

HOUSE AMENDMENTS TO HOUSE BILL 2345

By COMMITTEE ON HEALTH CARE

May 1

1 On page 1 of the printed bill, delete lines 7 through 28.

2 On page 2, delete lines 1 through 39 and insert:

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

4 **“(1) ‘Health profession licensing board’ means:**

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

6 **“(b) The Oregon Health Licensing Agency for a board, council or program listed in ORS**
7 **676.606.**

8 **“(2) ‘Impaired professional’ means a licensee who is unable to practice with professional**
9 **skill and safety by reason of habitual or excessive use or abuse of drugs, alcohol or other**
10 **substances that impair ability or by reason of a mental health disorder.**

11 **“(3) ‘Licensee’ means a health professional licensed or certified by or registered with a**
12 **health profession licensing board.**

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

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

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

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

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

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

30 **“(c) The licensee consents to the entry of the licensee’s name and fingerprints in the Law**
31 **Enforcement Data System established in ORS 181.730.**

32 **“(3)(a) For the purpose of requesting state or nationwide criminal records checks under**
33 **ORS 181.534, a board may require the fingerprints of a licensee before referring the licensee**
34 **to the impaired health professional program.**

35 **“(b) Notwithstanding ORS 181.534 (5) and (6), the Department of State Police shall main-**

1 tain in the department's files fingerprint cards submitted to the department for purposes of
2 conducting a state or nationwide criminal records check under paragraph (a) of this sub-
3 section.

4 "(c) A board is a designated agency for purposes of ORS 181.010 to 181.560 and 181.715 to
5 181.730.

6 "(4) A board that participates in the impaired health professional program shall investi-
7 gate reports received from the monitoring entity established under section 1c of this 2009
8 Act. If the board finds that a licensee is substantially noncompliant with a diversion agree-
9 ment entered into under section 1b of this 2009 Act, the board may suspend, restrict, modify
10 or revoke the licensee's license or end the licensee's participation in the impaired health
11 professional program.

12 "(5) A board may not discipline a licensee solely because the licensee:

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

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

15 "(c) Used controlled substances before entry into the impaired health professional pro-
16 gram, if the licensee did not practice while impaired.

17 "SECTION 1b. (1) The Department of Human Services shall establish or contract to es-
18 tablish an impaired health professional program. The program must:

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

21 "(b) Require that a licensee sign a written consent prior to enrollment in the program
22 allowing disclosure and exchange of information between the program, the licensee's board,
23 the licensee's employer, evaluators and treatment entities in compliance with 42 C.F.R. part
24 2;

25 "(c) Enter into diversion agreements with enrolled licensees;

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

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

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

34 "(A) Engaged in criminal behavior;

35 "(B) Engaged in conduct that caused injury, death or harm to the public, including en-
36 gaging in sexual impropriety with a patient;

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

38 "(D) Received a positive toxicology test result as determined by federal regulations per-
39 taining to drug testing;

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

42 "(F) Was admitted to the hospital for mental illness or adjudged to be mentally incom-
43 petent;

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

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

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

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

6 “(a) A description of the noncompliance;

7 “(b) A copy of a report from the independent third party who diagnosed the licensee un-
8 der section 1a (2)(a) of this 2009 Act or subsection (5)(a) of this section stating the licensee’s
9 diagnosis;

10 “(c) A copy of the licensee’s diversion agreement; and

11 “(d) The licensee’s employment status.

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

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

14 “(a) Require the licensee to consent to disclosure and exchange of information between
15 the program, the licensee’s board, the licensee’s employer, evaluators and treatment pro-
16 viders, in compliance with 42 C.F.R. part 2;

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

19 “(c) Require that the licensee abstain from mind-altering or intoxicating substances or
20 potentially addictive drugs, unless the drug is prescribed for a documented medical condition
21 by a person authorized by law and approved by the program to prescribe the drug to the
22 licensee;

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

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

27 “(f) Contain limits on the licensee’s practice of the licensee’s health profession;

28 “(g) Provide for employer monitoring of the licensee;

29 “(h) Provide that the program may require an evaluation of the licensee’s fitness to
30 practice before removing the limits on the licensee’s practice of the licensee’s health pro-
31 fession;

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

34 “(j) Require the licensee to report at least weekly to the program regarding the licensee’s
35 compliance with the agreement;

36 “(k) Require the licensee to report arrests, applications for licensure in other states,
37 changes in employment and changes in practice setting; and

38 “(L) Provide that the licensee is responsible for the cost of evaluations, toxicology testing
39 and treatment.

