

House Bill 2394

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Health Care for Health Professionals' Services Program (HPSP) Advisory Committee)

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**.

Allows participating health profession licensing boards to refer to impaired health professional program for monitoring licensees who have been convicted of certain alcohol- or drug-related crimes. Includes for purposes of definition of "impaired health professional" physical health conditions deemed appropriate for inclusion in program by Oregon Health Authority.

Declares emergency, effective July 1, 2017.

A BILL FOR AN ACT

1
2 Relating to impaired health professionals; creating new provisions; amending ORS 675.583, 676.185,
3 676.190 and 676.200; and declaring an emergency.

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

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

6 676.185. As used in ORS 676.185 to 676.200:

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

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

9 (b) Monitoring the licensee's compliance with the requirements of the **impaired health profes-**
10 **sional** program; and

11 (c) Periodically reporting to the **impaired health professional** program on the licensee's com-
12 pliance with the requirements of the program.

13 (2) "Health profession licensing board" means:

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

15 (b) The Health Licensing Office for a board or council listed in ORS 676.583.

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

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

21 (4) "**Physical health condition**" means a medical condition, chronic or otherwise, that the
22 **Oregon Health Authority deems appropriate for inclusion in the impaired health professional**
23 **program.**

24 (5) "Substantial noncompliance" includes the following:

25 (a) Criminal behavior;

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

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

29 (d) A positive toxicology test result as determined by federal regulations pertaining to drug

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 testing;

2 (e) Violation of a restriction on a licensee’s practice imposed by the impaired health professional
3 program [established under ORS 676.190] or the licensee’s health profession licensing board;

4 (f) Civil commitment for mental illness;

5 (g) Failure to participate in the **impaired health professional** program after entering into a
6 diversion agreement under ORS 676.190; or

7 (h) Failure to enroll in the **impaired health professional** program after being referred to the
8 program.

9 **SECTION 2.** ORS 676.190, as amended by section 1, chapter 5, Oregon Laws 2016, is amended
10 to read:

11 676.190. (1) The health profession licensing boards may establish or contract to establish an
12 impaired health professional program[.] **to assist licensees who are unable to practice with pro-**
13 **fessional skill and safety by reason of:**

14 (a) **Habitual or excessive use or abuse of drugs, alcohol or other substances that impair**
15 **ability;**

16 (b) **A mental health disorder; or**

17 (c) **A physical health condition.**

18 (2) [A] **An impaired health professional** program established or contracted for under this sec-
19 tion must:

20 (a) Enroll licensees of participating health profession licensing boards who have been:

21 (A) Diagnosed with alcohol or substance abuse [or], a mental health disorder **or a physical**
22 **health condition; or**

23 (B) **Referred to the impaired health professional program by a participating health pro-**
24 **feSSION licensing board for a conviction of driving under the influence of intoxicants under**
25 **ORS 813.010 or 813.011, or another alcohol- or drug-related crime, but who have not been di-**
26 **agnosed with alcohol or substance abuse, a mental health disorder or a physical health con-**
27 **dition;**

28 (b) Require that a licensee sign a written consent prior to enrollment in the **impaired health**
29 **professional** program allowing disclosure and exchange of information between the program, the
30 licensee’s board, the licensee’s employer, evaluators and treatment entities in compliance with ORS
31 179.505 and 42 C.F.R. part 2;

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

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

36 (e) Report substantial noncompliance with a diversion agreement to a noncompliant licensee’s
37 board within one business day after the **impaired health professional** program learns of the sub-
38 stantial noncompliance; and

39 (f) At least weekly, submit to licensees’ boards:

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

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

44 (3) The lists submitted under subsection (2)(f) of this section are exempt from disclosure as a
45 public record under ORS 192.410 to 192.505.

1 (4) When the **impaired health professional** program reports substantial noncompliance under
 2 subsection (2)(e) of this section to a licensee’s board, the report must include:

3 (a) A description of the substantial noncompliance;

4 (b) A copy of a report from the independent third party who diagnosed the licensee under ORS
 5 676.200 (2)(a) or subsection (7)(a) of this section stating the licensee’s diagnosis;

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

7 (d) The licensee’s employment status.

8 (5) The **impaired health professional** program may not diagnose or treat licensees enrolled in
 9 the program.

