

# Enrolled House Bill 2345

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Health Care)

CHAPTER .....

AN ACT

Relating to impaired health professionals; creating new provisions; amending ORS 179.505, 192.690, 675.410, 675.510, 675.583, 675.600, 675.785, 678.112, 678.410, 684.010 and 687.081 and section 50, chapter \_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 177); repealing ORS 677.615, 677.625, 677.635, 677.645, 677.655, 677.665, 677.677, 684.103, 684.157, 689.342, 689.344, 689.346, 689.348, 689.352, 689.354 and 689.356 and section 2, chapter \_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 177); and declaring an emergency.

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

**SECTION 1. As used in sections 1 to 1c of this 2009 Act:**

**(1) "Health profession licensing board" means:**

**(a) A health professional regulatory board as defined in ORS 676.160; or**

**(b) The Oregon Health Licensing Agency for a board, council or program listed in ORS 676.606.**

**(2) "Impaired professional" means a licensee 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.**

**(3) "Licensee" means a health professional licensed or certified by or registered with a health profession licensing board.**

**SECTION 1a. (1)(a) A health profession licensing board that is authorized by law to take disciplinary action against licensees may adopt rules opting to participate in the impaired health professional program established under section 1b of this 2009 Act.**

**(b) A board may only refer impaired professionals to the impaired health professional program established under section 1b of this 2009 Act and may not establish the board's own impaired health professional program.**

**(c) A board may adopt rules establishing additional requirements for licensees referred to the impaired health professional program established under section 1b of this 2009 Act.**

**(2) If a board participates in the impaired health professional program, the board shall establish by rule a procedure for referring licensees to the program. The procedure must provide that, before the board refers a licensee to the program, the board shall ensure that:**

**(a) An independent third party approved by the board to evaluate alcohol or substance abuse or mental health disorders has diagnosed the licensee with alcohol or substance abuse or a mental health disorder and provided the diagnosis and treatment options to the licensee and the board;**

(b) The board has investigated to determine whether the licensee's professional practice while impaired has presented or presents a danger to the public; and

(c) The licensee has agreed to report any arrest for or conviction of a misdemeanor or felony crime to the board within three business days after the licensee is arrested or convicted.

(3) A board that participates in the impaired health professional program shall investigate reports received from the monitoring entity established under section 1c of this 2009 Act. If the board finds that a licensee is substantially noncompliant with a diversion agreement entered into under section 1b of this 2009 Act, the board may suspend, restrict, modify or revoke the licensee's license or end the licensee's participation in the impaired health professional program.

(4) A board may not discipline a licensee solely because the licensee:

(a) Self-refers to or participates in the impaired health professional program;

(b) Has been diagnosed with alcohol or substance abuse or a mental health disorder; or

(c) Used controlled substances before entry into the impaired health professional program, if the licensee did not practice while impaired.

**SECTION 1b.** (1) The Department of Human Services shall establish or contract to establish an impaired health professional program. The program must:

(a) Enroll licensees of participating health profession licensing boards who have been diagnosed with alcohol or substance abuse or a mental health disorder;

(b) Require that a licensee sign a written consent prior to enrollment in the program allowing disclosure and exchange of information between the program, the licensee's board, the monitoring entity established under section 1c of this 2009 Act, the licensee's employer, evaluators and treatment entities in compliance with ORS 179.505 and 42 C.F.R. part 2;

(c) Enter into diversion agreements with enrolled licensees;

(d) Assess and evaluate compliance with diversion agreements by enrolled licensees;

(e) Assess the ability of an enrolled licensee's employer to supervise the licensee and require an enrolled licensee's employer to establish minimum training requirements for supervisors of enrolled licensees;

(f) Report substantial noncompliance with a diversion agreement to the monitoring entity established under section 1c of this 2009 Act within one business day after the program learns of the substantial noncompliance, including but not limited to information that a licensee:

(A) Engaged in criminal behavior;

(B) Engaged in conduct that caused injury, death or harm to the public, including engaging in sexual impropriety with a patient;

(C) Was impaired in a health care setting in the course of the licensee's employment;

(D) Received a positive toxicology test result as determined by federal regulations pertaining to drug testing;

(E) Violated a restriction on the licensee's practice imposed by the program or the licensee's board;

(F) Was admitted to the hospital for mental illness or adjudged to be mentally incompetent;

(G) Entered into a diversion agreement, but failed to participate in the program; or

(H) Was referred to the program but failed to enroll in the program; and

(g) At least weekly, submit a list of licensees who are enrolled in the program and a list of licensees who successfully complete the program to the monitoring entity established under section 1c of this 2009 Act.

(2) When the program reports noncompliance to the monitoring entity, the report must include:

(a) A description of the noncompliance;

(b) A copy of a report from the independent third party who diagnosed the licensee under section 1a (2)(a) of this 2009 Act or subsection (5)(a) of this section stating the licensee's diagnosis;

(c) A copy of the licensee's diversion agreement; and

(d) The licensee's employment status.

(3) The program may not diagnose or treat licensees enrolled in the program.

(4) The diversion agreement required by subsection (1) of this section must:

(a) Require the licensee to consent to disclosure and exchange of information between the program, the licensee's board, the monitoring entity established under section 1c of this 2009 Act, the licensee's employer, evaluators and treatment providers, in compliance with ORS 179.505 and 42 C.F.R. part 2;

(b) Require that the licensee comply continuously with the agreement for at least two years to successfully complete the program;

(c) Based on an individualized assessment, require that the licensee abstain from mind-altering or intoxicating substances or potentially addictive drugs, unless the drug is approved by the program and prescribed for a documented medical condition by a person authorized by law to prescribe the drug to the licensee;

(d) Require the licensee to report use of mind-altering or intoxicating substances or potentially addictive drugs within 24 hours;

(e) Require the licensee to agree to participate in a treatment plan approved by a third party;

(f) Contain limits on the licensee's practice of the licensee's health profession;

(g) Provide for employer monitoring of the licensee;

(h) Provide that the program may require an evaluation of the licensee's fitness to practice before removing the limits on the licensee's practice of the licensee's health profession;

(i) Require the licensee to submit to random drug or alcohol testing in accordance with federal regulations;

(j) Require the licensee to report at least weekly to the program regarding the licensee's compliance with the agreement;

(k) Require the licensee to report any arrest for or conviction of a misdemeanor or felony crime to the program within three business days after the licensee is arrested or convicted;

(L) Require the licensee to report applications for licensure in other states, changes in employment and changes in practice setting; and

(m) Provide that the licensee is responsible for the cost of evaluations, toxicology testing and treatment.

