

House Bill 2120

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Health Care)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Provides that health professional regulatory boards have discretion to authorize licensees regulated by board to self-refer to impaired health professional program in which board participates.

A BILL FOR AN ACT

1
2 Relating to licensees who self-refer to the impaired health professional program; creating new pro-
3 visions; and amending ORS 676.190.

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

5 **SECTION 1.** ORS 676.190, as amended by section 1, chapter 2, Oregon Laws 2012, is amended
6 to read:

7 676.190. (1) The Oregon Health Authority shall establish or contract to establish an impaired
8 health professional program. The program must:

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

11 (b) Require that a licensee sign a written consent prior to enrollment in the program allowing
12 disclosure and exchange of information between the program, the licensee's board, the licensee's
13 employer, evaluators and treatment entities in compliance with ORS 179.505 and 42 C.F.R. part 2;

14 (c) Enter into diversion agreements with enrolled licensees;

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

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

19 (f) Report substantial noncompliance with a diversion agreement to a noncompliant licensee's
20 board within one business day after the program learns of the substantial noncompliance, including
21 but not limited to information that a licensee:

22 (A) Engaged in criminal behavior;

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

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

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

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

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

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

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

- 1 (H) Was referred to the program but failed to enroll in the program; and
 2 (g) At least weekly, submit to licensees' boards:
 3 (A) A list of licensees who were referred to the program by a health profession licensing board
 4 and who are enrolled in the program; and
 5 (B) A list of licensees who were referred to the program by a health profession licensing board
 6 and who successfully complete the program.
 7 (2) The lists submitted under subsection (1)(g) of this section are exempt from disclosure as a
 8 public record under ORS 192.410 to 192.505.
 9 (3) When the program reports noncompliance to a licensee's board, the report must include:
 10 (a) A description of the noncompliance;
 11 (b) A copy of a report from the independent third party who diagnosed the licensee under ORS
 12 676.200 (2)(a) or subsection (6)(a) of this section stating the licensee's diagnosis;
 13 (c) A copy of the licensee's diversion agreement; and
 14 (d) The licensee's employment status.
 15 (4) The program may not diagnose or treat licensees enrolled in the program.
 16 (5) The diversion agreement required by subsection (1) of this section must:
 17 (a) Require the licensee to consent to disclosure and exchange of information between the pro-
 18 gram, the licensee's board, the licensee's employer, evaluators and treatment providers, in compli-
 19 ance with ORS 179.505 and 42 C.F.R. part 2;
 20 (b) Require that the licensee comply continuously with the agreement for at least two years to
 21 successfully complete the program;
 22 (c) Based on an individualized assessment, require that the licensee abstain from mind-altering
 23 or intoxicating substances or potentially addictive drugs, unless the drug is approved by the pro-
 24 gram and prescribed for a documented medical condition by a person authorized by law to prescribe
 25 the drug to the licensee;
 26 (d) Require the licensee to report use of mind-altering or intoxicating substances or potentially
 27 addictive drugs within 24 hours;
 28 (e) Require the licensee to agree to participate in a treatment plan approved by a third party;
 29 (f) Contain limits on the licensee's practice of the licensee's health profession;
 30 (g) Provide for employer monitoring of the licensee;
 31 (h) Provide that the program may require an evaluation of the licensee's fitness to practice be-
 32 fore removing the limits on the licensee's practice of the licensee's health profession;
 33 (i) Require the licensee to submit to random drug or alcohol testing in accordance with federal
 34 regulations;
 35 (j) Require the licensee to report at least weekly to the program regarding the licensee's com-
 36 pliance with the agreement;
 37 (k) Require the licensee to report any arrest for or conviction of a misdemeanor or felony crime
 38 to the program within three business days after the licensee is arrested or convicted;
 39 (L) Require the licensee to report applications for licensure in other states, changes in employ-
 40 ment and changes in practice setting; and
 41 (m) Provide that the licensee is responsible for the cost of evaluations, toxicology testing and
 42 treatment.
 43 (6)(a) **If a board participating in the program establishes by rule an option for self-referral**
 44 **to the program**, a licensee of [a] the board [*participating in the program*] may self-refer to the
 45 program.

1 (b) The program shall require [*the*] a licensee **who self-refers to the program** to attest that
2 the licensee is not, to the best of the licensee's knowledge, under investigation by the licensee's
3 board. The program shall enroll the licensee on the date on which the licensee attests that the
4 licensee, to the best of the licensee's knowledge, is not under investigation by the licensee's board.

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

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

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

11 (d) **When a licensee self-refers to the program**, the program may not report [*a self-referred*]
12 **the** licensee's enrollment in or successful completion of the program to the licensee's board.

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

15 (8) The authority shall arrange for an independent third party to audit the program to ensure
16 compliance with program guidelines. The authority shall report the results of the audit to the Leg-
17 islative Assembly, the Governor and the health profession licensing boards. The report may not
18 contain individually identifiable information about licensees.

19 (9) The authority may adopt rules to carry out this section.

20 **SECTION 2. The amendments to ORS 676.190 by section 1 of this 2013 Act apply to**
21 **licensees who self-refer to the impaired health professional program on and after the effec-**
22 **tive date of this 2013 Act.**

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