40 “(5) A licensee of a board participating in the program may self-refer to the program.
41 Before a self-referred licensee is enrolled in the program, the program shall:

42 “(a) Require that an independent third party approved by the licensee’s board to evaluate
43 alcohol or substance abuse or mental health disorders has diagnosed the licensee with alco-
44 hol or substance abuse or a mental health disorder;

45 “(b) Require the licensee to attest that the licensee is not under investigation by the

1 licensee's board; and

2 “(c) Investigate to determine whether the licensee’s practice while impaired has pre-
3 sented or presents a danger to the public.

4 “(6) The department shall adopt rules establishing a fee to be paid by the boards partic-
5 ipating in the impaired health professional program for administration of the program.

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

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

11 “SECTION 1c. (1) The Oregon Department of Administrative Services shall establish a
12 monitoring entity for impaired professionals. The monitoring entity shall:

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

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

17 “(A) The monitoring entity receives a report from the impaired health professional pro-
18 gram established under section 1b of this 2009 Act that a licensee is substantially
19 noncompliant with the licensee’s diversion agreement;

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

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

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

28 “(3) If a licensee self-refers to the impaired health professional program, the monitoring
29 entity may not report the licensee’s enrollment or successful completion of the impaired
30 health professional program to the licensee’s board.

31 “(4) The department shall arrange for an independent third party to audit the monitoring
32 entity to ensure compliance with program guidelines. The department shall report the re-
33 sults of the audit to the Legislative Assembly, the Governor and the health profession li-
34 censing boards. The report may not contain individually identifiable information about
35 licensees.

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

38 On page 6, delete lines 8 through 29 and insert:

39 “SECTION 7. ORS 678.112 is amended to read:

40 “678.112. [(1) When a person licensed to practice nursing voluntarily seeks treatment for chemical
41 dependency or an emotional or physical problem that otherwise may lead to formal disciplinary action
42 under ORS 678.111, the Oregon State Board of Nursing may abstain from taking such formal disci-
43 plinary action if the board finds that the licensee can be treated effectively and that there is no danger
44 to the public health, safety or welfare.]

45 “[2) If the board abstains from taking such formal disciplinary action, it may require the licensee

1 to be subject to the voluntary monitoring program as established by the board.]

2 “[3] All records of the voluntary monitoring program are confidential and shall not be subject to
3 public disclosure, nor shall the records be admissible as evidence in any judicial proceedings.]

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

7 “[5] The board shall establish by rule criteria for eligibility to participate in the voluntary moni-
8 toring program and criteria for successful completion of the program.]

9 “[6] Licensees] **Persons licensed to practice nursing** who elect not to participate in the [vol-
10 untary monitoring program] **impaired health professional program established under section 1b**
11 **of this 2009 Act** or who fail to comply with the terms of participation shall be reported to the board
12 for formal disciplinary action under ORS 678.111.”.

13 On page 8, lines 31 and 32, delete the boldfaced material and insert “Referral to the impaired
14 health professional program established under section 1b of this 2009 Act”.

15 On page 9, after line 42, insert:

16 “**SECTION 12. The Department of Human Services shall report on the impaired health**
17 **professional program established under section 1b of this 2009 Act to the Governor, to the**
18 **Legislative Assembly as provided in ORS 192.245 and to health profession licensing boards**
19 **as defined in section 1 of this 2009 Act on or before January 31, 2011.”.**

20 In line 43, delete “12” and insert “13”.

21 In line 45, delete “13” and insert “14” and delete “Section 1” and insert “Sections 1 to 1c”.

22 On page 10, line 3, delete “12” and insert “13”.

23 In line 6, delete “January” and insert “July”.

24 In line 8, delete “January” and insert “July”.

25 In line 9, delete “January” and insert “July”.

26 In line 10, delete “14” and insert “15” and delete “Section 1” and insert “Sections 1 to 1c”.

27 In line 13, delete “12” and insert “13”.

28 In line 14, delete “January” and insert “July”.

29 After line 19, insert:

30 “**SECTION 16. Section 12 of this 2009 Act is repealed on January 2, 2012.”.**

31 In line 20, delete “15” and insert “17”.