(5)(a) A licensee of a board participating in the program may self-refer to the program.

(b) The program shall require the licensee to attest that the licensee is not, to the best of the licensee's knowledge, under investigation by the licensee's board. The program shall enroll the licensee on the date on which the licensee attests that the licensee, to the best of the licensee's knowledge, is not under investigation by the licensee's board.

(c) When a licensee self-refers to the program, the program shall:

(A) Require that an independent third party approved by the licensee's board to evaluate alcohol or substance abuse or mental health disorders evaluate the licensee for alcohol or substance abuse or mental health disorders; and

(B) Investigate to determine whether the licensee's practice while impaired has presented or presents a danger to the public.

(6) The department shall adopt rules establishing a fee to be paid by the boards participating in the impaired health professional program for administration of the program.

(7) The department shall arrange for an independent third party to audit the program to ensure compliance with program guidelines. The department shall report the results of the

audit to the Legislative Assembly, the Governor and the health profession licensing boards. The report may not contain individually identifiable information about licensees.

(8) The department may adopt rules to carry out this section.

**SECTION 1c.** (1) The Department of Human Services shall contract with an independent third party to establish a monitoring entity for impaired professionals. The monitoring entity shall:

(a) Compare the weekly lists submitted by the impaired health professional program under section 1b of this 2009 Act to determine if any enrollees are no longer participating in the impaired health professional program; and

(b) Report to a health profession licensing board when:

(A) The monitoring entity receives a report from the impaired health professional program established under section 1b of this 2009 Act that a licensee is substantially noncompliant with the licensee's diversion agreement;

(B) Comparison of the weekly lists submitted by the impaired health professional program under section 1b of this 2009 Act shows that a licensee is no longer participating in the impaired health professional program; and

(C) The monitoring entity receives a report from the impaired health professional program under section 1b of this 2009 Act that a licensee referred by the board has completed the impaired health professional program.

(2) The monitoring entity may not have any contact with a licensee and has no discretion in deciding whether to make a report required under this section.

(3) The weekly lists submitted by the impaired health professional program under section 1b of this 2009 Act are exempt from disclosure under public records law.

(4) If a licensee self-refers to the impaired health professional program, the monitoring entity may not report the licensee's enrollment or successful completion of the impaired health professional program to the licensee's board.

(5) The department shall arrange for an independent third party to audit the monitoring entity to ensure compliance with program guidelines. The department shall report the results of the audit to the Legislative Assembly, the Governor and the health profession licensing boards. The report may not contain individually identifiable information about licensees.

(6) The department may adopt rules assessing fees to health profession licensing boards participating in the program for the costs of administering the monitoring entity.

**SECTION 2.** ORS 675.410 is amended to read:

675.410. (1) The Oregon Health Licensing Agency shall:

(a) Issue certifications to persons determined by the agency to be qualified.

(b) Make all disbursements necessary to carry out the provisions of ORS 675.360 to 675.410.

(c) Maintain a registry of all current certified sex offender therapists. The registry shall be made available to the public online.

(d) Keep a record of its proceedings related to the issuance, refusal, suspension and revocation of certifications issued under ORS 675.360 to 675.380.

*[(e) Approve or sanction programs for impaired professionals to assist any certified sex offender therapist to regain or retain certification and shall impose the requirement of participation in the program as a condition to reissuance or retention of certification.]*

*[(f)]* (e) In consultation with the Sex Offender Treatment Board, create a multidisciplinary advisory committee within the board. Persons who are not board members may be appointed as non-voting members to serve on the multidisciplinary advisory committee with the approval of the board.

(2) The agency may:

(a) Deny, suspend, revoke or refuse to issue or renew any certification issued under ORS 675.360 to 675.380.

(b) Provide for waivers of examinations, grandfathering requirements and temporary certifications as considered appropriate.

(c) In consultation with the Sex Offender Treatment Board, create any committees within the board as deemed necessary. Persons who are not board members may be appointed as nonvoting members to serve on the committees with the approval of the board.

**SECTION 3.** ORS 675.510 is amended to read:

675.510. As used in ORS 675.510 to 675.600, unless the context requires otherwise:

(1) "Board" means the State Board of Clinical Social Workers.

(2) "Clinical social work" means the professional practice of applying principles and methods with individuals, couples, families, children and groups, which include, but are not restricted to:

(a) Providing diagnostic, preventive and treatment services of a psychosocial nature pertaining to personality adjustment, behavior problems, interpersonal dysfunctioning or deinstitutionalization;

(b) Developing a psychotherapeutic relationship to employ a series of problem solving techniques for the purpose of removing, modifying, or retarding disrupted patterns of behavior, and for promoting positive personality growth and development;

(c) Counseling and the use of psychotherapeutic techniques, such as disciplined interviewing which is supportive, directive or insight oriented depending upon diagnosed problems, observation and feedback, systematic analysis, and recommendations;

(d) Modifying internal and external conditions that affect a client's behavior, emotions, thinking, or intrapersonal processes;

(e) Explaining and interpreting the psychosocial dynamics of human behavior to facilitate problem solving; and

(f) Supervising, administering or teaching clinical social work practice.

(3) "Clinical social work associate" means a person who holds a master's degree from an accredited college or university accredited by the Council on Social Work Education whose plan of practice and supervision has been approved by the board, and who is working toward licensure in accordance with ORS 675.510 to 675.600 and rules adopted by the board.

[(4) "*Impaired clinical social worker*" means a person unable to perform the practice of clinical social work by reason of mental illness, physical illness or alcohol or other drug abuse.]

[(5)] (4) "Licensed clinical social worker" means a person licensed under the provisions of ORS 675.510 to 675.600 to practice clinical social work.

[(6)] (5) "Unprofessional conduct" includes, but is not limited to, any conduct or practice contrary to recognized standards of ethics of the social work profession or any conduct that constitutes or might constitute a danger to the health or safety of a client or the public or in any other manner fails or might fail to adhere to the recognized standards of the profession.

**SECTION 4.** ORS 675.583 is amended to read:

675.583. (1) A licensed clinical social worker shall report to the State Board of Clinical Social Workers any information the licensed clinical social worker has that appears to show that a licensed clinical social worker is or may be an impaired [*clinical social worker*] **professional as defined in section 1 of this 2009 Act**, or may be guilty of unprofessional conduct according to the guidelines of the code of ethics, to the extent that disclosure does not conflict with the requirements of ORS 675.580.

