical fight or to effectively protect a person from an assault, serious bodily injury or sexual contact;

(B) The intervention uses the least amount of physical force and contact possible; and

(C) The intervention is not a prohibited restraint described in section 2 (2) of this 2021 Act.

(4) Notwithstanding section 2 (2) of this 2021 Act:

(a) The restraint described in section 2 (2)(e) of this 2021 Act may be used if the restraint is necessary to gain control of a weapon.

(b) The restraint described in section 2 (2)(g) of this 2021 Act may be used if the restraint is necessary for the purpose of extracting a body part from a bite.

(c) If a program is a secure children's inpatient treatment program or secure adolescent inpatient treatment program, the program may place a child in care in a restraint described in section 2 (2)(d) or (e) of this 2021 Act only if:

(A) The child in care is currently admitted to the program;

(B) The restraint is authorized by an order written at the time of and specifically for the current situation by a licensed medical practitioner or a licensed children's emergency safety intervention specialist;

(C) The restraint is used only as long as needed to prevent serious physical injury, as defined in ORS 161.015, and while no other intervention or form of restraint is possible;

(D) A licensed medical practitioner, children's emergency safety intervention specialist or qualified mental health professional, who is certified in the use of the type of restraint used, continuously monitors the use of the restraint and the physical and psychological well-being of the child in care at all times while the restraint is being used;

(E) Each individual placing the child in care in the restraint is trained, as required by the Department of Human Services by rule, in the use of the type of restraint used and the individual's training is current;

(F) One or more individuals with current cardiopulmonary resuscitation training are present for the duration of the restraint;

(G) The program has written policies that require a licensed children's emergency safety intervention specialist or other licensed practitioner to evaluate and document the physical, psychological and emotional well-being of the child in care immediately following the use of the restraint; and

(H) The program is in compliance with any other requirements under sections 1 to 11 of this 2021 Act, and the use of the restraint does not otherwise violate any applicable contract requirements or any state or federal law related to the use of restraints.

(5) In addition to the restraints described in subsection (3) of this section, a program may place a child in care in a restraint or involuntary seclusion if:

(a) The restraint or involuntary seclusion is used only for as long as the child in care's behavior poses a reasonable risk of imminent serious bodily injury;

(b) The individuals placing the child in care in the restraint are trained, as required by the department by rule, in the use of the type of restraint or involuntary seclusion used;

(c) The program staff continuously monitor the child in care for the duration of the restraint or involuntary seclusion; and

(d) The restraint or involuntary seclusion is performed in a manner that is safe, proportionate and appropriate, taking into consideration the child in care's chronological and developmental age, size, gender identity, physical, medical and psychiatric condition and personal history, including any history of physical or sexual abuse.

(6) In addition to the requirements described in subsection (5) of this section, if a program places a child in care in a restraint or involuntary seclusion for more than 10 minutes:

(a) The program must provide the child in care with adequate access to the bathroom and water at least every 30 minutes; and

(b)(A) Every five minutes after the first 10 minutes of the restraint or involuntary seclusion, a program supervisor who is trained, as required by the department by rule, in the use of the type of restraint or involuntary seclusion being used must provide written authorization for the continuation of the restraint or involuntary seclusion.

(B) If the supervisor is not on-site at the time the restraint is used, the supervisor may provide the written authorization electronically.

(C) The written authorization must document why the restraint or involuntary seclusion continues to be the least restrictive intervention to reduce the risk of imminent serious bodily injury in the given circumstances.

SECTION 4. Section 3 of this 2021 Act is amended to read:

Sec. 3. (1) Except as otherwise provided in this section, a child-caring agency, proctor foster home or developmental disabilities residential facility may only place a child in care in a restraint or involuntary seclusion if the child in care's behavior poses a reasonable risk of imminent serious bodily injury to the child in care or others and less restrictive interventions would not effectively reduce that risk.

(2) A certified foster home may not place a child in care in a restraint or involuntary seclusion.

(3) Notwithstanding subsection (1) or (2) of this section, a child-caring agency, proctor foster home, certified foster home or developmental disabilities residential facility may use the following types of restraints on a child in care:

(a) Holding the child in care's hand or arm to escort the child in care safely and without the use of force from one area to another;

(b) Assisting the child in care to complete a task if the child in care does not resist the physical contact; or

(c) Using a physical intervention if:

(A) The intervention is necessary to break up a physical fight or to effectively protect a person from an assault, serious bodily injury or sexual contact;

(B) The intervention uses the least amount of physical force and contact possible; and

(C) The intervention is not a prohibited restraint described in section 2 (2) of this 2021 Act.

(4) Notwithstanding section 2 (2) of this 2021 Act:

(a) The restraint described in section 2 (2)(e) of this 2021 Act may be used if the restraint is necessary to gain control of a weapon.

(b) The restraint described in section 2 (2)(g) of this 2021 Act may be used if the restraint is necessary for the purpose of extracting a body part from a bite.

(c) If a program is a secure children's inpatient treatment program or secure adolescent inpatient treatment program, the program may place a child in care in a restraint described in section 2 (2)(d) or (e) of this 2021 Act only if:

(A) The child in care is currently admitted to the program;

(B) The restraint is authorized by an order written at the time of and specifically for the current situation by a licensed medical practitioner or a licensed children's emergency safety intervention specialist;

(C) The restraint is used only as long as needed to prevent serious physical injury, as defined in ORS 161.015, and while no other intervention or form of restraint is possible;

(D) A licensed medical practitioner, children's emergency safety intervention specialist or qualified mental health professional, who is certified in the use of the type of restraint used, contin-

uously monitors the use of the restraint and the physical and psychological well-being of the child in care at all times while the restraint is being used;

(E) Each individual placing the child in care in the restraint is [*trained, as required by the Department of Human Services by rule,*] **certified as described in section 9 of this 2021 Act** in the use of the type of restraint used and the individual's training is current;

(F) One or more individuals with current cardiopulmonary resuscitation training are present for the duration of the restraint;

(G) The program has written policies that require a licensed children's emergency safety intervention specialist or other licensed practitioner to evaluate and document the physical, psychological and emotional well-being of the child in care immediately following the use of the restraint; and

(H) The program is in compliance with any other requirements under sections 1 to 11 of this 2021 Act, and the use of the restraint does not otherwise violate any applicable contract requirements or any state or federal law related to the use of restraints.

(5) In addition to the restraints described in subsection (3) of this section, a program may place a child in care in a restraint or involuntary seclusion if:

(a) The restraint or involuntary seclusion is used only for as long as the child in care's behavior poses a reasonable risk of imminent serious bodily injury;

(b) The individuals placing the child in care in the restraint **or involuntary seclusion are certified as described in section 9 of this 2021 Act in the use of the type of restraint used or** are trained, as required by the department by rule, in the use of the [*type of restraint or*] involuntary seclusion used;

(c) The program staff continuously monitor the child in care for the duration of the restraint or involuntary seclusion; and

(d) The restraint or involuntary seclusion is performed in a manner that is safe, proportionate and appropriate, taking into consideration the child in care's chronological and developmental age, size, gender identity, physical, medical and psychiatric condition and personal history, including any history of physical or sexual abuse.

(6) In addition to the requirements described in subsection (5) of this section, if a program places a child in care in a restraint or involuntary seclusion for more than 10 minutes:

(a) The program must provide the child in care with adequate access to the bathroom and water at least every 30 minutes; and

(b)(A) Every five minutes after the first 10 minutes of the restraint or involuntary seclusion, a program supervisor who is **certified as described in section 9 of this 2021 Act in the use of the type of restraint being used or** trained, as required by the department by rule, in the use of the [*type of restraint or*] involuntary seclusion being used must provide written authorization for the continuation of the restraint or involuntary seclusion.

(B) If the supervisor is not on-site at the time the restraint is used, the supervisor may provide the written authorization electronically.

(C) The written authorization must document why the restraint or involuntary seclusion continues to be the least restrictive intervention to reduce the risk of imminent serious bodily injury in the given circumstances.

SECTION 5. Procedures, notices and reports. (1) A program shall establish procedures for the program to follow when a child in care is placed in a restraint or involuntary seclusion. The procedures must be consistent with the provisions of this section and sections 2 and 3 of this 2021 Act.

(2) A program shall maintain a record of each incident in which a reportable injury arises from the use of a restraint or involuntary seclusion. The record under this subsection must include any audio or video recording immediately preceding, during and following the incident.

(3)(a) If a program places a child in care in a restraint except as provided in section 3 (3)(a) or (b) of this 2021 Act, or involuntary seclusion, the program shall provide the child in

care's case manager, attorney, court appointed special advocate and parents or guardians with:

(A) Verbal or electronic notice that the restraint or involuntary seclusion was used as soon as practicable following the incident but not later than the end of the next business day; and

(B) Written notice that the restraint or involuntary seclusion was used as soon as practicable following the incident but not later than the end of the next business day.

(b) The written notice must include:

(A) A description of the restraint or involuntary seclusion, the date of the restraint or involuntary seclusion, the times when the restraint or involuntary seclusion began and ended and the location of the restraint or involuntary seclusion.

(B) A description of the child in care's activity that necessitated the use of restraint or involuntary seclusion.

(C) The efforts the program used to de-escalate the situation and the alternatives to restraint or involuntary seclusion the program attempted before placing the child in care in the restraint or involuntary seclusion.

(D)(i) The names of each of individual who placed the child in care in the restraint or involuntary seclusion or who monitored or approved the placement of the child in care in the restraint or involuntary seclusion.

