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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 824  
OREGON HEALTH AUTHORITY  
HEALTH LICENSING OFFICE, BEHAVIOR ANALYSIS REGULATORY BOARD

**FILED**  
01/25/2021 2:39 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Behavior Analysis Regulatory Board wants licensees to have a policy for the use of restraints.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 03/03/2021 11:00 AM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

CONTACT: Anne Thompson  
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1430 Tandem Ave. NE Suite 180  
Salem, OR 97301

Filed By:  
Anne Thompson  
Rules Coordinator

HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 03/03/2021

TIME: 10:00 AM - 11:00 AM

OFFICER: Anne Thompson

ADDRESS: Health Licensing Office

1430 Tandem Ave. NE Suite 180

Salem, OR 97301

SPECIAL INSTRUCTIONS:

To limit exposure and spread of the COVID-19 virus and adhere to the Governor's social distancing requirements, the hearing is being held via telephone conference call only.

Call-in number: 1(877) 336-1828

Participant code: 4111788.

NEED FOR THE RULE(S):

After reviewing a disciplinary case, the Behavior Analysis Board decided to add a rule to Standards of Practice that licensed behavior analysts and licensed assistant behavior analysts must have a policy in place for the use of restraints. Licensees work with autistic children, some of whom are non-verbal. The Board and the Health Licensing Office think a rule regarding how and when restraints are used is needed to protect this vulnerable population.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

2019 Oregon Revised Statutes, which are available through the Oregon Legislature and the Health Licensing Office.

FISCAL AND ECONOMIC IMPACT:

If a licensed behavior analyst or licensed assistant behavior analyst does not have a policy on the use of restraints, they would have to create one by themselves, which could take time from their schedule and cost them service hours. If they work for a company, they would have to reach out to the company to have the policy created, which would take the company time and money. Providers and their companies may have to get legal advice on the policy or seek assistance from human-resource professions, which also may cost the licensees and their businesses or companies they work for money.

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#### COST OF COMPLIANCE:

*(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

The Health Licensing Office and the Behavior Analysis Regulatory Board may benefit from the rule, as it will make investigations into complaints involving the use of restraints on clients simpler and less costly. If members of the public are licensed behavior analysts or assistant behavior analysts and don't have a policy regarding the use of restraints on clients, they would have to develop one. This would cost time and any revenue from the subsequent loss of service hours. Any human-resources help or legal help needed to create the policy also would cost the licensee money. The cost of professional services and labor would depend on how many licensees currently do not have a policy in place regarding the use of restraints and the time and help they would need to create one. There is no way of knowing how many licensees may be impacted and to what degree. Recent data show there are 327 licensed behavior analysts and 22 licensed assistant behavior analysts. The Office does not expect that licensees would have a significant cost associated with increased administration to comply with the rule.

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#### DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Members of the Behavior Analysis Regulatory Board are service providers and work for companies or have their own practices. Their knowledge was used in the development of this rule.

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#### WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The Behavior Analysis Regulatory Board includes members who are service providers, parents of children with autism who get behavior analysis treatment, and members of the public. For the purposes of this rule, they served as the rules advisory committee.

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AMEND: 824-060-0010

RULE SUMMARY: The Behavior Analysis Regulatory Board is adding a rule stating that licensed behavior analysts and licensed assistant behavior analysts must have a policy in place for the use of restraints.

#### CHANGES TO RULE:

824-060-0010

Standards of Practice ¶

- (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).

Statutory/Other Authority: ORS 676.8002-676.830, ORS 676.990, ORS 676.992

Statutes/Other Implemented: ORS 676.8002-676.830, ORS 676.990, ORS 676.992