(2) Any information that the board obtains pursuant to subsection (1) of this section is confidential as provided under ORS 676.175.

(3) Any person who reports or provides information to the board under subsection (1) of this section in good faith [*shall*] **may** not be subject to an action for civil damages as a result [*thereof*] **of reporting or providing information to the board.**

**SECTION 5.** ORS 675.600 is amended to read:

675.600. (1) The State Board of Clinical Social Workers shall:

(a) Pursuant to ORS chapter 183, [*make*] **adopt** rules necessary to carry out the provisions of ORS 675.510 to 675.600;

(b) Publish annually a list of the names and addresses of all persons who have been certified or licensed under ORS 675.510 to 675.600;

*[(c) Establish a program for impaired clinical social workers to assist licensed clinical social workers to regain or retain their certification or licensure and impose the requirement of participation as a condition to reissuance or retention of the certificate or license;]*

*[(d)] (c)* Establish a voluntary arbitration procedure that may be invoked with the consent of clients and the licensed clinical social workers whereby disputes between clients and workers may be resolved; and

*[(e)] (d)* Report to the Legislative Assembly on its activities regarding the certification or licensure of clinical social workers during the preceding biennium.

(2) The board may appoint an administrator who shall not be a member of the board. The board shall fix the compensation for the administrator.

**SECTION 6.** ORS 675.785 is amended to read:

675.785. The Oregon Board of Licensed Professional Counselors and Therapists has the following powers:

(1) In accordance with the applicable provisions of ORS chapter 183, the board shall adopt rules necessary for the administration of the laws the board is charged with administering.

(2) Subject to any applicable provisions of the State Personnel Relations Law, the board may appoint, prescribe the duties and fix the compensation of an administrator and other employees of the board necessary to carry out the duties of the board.

(3) The board may impose nonrefundable fees in an amount set by rule for the following:

(a) License application.

(b) First issuance of a license.

(c) Renewal of a license.

(d) Late filing of a license renewal.

(e) Renewal of registration as an intern.

(f) Examinations. Examination fees shall not exceed the costs incurred in administering the particular examination. Fees established under this subsection are subject to prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fees and shall be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board.

(4) The board shall:

(a) Maintain a register of all current licensed professional counselors and marriage and family therapists.

(b) Annually publish a directory listing all current licensed professional counselors and marriage and family therapists. The directory shall be available to the public, for which the board may collect a publication fee.

(5) The board shall:

(a) Investigate alleged violations of the provisions of ORS 675.715 to 675.835 or rules adopted under authority of the board.

(b) Establish procedures to review the complaints of clients of licensees of the board. Upon receipt of a complaint under ORS 675.715 to 675.835 against any licensed or unlicensed person, the board shall conduct an investigation as described under ORS 676.165.

(6) The board shall report to the Legislative Assembly concerning the activities of the board during the preceding biennium.

(7) The board shall form standards committees to establish, examine and pass on the qualifications of applicants to practice professional counseling or marriage and family therapy in this state. The standards committee for professional counselors shall be made up of the professional counselors on the board, the faculty member and the public member. The standards committee for marriage and family therapists shall be made up of the marriage and family members of the board, the faculty member and the public member.

(8) The board shall grant licenses to applicants who qualify to practice professional counseling or marriage and family therapy in this state upon compliance with ORS 675.715 to 675.835 and the rules of the board.

(9) The board may administer oaths, take depositions, defray legal expenses and issue subpoenas to compel the attendance of witnesses and the production of documents or written information necessary to carry out ORS 675.715 to 675.835.

(10) The board may adopt a seal to be affixed to all licenses.

(11) The board shall adopt a code of ethics for licensees. The board may use the ethical codes of professional counseling and marriage and family therapy associations as models for the code established by the board.

(12) The board may set academic and training standards necessary under ORS 675.715 to 675.835, including, but not limited to, the adoption of rules to establish semester hour equivalents for qualification for licensing where quarter hours are required under ORS 675.715 to 675.835.

(13) The board shall require the applicant for a professional counselor license or a marriage and family therapy license to receive a passing score on an examination of competency in counseling or marriage and family therapy. The examination may be the examination given nationally to certify counselors, or in the case of marriage and family therapy, the examination approved by the Association of Marital and Family Therapy Regulatory Boards.

(14) The standards committee shall establish standards and requirements for continuing education and supervision, as appropriate. *[The standards and requirements shall be in effect July 1, 1992.]*

*[(15) The board shall establish a program for licensees whose ability to perform professional counseling is impaired to assist those licensees in regaining or retaining their licensure and shall impose the requirement of participation as a condition to reissuance or retention of the license.]*

*[(16)]* **(15)** For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the board may require the fingerprints of a person who is:

- (a) Applying for a license that is issued by the board;
- (b) Applying for renewal of a license that is issued by the board; or
- (c) Under investigation by the board.

**SECTION 7.** ORS 678.112 is amended to read:

678.112. *[(1) When a person licensed to practice nursing voluntarily seeks treatment for chemical dependency or an emotional or physical problem that otherwise may lead to formal disciplinary action under ORS 678.111, the Oregon State Board of Nursing may abstain from taking such formal disciplinary action if the board finds that the licensee can be treated effectively and that there is no danger to the public health, safety or welfare.]*

*[(2) If the board abstains from taking such formal disciplinary action, it may require the licensee to be subject to the voluntary monitoring program as established by the board.]*

*[(3) All records of the voluntary monitoring program are confidential and shall not be subject to public disclosure, nor shall the records be admissible as evidence in any judicial proceedings.]*

*[(4) A licensee voluntarily participating in the voluntary monitoring program shall not be subject to investigation or disciplinary action by the board for the same offense, if the licensee complies with the terms and conditions of the monitoring program.]*

*[(5) The board shall establish by rule criteria for eligibility to participate in the voluntary monitoring program and criteria for successful completion of the program.]*

*[(6) Licensees] **Persons licensed to practice nursing** who elect not to participate in the [voluntary monitoring program] **impaired health professional program established under section 1b of this 2009 Act** or who fail to comply with the terms of participation shall be reported to the board for formal disciplinary action under ORS 678.111.*

**SECTION 8.** ORS 678.410 is amended to read:

678.410. (1) The Oregon State Board of Nursing may impose fees for the following:

- (a) License renewal.
- (b) Examination.
- (c) License by indorsement.
- (d) Limited license.
- (e) Examination proctor service.

