House Bill 2493

Sponsored by Representative SALINAS (Presession filed.)

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.

Directs Health Licensing Office to establish and maintain voluntary alternative practitioner registry of individuals who provide alternative well-being care. Defines “alternative well-being care.” Allows office to impose discipline for certain violations. Directs office to provide administrative and regulatory oversight to alternative well-being care program. Imposes civil penalty for violation of registry listing requirements.

Becomes operative January 1, 2022.
Declares emergency, effective on passage.

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.

LC 1681
therapy practitioners so that consumers of the services they provide will have an entity to which the consumers can make complaints and have recourse if the consumers are harmed through interactions with unlicensed alternative therapy practitioners; now, therefore,

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

REGISTERED ALTERNATIVE PRACTITIONERS

SECTION 1. As used in sections 1 to 8 of this 2021 Act:

(1) “Alternative practitioner registry” means the registry established and maintained under section 2 of this 2021 Act.

(2)(a) “Alternative well-being care” means:

(A) Helping services that are relevant to the alternative therapy or care provided to an individual or group of individuals for the purpose of addressing personal growth or to alleviate emotional suffering; and

(B) The application of techniques and intervention such as energy work, hypnotherapy, life coaching, philosophically based disciplines and spiritually based disciplines relevant to the particular approach of the registered alternative provider to support change in emotional, relationship or attitudinal conflicts or to modify behavior that interferes with effective emotional, social, relationship, health, work or spiritual functioning of the individual or group of individuals to whom the alternative therapy or care is provided.

(b) “Alternative well-being care” does not include the provision of life skills training or instruction, such as learning to make friends, handle social situations or do laundry.

(3) “Mental health care provider” means a person who is authorized to practice an occupation or profession regulated by:

(a) The Oregon Board of Licensed Professional Counselors and Therapists;

(b) The Oregon Board of Psychology; or

(c) The State Board of Licensed Social Workers.

(4) “Registered alternative practitioner” means a person who is listed on the alternative practitioner registry and provides alternative well-being care.

SECTION 2. (1) The Health Licensing Office shall establish and maintain an alternative practitioner registry. The office shall list on the alternative practitioner registry, and may issue a written registration to, an individual who:

(a) Submits an application to the office in the manner provided by the office by rule;

(b) Pays an application fee;

(c) Completes a tutorial and passes an examination regarding Oregon laws and rules related to mandatory reporting, scope of practice for registered alternative practitioners and other matters determined by the office; and

(d) Meets any other requirements established by the office by rule.

(2) The office shall request a nationwide criminal records check under ORS 181A.195 of each applicant.

(3) A listing on the alternative practitioner registry under this section is valid for two years from the date of listing and may be renewed. In order to have a listing renewed, a registered alternative practitioner shall:

(a) Apply to the office in the manner provided by the office by rule;

(b) Pay a renewal fee; and
(c) Meet any other requirements established by the office by rule.

(4) The office may contract with a third party to set up and maintain the alternative practitioner registry.

SECTION 3. (1) Alternative well-being care must be provided to a client during a timeframe agreed to by the registered alternative practitioner and the client.

(2) A registered alternative practitioner may use a title or words or abbreviations in professional and promotional materials that accurately indicate the registered alternative practitioner's training and experience and listing on the alternative practitioner registry.

(3) An individual who provides alternative well-being care is not required to apply for listing, or be listed, on the alternative practitioner registry.

(4)(a) A mental health care provider who also provides alternative well-being care may apply to the Health Licensing Office for listing under section 2 of this 2021 Act.

(b) A mental health care provider whose authorization issued by the health professional regulatory board in Oregon or any other jurisdiction that oversees the occupation or profession that the mental health care provider is authorized to practice has been suspended or revoked may not be listed on the alternative practitioner registry.

SECTION 4. (1) A registered alternative practitioner shall provide to each client a professional disclosure statement prior to providing alternative well-being care to the client. A professional disclosure statement must include:

(a) A description of the registered alternative practitioner’s professional experience, qualifications and training; and

(b) The following statements provided by the Health Licensing Office:

(A) If the registered alternative practitioner is not a mental health care provider, a statement that the registered alternative practitioner is not a mental health care provider;

(B) Unless the registered alternative practitioner is a mental health care provider who is authorized to diagnose mental disorders set forth in the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), a statement that the registered alternative practitioner is not authorized to diagnose mental disorders set forth in the DSM-5;

(C) A statement that describes unprofessional conduct of a registered alternative practitioner; and

(D) A statement that specifies the manner in which a client may make a complaint to the office regarding the registered alternative practitioner.

