

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

MEASURE NUMBER: HB 2345 **STATUS:** B-Engrossed
SUBJECT: Establishes a program to protect the public from impaired health professionals
GOVERNMENT UNIT AFFECTED: Department of Human Services, 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]
PREPARED BY: Kim To
REVIEWED BY: John Britton, Daron Hill, Robin LaMonte, Erica Kleiner, Tim Walker
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EXPENDITURES: See Analysis	<u>2009-2011</u> Indeterminate	<u>2011-2013</u> Indeterminate
REVENUES: See Analysis	Indeterminate	Indeterminate
POSITIONS/FTE: See Analysis		

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, and 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) 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 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. The bill requires DHS and the health profession licensing boards that opt to participate in the IHPP to collaborate to transfer existing impaired professional programs, funding and licensees.

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.

Note the bill is permissive and does not require board participation in the IHPP.

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 measure. Although the bill stipulates that boards opting to participate in the IHPP established by this measure may only refer impaired licensees to the IHPP established by this measure 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 measure.

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 measure 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; and (2) investigate to determine whether the licensee’s practicing while impaired has presented or presents a danger to the public. Because of these initial investigative requirements, 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 participate in the IHPP established by this measure, the board will have to incur the cost of rewriting administrative rules and fees charged by DHS for the administration of the new IHPP. The cost for rewriting administrative rules should be minimal. The fees charged by DHS are indeterminate dependent on program implementation 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-staffed 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 measure 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) FTEs 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 initial investigative duties and other responsibilities, and a portion of the program costs would be retained under passage of this bill to work with DHS coordinating the IHPP as established by this measure.

Oregon Board of Pharmacy

The Oregon Board of Pharmacy estimates the fiscal impact of abolishing the Pharmacy Recovery Network to be approximately (0.75) FTE and (\$156,587) Other Funds for the 12 months of the 2009-11 biennium. However, the Board is uncertain whether the two positions would be assigned to initial investigative and other duties, and a portion of the program costs would be retained under passage of this bill to work with DHS coordinating the IHPP as established by this measure.

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.

In addition, the bill requires DHS to contract with an independent third party 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. DHS is required to arrange for an independent third party to audit the monitoring entity to ensure compliance with program guidelines. DHS must report the results of the audit to the Legislative Assembly, the Governor and the health profession licensing boards. DHS is authorized to establish rules assessing fees to health profession licensing boards participating in the program for the costs of administering the monitoring entity.

The full cost for the administration of the IHPP and the corresponding fee to be charged by DHS and paid by health profession licensing boards are indeterminate at this time dependent on board participation. DHS anticipates establishing three permanent full time positions (2.38 FTE and \$519,230 Other Funds in the 2009-11 biennium) to staff the program. Note that this amount is only a rough approximation of the partial costs of the IHPP program. This amount does not include the cost of contracting with a third party to establish a monitoring entity. The cost of this monitoring entity and the corresponding fee to be charged by DHS and paid by health profession licensing boards are indeterminate at this time dependent on board participation. DHS reports that assuming at least the participation of Oregon State Board of Nursing and Oregon Medical Board, this contract could cost \$700,000 per biennium. Also, note that the bill assumes the fee revenues paid by boards will be sufficient to cover program costs. If board participation is inadequate and fee revenues are insufficient to cover program costs, there could be a need for General Fund resources.

This bill requires budgetary action to address issues of cash flow, funding source and inter-agency transfers of funds.