(ii) For each individual identified in this subparagraph, whether the individual was trained, as required by the Department of Human Services by rule, in the use of the type of restraint or involuntary seclusion used, the date of the individual's most recent training and a description of the types of restraint the individual is trained to use, if any.

(iii) If an individual identified in this subparagraph was not trained in the type of restraint or involuntary seclusion used, or if the individual's training was not current, a description of the individual's training deficiency and the reason an individual without the proper training was involved in the restraint or involuntary seclusion.

(4) If an incident requires notice under subsection (3) of this section, not later than two business days following the date of the restraint or involuntary seclusion, the program shall hold a debriefing meeting with each individual who was involved in the incident and with any other appropriate program staff, shall take written notes of the debriefing meeting and shall provide copies of the written notes to the child in care's case manager, attorney, court appointed special advocate and parents or guardians.

(5)(a) If a program places a child in care in a restraint or involuntary seclusion and the child in care suffers a reportable injury arising from the restraint or involuntary seclusion, the program shall immediately provide the department and the child in care's attorney, court appointed special advocate and parents or guardians with written notification of the incident and access to and, upon request, copies of all records related to the restraint or involuntary seclusion, including any photographs and audio or video recordings.

(b) If serious bodily injury or the death of staff personnel occurs in connection to the use of the restraint or involuntary seclusion, the program shall provide the department with written notification of the incident not later than 24 hours following the incident.

SECTION 6. Section 5 of this 2021 Act is amended to read:

Sec. 5. (1) A program shall establish procedures for the program to follow when a child in care is placed in a restraint or involuntary seclusion. The procedures must be consistent with the provisions of this section and sections 2 and 3 of this 2021 Act.

(2) A program shall maintain a record of each incident in which a reportable injury arises from the use of a restraint or involuntary seclusion. The record under this subsection must include any audio or video recording immediately preceding, during and following the incident.

(3)(a) If a program places a child in care in a restraint except as provided in section 3 (3)(a) or (b) of this 2021 Act, or involuntary seclusion, the program shall provide the child in care's case manager, attorney, court appointed special advocate and parents or guardians with:

(A) Verbal or electronic notice that the restraint or involuntary seclusion was used as soon as practicable following the incident but not later than the end of the next business day; and

(B) Written notice that the restraint or involuntary seclusion was used as soon as practicable following the incident but not later than the end of the next business day.

(b) The written notice must include:

(A) A description of the restraint or involuntary seclusion, the date of the restraint or involuntary seclusion, the times when the restraint or involuntary seclusion began and ended and the location of the restraint or involuntary seclusion.

(B) A description of the child in care's activity that necessitated the use of restraint or involuntary seclusion.

(C) The efforts the program used to de-escalate the situation and the alternatives to restraint or involuntary seclusion the program attempted before placing the child in care in the restraint or involuntary seclusion.

(D)(i) The names of each of individual who placed the child in care in the restraint or involuntary seclusion or who monitored or approved the placement of the child in care in the restraint or involuntary seclusion.

(ii) For each individual identified in this subparagraph, whether the individual was **certified as described in section 9 of this 2021 Act in the use of the type of restraint used or** trained, as required by the Department of Human Services by rule, in the use of the [*type of restraint or*] involuntary seclusion used, the date of the individual's most recent **certification or** training and a description of the types of restraint the individual is [*trained*] **certified** to use, if any.

(iii) If an individual identified in this subparagraph was not **certified or** trained in the type of restraint or involuntary seclusion used, or if the individual's **certification or** training was not current, a description of the individual's **certification or** training deficiency and the reason an individual without the proper **certification or** training was involved in the restraint or involuntary seclusion.

(4) If an incident requires notice under subsection (3) of this section, not later than two business days following the date of the restraint or involuntary seclusion, the program shall hold a debriefing meeting with each individual who was involved in the incident and with any other appropriate program staff, shall take written notes of the debriefing meeting and shall provide copies of the written notes to the child in care's case manager, attorney, court appointed special advocate and parents or guardians.

(5)(a) If a program places a child in care in a restraint or involuntary seclusion and the child in care suffers a reportable injury arising from the restraint or involuntary seclusion, the program shall immediately provide the department and the child in care's attorney, court appointed special advocate and parents or guardians with written notification of the incident and access to and, upon request, copies of all records related to the restraint or involuntary seclusion, including any photographs and audio or video recordings.

(b) If serious bodily injury or the death of staff personnel occurs in connection to the use of the restraint or involuntary seclusion, the program shall provide the department with written notification of the incident not later than 24 hours following the incident.

SECTION 7. Reporting requirements. (1) A program must prepare and submit to the Department of Human Services a quarterly report detailing the program's use of restraint and involuntary seclusion for the preceding three-month period, including, at a minimum:

(a) The total number of incidents involving restraint.

(b) The total number of incidents involving involuntary seclusion.

(c) The total number of involuntary seclusions in a locked room.

(d) The total number of rooms available for use by the program for involuntary seclusion and a description of the dimensions and design of the rooms.

(e) The total number of children in care placed in restraint.

(f) The total number of children in care placed in involuntary seclusion.

(g) The total number of incidents under paragraph (a) or (b) of this subsection that resulted in reportable injuries.

(h) The number of children in care who were placed in restraint or involuntary seclusion more than three times during the preceding three-month period and a description of the steps the program has taken to decrease the use of restraint and involuntary seclusion.

(i) The number of incidents in which an individual who placed a child in care in a restraint or involuntary seclusion was not trained, as required by the department by rule, in the use of the type of restraint or involuntary seclusion used.

(j) The demographic characteristics of the children in care who the program placed in a restraint or involuntary seclusion, including race, ethnicity, gender, disability status, migrant status, English proficiency and status as economically disadvantaged, unless the demographic information would reveal personally identifiable information about an individual child in care.

(2)(a) If a program provides services in more than one location, the reports under subsection (1) of this section must separate the data for each location that serves five or more children in care.

(b) If the site-specific data for a given location is not provided under paragraph (a) of this subsection because the program serves fewer than five children in care at that location, the program's report must include a notation indicating the aggregate number of children in care served by the program across all of the program's locations and the reporting requirements under paragraph (a) of this subsection continue to apply to any of the program's other locations serving five or more children in care.

(3)(a) The department shall make each quarterly report it receives under this section available to the public on the department's website.

(b) Each program that submits a report under this section shall make its quarterly report available to the public upon request at the program's main office and on the program's website if the program maintains a website.

(c) Each program shall provide notice regarding how to access the quarterly reports to the parents or guardians of children in care in the program. The program shall provide the notice upon the child in care's admission and at least two times each year thereafter.

SECTION 8. Section 7 of this 2021 Act is amended to read:

Sec. 7. (1) A program must prepare and submit to the Department of Human Services a quarterly report detailing the program's use of restraint and involuntary seclusion for the preceding three-month period, including, at a minimum:

(a) The total number of incidents involving restraint.

(b) The total number of incidents involving involuntary seclusion.

(c) The total number of involuntary seclusions in a locked room.

(d) The total number of rooms available for use by the program for involuntary seclusion and a description of the dimensions and design of the rooms.

(e) The total number of children in care placed in restraint.

(f) The total number of children in care placed in involuntary seclusion.

(g) The total number of incidents under paragraph (a) or (b) of this subsection that resulted in reportable injuries.

(h) The number of children in care who were placed in restraint or involuntary seclusion more than three times during the preceding three-month period and a description of the steps the program has taken to decrease the use of restraint and involuntary seclusion.

(i) The number of incidents in which an individual who placed a child in care in a restraint or involuntary seclusion was not **certified as described in section 9 of this 2021 Act or** trained, as required by the department by rule, in the use of the type of restraint or involuntary seclusion used.

(j) The demographic characteristics of the children in care who the program placed in a restraint or involuntary seclusion, including race, ethnicity, gender, disability status, migrant status,

English proficiency and status as economically disadvantaged, unless the demographic information would reveal personally identifiable information about an individual child in care.

(2)(a) If a program provides services in more than one location, the reports under subsection (1) of this section must separate the data for each location that serves five or more children in care.

(b) If the site-specific data for a given location is not provided under paragraph (a) of this subsection because the program serves fewer than five children in care at that location, the program's report must include a notation indicating the aggregate number of children in care served by the program across all of the program's locations and the reporting requirements under paragraph (a) of this subsection continue to apply to any of the program's other locations serving five or more children in care.

(3)(a) The department shall make each quarterly report it receives under this section available to the public on the department's website.

(b) Each program that submits a report under this section shall make its quarterly report available to the public upon request at the program's main office and on the program's website if the program maintains a website.

(c) Each program shall provide notice regarding how to access the quarterly reports to the parents or guardians of children in care in the program. The program shall provide the notice upon the child in care's admission and at least two times each year thereafter.

SECTION 9. Training. If a program places a child in care in a restraint or involuntary seclusion, the individuals using the restraint or involuntary seclusion must be trained, as required by the Department of Human Services by rule in effect on the effective date of this 2021 Act, to administer the type of restraint or involuntary seclusion used.

SECTION 10. Section 9 of this 2021 Act is amended to read:

Sec. 9. [*If a program places a child in care in a restraint or involuntary seclusion, the individuals using the restraint or involuntary seclusion must be trained, as required by the Department of Human Services by rule in effect on the effective date of this 2021 Act, to administer the type of restraint or involuntary seclusion used.*]

(1)(a) The Department of Human Services shall adopt by rule training standards and certification requirements regarding the placement of a child in care in a restraint or involuntary seclusion, consistent with this section.