(2) The office shall establish requirements regarding:

(a) The manner in which the information described in subsection (1) of this section must be displayed in a professional disclosure statement; and

(b) The acknowledgement and signing of a professional disclosure statement by a registered alternative practitioner and the client to whom the registered alternative practitioner will provide alternative well-being care.

SECTION 5. (1) A registered alternative practitioner shall comply with the standards of professional conduct adopted by the Health Licensing Office by rule under section 8 of this 2021 Act.

(2) The office shall define unprofessional conduct to include:

(a) Providing fraudulent or deceptive information in an application for listing or renewal of listing on the alternative practitioner registry;

(b) Failing to provide a client with the professional disclosure statement required under
section 4 of this 2021 Act;
(c) Engaging in sexual conduct with a client at any time;
(d) Engaging in sexual conduct with an immediate family member of a client within two
years of the date from the last professional contact between the registered alternative
practitioner and the client;
(e) Harassing, intimidating or abusing a client;
(f) Entering into an additional relationship with a client that could impair the registered
alternative practitioner's objectivity, or otherwise interfere with the registered alternative
practitioner's professional obligations according to best practice standards for the alterna-
tive well-being care that the registered alternative practitioner provides; or
(g) Practicing outside of the registered alternative practitioner's training, experience or
competence without appropriate supervision.

SECTION 6. (1) A registered alternative practitioner may not assume or use any titles,
words or abbreviations, including but not limited to “state certified,” “state licensed,” “clinical”
or “state approved” that indicate that the person is authorized by the state to provide
alternative well-being care, or that the alternative well-being care the person provides is
recommended or approved by the state.
(2) A registered alternative practitioner who is not a mental health care provider may
not assess, diagnose or treat a mental, emotional or behavioral disorder.

SECTION 7. In the manner prescribed in ORS chapter 183 for contested cases, the Health
Licensing Office may impose a form of discipline listed in ORS 676.612 against an individual
listed on the alternative practitioner registry for any of the prohibited acts listed in section
6 of this 2021 Act and for any violation of a rule adopted under sections 1 to 8 of this 2021
Act.

SECTION 8. (1) The Health Licensing Office shall adopt rules to:
(a) Establish a process for application for listing on the alternative practitioner registry;
(b) Establish a process for listing and renewing a listing, of an alternative practitioner
on the alternative practitioner registry;
(c) Establish application and renewal fees;
(d) Develop a tutorial and examination as described in section 2 of this 2021 Act;
(e) Develop and maintain a publicly available online version of the alternative practitioner
registry that includes the location of a registered alternative practitioner and the alternative
well-being care provided by the registered alternative practitioner;
(f) Establish standards of practice for registered alternative practitioners;
(g) Define unprofessional conduct; and
(h) Develop and disseminate public education materials regarding registered alternative
practitioners, alternative well-being care and client rights in receiving alternative well-being
care from registered alternative practitioners.
(2) The office may adopt other rules as necessary to carry out sections 1 to 8 of this 2021
Act.
(3) The office may not adopt rules to approve any alternative well-being care or to es-
tablish any educational requirements for registered alternative practitioners.

HEALTH LICENSING OFFICE
SECTION 9. ORS 676.565 is amended to read:

676.565. Pursuant to ORS 676.568, the Health Licensing Office shall provide administrative and regulatory oversight and centralized service for the following boards, councils and programs:

1. Board of Athletic Trainers, as provided in ORS 688.701 to 688.734;
2. Board of Cosmetology, as provided in ORS 690.005 to 690.225;
3. State Board of Denture Technology, as provided in ORS 680.500 to 680.565;
4. State Board of Direct Entry Midwifery, as provided in ORS 687.405 to 687.495;
5. Respiratory Therapist and Polysomnographic Technologist Licensing Board, as provided in ORS 688.800 to 688.840;
6. Environmental Health Registration Board, as provided in ORS chapter 700;
7. Board of Electrologists and Body Art Practitioners, as provided in ORS 690.350 to 690.410;
8. Advisory Council on Hearing Aids, as provided in ORS 694.015 to 694.170;
9. Sexual Offense Treatment Board, as provided in ORS 675.365 to 675.410;
10. Long Term Care Administrators Board, as provided in ORS 678.710 to 678.820;
11. Board of Licensed Dietitians, as provided in ORS 691.405 to 691.485;
12. Behavior Analysis Regulatory Board, as provided in ORS 676.806;
13. Board of Certified Advanced Estheticians, as provided in ORS 676.630 to 676.660;
14. Art therapy, as provided in ORS 681.740 to 681.758;
15. Lactation consultation, as provided in ORS 676.665 to 676.689; [and]
16. Music therapy, as provided in ORS 681.700 to 681.730; and
17. Alternative well-being care, as provided in sections 1 to 8 of this 2021 Act.