- (f) Duplicate license.
- (g) Extension of limited license.
- (h) Nurse practitioner certificate.
- (i) Reexamination for licensure.
- (j) Delinquent fee.
- (k) Renewal fee nurse practitioner.
- (L) Verification of a license of a nurse applying for license by indorsement in another state.
- (m) Certified nurse practitioner's initial application and registration for writing prescriptions.
- (n) Renewal of certified nurse practitioner's application for writing prescriptions.
- (o) Approval of training program for nursing assistants.
- (p) Issuance, renewal and delinquency of a nursing assistant certificate.
- [*q*] *Voluntary monitoring program for chemical dependency or an emotional or physical problem.*]
- [*r*] **(q)** Clinical nurse specialist certification established pursuant to ORS 678.370.
- [*s*] **(r)** Clinical nurse specialist's initial application for prescriptive authority.
- [*t*] **(s)** Renewal of clinical nurse specialist's application for prescriptive authority.
- [*u*] **(t)** Inactive license or certificate.
- [*v*] **(u)** Retired license or certificate.
- [*w*] **(v)** Nationwide criminal records check.
- (2) Fees are nonrefundable.

(3) Subject to prior approval of the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fees and charges, the fees and charges established under this section shall not exceed the cost of administering the regulatory program of the board pertaining to the purpose for which the fee or charge is established, as authorized by the Legislative Assembly within the board's budget, as the budget may be modified by the Emergency Board. If federal or other funds are available to offset costs of administering the program, fees shall be established based on net costs to the state but not to exceed \$75 per biennium for the certification fee under subsection (1)(p) of this section.

**SECTION 9.** ORS 684.010 is amended to read:

684.010. As used in this chapter:

- (1) "Active senior" means a person who:
  - (a) Is licensed under ORS 684.054;
  - (b) Is at least 60 years of age; and
  - (c) Has been in practice for 25 years or more.
- (2) "Chiropractic" is defined as:
  - (a) That system of adjusting with the hands the articulations of the bony framework of the human body, and the employment and practice of physiotherapy, electrotherapy, hydrotherapy and minor surgery.
  - (b) The chiropractic diagnosis, treatment and prevention of body dysfunction; correction, maintenance of the structural and functional integrity of the neuro-musculoskeletal system and the effects thereof or interferences therewith by the utilization of all recognized and accepted chiropractic diagnostic procedures and the employment of all rational therapeutic measures as taught in approved chiropractic colleges.
- (3) "Chiropractic physician" means a person licensed by ORS 677.060, 684.025, 684.100, 684.155 or 688.010 to 688.201 and this section as an attending physician.
- (4) "Drugs" means all medicines and preparations and all substances, except over-the-counter nonprescription substances, food, water and nutritional supplements taken orally, used or intended to be used for the diagnosis, cure, treatment, mitigation or prevention of diseases or abnormalities of humans, which are recognized in the latest editions of the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia, official National Formulary, or any supplement to any of them, or otherwise established as drugs.



[5) "Impaired chiropractic physician" means a chiropractic physician unable to practice chiropractic with reasonable skill and safety by reason of habitual or excessive use or abuse of drugs, alcohol or other substances that impair ability.]

[6] (5) "Minor surgery" means the use of electrical or other methods for the surgical repair and care incident thereto of superficial lacerations and abrasions, benign superficial lesions, and the removal of foreign bodies located in the superficial structures; and the use of antiseptics and local anesthetics in connection therewith.

**SECTION 10.** ORS 687.081 is amended to read:

687.081. (1) The State Board of Massage Therapists may discipline a licensee, deny, suspend, revoke or refuse to renew a license, issue a reprimand, censure a licensee or place a licensee on probation if the licensee:

(a) Has violated any provision of ORS 687.011 to 687.250, 687.895 and 687.991 or any rule of the board adopted under ORS 687.121.

(b) Has made any false representation or statement to the board in order to induce or prevent action by the board.

(c) Has a physical or mental condition that makes the licensee unable to conduct safely the practice of massage.

(d) Is habitually intemperate in the use of alcoholic beverages or is addicted to the use of habit-forming drugs or controlled substances.

(e) Has misrepresented to any patron any services rendered.

(f) Has been convicted of a crime that bears a demonstrable relationship to the practice of massage.

(g) Fails to meet with any requirement under ORS 687.051.

(h) Violates any provision of ORS 167.002 to 167.027.

(i) Engages in unprofessional or dishonorable conduct.

(j) Has been the subject of disciplinary action as a massage therapist by any other state or territory of the United States or by a foreign country and the board determines that the cause of the disciplinary action would be a violation under ORS 687.011 to 687.250, 687.895 and 687.991 or rules of the board if it occurred in this state.

(2) If the board places a licensee on probation pursuant to subsection (1) of this section, the board may impose and at any time modify the following conditions of probation:

(a) Limitation on the allowed scope of practice.

(b) [If the board finds that the licensee is physically or mentally impaired, a requirement for successful completion of appropriate treatment as determined by the board] **Referral to the impaired health professional program established under section 1b of this 2009 Act.**

(c) Individual or peer supervision.

(d) Such other conditions as the board may [deem] **consider** necessary for the protection of the public and the rehabilitation of the licensee.

(3) If the board determines that a licensee's continued practice constitutes a serious danger to the public, the board may impose an emergency suspension of the license without a hearing. Simultaneous with the order of suspension, the board shall institute proceedings for a hearing as provided under ORS 687.011 to 687.250, 687.895 and 687.991. The suspension shall continue unless and until the licensee obtains injunctive relief from a court of competent jurisdiction or the board determines that the suspension is no longer necessary for the protection of the public.

(4) In addition to the discipline described in subsection (1) of this section, the board may impose a civil penalty as provided under ORS 687.250. Civil penalties under this subsection shall be imposed pursuant to ORS 183.745.

(5) Prior to imposing any of the sanctions authorized under this section, the board shall consider, but is not limited to, the following factors:

(a) The person's past history in observing the provisions of ORS 687.011 to 687.250, 687.895 and 687.991 and the rules adopted pursuant thereto;

(b) The effect of the violation on public safety and welfare;

(c) The degree to which the action subject to sanction violates professional ethics and standards of practice;

(d) The economic and financial condition of the person subject to sanction; and

(e) Any mitigating factors that the board may choose to consider.

(6) In addition to the sanctions authorized by this section, the board may assess against a licensee the costs associated with the disciplinary action taken against the licensee.