(b) The department shall designate two or three nationally recognized providers of crisis intervention training that meet the department's training standards and whose certifications issued upon completion of the training programs the department will recognize as satisfying the department's certification requirements.

(2) The department's rules under this section must:

(a) Ensure consistency of training and professional development across all programs;

(b) Require the teaching of techniques for nonviolent crisis intervention that do not require restraint;

(c) Focus on de-escalation and trauma-informed behavioral support as the core of a training program;

(d) Offer options for certification in skills that do not include the use of restraint to improve agency-wide safety, culture and trauma-informed practices;

(e) Prioritize the reduction or elimination of the use of restraint and involuntary seclusion;

(f) Ensure that any physical intervention skills taught are trauma-informed, age-appropriate and developmentally appropriate for children in care, reduce the risk of physical or emotional harm and are consistent with all state and federal laws;

(g) Include training to identify the physical, psychological and emotional risks for children and program staff related to the use of restraint and involuntary seclusion;

(h) Ensure fidelity of training through the publication of consistent training materials and resources for certified instructors and certified program staff;

(i) Include requirements for instructor training and certification; and

(j) Require regular, ongoing support to certified instructors, including quality control, monitoring of outcomes and provision of information regarding networks for professional collaboration and support.

(3) The department's rules must require that training instructors:

(a) Be certified to conduct the type of training the instructor is providing;

(b) Complete a minimum of 26 hours of initial education with a focus on de-escalation, nonviolent intervention and methods consistent with the department's rules for the use of physical intervention;

(c) Complete a minimum of 12 hours of continuing education every two years;

(d) Be recertified at least once every two years; and

(e) Demonstrate written and physical competency before receiving certification or re-certification.

(4) The department's rules must provide that an individual who places a child in care in a program in a restraint must be certified in the use of the specific type of restraint used. The department's rules must describe the minimum certification requirements, including:

(a) Completion of a minimum of 12 hours of initial training in person from an instructor certified as provided in subsection (3) of this section, including at least six hours of training in positive behavior support, nonviolent crisis intervention and other methods of nonphysical intervention to support children in care in crisis;

(b) Annual continuing education with a certified instructor; and

(c) Demonstration of a mastery of the training program material both in writing and by physical competency before receiving certification.

(5) A certification issued under this section:

(a) Must be personal to the individual certified by the training provider;

(b) May be valid for no more than two years without recertification;

(c) Must require annual continuing education to maintain;

(d) Must require additional training to renew the certification;

(e) Must be portable between employers; and

(f) Must include:

(A) The dates during which the certification is current;

(B) The types of restraint in which the individual is certified, if any;

(C) The types of training the individual is certified to conduct, if any;

(D) Any special endorsements earned by the individual;

(E) The level of training; and

(F) The name of the certified instructor who conducted the training and administered the assessment of proficiency.

(6) An individual whose certification is consistent with the department's rules under this section shall maintain the documentation of the certification and make that documentation available to the department upon request.

SECTION 11. Information provided to children in care. (1) Each child in care receiving services from a child-caring agency must be provided with information that:

(a) Explains the provisions of sections 1 to 11 of this 2021 Act;

(b) Provides instruction regarding how a child in care may report suspected inappropriate use of restraint or involuntary seclusion;

(c) Assures the child in care that the child will not experience retaliation for reporting suspected inappropriate uses of restraint or involuntary seclusion; and

(d) Includes the telephone number for the toll-free child abuse hotline described in ORS 417.805 and the telephone numbers and electronic mail addresses for the program's licensing or certification agency, the child in care's caseworker and attorney, the child in care's court appointed special advocate and Disability Rights Oregon.

(2) The information described in subsection (1) of this section must be provided by:

(a) The Department of Human Services if the department placed the child in care in the child-caring agency;

(b) The Oregon Youth Authority if the child in care has been committed to the custody of the authority; or

(c) The child-caring agency, as required by the department by rule, for all other children in care.

SECTION 12. ORS 418.257 is amended to read:

418.257. As used in ORS 418.257 to 418.259:

(1) "Abuse" means one or more of the following:

(a) Any physical injury to a child in care caused by other than accidental means, or that appears to be at variance with the explanation given of the injury.

(b) Neglect of a child in care.

(c) Abandonment, including desertion or willful forsaking of a child in care or the withdrawal or neglect of duties and obligations owed a child in care by a child-caring agency, caretaker, certified foster home, developmental disabilities residential facility or other person.

(d) Willful infliction of physical pain or injury upon a child in care.

(e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465, 163.467 or 163.525.

(f) Verbal abuse.

(g) Financial exploitation.

(h) Sexual abuse.

[*(i) Involuntary seclusion of a child in care for the convenience of a child-caring agency, caretaker, certified foster home or developmental disabilities residential facility or to discipline the child in care.*]

[*(j) A wrongful use of a physical or chemical restraint of a child in care, excluding an act of restraint prescribed by a physician licensed under ORS chapter 677 and any treatment activities that are consistent with an approved treatment plan or in connection with a court order.*]

(i) The use of restraint or involuntary seclusion of a child in care in violation of section 2 or 3 of this 2021 Act.

(2) "Certified foster home" means a foster home certified by the Department of Human Services and subject to ORS 418.625 to 418.645.

(3)(a) "Child in care" means a person under 21 years of age who is residing in or receiving care or services from:

(A) A child-caring agency or proctor foster home subject to ORS 418.205 to 418.327, 418.470, 418.475 or 418.950 to 418.970;

(B) A certified foster home; or

(C) A developmental disabilities residential facility.

(b) "Child in care" does not include a person under 21 years of age who is residing in any of the entities listed in paragraph (a) of this subsection when the care provided is in the home of the child by the child's parent.

[*(4) "Child-caring agency" has the meaning given that term in ORS 418.205.*]

[*(5)*] **(4)** "Developmental disabilities residential facility" means a residential facility or foster home for children who are [*18*] **17** years of age or younger and receiving developmental disability services that is subject to ORS 443.400 to 443.455, 443.830 and 443.835.

[*(6) "Involuntary seclusion" means the confinement of a child in care alone in a room from which the child in care is physically prevented from leaving. "Involuntary seclusion" does not include age-appropriate discipline, including but not limited to a time-out.*]

[*(7) "Proctor foster home" has the meaning given that term in ORS 418.205.*]

[*(8)(a)*] **(5)(a)** "Financial exploitation" means:

(A) Wrongfully taking the assets, funds or property belonging to or intended for the use of a child in care.

(B) Alarming a child in care by conveying a threat to wrongfully take or appropriate moneys or property of the child in care if the child would reasonably believe that the threat conveyed would be carried out.

(C) Misappropriating, misusing or transferring without authorization any moneys from any account held jointly or singly by a child in care.

(D) Failing to use the income or assets of a child in care effectively for the support and maintenance of the child in care.

(b) "Financial exploitation" does not include age-appropriate discipline that may involve the threat to withhold, or the withholding of, privileges.

[*(9)*] **(6)** "Intimidation" means compelling or deterring conduct by threat. "Intimidation" does not include age-appropriate discipline that may involve the threat to withhold privileges.

(7) "Involuntary seclusion" has the meaning given that term in section 1 of this 2021 Act.

[*(10)*] **(8)** "Law enforcement agency" means:

(a) Any city or municipal police department.

(b) Any county sheriff's office.

(c) The Oregon State Police.

(d) Any district attorney.

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

[*(11)*] **(9)** "Neglect" means:

(a) Failure to provide the care, supervision or services necessary to maintain the physical and mental health of a child in care; or

(b) The failure of a child-caring agency, proctor foster home, certified foster home, developmental disabilities residential facility, caretaker or other person to make a reasonable effort to protect a child in care from abuse.

(10) "Restraint" has the meaning given that term in section 1 of this 2021 Act.

[*(12)*] **(11)** "Services" includes but is not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene or any other service essential to the well-being of a child in care.

[*(13)*] **(12)** "Sexual abuse" means:

(a) Sexual harassment, sexual exploitation or inappropriate exposure to sexually explicit material or language;

(b) Any sexual contact between a child in care and an employee of a child-caring agency, proctor foster home, certified foster home, developmental disabilities residential facility, caretaker or other person responsible for the provision of care or services to a child in care;

(c) Any sexual contact between a person and a child in care that is unlawful under ORS chapter 163 and not subject to a defense under that chapter; or

(d) Any sexual contact that is achieved through force, trickery, threat or coercion.

[*(14)*] **(13)** "Sexual contact" has the meaning given that term in ORS 163.305.

[*(15)*] **(14)** "Sexual exploitation" means sexual exploitation as described in ORS 419B.005 (1)(a)(E).

[*(16)*] **(15)** "Verbal abuse" means to threaten significant physical or emotional harm to a child in care through the use of:

(a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or

(b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate sexual comments.

SECTION 13. ORS 418.259, as amended by section 9, chapter 19, Oregon Laws 2020 (first special session), is amended to read:

418.259. (1) The investigation conducted by the Department of Human Services under ORS 418.258 must result in one of the following findings:

(a) That the report is substantiated. A report is substantiated when there is reasonable cause to believe that the abuse of a child in care occurred.

(b) That the report is unsubstantiated. A report is unsubstantiated when there is no evidence that the abuse of a child in care occurred.

(c) That the report is inconclusive. A report is inconclusive when there is some indication that the abuse occurred but there is insufficient evidence to conclude that there is reasonable cause to believe that the abuse occurred.