SECTION 10. ORS 676.579 is amended to read:

676.579. (1)(a) The Health Licensing Office is under the supervision and control of a director, who is responsible for the performance of the duties, functions and powers and for the organization of the office.

(b) The Director of the Oregon Health Authority shall establish the qualifications for and appoint the Director of the Health Licensing Office, who holds office at the pleasure of the Director of the Oregon Health Authority.

(c) The Director of the Health Licensing Office shall receive a salary as provided by law or, if not so provided, as prescribed by the Director of the Oregon Health Authority.

(d) The Director of the Health Licensing Office is in the unclassified service.

(2) The Director of the Health Licensing Office shall provide the boards, councils and programs administered by the office with any services and employees as the office requires to carry out the office’s duties. Subject to any applicable provisions of the State Personnel Relations Law, the Director of the Health Licensing Office shall appoint all subordinate officers and employees of the office, prescribe their duties and fix their compensation.

(3) The Director of the Health Licensing Office is responsible for carrying out the duties, functions and powers under ORS 675.365 to 675.410, 676.560 to 676.625, 676.665 to 676.689, 676.810, 676.815, 676.825, 676.992, 678.710 to 678.820, 680.500 to 680.565, 681.700 to 681.730, 681.740 to 681.758, 687.405 to 687.495, 687.895, 688.701 to 688.734, 688.800 to 688.840, 690.005 to 690.225, 690.350 to 690.410, 691.405 to 691.485 and 694.015 to 694.170 and ORS chapter 700 and sections 1 to 8 of this 2021 Act.

(4) The enumeration of duties, functions and powers in subsection (3) of this section is not intended to be exclusive or to limit the duties, functions and powers imposed on or vested in the office by other statutes.
SECTION 11. ORS 676.590 is amended to read:

676.590. (1) Information obtained by the Health Licensing Office as part of an investigation conducted under the following laws and any reports issued by an investigator are exempt from public disclosure:

(a) ORS 676.630 to 676.660, 676.665 to 676.689, 681.700 to 681.730, 681.740 to 681.758, 690.005 to 690.225, 690.350 to 690.410 or 694.015 to 694.170.

(b) ORS 676.560 to 676.625 if the investigation is related to the regulation of:

(A) Advanced nonablative esthetics under ORS 676.630 to 676.660;

(B) Lactation consultation under ORS 676.665 to 676.689;

(C) Music therapy under ORS 681.700 to 681.730;

(D) Art therapy under ORS 681.740 to 681.758;

(E) Barbering, hair design, esthetics, nail technology or natural hair care under ORS 690.005 to 690.225;

(F) Electrologists and body art practitioners under ORS 690.350 to 690.410; [or]

(G) Dealing in hearing aids under ORS 694.015 to 694.170; or

(H) Alternative well-being care under sections 1 to 8 of this 2021 Act.

(2) The office shall disclose information obtained as part of an investigation described in subsection (1) of this section to a person who demonstrates by clear and convincing evidence that the public interest in disclosure outweighs other interests in nondisclosure, including the public interest in nondisclosure.

(3) A complaint that forms the basis for an investigation described in subsection (1) of this section shall not be considered information obtained as part of an investigation and is not exempt from public disclosure.

(4) Upon request, the office shall disclose to a person against whom disciplinary action is sought any information obtained as part of an investigation described in section (1) of this section, if the information is not otherwise privileged or confidential under state or federal law.

SECTION 12. ORS 676.612 is amended to read:

676.612. (1) As used in this section:

(a) “Authorization” includes a listing on the alternative practitioner registry under section 2 of this 2021 Act.

(b) “Authorization holder” includes a registered alternative practitioner as defined in section 1 of this 2021 Act.