(7) The board shall adopt a code of ethical standards for practitioners of massage and shall take appropriate measures to ensure that all applicants and practitioners of massage are aware of those standards.

(8) Upon receipt of a complaint under ORS 687.011 to 687.250, 687.895 and 687.991, the board shall conduct an investigation as described under ORS 676.165.

(9) Information that the board obtains as part of an investigation into licensee or applicant conduct or as part of a contested case proceeding, consent order or stipulated agreement involving licensee or applicant conduct is confidential as provided under ORS 676.175.

**SECTION 11.** ORS 192.690, as amended by section 8, chapter 796, Oregon Laws 2007, is amended to read:

192.690. (1) ORS 192.610 to 192.690 do not apply to the deliberations of the State Board of Parole and Post-Prison Supervision, the Psychiatric Security Review Board, state agencies conducting hearings on contested cases in accordance with the provisions of ORS chapter 183, the review by the Workers' Compensation Board or the Employment Appeals Board of similar hearings on contested cases, meetings of the state lawyers assistance committee operating under the provisions of ORS 9.568, [*meetings of the Health Professionals Program Supervisory Council established under ORS 677.615,*] meetings of the personal and practice management assistance committees operating under the provisions of ORS 9.568, the county multidisciplinary child abuse teams required to review child abuse cases in accordance with the provisions of ORS 418.747, the child fatality review teams required to review child fatalities in accordance with the provisions of ORS 418.785, the peer review committees in accordance with the provisions of ORS 441.055, mediation conducted under ORS 36.250 to 36.270, any judicial proceeding, meetings of the Oregon Health and Science University Board of Directors or its designated committee regarding candidates for the position of president of the university or regarding sensitive business, financial or commercial matters of the university not customarily provided to competitors related to financings, mergers, acquisitions or joint ventures or related to the sale or other disposition of, or substantial change in use of, significant real or personal property, or related to health system strategies, or to Oregon Health and Science University faculty or staff committee meetings.

(2) Because of the grave risk to public health and safety that would be posed by misappropriation or misapplication of information considered during such review and approval, ORS 192.610 to 192.690 shall not apply to review and approval of security programs by the Energy Facility Siting Council pursuant to ORS 469.530.

**SECTION 12.** ORS 179.505 is amended to read:

179.505. (1) As used in this section:

(a) "Disclosure" means the release of, transfer of, provision of access to or divulgence in any other manner of information outside the health care services provider holding the information.

(b) "Health care services provider" means:

(A) Medical personnel or other staff employed by or under contract with a public provider to provide health care or maintain written accounts of health care provided to individuals; or

(B) Units, programs or services designated, operated or maintained by a public provider to provide health care or maintain written accounts of health care provided to individuals.

(c) "Individually identifiable health information" means any health information that is:

(A) Created or received by a health care services provider; and

(B) Identifiable to an individual, including demographic information that identifies the individual, or for which there is a reasonable basis to believe the information can be used to identify an individual, and that relates to:

- (i) The past, present or future physical or mental health or condition of an individual;
- (ii) The provision of health care to an individual; or
- (iii) The past, present or future payment for the provision of health care to an individual.
- (d) "Personal representative" includes but is not limited to:
  - (A) A person appointed as a guardian under ORS 125.305, 419B.370, 419C.481 or 419C.555 with authority to make medical and health care decisions;
  - (B) A person appointed as a health care representative under ORS 127.505 to 127.660 or a representative under ORS 127.700 to 127.737 to make health care decisions or mental health treatment decisions; and
  - (C) A person appointed as a personal representative under ORS chapter 113.
- (e) "Psychotherapy notes" means notes recorded in any medium:
  - (A) By a mental health professional, in the performance of the official duties of the mental health professional;
  - (B) Documenting or analyzing the contents of conversation during a counseling session; and
  - (C) That are maintained separately from the rest of the individual's record.
- (f) "Psychotherapy notes" does not mean notes documenting:
  - (A) Medication prescription and monitoring;
  - (B) Counseling session start and stop times;
  - (C) Modalities and frequencies of treatment furnished;
  - (D) Results of clinical tests; or
  - (E) Any summary of the following items:
    - (i) Diagnosis;
    - (ii) Functional status;
    - (iii) Treatment plan;
    - (iv) Symptoms;
    - (v) Prognosis; or
    - (vi) Progress to date.
- (g) "Public provider" means:
  - (A) The state institutions for the care and treatment of individuals with mental illness or developmental disabilities operated by the Department of Human Services;
  - (B) Department of Corrections institutions as defined in ORS 421.005;
  - (C) A contractor of the Department of Human Services or the Department of Corrections that provides health care to individuals residing in a state institution operated by the Department of Human Services or the Department of Corrections;
  - (D) A community mental health and developmental disabilities program as described in ORS 430.610 to 430.695 and the public and private entities with which it contracts to provide mental health or developmental disabilities programs or services;
  - (E) A program or service provided under ORS 431.250, 431.375 to 431.385 or 431.416;
  - (F) A program or service licensed, approved, established, maintained or operated by or contracted with the Department of Human Services under ORS 430.630 for individuals with developmental disabilities and individuals with mental or emotional disturbances;
  - (G) A program or facility providing an organized full-day or part-day program of treatment that is licensed, approved, established, maintained or operated by or contracted with the Department of Human Services for alcoholism, drug addiction or mental or emotional disturbance; [or]
  - (H) A program or service providing treatment by appointment that is licensed, approved, established, maintained or operated by or contracted with the Department of Human Services for alcoholism, drug addiction or mental or emotional disturbance[.]; **or**
  - (I) **The impaired health professional program established under section 1b of this 2009 Act.**
- (h) "Written account" means records containing only individually identifiable health information.

(2) Except as provided in subsections (3), (4), (6), (7), (8), (9), (11), (12), (14), (15), (16) and (17) of this section or unless otherwise permitted or required by state or federal law or by order of the court, written accounts of the individuals served by any health care services provider maintained in or by the health care services provider by the officers or employees thereof who are authorized to maintain written accounts within the official scope of their duties are not subject to access and may not be disclosed. This subsection applies to written accounts maintained in or by facilities of the Department of Corrections only to the extent that the written accounts concern the medical, dental or psychiatric treatment as patients of those under the jurisdiction of the Department of Corrections.

