

Enrolled
House Bill 2319

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Oregon Board of Licensed Professional Counselors and Therapists)

CHAPTER

AN ACT

Relating to mental health agencies; creating new provisions; amending ORS 675.070, 675.110, 675.130, 675.140, 675.785 and 675.805; and declaring an emergency.

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

MENTAL HEALTH REGULATORY AGENCY

SECTION 1. (1) The Mental Health Regulatory Agency is created to provide for the more effective coordination of administrative and regulatory functions of the regulated boards involved in protecting the public through the licensing and regulation of professions in this state that are related to behavioral and mental health.

(2) The agency shall provide a uniform structure and accountability for the regulated boards under the administration of the agency to protect the public from harm. The agency’s focus is to:

(a) Promote effective behavioral and mental health policy that protects the public from incompetent or unauthorized individuals and allows consumers to select a provider from a range of safe options.

(b) Provide outreach and training to stakeholders to improve compliance with public health and safety standards and to involve stakeholders in the regulation of various disciplines and fields of practice.

(c) Form partnerships and work in collaboration with local and state governmental agencies, educators, organizations and other affected entities to encourage diverse opinions and perspectives.

(d) Provide the regulated boards with a standardized administrative forum and procedures for operation, fiscal services, licensing, enforcement and complaint resolution.

(e) Resolve disputes between regulated boards regarding the scope of practice of persons with authorizations in regulated professions.

SECTION 2. As used in sections 1 to 11 of this 2017 Act:

(1) “Authorization” means a certificate, license, permit or registration issued by a regulated board that allows a person to practice a regulated profession.

(2) “Regulated board” means a board that is listed in section 3 of this 2017 Act.

(3) “Regulated profession” means a profession regulated by a regulated board.

SECTION 3. The Mental Health Regulatory Agency shall provide administrative and regulatory oversight and centralized service for:

(1) The Oregon Board of Licensed Professional Counselors and Therapists, as provided in ORS 675.715 to 675.835; and

(2) The State Board of Psychologist Examiners, as provided in ORS 675.010 to 675.150.

SECTION 4. (1) The responsibilities of the Mental Health Regulatory Agency include, but are not limited to:

(a) Budgeting;

(b) Record keeping;

(c) Staffing;

(d) Contracting;

(e) Establishing uniform and streamlined policies and procedures for the issuance and renewal of authorizations, the collection of fees and the investigation of complaints;

(f) Preparing and tracking office performance measures; and

(g) Implementing regulatory streamlining initiatives to reduce regulatory burdens without compromising regulatory standards.

(2) The regulated boards maintain separate authority over functions including, but not limited to:

(a) Contracting related to the particular board;

(b) Consumer protection and investigation of complaints;

(c) Establishing and collecting fees;

(d) Determining the qualification of applicants to practice regulated professions;

(e) Establishing application processes for the issuance of authorizations;

(f) Issuing and renewing authorizations;

(g) Conditioning, limiting or denying the issuance of new authorizations, suspending, revoking or refusing to renew existing authorizations and otherwise disciplining persons authorized to practice the regulated professions;

(h) Imposing civil penalties;

(i) Enforcing administrative rules adopted under any statute that each regulated board is charged with enforcing, including administrative rules and statutes that establish professional codes of conduct, practice standards and scopes of professional practice; and

(j) Formulating and enforcing continuing education requirements.

(3) Subsection (1) of this section is not intended to limit the duties, functions and powers imposed on or vested in the agency by other statutes.

SECTION 5. The expenses of the Mental Health Regulatory Agency shall be paid by the regulated boards as established by rule by the regulated boards in consultation with each other.

SECTION 6. In accordance with applicable provisions of ORS chapter 183, the Director of the Mental Health Regulatory Agency may adopt rules necessary for the administration of the laws that the agency is charged with administering.

SECTION 7. (1) The Mental Health Regulatory Agency is under the supervision and control of the Director of the Mental Health Regulatory Agency, who is responsible for the performance of the duties, functions and powers and for the organization of the agency.

(2) The regulated boards shall jointly appoint the director, who shall serve at the direction of the boards. If the boards cannot agree on a director, the Governor shall appoint a director from individuals suggested by each board, and the Governor's decision is final.

(3) The director is authorized to carry out the provisions of:

(a) ORS 675.010 to 675.150 as prescribed by the State Board of Psychologist Examiners; and

(b) ORS 675.715 to 675.835 as prescribed by the Oregon Board of Licensed Professional Counselors and Therapists.

(4) The director may appoint officers and hire employees as necessary to assist the director in fulfilling the duties, functions and powers conferred on the director by this section.

(5) The director may prescribe the duties and fix the compensation of officers appointed by the director and employees hired by the director.