(2) When a report is received under ORS 418.258 alleging that a child in care may have been subjected to abuse, the department shall notify the case managers for the child, the attorney for the child, the child's court appointed special advocate, the parents or guardians of the child, any attorney representing a parent or guardian of the child and any governmental agency that has a contract with the child-caring agency or developmental disabilities residential facility to provide care or services to the child that a report has been received.

(3)**(a)** The department may interview the child in care who is the subject of suspected abuse and **any** witnesses**, including other children,** without the presence of employees of the child-caring agency, proctor foster home or developmental disabilities residential facility, the provider of services at a certified foster home or department personnel. The department shall inform the child in care that the child may have the child's parent or guardian, if the child has not been committed to the custody of the department or the Oregon Youth Authority, or attorney present when participating in an interview conducted in the course of an abuse investigation.

(b) When investigating an allegation of inappropriate use of restraint or involuntary seclusion, the department shall:

(A) Conduct the interviews described in paragraph (a) of this subsection;

(B) Review all relevant incident reports related to the child in care and other reports related to the restraint or involuntary seclusion of the child in care;

(C) Review any audio, video or photographic recordings of the restraint or involuntary seclusion, including the circumstances immediately before and following the incident;

(D) During an interview with the child in care who is the subject of the suspected abuse, ask the child about whether they experienced any reportable injury or pain as a result of the restraint or involuntary seclusion;

(E) Review the training records related to all of the individuals who were involved in the use of restraint or involuntary seclusion; and

(F) Make all reasonable efforts to conduct trauma-informed interviews of each child witness, including the child in care who is the subject of suspected abuse unless the investigator makes a specific determination that the interview may significantly traumatize the child and is not in the best interests of the child.

(4) The department shall notify the following when a report of abuse is substantiated:

(a) The Director of Human Services.

(b) Personnel in the department responsible for the licensing, certificate or authorization of child-caring agencies.

(c) The department's lead personnel in that part of the department that is responsible for child welfare generally.

(d) With respect to the child in care who is the subject of the abuse report and investigation, the case managers for the child, the attorney for the child, the child's court appointed special advocate, the parents or guardians of the child, any attorney representing a parent or guardian of the child and any governmental agency that has a contract with the child-caring agency to provide care or services to the child.

(e) The parents or guardians of the child in care who is the subject of the abuse report and investigation if the child in care has not been committed to the custody of the department or the youth authority. Notification under this paragraph may not include any details or information other than that a report of abuse has been substantiated.

(f) Any governmental agency that has a contract with the child-caring agency to provide care or services to a child in care.

(g) The local citizen review board established by the Judicial Department under ORS 419A.090.

(5) The department shall report on a quarterly basis to the interim legislative committees on child welfare for the purposes of public review and oversight of the quality and safety of child-caring agencies, certified foster homes and developmental disabilities residential facilities that are licensed, certified or authorized by the department in this state and of proctor foster homes that are certified by the child-caring agencies. Information provided in reports under this subsection may not contain the name or any identifying information of a child in care but must contain all of the following:

(a) The name of any child-caring agency, including an out-of-state child-caring agency, proctor foster home or developmental disabilities residential facility, or, provided there are five or more certified foster homes in the county, the name of the county where a certified foster home is located, where the department conducted an investigation pursuant to ORS 418.258 that resulted in a finding that the report of abuse was substantiated during that quarter;

(b) The approximate date that the abuse occurred;

(c) The nature of the abuse and a brief narrative description of the abuse that occurred;

(d) Whether physical injury, sexual abuse or death resulted from the abuse;

(e) Corrective actions taken or ordered by the department and the outcome of the corrective actions; and

(f) Information the department received in that quarter regarding any substantiated allegations of child abuse made by any other state involving a congregate care residential setting, as defined in ORS 419B.354, in which the department has placed Oregon children.

(6) The department's quarterly report under subsection (5) of this section must also contain all of the following:

(a) The total number of restraints used in programs that quarter;

(b) The total number of programs that reported the use of restraints of children in care that quarter;

(c) The total number of individual children in care who were placed in restraints by programs that quarter;

(d) The number of reportable injuries to children in care that resulted from those restraints;

(e) The number of incidents in which an individual who was not appropriately trained in the use of the restraint used on a child in care in a program; and

(f) The number of incidents that were reported for potential inappropriate use of restraint.

[*(6)*] **(7)** In compiling records, reports and other information during an investigation under ORS 418.258 (1) and in issuing findings, letters of concern or reprimands, the Director of Human Services or the director's designee and the department may not refer to the employee, person or entity that is the subject of the investigation as an "alleged perpetrator" but must refer to the employee, person or entity as the "respondent."

(8) As used in this section, "program," "reportable injury" and "restraint" have the meanings given those terms in section 1 of this 2021 Act.

SECURE TRANSPORTATION SERVICES PROVIDERS

SECTION 14. Referrals to secure transportation services providers. (1) A person or organization that makes a referral or recommendation related to the use of a secure transportation services provider to transport a child to a school, agency, organization or program described in ORS 418.205 (2)(a)(A) must provide the written referral disclosure described in subsection (2) of this section if the child to be transferred is a resident of this state or if the school, agency, organization or program to which the secure transportation services provider will deliver the child is located in this state.

(2) The referral disclosure under this section must state:

ORS 418.215 requires a secure transportation services provider that transports children to or from a school, agency, organization or program along a route that begins or ends in Oregon to be licensed by the Department of Human Services.

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(3) As used in this section, "child" and "secure transportation services provider" have the meanings given those terms in ORS 418.205.

SECTION 15. ORS 418.205, as amended by sections 15a and 15b, chapter 19, Oregon Laws 2020 (first special session), is amended to read:

418.205. As used in ORS 418.205 to 418.327, 418.470, 418.475, 418.950 to 418.970 and 418.992 to 418.998, unless the context requires otherwise:

(1) "Child" means an unmarried person under 21 years of age who resides in or receives care or services from a child-caring agency.

(2)(a) "Child-caring agency":

(A) Means any private school, private agency, private organization or county program providing:

(i) Day treatment for children with emotional disturbances;

(ii) Adoption placement services;

(iii) Residential care, including but not limited to foster care or residential treatment for children;

(iv) Residential care in combination with academic education and therapeutic care, including but not limited to treatment for emotional, behavioral or mental health disturbances;

(v) Outdoor youth programs; or

(vi) Other similar care or services for children.

(B) Includes the following:

(i) A shelter-care home that is not a foster home subject to ORS 418.625 to 418.645;

(ii) An independent residence facility as described in ORS 418.475;

(iii) A private residential boarding school; [*and*]

(iv) A child-caring facility as defined in ORS 418.950[.]**; and**

(v) A secure transportation services provider that transports or provides escort services for children on the highways of this state along a route that begins or ends in this state to or from a school, agency, organization or program described in subparagraph (A) of this paragraph, if the school, agency, organization or program is located in this state or in any other state.

(b) "Child-caring agency" does not include:

(A) Residential facilities or foster care homes certified or licensed by the Department of Human Services under ORS 443.400 to 443.455, 443.830 and 443.835 for children receiving developmental disability services;

(B) Any private agency or organization facilitating the provision of respite services for parents pursuant to a properly executed power of attorney under ORS 109.056. For purposes of this subparagraph, "respite services" means the voluntary assumption of short-term care and control of a minor child without compensation or reimbursement of expenses for the purpose of providing a parent in crisis with relief from the demands of ongoing care of the parent's child;

(C) A youth job development organization as defined in ORS 344.415;

(D) A shelter-care home that is a foster home subject to ORS 418.625 to 418.645;

(E) A foster home subject to ORS 418.625 to 418.645;

(F) A facility that exclusively serves individuals 18 years of age and older; or

(G) A facility that primarily serves both adults and children but requires that any child must be accompanied at all times by at least one custodial parent or guardian.

(3) "Child-caring facility" has the meaning given that term in ORS 418.950.

(4)(a) "County program" means any county operated program that provides care or services to children**:**

(A) In the custody of the Department of Human Services or the Oregon Youth Authority[.]**; or**

(B) Under a contract with the Oregon Health Authority.

(b) "County program" does not include any local juvenile detention facility that receives state services provided and coordinated by the Department of Corrections under ORS 169.070.

(5) "Governmental agency" means an executive, legislative or judicial agency, department, board, commission, authority, institution or instrumentality of this state or of a county, municipality or other political subdivision of this state.

(6) "Independent residence facility" means a facility established or certified under ORS 418.475.

(7)(a) "Outdoor youth program" means a program that provides, in an outdoor living setting, services to children who have behavioral problems, mental health problems or problems with abuse of alcohol or drugs.

(b) "Outdoor youth program" does not include any program, facility or activity:

(A) Operated by a governmental entity;

(B) Operated or affiliated with the Oregon Youth Corps;

(C) Licensed by the Department of Human Services under other authority of the department; or

(D) Operated by a youth job development organization as defined in ORS 344.415.

(8) "Private" means not owned, operated or administered by any governmental agency or unit.

(9) "Private residential boarding school" means either of the following as the context requires:

(a) A child-caring agency that is a private school that provides residential care in combination with academic education and therapeutic care, including but not limited to treatment for emotional, behavioral or mental health disturbances; or

(b) A private school providing residential care that is primarily engaged in educational work under ORS 418.327.

(10) "Proctor foster home" means a foster home certified by a child-caring agency under ORS 418.248 that is not subject to ORS 418.625 to 418.645.

(11) "Provider of care or services for children" means a person, entity or organization that provides care or services to children, regardless of whether the child is in the custody of the Department of Human Services, and that does not otherwise meet the definition of, or requirements for, a child-caring agency. "Provider of care or services for children" includes a proctor foster home certified by a child-caring agency under ORS 418.248.