(3) If the individual or a personal representative of the individual provides an authorization, the content of any written account referred to in subsection (2) of this section must be disclosed accordingly, if the authorization is in writing and is signed and dated by the individual or the personal representative of the individual and sets forth with specificity the following:

(a) Name of the health care services provider authorized to make the disclosure, except when the authorization is provided by recipients of or applicants for public assistance to a governmental entity for purposes of determining eligibility for benefits or investigating for fraud;

(b) Name or title of the persons or organizations to which the information is to be disclosed or that information may be disclosed to the public;

(c) Name of the individual;

(d) Extent or nature of the information to be disclosed; and

(e) Statement that the authorization is subject to revocation at any time except to the extent that action has been taken in reliance thereon, and a specification of the date, event or condition upon which it expires without express revocation. However, a revocation of an authorization is not valid with respect to inspection or records necessary to validate expenditures by or on behalf of governmental entities.

(4) The content of any written account referred to in subsection (2) of this section may be disclosed without an authorization:

(a) To any person to the extent necessary to meet a medical emergency.

(b) At the discretion of the responsible officer of the health care services provider, which in the case of any Department of Human Services facility or community mental health and developmental disabilities program shall be the Director of Human Services, to persons engaged in scientific research, program evaluation, peer review and fiscal audits. However, individual identities may not be disclosed to such persons, except when the disclosure is essential to the research, evaluation, review or audit and is consistent with state and federal law.

(c) To governmental agencies when necessary to secure compensation for services rendered in the treatment of the individual.

(5) When an individual's identity is disclosed under subsection (4) of this section, a health care services provider shall prepare, and include in the permanent records of the health care services provider, a written statement indicating the reasons for the disclosure, the written accounts disclosed and the recipients of the disclosure.

(6) The content of any written account referred to in subsection (2) of this section and held by a health care services provider currently engaged in the treatment of an individual may be disclosed to officers or employees of that provider, its agents or cooperating health care services providers who are currently acting within the official scope of their duties to evaluate treatment programs, to diagnose or treat or to assist in diagnosing or treating an individual when the written account is to be used in the course of diagnosing or treating the individual. Nothing in this subsection prevents the transfer of written accounts referred to in subsection (2) of this section among health care services providers, the Department of Human Services, the Department of Corrections or a local correctional facility when the transfer is necessary or beneficial to the treatment of an individual.

(7) When an action, suit, claim, arbitration or proceeding is brought under ORS 34.105 to 34.240 or 34.310 to 34.730 and involves a claim of constitutionally inadequate medical care, diagnosis or

treatment, or is brought under ORS 30.260 to 30.300 and involves the Department of Corrections or an institution operated by the department, nothing in this section prohibits the disclosure of any written account referred to in subsection (2) of this section to the Department of Justice, Oregon Department of Administrative Services, or their agents, upon request, or the subsequent disclosure to a court, administrative hearings officer, arbitrator or other administrative decision maker.

(8)(a) When an action, suit, claim, arbitration or proceeding involves the Department of Human Services or an institution operated by the department, nothing in this section prohibits the disclosure of any written account referred to in subsection (2) of this section to the Department of Justice, Oregon Department of Administrative Services, or their agents.

(b) Disclosure of information in an action, suit, claim, nonlabor arbitration or proceeding is limited by the relevancy restrictions of ORS 40.010 to 40.585, 183.710 to 183.725, 183.745 and 183.750 and ORS chapter 183. Only written accounts of a plaintiff, claimant or petitioner shall be disclosed under this paragraph.

(c) Disclosure of information as part of a labor arbitration or proceeding to support a personnel action taken against staff is limited to written accounts directly relating to alleged action or inaction by staff for which the personnel action was imposed.

(9)(a) The copy of any written account referred to in subsection (2) of this section, upon written request of the individual or a personal representative of the individual, shall be disclosed to the individual or the personal representative of the individual within a reasonable time not to exceed five working days. The individual or the personal representative of the individual shall have the right to timely access to any written accounts.

(b) If the disclosure of psychiatric or psychological information contained in the written account would constitute an immediate and grave detriment to the treatment of the individual, disclosure may be denied, if medically contraindicated by the treating physician or a licensed health care professional in the written account of the individual.

(c) The Department of Corrections may withhold psychiatric or psychological information if:

(A) The information relates to an individual other than the individual seeking it.

(B) Disclosure of the information would constitute a danger to another individual.

(C) Disclosure of the information would compromise the privacy of a confidential source.

(d) However, a written statement of the denial under paragraph (c) of this subsection and the reasons therefor must be entered in the written account.

(10) A health care services provider may require a person requesting disclosure of the contents of a written account under this section to reimburse the provider for the reasonable costs incurred in searching files, abstracting if requested and copying if requested. However, an individual or a personal representative of the individual may not be denied access to written accounts concerning the individual because of inability to pay.

(11) A written account referred to in subsection (2) of this section may not be used to initiate or substantiate any criminal, civil, administrative, legislative or other proceedings conducted by federal, state or local authorities against the individual or to conduct any investigations of the individual. If the individual, as a party to an action, suit or other judicial proceeding, voluntarily produces evidence regarding an issue to which a written account referred to in subsection (2) of this section would be relevant, the contents of that written account may be disclosed for use in the proceeding.

(12) Information obtained in the course of diagnosis, evaluation or treatment of an individual that, in the professional judgment of the health care services provider, indicates a clear and immediate danger to others or to society may be reported to the appropriate authority. A decision not to disclose information under this subsection does not subject the provider to any civil liability. Nothing in this subsection may be construed to alter the provisions of ORS 146.750, 146.760, 419B.010, 419B.015, 419B.020, 419B.025, 419B.030, 419B.035, 419B.040 and 419B.045.

(13) The prohibitions of this section apply to written accounts concerning any individual who has been treated by any health care services provider irrespective of whether or when the individual ceases to receive treatment.

(14) Persons other than the individual or the personal representative of the individual who are granted access under this section to the contents of a written account referred to in subsection (2) of this section may not disclose the contents of the written account to any other person except in accordance with the provisions of this section.

(15) Nothing in this section prevents the Department of Human Services from disclosing the contents of written accounts in its possession to individuals or agencies with whom children in its custody are placed.

(16) The system described in ORS 192.517 (1) shall have access to records, as defined in ORS 192.515, as provided in ORS 192.517.

(17)(a) Except as provided in paragraph (b) of this subsection, a health care services provider must obtain an authorization from an individual or a personal representative of the individual to disclose psychotherapy notes.