10 (6) The diversion agreement required by subsection (2) of this section must:

11 (a) Require the licensee to consent to disclosure and exchange of information between the **im-**
 12 **paired health professional** program, the licensee’s board, the licensee’s employer, evaluators and
 13 treatment programs or providers, in compliance with ORS 179.505 and 42 C.F.R. part 2;

14 (b) Require, **for successful completion of the impaired health professional program**, that
 15 the licensee comply continuously with the agreement for at least:

16 (A) Two years [*to successfully complete the program*], **if the licensee is diagnosed with alcohol**
 17 **or substance abuse, a mental health disorder or a physical health condition; or**

18 (B) **One year, if the licensee was referred because of a conviction of driving under the**
 19 **influence of intoxicants under ORS 813.010 or 813.011 or another alcohol- or drug-related**
 20 **crime;**

21 (c) Require that the licensee abstain from mind-altering or intoxicating substances or potentially
 22 addictive drugs, unless the drug is:

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 **impaired health professional** program if the licensee’s board has granted
 26 the program that authority;

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;

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

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

35 (h) Require the licensee to report to the **impaired health professional** program regarding the
 36 licensee’s compliance with the agreement;

37 (i) Require the licensee to report any arrest for or conviction of a misdemeanor or felony crime
 38 to the **impaired health professional** program within three business days after the licensee is ar-
 39 rested or convicted;

40 (j) Require the licensee to report applications for licensure in other states, changes in employ-
 41 ment and changes in practice setting; and

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

44 (7)(a) A health profession licensing board may establish by rule an option to permit licensees
 45 of the health profession licensing board to self-refer to the **impaired health professional** program.

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

6 (c) When a licensee self-refers to the **impaired health professional** program, the program shall:

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

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

12 (d) When a licensee self-refers to the **impaired health professional** program, the program may
13 not report the licensee's enrollment in or successful completion of the program to the licensee's
14 board.

15 (8) The health profession licensing boards shall arrange for an independent third party to con-
16 duct an audit every four years of an impaired health professional program for the licensees of those
17 health profession licensing boards to ensure compliance with program guidelines. The health pro-
18 fession licensing boards shall report the results of the audit to the Legislative Assembly in the
19 manner provided by ORS 192.245 and to the Governor. The report may not contain individually
20 identifiable information about licensees.

21 (9) The health profession licensing boards, in consultation with one another, may adopt rules to
22 carry out this section.

23 **SECTION 3.** ORS 676.200 is amended to read:

24 676.200. (1)(a) A health profession licensing board that is authorized by law to take disciplinary
25 action against licensees may adopt rules opting to participate in the impaired health professional
26 program [*established under ORS 676.190*] and may contract with or designate one or more programs
27 to deliver therapeutic services to its licensees.

28 (b) A board may not establish the board's own impaired health professional program for the
29 purpose of monitoring licensees of the board that have been referred to the program.

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

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

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

41 (b) The board has investigated to determine whether the licensee's professional practice while
42 impaired has presented or presents a danger to the public; and

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

45 (3) A board that participates in the impaired health professional program shall review reports

1 received from the program. If the board finds that a licensee is substantially noncompliant with a
2 diversion agreement entered into under ORS 676.190, the board may suspend, restrict, modify or
3 revoke the licensee's license or end the licensee's participation in the impaired health professional
4 program.

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

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

7 (b) Has been diagnosed with alcohol or substance abuse [or], a mental health disorder **or a**
8 **physical health condition**; or

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

11 **SECTION 4.** ORS 675.583 is amended to read:

12 675.583. (1) Unless state or federal laws relating to confidentiality or the protection of health
13 information prohibit disclosure, a regulated social worker shall report to the State Board of Li-
14 censed Social Workers any information the regulated social worker has that appears to show that
15 a regulated social worker [*is or may be an impaired professional as defined in ORS 676.185, or*] may
16 have engaged in unprofessional conduct according to the guidelines of the code of ethics, to the
17 extent that disclosure does not conflict with the requirements of ORS 675.580.

18 (2) A regulated social worker shall report any prohibited conduct as defined in ORS 676.150 in
19 the manner provided in ORS 676.150.

20 (3) Notwithstanding ORS 676.175, any information that the board obtains pursuant to subsection
21 (1) of this section is confidential and may not be disclosed except as provided by the board by rule.

22 (4) A person who reports or provides information to the board under subsection (1) of this sec-
23 tion in good faith is not subject to an action for civil damages as a result of reporting or providing
24 information to the board.

25 **SECTION 5.** (1) **The amendments to ORS 676.185, 676.190 and 676.200 by sections 1 to 3**
26 **of this 2017 Act become operative on January 1, 2018.**

27 (2) **The Oregon Health Authority may take any action before the operative date specified**
28 **in subsection (1) of this section that is necessary to enable the authority to exercise, on or**
29 **after the operative date specified in subsection (1) of this section, all of the duties, functions**
30 **and powers conferred on the authority by the amendments to ORS 676.185, 676.190 and 676.200**
31 **by sections 1 to 3 of this 2017 Act.**

32 **SECTION 6.** **This 2017 Act being necessary for the immediate preservation of the public**
33 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**
34 **on July 1, 2017.**