(6) The director has all the powers necessary for the director to fulfill the director's duties as prescribed by the regulated boards under subsection (3) of this section.

SECTION 8. The Director of the Mental Health Regulatory Agency appointed under section 7 of this 2017 Act may be appointed before the operative date specified in section 18 of this 2017 Act and may take any action before that date that is necessary to enable the director to exercise, on and after the operative date specified in section 18 of this 2017 Act, the duties, functions and powers of the director pursuant to section 7 of this 2017 Act.

TEMPORARY TRANSITIONAL PROVISIONS

SECTION 9. (1) On the operative date of this section, the tenure of office of any director or other administrator who provides administrative oversight for the Oregon Board of Licensed Professional Counselors and Therapists and the State Board of Psychologist Examiners ceases.

(2) All the duties, functions and powers of any directors or other administrators of the boards are imposed upon, transferred to and vested in the Director of the Mental Health Regulatory Agency.

SECTION 10. (1) A director or other administrator of the Oregon Board of Licensed Professional Counselors and Therapists or of the State Board of Psychologist Examiners whose tenure ceases under section 9 of this 2017 Act shall:

(a) Deliver to the Director of the Mental Health Regulatory Agency all records and property, within the jurisdiction of any director or other administrator whose tenure ceases under section 9 of this 2017 Act, that relate to the duties, functions and powers transferred by section 9 of this 2017 Act; and

(b) Transfer to the Director of the Mental Health Regulatory Agency those employees engaged primarily in the exercise of the duties, functions and powers transferred by section 9 of this 2017 Act.

(2) The Director of the Mental Health Regulatory Agency shall take possession of the records and property, and shall take charge of the employees and employ them in the exercise of the duties, functions and powers transferred by section 9 of this 2017 Act, without reduction of compensation but subject to change or termination of employment or compensation as provided by law.

SECTION 11. (1) Nothing in sections 1 to 11 of this 2017 Act relieves a person of a liability, duty or obligation accruing under or with respect to the duties, functions and powers transferred by section 9 of this 2017 Act. The Director of the Mental Health Regulatory Agency may undertake the collection or enforcement of any liability, duty or obligation accruing under or with respect to the duties, functions and powers transferred by section 9 of this 2017 Act.

(2) The rights and obligations of a director or other administrator who provides administrative oversight for the Oregon Board of Licensed Professional Counselors and Therapists or the State Board of Psychologist Examiners legally incurred under contracts, leases and business transactions executed, entered into or begun before the operative date specified in section 18 of this 2017 Act are transferred to the Director of the Mental Health Regulatory Agency. For the purpose of succession to these rights and obligations, the new director is not a new authority.

CONFORMING AMENDMENTS

SECTION 12. ORS 675.070 is amended to read:

675.070. (1) If any of the grounds enumerated in subsection (2) of this section exist, the State Board of Psychologist Examiners may impose any of the following sanctions:

- (a) Deny a license to *[any]* **an** applicant;
- (b) Refuse to renew the license of *[any]* **a** psychologist or psychologist associate;
- (c) Suspend the license of *[any]* **a** psychologist or psychologist associate for a period of not less than one year;
- (d) Issue a letter of reprimand;
- (e) Impose probation with authority to restrict the scope of practice of a psychologist or psychologist associate or require practice under supervision;
- (f) Revoke the license of *[any]* **a** psychologist or psychologist associate; or
- (g) Impose a civil penalty as described in subsection (3) of this section.

(2) The board may impose a sanction listed in subsection (1) of this section against *[any]* **a** psychologist or psychologist associate or applicant, or, if applicable, *[any]* **an** unlicensed person found in violation of ORS 675.010 to 675.150, when, in the judgment of the board, the person:

- (a) Has an impairment as defined in ORS 676.303;
- (b) Has been convicted of violation of *[any]* **a** law relating to controlled substances;
- (c) Has been convicted of *[any]* **a** felony or *[of any]* misdemeanor involving moral turpitude;
- (d) Is guilty of immoral or unprofessional conduct or of gross negligence in the practice of psychology, including but not limited to:

(A) *[Any]* Conduct or practice contrary to recognized standard of ethics of the psychological profession or *[any]* conduct or practice that constitutes a danger to the health or safety of a patient or the public, or *[any]* conduct, practice or **a** condition that adversely affects a psychologist or psychologist associate's ability to practice psychology safely and skillfully.