(12) "Qualified residential treatment program" means a program described in section 12b, chapter 19, Oregon Laws 2020 (first special session).

(13) "Secure transportation services provider" means a private organization or person that provides secure transportation or secure escort services for children to or from a school, agency, organization or program described in subsection (2)(a)(A) of this section, if the school, agency, organization or program is located in this state or in any other state.

[*(13)*] **(14)** "Shelter-care home" has the meaning given that term in ORS 418.470.

MISCELLANEOUS

SECTION 16. Reports first due. The reports under section 7 of this 2021 Act are due on February 1, 2022, and quarterly thereafter. The reports due on February 1, 2022, must include data regarding the program's use of restraint and involuntary seclusion from September 1, 2021, through December 31, 2021.

SECTION 17. Appropriations. (1) Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (8), chapter ___, Oregon Laws 2021 (Enrolled Senate Bill 5529), for the biennium beginning July 1, 2021, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and Medicare receipts and including federal funds for indirect cost recovery, Social Security Supplemental Security Income recoveries and the Child Care and Development Fund, but excluding lottery funds and federal funds not described in section 2, chapter __, Oregon Laws 2021 (Enrolled Senate Bill 5529), collected or received by the Department of

Human Services, for shared services, is increased by $591,746 for the purpose of carrying out the provisions of this 2021 Act.

(2) Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 3 (2), chapter __, Oregon Laws 2021 (Enrolled Senate Bill 5529), for the biennium beginning July 1, 2021, as the maximum limit for payment of expenses from federal funds, excluding federal funds described in section 2, chapter __, Oregon Laws 2021 (Enrolled Senate Bill 5529), collected or received by the Department of Human Services, for state assessments and enterprise-wide costs, is increased by $231,981 for the purpose of carrying out the provisions of this 2021 Act.

(3) Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (2), chapter __, Oregon Laws 2021 (Enrolled Senate Bill 5529), for the biennium beginning July 1, 2021, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and Medicare receipts and including federal funds for indirect cost recovery, Social Security Supplemental Security Income recoveries and the Child Care and Development Fund, but excluding lottery funds and federal funds not described in section 2, chapter __, Oregon Laws 2021 (Enrolled Senate Bill 5529), collected or received by the Department of Human Services, for state assessments and enterprise-wide costs, is increased by $1,483 for the purpose of carrying out the provisions of this 2021 Act.

(4) Notwithstanding any other provision of law, the General Fund appropriation made to the Department of Human Services by section 1 (2), chapter __, Oregon Laws 2021 (Enrolled Senate Bill 5529), for the biennium beginning July 1, 2021, for state assessments and enterprise-wide costs, is increased by $440,116, for the purpose of carrying out the provisions of this 2021 Act.

(5) Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 3 (7), chapter __, Oregon Laws 2021 (Enrolled Senate Bill 5529), for the biennium beginning July 1, 2021, as the maximum limit for payment of expenses from federal funds, excluding federal funds described in section 2, chapter __, Oregon Laws 2021 (Enrolled Senate Bill 5529), collected or received by the Department of Human Services, for intellectual/developmental disabilities programs, is increased by $2,042,807 for the purpose of carrying out the provisions of this 2021 Act.

(6) Notwithstanding any other provision of law, the General Fund appropriation made to the Department of Human Services by section 1 (7), chapter __, Oregon Laws 2021 (Enrolled Senate Bill 5529), for the biennium beginning July 1, 2021, for intellectual/developmental disabilities programs, is increased by $1,047,717, for the purpose of carrying out the provisions of this 2021 Act.

SECTION 18. Operative dates. (1)(a) The amendments to sections 3, 5, 7 and 9 of this 2021 Act by sections 4, 6, 8 and 10 of this 2021 Act become operative on July 1, 2022.

(b) The Department of Human Services may adopt rules and take any other action before the operative date specified in paragraph (a) of this subsection that is necessary to enable the department, on or after the operative date specified in paragraph (a) of this subsection, to undertake and exercise all of the duties, functions and powers conferred on the department by the amendments to sections 3, 5, 7 and 9 of this 2021 Act by sections 4, 6, 8 and 10 of this 2021 Act.

(2)(a) Section 14 of this 2021 Act and the amendments to ORS 418.205 by section 15 of this 2021 Act become operative on January 2, 2022.

(b) The department may adopt rules and take any other action before the operative date specified in paragraph (a) of this subsection that is necessary to enable the department, on or after the operative date specified in paragraph (a) of this subsection, to undertake and exercise all of the duties, functions and powers conferred on the department by section 14 of this 2021 Act and the amendments to ORS 418.205 by section 15 of this 2021 Act.

SECTION 19. Captions. The unit and section captions used in this 2021 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2021 Act.

SECTION 20. Effective date. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on September 1, 2021.

Passed by Senate June 24, 2021

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

.....
Peter Courtney, President of Senate

Passed by House June 25, 2021

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

.....
Shemia Fagan, Secretary of State

July 16, 2020

Paul Terdal
700 NW Macleay Blvd
Portland, OR 97210

Behavior Analysis Regulatory Board
Oregon Health Authority
1430 Tandem Ave, NE, Suite 180
Salem, OR 97301-2192
By e-mail: maria.s.gutierrez@state.or.us

Re: Public Comment for July 16, 2021 Behavior Analysis Regulatory Board Meeting –2021 Legislation (SB355 and SB358)

Dear Chair Johns and Members of the Board,

I'm writing to provide testimony for the BARB meeting on July 16th regarding 2021 Legislation.

In the January meeting, I submitted public comment about two bills that were introduced on my behalf by the Senate Health Care committee:

- **SB355** delays the sunset of Oregon's Autism Health Insurance Reform law – which is currently set to expire at the end of this year. This law mandates coverage of medically necessary care for autism, including ABA.
- **SB358** fixes a number of gaps and technical issues with regulation of Behavior Analysts, such as requiring them to report child abuse; unprofessional conduct and criminal convictions; and provides enforcement authority and penalties for falsely claiming to be a licensed behavior analyst.

The bills were both filed on my behalf by the Senate Health Care committee.

SB358 passed – but at the last minute, it was amended to remove all consumer protections and all language fixing the gaps and technical issues with the regulation of Behavior Analysts. In effect, the legislature turned SB358 into SB355, extending the insurance coverage provisions from the 2013 Autism Health Insurance Reform law (SB365) for another eight years, until January 2, 2030.

To recap, here is a summary of the provisions that were removed from SB358 by the -A2 amendment:

- Licensed Behavior Analysts don't have to report child abuse – unlike every other professional. Even animal control officers have to report child abuse (ORS 419B.005(6)(ff)) – but Licensed Behavior Analysts don't have to. (see https://www.oregonlaws.org/ors/419B.005)
- Licensed Behavior Analysts remain free to practice gay conversion therapy in the State of Oregon, unlike psychologists, LPCs, OTs, etc. (see https://www.oregonlaws.org/ors/675.850)
- Licensed Behavior Analysts don't have to report their own criminal convictions, or unprofessional conduct, unlike all other health professions. (see https://www.oregonlaws.org/ors/676.150)
- The Behavior Analysis Regulatory Board – with professionals confirmed by the Senate – doesn't officially have even an advisory role on discipline and enforcement

    - Currently, the BARB's only statutory role is in adopting administrative rules on licensing and the practice of ABA – the board itself has no role whatsoever in enforcement.
    - All enforcement authority resides with the staff of the Health Licensing Office. As a matter of practice, the HLO staff consults with the BARB before taking action, but nothing in the statute requires or even encourages this.
- Anyone is free to falsely advertise that they are a Licensed Behavior Analyst – because Health Licensing doesn't have any enforcement authority to stop them.
    - It is technically unlawful to falsely claim the title, under ORS 676.820, but when we wrote this in 2015 we forgot to give Health Licensing any enforcement authority over that statute and there is no penalty clause. (See https://oregon.public.law/statutes/ors_676.825)
- Youth age 14 and up can access ABA therapy without parental consent if it is provided by a psychologist, professional counselor, clinical social worker, or nurse practitioner – but not from a Licensed Behavior Analyst (see https://www.oregonlaws.org/ors/109.675).

Earlier in the session, we also agreed to remove a provision changing title of "Registered Behavior Analysis Interventionist" to "Licensed Behavior Analysis Interventionist." This title change proved to be confusing, and not needed for the intended purpose – making it easier for schools to be reimbursed by Medicaid for school-based ABA therapy services.

Discussion:

SB358 was sent to Ways and Means – the budget committee – because the Legislative Fiscal Office (LFO) believed (erroneously) that there was an opportunity to save about $2 million per year from the state budget by halting coverage of ABA therapy for public employees and teachers (PEBB and OEBB). LFO did this even though the Oregon Health Authority advised LFO in writing that there would be no fiscal impact to PEBB and OEBB; that the cost of providing ABA therapy was already budgeted; and they had no intention of halting coverage. Indeed, in 2015, PEBB was compelled to pay retroactive reimbursement for ABA therapy by public employees back to the enactment of Oregon's Mental Health Parity Law, plus compensation for violating the civil rights of a public employee, for wrongfully denying coverage of ABA.

Extending the coverage mandate from SB365 (2013) was important to streamline insurance coverage and eliminate the need for yet another round of costly litigation to enforce rights that already existed under other State and Federal laws – not to establish a right to coverage that wouldn't otherwise have existed. (See the Division of Financial Regulation's bulletins on mental health parity: https://dfr.oregon.gov/business/reg/health/Pages/mental-health-parity.aspx).

