

2009 Regular Legislative Session
FISCAL ANALYSIS OF PROPOSED LEGISLATION
Prepared by the Oregon Legislative Fiscal Office

MEASURE NUMBER: HB 2345

STATUS: A-Engrossed

SUBJECT: Establishes a program to protect the public from impaired health professionals

GOVERNMENT UNIT AFFECTED: Department of Human Services, Department of Administrative Services, Oregon State Police, health profession regulatory and licensing boards [e.g., Oregon Health Licensing Agency, Oregon Board of Clinical Social Workers, Oregon Board of Licensed Professional Counselors and Therapists, Oregon State Board of Nursing, Oregon Board of Massage Therapists, Oregon Medical Board, Oregon Board of Chiropractic Examiners, Oregon Board of Pharmacy]

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EXPENDITURES: See Analysis

2009-2011

2011-2013

EFFECTIVE DATE: This bill includes an emergency clause and is effective on passage. The bill also includes an operative date of July 1, 2010, and also provides that health profession regulatory and licensing boards, including the Department of Human Services may take action before the operative date.

LOCAL GOVERNMENT MANDATE: This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

ANALYSIS: House Bill 2345 directs the Department of Human Services (DHS) and the Department of Administrative Services (DAS) to establish an impaired health professional program (IHPP) to protect the public from impaired health professionals. The bill defines "impaired professional" as a health professional licensed or certified by or registered with a health profession licensing board who is unable to practice with professional skill and safety by reason of habitual or excessive use or abuse of drugs, alcohol or other substances that impair ability or by reason of a mental health disorder. The bill authorizes DHS and DAS to recoup the cost for the administration of the IHPP with a fee to be paid by the health profession licensing boards participating in the program.

Health Profession Regulatory and Licensing Boards

The bill repeals the authority of the following health profession licensing boards to establish, approve, sanction, enter into contracts, or impose fees for their own diversion programs for impaired professionals:

1. Oregon Health Licensing Agency;
2. Oregon Board of Clinical Social Workers;
3. Oregon Board of Licensed Professional Counselors and Therapists;
4. Oregon State Board of Nursing;
5. Oregon Board of Massage Therapists;
6. Oregon Medical Board;
7. Oregon Board of Chiropractic Examiners; and
8. Oregon Board of Pharmacy.

Overall, the fiscal impact of this bill is indeterminate, dependent on the number of health profession regulatory boards that would choose to participate in the IHPP if this bill is enacted. The bill contains

language that allows boards to comply with the provisions of the bill simply by modifying or dissolving their existing diversion programs and identifying an alternative process or pathway for disciplining impaired professionals rather than participating in the IHPP established by this Act. Although the bill stipulates that boards opting to participate in the IHPP established by this Act may only refer impaired licensees to the IHPP established by this Act and may not establish their own impaired health professional program, the bill also states that a health profession licensing board “may adopt rules opting to participate in the impaired health professional program” established in this Act. It does not require board participation in the IHPP.

Furthermore, the bill allows boards to adopt rules establishing additional requirements for licensees referred to the IHPP. In addition, before referring a licensee to the IHPP established in this Act a participating board is required to (1) ensure that an independent third party has diagnosed the licensee with alcohol or substance abuse or mental health disorder and provided the diagnosis and treatment options to the licensee and the board; (2) investigate to determine whether the licensee’s practicing while impaired has presented or presents a danger to the public; and (3) obtain the licensee’s consent to the entry of a the licensee’s name and fingerprints in the Law Enforcement Data System (LEDS). Because of these provisions, boards with existing diversion programs for impaired licensees are uncertain whether they are required to completely dissolve their existing programs for handling impaired licensees or if they must modify their existing programs to support and complement the new IHPP in order to comply with the provisions of this bill.

If a board chooses to adopt rules opting to participate in the IHPP established by this Act, the board will have to incur the cost of rewriting administrative rules and fees charged by DAS and DHS for the administration of the new IHPP. The cost for rewriting administrative rules should be minimal. The fees charged by DAS and DHS are indeterminate dependent on the implementation of the program and board participation.