(B) Willful ordering or performing of unnecessary tests or studies, administration of unnecessary treatment, failure to obtain consultations or perform referrals when failing to do so is not consistent with the standard of care, or otherwise ordering or performing *[any]* **a** psychological service or treatment *[which]* **that** is contrary to recognized standards of practice of the psychological profession;

- (e) Has practiced or attempted to practice medicine without being licensed to do so;
- (f) Has obtained or attempted to obtain a license under ORS 675.010 to 675.150 by fraud or material misrepresentation;
- (g) Has impersonated a licensed psychologist or psychologist associate or has allowed another person to use the license of the psychologist;
- (h) Has violated *[any]* **a** provision of ORS 675.010 to 675.150 or 675.850 or *[any]* **a** provision of the code of professional conduct formulated under ORS 675.110 [(12)] (13);
- (i) Has obtained a fee or payment from a patient or third party payer through fraud or intentional misrepresentation; or
- (j) Notwithstanding ORS 670.280, has been convicted of a sex crime as defined in ORS 163A.005 or has been convicted in another state or jurisdiction of a crime that is substantially equivalent to a sex crime as defined in ORS 163A.005.

(3) The board may impose a civil penalty under subsection (1) of this section:

- (a) In an amount not to exceed \$5,000; or
- (b) In an amount not to exceed \$10,000, if any of the following conditions exist:
 - (A) The conduct giving rise to the penalty had a serious detrimental effect on the health or safety of another person;
 - (B) The person subject to the penalty has a history of discipline for the same or similar conduct;
 - (C) The conduct giving rise to the penalty involves a willful or reckless disregard of the law;
 - (D) The conduct giving rise to the penalty was perpetrated against a minor, an elderly person or a person with a disability; or
 - (E) The person subject to the penalty violated ORS 675.020 by practicing psychology or representing that the person is a psychologist without having a license.

(4) If a conviction described in subsection (2) of this section is used as grounds for denial, refusal, suspension, revocation, reprimand, probation or imposition of a civil penalty, a certified copy of the record of the conviction shall be conclusive evidence.

(5) The board may license an applicant or renew or restore *[any]* a license suspended or revoked under subsection (2)(a) of this section due to a mental health condition if the board determines that the applicant or former licensed psychologist or former psychologist associate no longer has an impairment due to a mental health condition.

(6) License suspension or revocation in another state is grounds for license denial or disciplinary action by the board.

SECTION 13. ORS 675.110 is amended to read:

675.110. *[The State Board of Psychologist Examiners shall have the following powers,]* In addition to the powers otherwise granted under ORS 675.010 to 675.150, *[and shall have]* **the State Board of Psychologist Examiners has** all powers necessary or proper to *[carry the granted powers into effect]*:

(1) *[To]* Determine qualifications of applicants to practice psychology in this state; *to cause to have examinations prepared, conducted and graded*], **prepare, conduct and grade examinations** and *[to grant licensing to]* **license** qualified applicants *[upon their compliance]* **who comply** with the provisions of ORS 675.010 to 675.150 and the rules of the board.

(2) *[To]* Grant or deny renewal of licenses[,] and *[to]* renew licenses *[which]* **that** have lapsed for nonpayment of the renewal fee, subject to the provisions of ORS 675.010 to 675.150.

(3) *[To]* Suspend or revoke licenses, subject to ORS 675.010 to 675.150.

(4) *[To]* Issue letters of reprimand[, *to*] **and** impose probationary periods with the authority to restrict the scope of practice of a licensed psychologist or to require practice under supervision.

(5) *[To]* Impose civil penalties as provided in ORS 675.070.

(6) *[To]* Restore licenses *[which]* **that** have been suspended or revoked or voided by nonpayment of the renewal fee.

[(7)(a)] **(7)** *[To]* Collect fees for application, examination and licensing of applicants, for renewal of licenses[,] and for issuance of limited permits[, *such fees to be used*] **and use the fees** to defray the expenses of the board as provided in ORS 675.140.

[(b)] **(8)** *[The board may]* Collect a delinquent renewal fee for licenses renewed after the deadline for renewal but before the grace period for renewal has expired.

[(8)] **(9)** *[To]* Investigate alleged violations of ORS 675.010 to 675.150.

[(9)] **(10)** *[To]* Issue subpoenas for the attendance of witnesses, take testimony, administer oaths or affirmations to witnesses, conduct hearings[,] **and** require the production of relevant documents in all proceedings pertaining to the duties and powers of the board.

[(10)] **(11)** *[To]* Enforce ORS 675.010 to 675.150 and *[to]* exercise general supervision over the practice of psychology in this state.

[(11)] **(12)** *[To]* Adopt a common seal.

[(12)] **(13)** *[To]* Formulate a code of professional conduct for the practice of psychology giving particular consideration to the Ethical Standards of Psychologists promulgated by the American Psychological Association.

[(13)] **(14)** *[To]* Establish standards of service and training and educational qualifications for *[the]* rendering *[of]* ethical psychological services in this state, including the formulation of standards for the issuance of licenses for areas of special competence.

