

Enrolled
House Bill 2124

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

CHAPTER

AN ACT

Relating to the impaired health professional program established by the Oregon Health Authority; creating new provisions; amending ORS 676.185, 676.190 and 676.200; and declaring an emergency.

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

SECTION 1. ORS 676.185 is amended to read:

676.185. As used in ORS 676.185 to 676.200:

(1) "Direct supervisor" means the individual who is responsible for:

- (a) Supervising a licensee enrolled in the impaired health professional program;**
- (b) Monitoring the licensee's compliance with the requirements of the program; and**
- (c) Periodically reporting to the program on the licensee's compliance with the requirements of the program.**

[(1)] (2) "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)] (3) "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)] (4) "Licensee" means a health professional licensed or certified by or registered with a health profession licensing board.

(5) "Substantial noncompliance" includes the following:

- (a) Criminal behavior;**
- (b) Conduct that causes injury, death or harm to the public, or a patient, including sexual impropriety with a patient;**
- (c) Impairment in a health care setting in the course of employment;**
- (d) A positive toxicology test result as determined by federal regulations pertaining to drug testing;**
- (e) Violation of a restriction on a licensee's practice imposed by the impaired health professional program established under ORS 676.190 or the licensee's health profession licensing board;**
- (f) Civil commitment for mental illness;**
- (g) Failure to participate in the program after entering into a diversion agreement under ORS 676.190; or**
- (h) Failure to enroll in the program after being referred to the program.**

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

676.190. (1) The Oregon Health Authority 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 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;]

(d) If the enrolled licensee has a direct supervisor, assess the ability of the direct supervisor to supervise the licensee, including an assessment of any documentation of the direct supervisor's completion of specialized training;

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

[(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)] (f) At least weekly, submit to licensees' boards:

(A) A list of licensees who were referred to the program by a health profession licensing board and who are enrolled in the program; and

(B) A list of licensees who were referred to the program by a health profession licensing board and who successfully complete the program.

(2) The lists submitted under subsection *[(1)(g)] (1)(f)* of this section are exempt from disclosure as a public record under ORS 192.410 to 192.505.

(3) When the program reports **substantial noncompliance under subsection (1)(e) of this section** to a licensee's board, the report must include:

(a) A description of the **substantial noncompliance**;

(b) A copy of a report from the independent third party who diagnosed the licensee under ORS 676.200 (2)(a) or subsection (6)(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.

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

(5) 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 licensee's employer, evaluators and treatment **programs or 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]*:

(A) Prescribed for a documented medical condition by a person authorized by law to prescribe the drug to the licensee; **and**

(B) Approved by the program if the licensee's board has granted the program that authority;

(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 **recommended** 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) (g) Require the licensee to submit to random drug or alcohol testing in accordance with federal regulations, unless the licensee is diagnosed with solely a mental health disorder and the licensee's board does not otherwise require the licensee to submit to random drug or alcohol testing;

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

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

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

(6)(a) **If a health profession licensing board participating in the program establishes by rule an option for self-referral to the program**, a licensee of *[a] the health profession licensing board [participating in the program]* may self-refer to the program.

(b) The program shall require *[the] a licensee who self-refers to the program* 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.

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

(7) The authority shall adopt rules establishing a fee to be paid by the **health profession licensing** boards participating in the *[impaired health professional]* program for administration of the program.

(8) The authority shall arrange for an independent third party to audit the program **every four years** to ensure compliance with program guidelines. The authority 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.

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

SECTION 3. ORS 676.200, as amended by section 2, chapter 2, Oregon Laws 2012, is amended to read:

676.200. (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 ORS 676.190 **and may contract with or designate one or more programs to deliver therapeutic services to its licensees.**

(b) A board [*may only refer impaired professionals to the impaired health professional program established under ORS 676.190 and*] may not establish the board's own impaired health professional program **for the purpose of monitoring licensees of the board that have been referred to the program.**

(c) A board may adopt rules establishing additional requirements for licensees referred to the impaired health professional program established under ORS 676.190 **or a program with which the board has entered into a contract or designated to deliver therapeutic services under subsection (1) of this section.**

(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*] **re-view** reports received from the program. If the board finds that a licensee is substantially noncompliant with a diversion agreement entered into under ORS 676.190, 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 4. The amendments to ORS 676.190 (5) and (6) by section 2 of this 2013 Act apply to:

(1) **Diversion agreements between licensees and the impaired health professional program entered into on or after the effective date of this 2013 Act; and**

(2) **Licensees who self-refer to the impaired health professional program on or after the effective date of this 2013 Act.**

SECTION 5. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by House March 5, 2013

Repassed by House June 6, 2013

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 4, 2013

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2013

Approved:

.....M,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

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Kate Brown, Secretary of State