(b) A health care services provider may use or disclose psychotherapy notes without obtaining an authorization from the individual or a personal representative of the individual to carry out the following treatment, payment and health care operations:

(A) Use by the originator of the psychotherapy notes for treatment;

(B) Disclosure by the health care services provider for its own training program in which students, trainees or practitioners in mental health learn under supervision to practice or improve their skills in group, joint, family or individual counseling; or

(C) Disclosure by the health care services provider to defend itself in a legal action or other proceeding brought by the individual or a personal representative of the individual.

(c) An authorization for the disclosure of psychotherapy notes may not be combined with an authorization for a disclosure of any other individually identifiable health information, but may be combined with another authorization for a disclosure of psychotherapy notes.

**SECTION 13. The Department of Human Services shall report on the impaired health professional program established under section 1b of this 2009 Act to the Governor, to the Legislative Assembly as provided in ORS 192.245 and to health profession licensing boards as defined in section 1 of this 2009 Act on or before January 31, 2011.**

**SECTION 14. ORS 677.615, 677.625, 677.635, 677.645, 677.655, 677.665, 677.677, 684.103, 684.157, 689.342, 689.344, 689.346, 689.348, 689.352, 689.354 and 689.356 are repealed.**

**SECTION 15. If Senate Bill 177 becomes law, section 3 of this 2009 Act (amending ORS 675.510) is repealed and ORS 675.510, as amended by section 1, chapter \_\_, Oregon Laws 2009 (Enrolled Senate Bill 177), is amended to read:**

675.510. As used in ORS 675.510 to 675.600, unless the context requires otherwise:

(1) "Authorization to practice regulated social work" means a certificate or license issued by the State Board of Licensed Social Workers under ORS 675.510 to 675.600.

(2) "Clinical social work" means the professional practice of applying principles and methods with individuals, couples, families, children and groups, which include, but are not restricted to:

(a) Providing diagnostic, preventive and treatment services of a psychosocial nature pertaining to personality adjustment, behavior problems, interpersonal dysfunctioning or deinstitutionalization;

(b) Developing a psychotherapeutic relationship to employ a series of problem solving techniques for the purpose of removing, modifying, or retarding disrupted patterns of behavior, and for promoting positive personality growth and development;

(c) Counseling and the use of psychotherapeutic techniques, such as disciplined interviewing which is supportive, directive or insight oriented depending upon diagnosed problems, observation and feedback, systematic analysis, and recommendations;

(d) Modifying internal and external conditions that affect a client's behavior, emotions, thinking, or intrapersonal processes;

(e) Explaining and interpreting the psychosocial dynamics of human behavior to facilitate problem solving; and

(f) Supervising, administering or teaching clinical social work practice.

[3] “Impaired clinical social worker” means a person who is unable to perform the practice of clinical social work by reason of mental illness, physical illness or alcohol or other drug abuse.]

[4] (3) “Regulated social worker” means a clinical social work associate certified under ORS 675.537 or a clinical social worker licensed under ORS 675.530.

[5] (4) “Unprofessional conduct” includes, but is not limited to, any conduct or practice contrary to recognized standards of ethics of the social work profession or any conduct that constitutes or might constitute a danger to the health or safety of a client or the public or in any other manner fails or might fail to adhere to the recognized standards of the profession.

**SECTION 16.** If Senate Bill 177 becomes law, section 2, chapter \_\_, Oregon Laws 2009 (Enrolled Senate Bill 177) (amending ORS 675.510), is repealed and ORS 675.510, as amended by section 1, chapter \_\_, Oregon Laws 2009 (Enrolled Senate Bill 177), and section 15 of this 2009 Act, is amended to read:

675.510. As used in ORS 675.510 to 675.600, unless the context requires otherwise:

(1) “Authorization to practice regulated social work” means a certificate or license issued by the State Board of Licensed Social Workers under ORS 675.510 to 675.600.

(2) “Clinical social work” means the professional practice of applying principles and methods with individuals, couples, families, children and groups, which include, but are not restricted to:

(a) Providing diagnostic, preventive and treatment services of a psychosocial nature pertaining to personality adjustment, behavior problems, interpersonal dysfunctioning or deinstitutionalization;

(b) Developing a psychotherapeutic relationship to employ a series of problem solving techniques for the purpose of removing, modifying, or retarding disrupted patterns of behavior, and for promoting positive personality growth and development;

(c) Counseling and the use of psychotherapeutic techniques, such as disciplined interviewing which is supportive, directive or insight oriented depending upon diagnosed problems, observation and feedback, systematic analysis, and recommendations;

(d) Modifying internal and external conditions that affect a client’s behavior, emotions, thinking, or intrapersonal processes;

(e) Explaining and interpreting the psychosocial dynamics of human behavior to facilitate problem solving; and

(f) Supervising, administering or teaching clinical social work practice.

(3) “Regulated social worker” means a **baccalaureate social worker registered under section 6, chapter \_\_, Oregon Laws 2009 (Enrolled Senate Bill 177), a master’s social worker licensed under section 7, chapter \_\_, Oregon Laws 2009 (Enrolled Senate Bill 177),** a clinical social work associate certified under ORS 675.537 or a clinical social worker licensed under ORS 675.530.

(4) “Unprofessional conduct” includes, but is not limited to, any conduct or practice contrary to recognized standards of ethics of the social work profession or any conduct that constitutes or might constitute a danger to the health or safety of a client or the public or in any other manner fails or might fail to adhere to the recognized standards of the profession.

**SECTION 17.** If Senate Bill 177 becomes law, section 50, chapter \_\_, Oregon Laws 2009 (Enrolled Senate Bill 177), is amended to read:

**Sec. 50.** Sections 4a, 6, 7, 12a and 12b, **chapter \_\_, Oregon Laws 2009 (Enrolled Senate Bill 177),** [of this 2009 Act] and the amendments to ORS 675.510 and 675.530 by **section 16 of this 2009 Act and section 9, chapter \_\_, Oregon Laws 2009 (Enrolled Senate Bill 177),** [sections 2 and 9 of this 2009 Act] become operative on January 1, 2011.

**SECTION 18.** If Senate Bill 177 becomes law and House Bill 2059 does not become law, **section 4 of this 2009 Act (amending ORS 675.583) is repealed and ORS 675.583, as amended by section 18, chapter \_\_, Oregon Laws 2009 (Enrolled Senate Bill 177), is amended to read:**

675.583. (1) A regulated social worker shall report to the State Board of Licensed Social Workers any information the regulated social worker has that appears to show that a regulated social worker is or may be an impaired [social worker] **professional as defined in section 1 of this 2009 Act,** or may have engaged in unprofessional conduct according to the guidelines of the code of ethics, to the extent that disclosure does not conflict with the requirements of ORS 675.580.