There is nothing in the public record to document the reasons for stripping out all consumer protections from SB358. The decision was made by Sen. Steiner Hayward, with support from President Courtney. She had apparently intended to kill SB358 altogether, but a last minute surge of grassroots emails and telephone calls from ABA providers and consumers raised awareness and the full bill was scheduled for a vote. Even then, Sen. Steiner Hayward and President Courtney informed their colleagues that they would not permit a vote on the bill unless everything but the insurance provisions were stripped out. I spoke with Sen. Steiner Hayward on her cell phone, and she made a vague reference to scope of practice but said she didn't remember what the issue was or who had raised it. No other legislator I spoke with identified any concerns with the bill.

During the work session, Legislative Fiscal Office confirmed that there was no fiscal impact whatsoever to any of the provisions that were removed.

It appears that some other health professional associations raised concerns with Sen. Steiner Hayward about the scope of practice of ABA, including concerns that had nothing to do with SB358 at all. Rather than reaching out to us for a response, or scheduling a hearing, she apparently decided to just kill the bill and forget about it. When the grassroots reached out en masse to call for passage, she simply demanded that everything but the insurance provisions had to go instead of trying to address the concerns she had received. As a result, Sen. Steiner Hayward left children vulnerable to child abuse, and – in the midst of Pride Month – stripped out protections for the LGBTQ community.

Next Steps:

I am working to reintroduce the consumer protections from SB358 as soon as possible – hopefully for the short 2022 legislative session.

I would encourage discussion between Behavior Analysts and peer professions (Speech-Language Pathologists, Occupational Therapists, Professional Counselors, Psychologists) regarding scope of practice. There may be ways to resolve concerns and friction through dialog, or formal regulatory guidance from the BARB, perhaps in partnership with other Oregon licensing boards.

Sincerely,

Paul Terdal

(503)984-2950

Attachments:

- Email from Paul Terdal to Health Licensing Office regarding fiscal impact of SB358
    - Includes one attachment, internal OHA emails confirming no impact
- Email from Paul Terdal to Sen. Steiner Hayward regarding scope of practice concerns

From:	Paul Terdal
To:	"Liz.A.Mill@state.or.us"; "Sara.SINGER@dhsoha.state.or.us"; "glenn.w.baly@dhsoha.state.or.us"; "Roger.STAPLES@dhsoha.state.or.us"; "CHELSEA.R.ANDERSON@dhsoha.state.or.us"; "haylee.morsemiller@oregonlegislature.gov"; "laurie.byerly@oregonlegislature.gov"
Cc:	"Brian.Nieubuurt@oregonlegislature.gov"; "Sylvie.Donaldson@dhsoha.state.or.us"; OBRIEN Jesse E * DCBS
Subject:	Fiscal Impact Statement for SB358A – request for meeting
Date:	Tuesday, April 27, 2021 8:59:00 AM
Attachments:	01 PEBB OEBB Emails on SB358A FIS.pdf 02 AF v Providence 013-cv-00776 doc 61 2014-01-21.pdf 03 SB365 Buckley Floor Letter 2013-07-01.pdf 04 AF v Providence 013-cv-00776 doc 09.pdf 05 PS v PEBB civil complaint 2014-04-29.pdf 06 AF v Providence 013-cv-00776 doc 91 2014-08-08.pdf 07 bulletin2014-01.pdf 08 bulletin2014-02.pdf 09 bulletin2014-0102opinion.pdf 10 2015.12.09_PS v PEBB Settlement Press Release.pdf 11 p_2015.12.04_Plaintiff"s Motion for Preliminary Approval of Settlement_Redacted.pdf

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Dear all,

I would like to meet with you to discuss the Fiscal Impact Statement for SB358A.

SB358A makes numerous technical fixes to the regulation of Applied Behavior Analysis providers and also extends the sunset on insurance coverage provisions for treatment of autism from SB365(2013).

The FIS states that:

> "*Were this measure not to pass, PEBB and OEBB would see combined savings of approximately $1,751,325 Other Funds in the 2021-23 biennium and $2,335,100 Other Funds in the 2023-25 biennium based on lower premiums, since insurers would no longer be required to cover certain treatment*"

This is not correct – while SB358A does extend the sunset on the insurance coverage provisions of SB365 (2013), existing state and federal laws will continue to mandate the same coverage, as has been well documented in legal rulings from federal courts, Oregon's Insurance Commissioner, and the Oregon Department of Justice. We want to extend the insurance coverage provisions for another 8 years to preserve the stability of coverage while we work to resolve overlaps and conflicts with federal law, as described in my testimony to the Senate Health Care committee.

PEBB and OEBB are aware of this, and I understand have already communicated to LFO that they have no intention of reducing coverage of treatment for autism even if SB358A is not enacted, as they wrote in an internal memo (attached):

> "*We put no impact on the fiscal, but LFO went ahead and included the possible savings and sent the bill to W&M. I have a call into Sara Singer on how we can clarify for LFO that there would be no savings especially with the further information provided by the advocate below.*"

There is, therefore, no fiscal impact to SB358A.

Background:

I worked very closely with Sen. Alan Bates on development of SB365 in the 2013 legislative session. As Sen. Bates described in a sworn declaration to U.S. District Court in AF v Providence, it was our belief then that the law already required coverage of treatment for autism – SB365 was intended to clarify and streamline coverage:

> "*I introduced Senate Bill 365 and ushered it through to enactment intending to create an accelerated process for children under the age of 9 who had confirmed diagnoses of autism to secure approval from their health insurers of reimbursement for up to 25 hours per week of Applied Behavior Analysis (ABA). At that time, state law required health insurance coverage for the treatment of autism and I understood that to include ABA. However, many insurers were initially denying coverage, forcing families to endure the extended insurance appeals processes, external review and, sometimes, litigation before the insurer would provide coverage of applied behavior analysis. The purpose of the bill was to allow families to bypass all of the lengthy appeals.*"

Rep. Peter Buckley, who carried SB365 on the floor of the House, made a similar point in a floor letter that he distributed:

> "*While SB365 establishes a framework for insurer approval and management of treatment for autism, it does not create a new Oregon insurance mandate for this condition: ORS 743A.168, Oregon's Mental Health Parity law, enacted as SB1 in 2005; and ORS 743A.190, Children with Pervasive Developmental Disorder, enacted as HB2918 in 2007, already mandate coverage of treatment for autism "at the same level as, and subject to limitations no more restrictive than, those imposed on coverage or reimbursement of expenses arising from treatment for other medical conditions.""*

Because of lingering concerns in 2013 about the fiscal impact of SB365, even as it was enacted, Sen. Bates – as Co-Chair of the Joint Committee On Ways and Means Subcommittee On Human Services – personally urged me to pursue litigation against a commercial insurance and against the State of Oregon to prove in a court of law that state and federal law had already mandated coverage of treatment for autism, including ABA therapy.

We had at that point already filed AF v Providence in U.S. District Court. At Sen. Bates specific urging, we also prepared and filed PS v PEBB in Marion County Circuit Court the following year. Both of these lawsuits argued that existing laws – that were in effect before SB365, and will remain in effect even if the sunset of SB365 takes effect in 2022 as scheduled – already mandated coverage, and that commercial insurers and the State were in violation of the law for unlawfully denying claims. PS v PEBB also included a civil rights claim under ORS 659A.112, that the State of Oregon had discriminated against the lead plaintiff by denying her daughter access to health care on the basis of her disability.

On August 8, 2014 – months before SB365 took effect – US District Court Judge Michael Simon issued a sweeping decision in AF v Providence, ruling on summary judgment that Providence's denials of ABA therapy as a treatment for autism had violated Oregon's Mental Health Parity Act (ORS 743A.168), Oregon's Children with Pervasive Developmental Disabilities Act (ORS 743A.190), and the Federal Wellstone-Domenici Mental Health Parity and Addiction Equity Act (MHPAEA). All of these statutes applied to PEBB and OEBB (by law or by incorporation into contracts) before SB365 was enacted, and will continue to apply after SB365 sunsets.

With respect to Oregon's Mental Health Parity act, Judge Simon wrote:

> "*Thus, looking to the text and context of § 743A.168 as well as the persuasive case law, the Court finds that Providence cannot simultaneously purport to cover autism and yet deny coverage for medically necessary ABA therapy through its Developmental Disability Exclusion consistent with the Oregon Mental Health Parity Act.*"

Regarding Oregon's Children with Pervasive Developmental Disabilities Act, Judge Simon wrote:

> "*If the Court were to interpret "medical services," it would find, and does find in the alternative, that ABA therapy is a medical service. Looking to the text and the context, the statute provides that a health benefit plan must cover "all medical services, including rehabilitation services, that are medically necessary and otherwise covered." Or. Rev. Stat. § 743A.190(1). * * * Based on the text and context of the statute—including the statutory definition of "rehabilitation services"—the Court agrees that ABA therapy fits within the ordinary definition of medical services.*"

Within days of Judge Simon's decision, the Oregon Health Plan, PEBB, and OEBB all announced that they would immediately begin coverage of ABA therapy, even though SB365 didn't take effect for PEBB and OEBB until 2015.

