

B-Engrossed
House Bill 2124

Ordered by the Senate May 31
Including House Amendments dated March 1 and Senate Amendments
dated May 31

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.

Eliminates from impaired health professional program requirement that employers of program participants establish minimum training requirements for supervisors of participants. Modifies provision requiring assessment of such employers.

Removes admittance to hospital for mental illness [*and court ruling of mental incompetence*] from list of information that program must report as evidence of substantial noncompliance with diversion agreement entered into under program.

Allows professional to self-refer to program only if licensing board adopts rule for self-referrals.

Authorizes licensing board to contract with third party for provision of therapeutic services to participants in program.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the impaired health professional program established by the Oregon Health Authority;
3 creating new provisions; amending ORS 676.185, 676.190 and 676.200; and declaring an emer-
4 gency.

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

6 **SECTION 1.** ORS 676.185 is amended to read:

7 676.185. As used in ORS 676.185 to 676.200:

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

9 **(a) Supervising a licensee enrolled in the impaired health professional program;**

10 **(b) Monitoring the licensee's compliance with the requirements of the program; and**

11 **(c) Periodically reporting to the program on the licensee's compliance with the require-**
12 **ments of the program.**

13 *[(1)]* **(2) "Health profession licensing board" means:**

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

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

16 *[(2)]* **(3) "Impaired professional" means a licensee who is unable to practice with professional**
17 **skill and safety by reason of habitual or excessive use or abuse of drugs, alcohol or other substances**
18 **that impair ability or by reason of a mental health disorder.**

19 *[(3)]* **(4) "Licensee" means a health professional licensed or certified by or registered with a**
20 **health profession licensing board.**

21 **(5) "Substantial noncompliance" includes the following:**

22 **(a) Criminal behavior;**

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 **(b) Conduct that causes injury, death or harm to the public, or a patient, including sexual**
2 **impropriety with a patient;**

3 **(c) Impairment in a health care setting in the course of employment;**

4 **(d) A positive toxicology test result as determined by federal regulations pertaining to**
5 **drug testing;**

6 **(e) Violation of a restriction on a licensee's practice imposed by the impaired health**
7 **professional program established under ORS 676.190 or the licensee's health profession li-**
8 **censing board;**

9 **(f) Civil commitment for mental illness;**

10 **(g) Failure to participate in the program after entering into a diversion agreement under**
11 **ORS 676.190; or**

12 **(h) Failure to enroll in the program after being referred to the program.**

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

15 676.190. (1) The Oregon Health Authority shall establish or contract to establish an impaired
16 health professional program. The program must:

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

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

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

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

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

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

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

33 [(A) Engaged in criminal behavior;]

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

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

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

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

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

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

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

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

45 (A) A list of licensees who were referred to the program by a health profession licensing board

1 and who are enrolled in the program; and

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

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

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

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

9 (b) A copy of a report from the independent third party who diagnosed the licensee under ORS
10 676.200 (2)(a) or subsection (6)(a) of this section stating the licensee's diagnosis;

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

12 (d) The licensee's employment status.

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

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

15 (a) Require the licensee to consent to disclosure and exchange of information between the pro-
16 gram, the licensee's board, the licensee's employer, evaluators and treatment **programs or** provid-
17 ers, in compliance with ORS 179.505 and 42 C.F.R. part 2;

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

20 (c) [*Based on an individualized assessment,*] Require that the licensee abstain from mind-altering
21 or intoxicating substances or potentially addictive drugs, unless the drug is [*approved by the pro-*
22 *gram and*]:

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

25 (B) **Approved by the program if the licensee's board has granted the program that au-**
26 **thority;**

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

29 (e) Require the licensee to agree to participate in a **recommended** treatment plan [*approved by*
30 *a third party*];

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

32 [(g) *Provide for employer monitoring of the licensee;*]

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

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

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

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

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

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

1 and treatment.

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

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

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

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

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

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

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

20 (8) The authority shall arrange for an independent third party to audit the program **every four**
21 **years** to ensure compliance with program guidelines. The authority shall report the results of the
22 audit to the Legislative Assembly, the Governor and the health profession licensing boards. The
23 report may not contain individually identifiable information about licensees.

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

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

27 676.200. (1)(a) A health profession licensing board that is authorized by law to take disciplinary
28 action against licensees may adopt rules opting to participate in the impaired health professional
29 program established under ORS 676.190 **and may contract with or designate one or more pro-**
30 **grams to deliver therapeutic services to its licensees.**

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

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

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

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

45 (b) The board has investigated to determine whether the licensee's professional practice while

1 impaired has presented or presents a danger to the public; and

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

4 (3) A board that participates in the impaired health professional program shall [*investigate*] **re-**
5 **view** reports received from the program. If the board finds that a licensee is substantially
6 noncompliant with a diversion agreement entered into under ORS 676.190, the board may suspend,
7 restrict, modify or revoke the licensee's license or end the licensee's participation in the impaired
8 health professional program.

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

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

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

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

14 **SECTION 4. The amendments to ORS 676.190 (5) and (6) by section 2 of this 2013 Act**
15 **apply to:**

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

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

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

23