In addition, boards with their own existing diversion programs for impaired licensees will have to incur the costs of dissolving or modifying their internal program and transitioning existing cases to the new IHPP, including legal costs. The fiscal impact of dissolving or modifying existing programs varies with the size and nature of each health profession licensing board. For example:

Board of Clinical Social Workers

The Board of Clinical Social Workers currently has a program run by volunteer board members. If this bill is enacted and the Board chooses to participate in the IHPP, the Board would incur the cost of moving from a volunteer program to the fee-based IHPP. The Board of Clinical Social Workers estimates it would refer approximate eight cases per biennium to the IHPP.

Oregon Medical Board

This bill removes the authority for the Oregon Medical Board Diversion Program Supervisory Council including the appointment of the Medical Director position responsible for administering the existing diversion program for impaired licensees. The Board estimates the fiscal impact of abolishing the Diversion Program Supervisory Council to be (0.50) FTE and ((\$452,107) Other Funds for the 12 months of the 2009-11 biennium. However, the Board will continue to need a Liaison Committee to coordinate with the IHPP. The cost of this Liaison Committee is indeterminate dependent on a number of variables including whether the IHPP program as established by this Act will have sufficient clinical staff to cover the current responsibilities of the Medical Director.

Oregon State Board of Nursing

Similarly, the Oregon State Nursing Board estimates the fiscal impact of abolishing the Nurse Monitoring Program to be approximately (1.50) FTE and (\$358,500) Other Funds for the 12 months

of the 2009-11 biennium. However, the Board is uncertain whether the two positions would be assigned to other duties and a portion of the program costs would be retained under passage of this bill to work with DHS and DAS coordinating the IHPP as established by this Act.

Department of Human Services (DHS)

The measure directs DHS to establish or contract to establish the impaired health professional program (IHPP). This program will enroll licensees of health profession licensing boards who have been diagnosed with alcohol or substance abuse or mental health disorder. The bill outlines the Department's role in: (1) reporting the list of participants to a monitoring entity; (2) administering diversion agreements; (3) working with employers to ensure adequate supervision of licensees; (4) assessing compliance; (5) reporting noncompliance; and (6) arranging for a third party to audit the program to ensure compliance with program guidelines. DHS is required to report the results of the audit to the Governor, to the Legislative Assembly and to health profession licensing boards. In addition, DHS is required to report on the IHPP to the Governor, to the Legislative Assembly and to health profession licensing boards on or before January 31, 2011. The bill authorizes DHS to recoup the cost for administering the program with a fee to be paid by the boards participating in the IHPP. Because board participation is indeterminate at this time, the fiscal impact of staffing and resources needed to establish this program and the corresponding fee to be paid by participating boards cannot be quantified. Note that the IHPP would be a new program for DHS.

Department of Administrative Services (DAS)

The bill requires DAS to establish a monitoring entity for impaired professionals. The monitoring entity is required (1) to compare the weekly lists submitted by the IHPP to determine if any enrollees are no longer participating in the IHPP; and (2) to report to a health profession licensing board when a licensee is substantially noncompliant with the licensee's diversion agreement. DAS is required to arrange for an independent third party to audit the monitoring entity to ensure compliance with program guidelines. DAS must report the results of the audit to the Legislative Assembly, the Governor and the health profession licensing boards. DAS is authorized to adopt rules assessing fees to health profession licensing boards participating in the program for the costs of administering the monitoring entity. The staffing needs, the cost for the administration of the program and the corresponding fee is indeterminate dependent on board participation and the partnership established between DAS and DHS to carryout the provisions of this bill. Note that this monitoring entity would be a new program for DAS.

State Police (OSP)

The bill allows health profession regulatory boards to require the fingerprints of a licensee for the purpose of requesting state or nationwide criminal records checks before referring the licensee to the IHPP. The measure requires the Oregon State Police (OSP) to maintain these fingerprint cards. The cost for maintaining these fingerprint cards is dependent on the number of licensees that will be referred to the IHPP.