[(14)] **(15)** *[To]* Formulate and enforce continuing education requirements for duly licensed psychologists to ensure the highest quality of professional services to the public.

[(15)] **(16)** *[To]* Deny renewal of a license, or renewal of a license that has lapsed for nonpayment of the renewal fee, unless the applicant completes, or provides documentation of previous completion of:

(a) A pain management education program approved by the board and developed in conjunction with the Pain Management Commission established under ORS 413.570; or

(b) An equivalent pain management education program, as determined by the board.

[(16)] (17) For the purpose of requesting a state or nationwide criminal records check under ORS 181A.195, [to] 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.

(18) Prescribe, in consultation with the Oregon Board of Licensed Professional Counselors and Therapists, the duties of the Director of the Mental Health Regulatory Agency.

[(17)] (19) Subject to the applicable provisions of ORS chapter 183, [to] adopt reasonable rules to carry out the provisions of ORS 675.010 to 675.150.

SECTION 14. ORS 675.130 is amended to read:

675.130. (1) The State Board of Psychologist Examiners shall select one of its members as chairperson, and another as vice chairperson, for [such] **the** terms and with [such] **the** powers and duties necessary for the performance of the functions of [such] **the** offices [as the board shall determine] **determined by the board.**

(2) A majority of the board constitutes a quorum for the transaction of business.

(3) The board shall meet at least once a year at a place, day and hour determined by the board. The board shall also meet at [such] other times and places as [are] specified by the call of the chairperson, or of a majority of the members of the board or of the Governor.

(4) The [executive director of the] board shall maintain records of all board proceedings under ORS 675.010 to 675.150.

(5) The [executive director] **board** shall maintain a register of all living psychologists licensed under ORS 675.010 to 675.150[, showing their] **that includes the** names, [their] last-known business addresses, [their] last-known residential addresses[,] and the dates and numbers of [their] **the** licenses **of the psychologists.**

SECTION 15. ORS 675.140, as amended by section 3, chapter 240, Oregon Laws 2013, is amended to read:

675.140. On or before the 10th day of each month, the State Board of Psychologist Examiners shall pay into the State Treasury all moneys received by the board during the preceding calendar month. The State Treasurer shall credit the moneys to the State Board of Psychologist Examiners Account. The moneys in the State Board of Psychologist Examiners Account are continuously appropriated to the board for the purpose of paying the expenses of administering and enforcing ORS 675.010 to 675.150 and 676.850 **and section 5 of this 2017 Act.**

SECTION 16. ORS 675.785 is amended to read:

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

(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 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] **may** 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] **must** 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*] **must** be available to the public, [*for which*] **and** the board may collect a publication fee **for the directory**.

(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*] a 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, **including standards and requirements for continuing education and supervision, as appropriate**. 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.]

[(15)] (14) For the purpose of requesting a state or nationwide criminal records check under ORS 181A.195, 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.

(15) The board shall prescribe, in consultation with the State Board of Psychologist Examiners, the duties of the Director of the Mental Health Regulatory Agency.

SECTION 17. ORS 675.805, as amended by section 6, chapter 240, Oregon Laws 2013, is amended to read:

675.805. All moneys received by the Oregon Board of Licensed Professional Counselors and Therapists under ORS 675.715 to 675.835 shall be paid into the General Fund in the State Treasury and placed to the credit of the Oregon Board of Licensed Professional Counselors and Therapists

Account, which is hereby established. Such moneys are appropriated continuously **to the board** and shall be used only for the administration and enforcement of ORS 675.715 to 675.835 and 676.850 **and section 5 of this 2017 Act.**

OPERATIVE DATE

SECTION 18. (1) Except as otherwise specifically provided in section 8 of this 2017 Act, sections 1 to 7 and 9 to 11 of this 2017 Act and the amendments to ORS 675.070, 675.110, 675.130, 675.140, 675.785 and 675.805 by sections 12 to 17 of this 2017 Act become operative on January 1, 2018.

(2) The Oregon Board of Licensed Professional Counselors and Therapists and the State Board of Psychologist Examiners may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the boards to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the boards by sections 1 to 7 and 9 to 11 of this 2017 Act and the amendments to ORS 675.070, 675.110, 675.130, 675.140, 675.785 and 675.805 by sections 12 to 17 of this 2017 Act.

UNIT CAPTIONS

SECTION 19. The unit captions used in this 2017 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2017 Act.

EMERGENCY CLAUSE

SECTION 20. This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect on its passage.

Passed by House April 27, 2017

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 10, 2017

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2017

Approved:

.....M.,....., 2017

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2017

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Dennis Richardson, Secretary of State