On November 14, 2014, the Oregon Insurance Division published bulletins INS 2014-1 and 2014-2 clarifying its interpretation of state and federal laws governing covering of mental health conditions, including autism and ABA therapy, in light of the AF v Providence decision. The bulletins were supported by a public-facing opinion from the Oregon Department of Justice, and are posted on the DFR web page here: https://dfr.oregon.gov/business/reg/health/Pages/mental-health-parity.aspx

Bulletin INS 2014-2 declared:

> "*The provisions of SB 365 that apply beginning January 1, 2016 (a year earlier for PEBB and*

OEBB) are those specifically concerning procedures for management of ABA therapy. The general requirement to cover medically necessary treatment for ASD already exists in the Oregon MHP and Oregon PDD. Insurers should provide access to ABA under existing law (Oregon MHP and PDD) as they would for any other treatment for a mental health condition."

Although PEBB had already begun providing coverage of ABA therapy in the wake of the AF v Providence decision, the PS v PEBB class action lawsuit wasn't settled until late 2015. Under the terms of the settlement agreement, the State of Oregon agreed to reimburse public employees for expenses they incurred to pay for ABA therapy to treat autism spectrum disorder between January 1, 2010, and January 30, 2015, and to pay $17,500 in compensation for violation of the civil rights of lead plaintiff P.S. and her family. (The other plaintiffs weren't eligible for the civil rights claim because they had not filed a timely tort notice).

In conclusion, PEBB and OEBB were correct in asserting that there would be no savings to them if SB358A does not pass, and that there is therefore no fiscal impact.

Questions / Next Steps:

Can we meet to review this (by Zoom or Teams), and confirm next steps? What is your availability? Can you propose a time that works for you?

Since there appears to be a consensus that there is no fiscal impact to the agencies for SB358A, can we revise the fiscal impact statement to show that there is no impact?

I would be happy to answer any questions you may have.

Sincerely,

Paul Terdal

(503)984-2950

Attachments:

- 01 PEBB OEBB Emails on SB358A FIS .pdf: Internal OHA emails discussing the fiscal impact of SB358A, and the agency's conclusions that there is no fiscal impact to PEBB / OEBB.
- 02 AF v Providence 013-cv-00776 doc 61 2014-01-21.pdf: Sen. Bates declaration in AF v Providence, describing his intent in SB365. This declaration was prepared by legislative counsel, and signed under oath by Sen. Bates.
- 03 SB365 Buckley Floor Letter 2013-07-01.pdf: Floor Letter from Rep. Buckley, who carried SB365 on the floor of the House. (Posted on OLIS at https://olis.oregonlegislature.gov/liz/2013R1/Downloads/FloorLetter/557)
- 04 AF v Providence 013-cv-00776 doc 09.pdf: First amended class action complaint in AF v Providence, asserting that Providence violated state and federal law by improperly denying coverage of ABA therapy as a treatment for autism.
- 05 PS v PEBB civil complaint 2014-04-29.pdf: Class action complaint in PS v PEBB, asserting that PEBB and the State of Oregon violated state and federal law, including civil rights laws, by improperly denying coverage of ABA therapy as a treatment for autism.
- 06 AF v Providence 013-cv-00776 doc 91 2014-08-08.pdf: Opinion and Order by US District Court Judge Michael Simon, finding that Providence violated state and federal laws in unlawfully denying coverage of ABA therapy as a treatment8/8/2014
- 07 bulletin2014-01.pdf: Insurance Division Bulletin INS 2014-1, on Mental Health Parity, written to implement the AF v Providence opinion and order (Posted by DFR at https://dfr.oregon.gov/business/reg/health/Documents/bulletin2014-01.pdf)

08 bulletin2014-02.pdf: Insurance Division Bulletin INS 2014-2, on Autism and Applied Behavior Analysis therapy, written to implement the AF v Providence opinion and order (Posted by DFR at https://dfr.oregon.gov/business/reg/health/Documents/bulletin2014-02.pdf)

- 09 bulletin2014-0102opinion.pdf: Public-facing DOJ Opinion in support of bulletins INS 2014-1 and INS 2014-2 (Posted by DFR at https://dfr.oregon.gov/business/reg/health/Documents/bulletin2014-0102opinion.pdf)
- 10 2015.12.09_PS v PEBB Settlement Press Release.pdf: Plaintiff's Press Release announcing settlement agreement in PS v PEBB.
- 11 p_2015.12.04_Plaintiff's Motion for Preliminary Approval of Settlement_Redacted.pdf: PS v PEBB Settlement Agreement, providing retroactive reimbursement to PEBB members for ABA therapy prior to implementation of SB365, and compensation for violation of civil rights by discriminating against individuals with disabilities in unlawfully denying coverage.

From: Baly Glenn W
To: STAPLES Roger; Anderson Chelsea R; Clark Clair E; Evans Janell R; Heiberg Holly; Jagger Dawn A; SINGER Sara
Cc: Chernishoff Rosie; Hassoun Ali H
Subject: RE: Review and Approve SB358-1 due ASAP
Date: Wednesday, March 10, 2021 11:20:00 AM
Attachments: SB 358-1 - PEBB-OEBB FIS (v2).xlsx

Chelsea/Roger,

I've updated the fiscal to indicate that there would be no fiscal impact on PEBB and OEBB through the extension of the coverage mandate since it was built into the budget for 21-23. Since LFO specifically asked for the savings associated with the original mandate repeal date, I included a note that indicated what the potential savings would be if PEBB and OEBB coverage ended on January 1, 2022 and it was built into the 21-23 budget.

Thanks,

Glenn

From: STAPLES Roger <Roger.STAPLES@dhsoha.state.or.us>
Sent: Wednesday, March 10, 2021 10:15 AM
To: Anderson Chelsea R <CHELSEA.R.ANDERSON@dhsoha.state.or.us>; Clark Clair E <CLAIR.E.CLARK@dhsoha.state.or.us>; Evans Janell R <JANELL.R.EVANS@dhsoha.state.or.us>; Heiberg Holly <HOLLY.HEIBERG@dhsoha.state.or.us>; Jagger Dawn A <Dawn.A.Jagger@dhsoha.state.or.us>; SINGER Sara <Sara.SINGER@dhsoha.state.or.us>
Cc: Baly Glenn W <GLENN.W.BALY@dhsoha.state.or.us>; Chernishoff Rosie <Rosie.CHERNISHOFF@dhsoha.state.or.us>
Subject: RE: Review and Approve SB358-1 due ASAP

Hi Chelsea,

I believe this FIS needs to change to a "no fiscal."

The bill extends the sunset date for the requirement to cover applied behavior analysis (ABA) from Jan. 2, 2022, to Jan 2, 2033. There are no savings (or costs) specific to the extension of the sunset date because the 2021-23 budget build process for PEBB and OEBB did not presume coverage for ABA would end on Jan. 2, 2022.

If LFO wants to know what the savings would be if ABA coverage were to end Jan. 2, 2022, that could simply be a note in the narrative.

Let me know if I am missing any nuance(s)…

Roger A. Staples
Deputy Budget Director
Oregon Health Authority

Cell: (503) 309-8265
(he/him/his)

From: Anderson Chelsea R <CHELSEA.R.ANDERSON@dhsoha.state.or.us>
Sent: Wednesday, March 10, 2021 9:39 AM
To: Clark Clair E <CLAIR.E.CLARK@dhsoha.state.or.us>; Evans Janell R <JANELL.R.EVANS@dhsoha.state.or.us>; Heiberg Holly <HOLLY.HEIBERG@dhsoha.state.or.us>; Jagger Dawn A <Dawn.A.Jagger@dhsoha.state.or.us>; SINGER Sara <Sara.SINGER@dhsoha.state.or.us>; STAPLES Roger <Roger.STAPLES@dhsoha.state.or.us>
Subject: Review and Approve SB358-1 due ASAP
Importance: High

Good morning,

Please review and approve SB358-1, due as soon as possible. This bill shows a slight savings.

The narrative is long, so please see the file.

Thanks,

Chelsea Anderson, MBA
Fisca Ana yst
DHS/OHA Shared Services
Technica Budget Services Unit
503-569-0276
chelsea.r.anderson@dhsoha.state.or.us

From: Baly Glenn W
To: Brayko Damian; Hassoun Ali H
Subject: RE: SB 358 additional analysis request
Date: Monday, March 22, 2021 12:42:00 PM
Attachments: SB 358-1 - PEBB-OEBB FIS (v2).xlsx

Damian/Ali,

Here are some bullet points I put together regarding the questions below. Let me know what you think before I send them on to Jeff.

1) OEBB plans ares fully-insured and the carriers they contract with must comply with the insurance code so the plans offered through OEBB must be compliant. PEBB has Kaiser who is fully-insured so the same applies. For the self-insured plans offered by PEBB, the board's formal policy is to follow the insurance code. Both PEBB and OEBB have implemented this policy in all of their carrier contracts.

2) We are working with LFO to clarify the fiscal impact provided for SB 358-1

We put no impact on the fiscal, but LFO went ahead and included the possible savings and sent the bill to W&M. I have a call into Sara Singer on how we can clarify for LFO that there would be no savings especially with the further information provided by the advocate below.

Thanks,

Glenn

From: Scroggin Jeffrey <JEFFREY.SCROGGIN@dhsoha.state.or.us>
Sent: Tuesday, March 16, 2021 10:08 AM
To: Baly Glenn W <GLENN.W.BALY@dhsoha.state.or.us>; Brayko Damian <DAMIAN.BRAYKO@dhsoha.state.or.us>
Subject: SB 358 additional analysis request

Hi Glenn,

Can you take a look at the below from an advocate and write up a couple bullet point responses/clarifications from your perspective by end-of-week please?