(2) Notwithstanding ORS 676.175, any information that the board obtains pursuant to subsection (1) of this section is confidential and may not be disclosed except as provided by the board by rule.

(3) A person who reports or provides information to the board under subsection (1) of this section in good faith is not subject to an action for civil damages as a result *[thereof]* **of reporting or providing information to the board.**

**SECTION 19. If both House Bill 2059 and Senate Bill 177 become law, section 4 of this 2009 Act (amending ORS 675.583) is repealed and ORS 675.583, as amended by section 18, chapter \_\_, Oregon Laws 2009 (Enrolled Senate Bill 177), and section 38, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2059), is amended to read:**

675.583. (1) Unless state or federal laws relating to confidentiality or the protection of health information prohibit disclosure, a regulated social worker shall report to the State Board of Licensed Social Workers any information the regulated social worker has that appears to show that a regulated social worker is or may be an impaired *[social worker]* **professional as defined in section 1 of this 2009 Act**, or may have engaged in unprofessional conduct according to the guidelines of the code of ethics, to the extent that disclosure does not conflict with the requirements of ORS 675.580.

(2) A regulated social worker shall report any prohibited conduct as defined in section 1, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2059)**, *[of this 2009 Act]* in the manner provided in section 1, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2059)** *[of this 2009 Act]*.

(3) Notwithstanding ORS 676.175, any information that the board obtains pursuant to subsection (1) of this section is confidential and may not be disclosed except as provided by the board by rule.

(4) A person who reports or provides information to the board under subsection (1) of this section in good faith is not subject to an action for civil damages as a result *[thereof]* **of reporting or providing information to the board.**

**SECTION 20. If Senate Bill 177 becomes law, section 5 of this 2009 Act (amending ORS 675.600) is repealed and ORS 675.600, as amended by section 23, chapter \_\_, Oregon Laws 2009 (Enrolled Senate Bill 177), is amended to read:**

675.600. (1) The State Board of Licensed Social Workers shall:

(a) Pursuant to ORS chapter 183, *[make]* **adopt** rules necessary to carry out the provisions of ORS 675.510 to 675.600.

(b) Publish annually a list of the names and addresses of all persons who have been authorized to practice regulated social work.

*[(c) Establish a program for impaired social workers to assist regulated social workers to regain or retain their authorizations to practice regulated social work and impose the requirement of participation as a condition to reissuance or retention of the authorization.]*

*[(d)]* (c) Establish a voluntary arbitration procedure that may be invoked with the consent of clients and regulated social workers whereby disputes between clients and workers may be resolved.

*[(e)]* (d) Report to the Legislative Assembly on its activities regarding authorizations to practice regulated social work during the preceding biennium.

(2) The board may appoint an administrator who may not be a member of the board. The board shall fix the compensation for the administrator.

*[(3) Any information obtained by the board as part of the impaired social workers program is confidential and may not be disclosed except as provided by the board by rule.]*

**SECTION 21. Sections 1 to 1c of this 2009 Act, the amendments to ORS 179.505, 192.690, 675.410, 675.510, 675.583, 675.600, 675.785, 678.112, 678.410, 684.010 and 687.081 by sections 2 to 12, 15 and 18 to 20 of this 2009 Act and the repeal of ORS 677.615, 677.625, 677.635, 677.645, 677.655, 677.665, 677.677, 684.103, 684.157, 689.342, 689.344, 689.346, 689.348, 689.352, 689.354 and 689.356 by section 14 of this 2009 Act apply to:**

(1) A licensee who is the subject of a complaint filed with a health profession licensing board on or after July 1, 2010;

(2) A licensee about whom a board receives information that the licensee may be impaired on or after July 1, 2010; and



(3) A disciplinary proceeding commenced on or after July 1, 2010.

**SECTION 22.** (1) Sections 1 to 1c of this 2009 Act, the amendments to ORS 179.505, 192.690, 675.410, 675.510, 675.583, 675.600, 675.785, 678.112, 678.410, 684.010 and 687.081 by sections 2 to 12, 15 and 18 to 20 of this 2009 Act and the repeal of ORS 677.615, 677.625, 677.635, 677.645, 677.655, 677.665, 677.677, 684.103, 684.157, 689.342, 689.344, 689.346, 689.348, 689.352, 689.354 and 689.356 by section 14 of this 2009 Act become operative July 1, 2010.

(2) A health profession licensing board as defined in section 1 of this 2009 Act may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the board to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the board by this 2009 Act.

(3) The Department of Human Services may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the department to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the department by this 2009 Act.

**SECTION 23.** (1) Before the operative date specified in section 22 of this 2009 Act, the Department of Human Services and the health profession licensing boards that opt to participate in the impaired health professional program established under section 1b of this 2009 Act shall collaborate to transfer existing impaired professional programs and funding, and licensees who are subject to existing impaired professional programs, to the impaired health professional program established under section 1b of this 2009 Act.

(2) When a licensee is transferred to the impaired health professional program established under section 1b of this 2009 Act pursuant to subsection (1) of this section, the program shall honor the terms of the licensee's existing diversion agreement if the terms of the agreement are consistent with the requirements of section 1b of this 2009 Act. If the terms of the licensee's existing diversion agreement are not consistent with the requirements of section 1b of this 2009 Act, the diversion agreement entered into by the program and the licensee must comply with section 1b of this 2009 Act.

(3) When a licensee who self-referred to an impaired professional program before the effective date of this 2009 Act is transferred to the impaired health professional program established under section 1b of this 2009 Act pursuant to subsection (1) of this section:

(a) The program may not disclose the licensee's enrollment in the program to the licensee's board unless the licensee:

(A) Ceases to participate in the program before completing the program; or

(B) Engages in substantial noncompliance as described in section 1b (1)(f)(A) to (H) of this 2009 Act.

(b) The program may not disclose the licensee's successful completion of the program to the licensee's board.

**SECTION 24.** Section 13 of this 2009 Act is repealed on January 2, 2012.

**SECTION 25.** This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

**Passed by House May 22, 2009**

**Repassed by House June 19, 2009**

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Chief Clerk of House

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Speaker of House

**Passed by Senate June 17, 2009**

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President of Senate

**Received by Governor:**

.....M,....., 2009

**Approved:**

.....M,....., 2009

.....  
Governor

**Filed in Office of Secretary of State:**

.....M,....., 2009

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Secretary of State