

# Support HB2023: ABA for Intellectual and Developmental Disability

Testimony to House Committee  
on Behavioral Health and Health Care by

**Paul Terdal**

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# Introduction – Paul Terdal

- Resident of Northwest Portland, Senate District 17 / House District 33
- Volunteer health consumer advocate assisting families with insurance appeals related to autism and related medical / mental health coverage
  - Assisted more than 100 families with insurance denials, coverage issues
  - Consulted on multiple class action lawsuits over insurance denials
- Led development and maintenance of the original bill that HB2023 amends
  - [SB365 \(2013\)](#) – Autism Health Insurance Reform
  - [SB696 \(2015\)](#) – Revised ABA Licensing Requirements
  - [HB2931 \(2017\)](#) – Clarified educational requirements for interventionists
  - [SB358 \(2021\)](#) – Extended sunset from 2022 to 2030
  - [HB2421 \(2023\)](#) – Technical fixes, technician reimbursement
- Business Management and Public Policy Consultant
  - Research for National Council on Disability on State’s Use of QALYs in Medicaid (2021-22)
  - MBA, Yale School of Management
  - NOT an attorney or licensed health professional

# Background

- Applied Behavior Analysis (ABA) therapy is a form of behavioral health care commonly used to treat behavioral symptoms of autism and other behavioral health conditions
  - Teach new, positive behaviors
  - Reduce or alter harmful behaviors (self-injurious, aggressive, disruptive , unlawful, etc.)
- Oregon's [Behavior Analysis Regulatory Board \(BARB\)](#) licenses Behavior Analysts and registers Behavioral Analysis Interventionists (technicians who practice under supervision by a Licensed Behavior Analyst, Psychologist, or other licensed behavioral health professional)
  - ABA licensing was established under [SB365 \(2013\)](#) and [SB696 \(2015\)](#)
  - There are now 2,310 active ABA licensees and registrants in Oregon
    - 496 Licensed Behavior Analysts
    - 20 Licensed Assistant Behavior Analysts
    - 1,794 Registered Behavior Analysis Interventionists
- Other health professionals also use ABA methods within their scope of practice
  - SLPs and OTs often use ABA methods within the course of speech or occupational therapy, and do so under their own licensure

# HB2023 Extends Legacy SB365(2013) Insurance Mandate to Other Developmental Disabilities

- HB2023 extends the original requirement for autism coverage to also include “intellectual or developmental disability”
  - (g) “Treatment for an intellectual or developmental disability” includes applied behavior analysis for up to 25 hours per week and any other mental health or medical services identified in the individualized treatment plan, as described in subsection (6) of this section.
  - Includes both ABA therapy ***and*** “any other mental health or medical services”
  - Requires detailed individualized treatment plan, updated every 6 months, that insurer can use for utilization management
- Nothing in this bill requires coverages of services that are not medically necessary, interferes with insurers utilization management process, or excludes access to other mental health or medical services
- Sunsets in 2030 – just a few years from now

# Oregon and Federal Law already require this coverage

## – but HB2023 will clarify and streamline access

- ORS 743A.190 Children with pervasive developmental disorder
  - Requires coverage of “all medical services” for children under 18 with “a neurological condition that includes autism spectrum disorder, developmental delay, developmental disability or mental retardation”
  - [Oregon DOJ](#) and [Insurance Commissioner](#) have determined that “all medical services” includes ABA therapy
    - *“3. Is ABA a “medical service” required by the pervasive developmental disabilities (PDD) mandate? Yes.”*
    - *“Our conclusion is same as the one arrived at by the US District Court in A.F. v. Providence. While the court did not find it necessary to decide whether ABA therapy is a “medical service,” the court did say: “If the Court were to interpret ‘medical services,’ it would find, and does find in the alternative, that ABA therapy is a medical service.””*
- ORS 743A.168 also mandates coverage of “medically necessary behavioral health treatment” for “behavioral health conditions”
  - OAR 836-053-1404(1)(a) defines “behavioral health condition” to mean “any mental or substance use disorder” in DSM-5-TR
  - Intellectual Disability is listed in DSM-5-TR as a “mental disorder”
  - [Oregon Insurance Commissioner](#) has determined that an “insurer may not categorically deny in all circumstances a treatment that in some circumstances is medically necessary for a mental health condition”

# Many HB2023 Provisions are Superseded or Modified by Federal Law

- Coverage requirements for treatment of behavioral health conditions are governed by a complex weave of state and federal laws, as described in DCBS bulletins:
  - [INS 2014-1 Mental Health Parity](#)
  - [INS 2014-2 Autism and ABA Therapy](#)
  - [DOJ Opinion Statutory Questions Related to ABA and Mental Health](#)
- Many “legacy” provisions of HB2023 are superseded or modified by the Federal Mental Health Parity and Addiction Equity Act and Affordable Care act, such as:

| HB2023 Provision  | MHPAEA / PPACA Impact  |
|---|--|
| Requires coverage only for “an individual who begins treatment before nine years of age”  | Age limits are prohibited  |
| “coverage of a maximum of 25 hours per week of applied behavior analysis”   | Quantitative treatment limits prohibited unless they apply to substantially all medical / surgical conditions, so this becomes a floor (minimum) |
| Require autism diagnosis by “a licensed neurologist, pediatric neurologist, developmental pediatrician, psychiatrist or psychologist” | Non-Quantitative Treatment Limit prohibited by MHPAEA unless the same limit is applied to substantially all medical / surgical conditions        |
| Insurer may require prior authorization for coverage of ABA   | Non-Quantitative Treatment Limit prohibited by MHPAEA unless prior authorization is required for substantially all medical / surgical conditions |
| insurer may require submission of an individualized treatment plan  | Non-Quantitative Treatment Limit prohibited by MHPAEA unless treatment plans are required for substantially all medical / surgical conditions    |