Best,

Jeff

Another bill I have been working on this year is SB358, which would delay the sunset of SB365(2013) – the autism health insurance coverage bill that I wrote with Sen. Bates – and provide some additional oversight for licensed / registered providers of ABA services.

SB358 received a "do pass" recommendation from the Senate Health Care committee this week, but it also has a "fiscal" attached to it so it will go to Ways and Means.

I have some significant concerns with the fiscal note (attached), because it is entirely about the

purported cost to PEBB and OEBB of providing health coverage for treatment of autism after SB365's sunset date.

First, as I understand it, PEBB (and possibly OEBB?) are self-funded plans that are not regulated by the insurance code. Since SB358's insurance coverage provisions apply only to the insurance code, they don't apply to PEBB (and possibly OEBB) at all. See the attached email from then-Insurance Commissioner Laura Cali, which she sent to me in October 2013:

> PEBB is not required to comply with ORS 743A.168 and ORS 743A.190 because it is exempt from the Insurance Code. However, the PEBB benefit handbook for 2013, states: "This plan complies with Oregon and Federal Mental Health Parity" . This requirement is part of their contract and not part of our statutes or federal law, but contractually PEBB would be subject to mental health parity laws both Oregon and Federal.

Question: has anything changed? Is PEBB now subject to the Insurance Code? What about OEBB? I checked the OEBB member handbooks and filings in the SERFF database, and can't find anything clearly indicating that OEBB's plans are actually "insurance" and not self-funded.

Second, and probably more significant – the Division and DoJ released bulletins on Mental Health Parity in November 2014 – before SB365 ever took effect – declaring that coverage for treatment of autism, including Applied Behavior Analysis (ABA) therapy was already mandated under existing Oregon and Federal laws, including ORS 743A.168 (mental health parity), ORS 743A.190 (children with pervasive developmental disorder) and the Federal Mental Health Parity and Addiction Equity Act. These opinions cited the landmark ruling in AF v Providence, which reached that conclusion. (See: https://dfr.oregon.gov/business/reg/health/Pages/mental-health-parity.aspx).

See for instance this statement in INS 2014-2 page 4:

> *"The general requirement to cover medically necessary treatment for ASD already exists in the Oregon MHP and Oregon PDD. Insurers should provide access to ABA under existing law (Oregon MHP and PDD) as they would for any other treatment for a mental health condition"*

Since those bulletins are independent of SB365, the "mandate" to cover treatment of autism, including ABA, should remain in effect whether SB365's sunset occurs or not.

Therefore, there should be no fiscal impact to PEBB or OEBB of extending the sunset of SB365 – since they will still be required to provide the same coverage.

From:	Paul Terdal
To:	Sen.ElizabethSteinerHayward@oregonlegislature.gov
Subject:	SB358 - regarding your concerns about "scope of practice" and the proposed amendment
Date:	Sunday, June 20, 2021 12:21:00 PM

Dear Sen. Steiner Hayward,

Thank you for taking a few minutes to speak with me on Friday morning about SB358, which would extend the sunset on the autism insurance coverage provisions from SB365(2013), and also improve consumer protections for Applied Behavior Analysis (ABA) therapy.

In our conversation, you mentioned that there were concerns that SB358 would increase the scope of practice of ABA providers, but you didn't recall what those concerns were or who they were coming from.

I went back through SB358 again, and I can assure you that nothing in SB358 changes the scope of practice for Licensed Behavior Analysts in any way.

The scope of practice for Licensed Behavior Analysts is defined in ORS 676.820:

> ORS 676.820 (1) *An individual licensed* under ORS 676.810 (Board duties) or registered under ORS 676.815 (Behavior analysis interventionists) *may practice applied behavior analysis*.

So their license allows them to practice ABA – and nothing else. SB358 does not make any changes to this.

"Applied Behavior Analysis" is in turn defined in ORS 676.802:

> ORS 676.802(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.

Note that the definition of ABA has a bunch of exclusions – so psychological testing, neuropsychology, psychotherapy, cognitive therapy, etc. are all out of the scope of practice for Licensed Behavior Analysts.

Again, nothing in SB358 makes any changes to this.

This limited scope of practice in ORS 676.820 and 676.802 also means that unlike most other health professionals, Behavior Analysts have no role in diagnosing any condition – they operate only on a diagnosis from someone else, like a physician or psychologist. In fact, SB358 says that an insurer can even require Behavior Analysts to get a physician or psychologist to approve their ABA treatment plans (page 4, lines 1 to 5).

It is important to note that there is no limitation or restriction in this scope of practice regarding what disorders a Behavior Analyst is authorized to practice ABA therapy on. While use of ABA to treat autism is widely known, there is no restriction in the statutory scope of practice to that one condition. ABA is commonly used to treat behavioral symptoms from many other conditions, including Down's syndrome, traumatic brain injury, etc. OHP has two separate lines on the prioritized list for ABA as a covered treatment – as a treatment for autism (line 193) and also for treatment of self-injurious behavior due to other neurodevelopmental disorders (line 437).

To reiterate, nothing in SB358 makes any changes to this scope of practice whatsoever – the bill doesn't even touch either ORS 676.802 or 676.820.

There is a provision in the bill that aligns access to ABA by children age 14 and up with their access to other care from other behavioral health providers:

> Section 8, page 5, lines 28 to 32, amending ORS 100.675:
> (b) Outpatient treatment of a mental or emotional disorder or a chemical dependency, excluding methadone maintenance, by a behavior analyst or assistant behavior analyst licensed under ORS 676.810 or a behavior analysis interventionist registered by the Health Licensing Office under ORS 676.815 *if the treatment is within the scope of practice of the behavior analyst*, assistant behavior analyst or behavior analysis interventionist.

This provision is modelled on one already available in ORS 100.675 for children age 14 and up to get "Outpatient diagnosis or treatment" from a professional counselor, clinical social workers, marriage and family therapists, etc, but with two key differences

- First, since Behavior Analysts can't diagnose anything, Legislative Counsel created a separate subsection (b) allowing for "treatment" only instead of just adding Behavior Analysts into the laundry list of professions that could do "Outpatient diagnosis or treatment" without parental consent.
- Second, Legislative Counsel was very clear in stating that this was only valid "*if the treatment is within the scope of practice of the behavior analyst.*" That means this only applies to ABA therapy. It also means that a Behavior Analyst needs to practice within their expertise – e.g., a Behavior Analyst with expertise in autism but no expertise in other conditions can only serve patients with autism. A Behavior Analyst with expertise in other conditions, such as self-injurious behavior or feeding disorders, can practice ABA in those areas. This is the same structure and format used to restrict scope of practice for all other professions, including physicians, LPCs, and SLPs.

We discussed this provision in the policy committee (Senate Health). Dr. Katherine Zuckerman MD of the Oregon Pediatric Society testified in support of this provision, explaining that is simply aligns the practice of ABA with other forms of behavioral health care, and serves as an important bridge for youth as they make the transition to adulthood and independent management of their own healthcare. As the father of a 15 year old who receives both ABA and psychotherapy, I have noted that my son's relationship with his psychotherapist (an LPC) is much stronger and more mature than his relationship with his Behavior Analyst – because my son has more direction over the course of his psychotherapy, and more confidence in his relationship with his LPC. I would like to see him develop the same kind of mature relationship with his ABA providers.

We have not received any feedback or concerns about these provisions from any legislator or other advocacy groups. (COPACT submitted some critical testimony to Senate Health in early March – we reached out to them immediately, discussed their feedback with Chair Patterson, and agreed that the -1 amendment resolved their concerns). If anything about this provision did raise any concerns, I really wish that someone had come to us to discuss it. We would have happily worked with anyone to resolve them, either by fine tuning the language of this section or removing it altogether and deferring it to a future session.

Unfortunately, the amendment you described on Friday – gutting everything but the sunset insurance coverage provisions in sections 6 and 7 – simply leaves open some gaping holes in consumer protections for ABA therapy. **Under this amendment**:

- Licensed Behavior Analysts won't have to report child abuse – unlike every other professional. Even animal control officers have to report child abuse (ORS 419B.005(6)(ff)) –

but under this amendment, Licensed Behavior Analysts won't have to

- Licensed Behavior Analysts will remain free to practice gay conversion therapy in the State of Oregon
- Licensed Behavior Analysts won't have to report their own criminal convictions, or unprofessional conduct, unlike all other health professions
- The Behavior Analysis Regulatory Board – with professionals confirmed by the Senate – won't have even an official advisory role on discipline and enforcement (staff will probably continue to consult with the board, but only on an ad-hoc basis)
- Anyone will be free to falsely advertise that they are a Licensed Behavior Analyst – because Health Licensing won't have any enforcement authority to stop them.

We will of course support a limited bill that simply extends the sunset on the insurance coverage provisions (in fact, I requested such a bill myself – SB355) – but we will REALLY need to come back in February and fix these critical consumer protection issues. I hope you will join us in working to do that.

Sincerely,

Paul Terdal
(503)984-2950

Public/Interested Parties' Feedback

Executive session

Pursuant to ORS 192.660(2)(f) and ORS 676.595 to consider information or records exempt from public inspection.

Item for Board Action

Other Board Business

Health Licensing Office
Behavior Analysis Regulatory Board
July 16, 2020

****PLEASE PRINT****

Name (First, Last) and Email	Representing	Request to Comment (yes/no)
Paul Terdal - paul@terdal.org		Yes
Jenny Fischer - jenny.fischer@cascadebehavior.com	Cascade Behavioral Intervention, LLC	No
Michelle Sherbon – president@oraba.org		No