[(1)] (2) Subject to ORS 676.616 and 687.445, and in the manner prescribed in ORS chapter 183 for contested cases and as specified in ORS 675.385, 676.685, 676.825, 678.780, 680.535, 681.733, 681.755, 687.445, 688.734, 688.836, 690.167, 690.407, 691.477, 694.147 and 700.111 and section 7 of this 2021 Act, the Health Licensing Office may refuse to issue or renew, may suspend or revoke or may otherwise condition or limit an authorization or may discipline or place on probation an authorization holder for commission of the prohibited acts listed in subsection [(2)] (3) of this section.

(2) A person subject to the authority of a board, council or program listed in ORS 676.565 commits a prohibited act if the person engages in:

(a) Fraud, misrepresentation, concealment of material facts or deception in applying for or obtaining an authorization to practice in this state, or in any written or oral communication to the office concerning the issuance or retention of the authorization.

(b) Using, causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, insignia or any other representation, however disseminated or
published, that is false, misleading or deceptive.

(c) Making a representation that the authorization holder knew or should have known is false or misleading regarding skill or the efficacy or value of treatment or remedy administered by the authorization holder.

(d) Practicing under a false, misleading or deceptive name, or impersonating another authorization holder.

(e) Permitting a person other than the authorization holder to use the authorization.

(f) Practicing with a physical or mental condition that presents an unreasonable risk of harm to the authorization holder or to the person or property of others in the course of performing the authorization holder’s duties.

(g) Practicing while under the influence of alcohol, cannabis, controlled substances or other skill-impairing substances, or engaging in the illegal use of controlled substances or other skill-impairing substances so as to create a risk of harm to the person or property of others in the course of performing the duties of an authorization holder.

(h) Failing to properly and reasonably accept responsibility for the actions of employees.

(i) Employing, directly or indirectly, any suspended, uncertified, unlicensed or unregistered person to practice a regulated occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.565.

(j) Unprofessional conduct, negligence, incompetence, repeated violations or any departure from or failure to conform to standards of practice in performing services or practicing in a regulated occupation or profession subject to the authority of the boards, councils and programs listed under ORS 676.565.

(k) Conviction of any criminal offense, subject to ORS 670.280. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence of the conviction. A plea of no contest or an admission of guilt is a conviction for purposes of this paragraph.

(L) Failing to report any adverse action, as required by statute or rule, taken against the authorization holder by another regulatory jurisdiction or any peer review body, health care institution, professional association, governmental agency, law enforcement agency or court for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action as described in this section.

(m) Violation of a statute regulating an occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.565.

(n) Violation of any rule regulating an occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.565.

(o) Failing to cooperate with the office in any investigation, inspection or request for information.

(p) Selling or fraudulently obtaining or furnishing an authorization to practice in a regulated occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.565, or aiding or abetting such an act.

(q) Selling or fraudulently obtaining or furnishing any record related to practice in a regulated occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.565, or aiding or abetting such an act.

(r) Failing to pay an outstanding civil penalty or fee that is due or failing to meet the terms of any order issued by the office that has become final.
(3) For the purpose of requesting a state or nationwide criminal records check under ORS 181A.195, the office may require the fingerprints of a person who is:
(a) Applying for an authorization;
(b) Applying for renewal of an authorization; or
(c) Under investigation by the office.
(4) If the office places an authorization holder on probation under subsection [(1)] (2) of this section, the office, in consultation with the appropriate board, council or program, may determine and at any time modify the conditions of the probation.
(5) If an authorization is suspended, the authorization holder may not practice during the term of suspension. Upon the expiration of the term of suspension, the authorization may be reinstated by the office if the conditions of suspension no longer exist and the authorization holder has satisfied all requirements in the relevant statutes or administrative rules for issuance, renewal or reinstatement.

SECTION 13. ORS 676.613 is amended to read:
676.613. (1) In addition to all other remedies, when it appears to the Health Licensing Office that a person is engaged in, has engaged in or is about to engage in any act, practice or transaction that violates any provision of ORS 675.365 to 675.410, 676.665 to 676.689, 676.810, 676.815, 678.710 to 678.820, 680.500 to 680.565, 681.700 to 681.730, 681.740 to 681.758, 687.405 to 687.495, 688.701 to 688.734, 688.800 to 688.840, 690.005 to 690.225, 690.350 to 690.410, 691.405 to 691.485 or 694.015 to 694.170 or ORS chapter 700 or sections 1 to 8 of this 2021 Act, the office may, through the Attorney General or the district attorney of the county in which the act, practice or transaction occurs or will occur, apply to the court for an injunction restraining the person from the act, practice or transaction.
(2) A court may issue an injunction under this section without proof of actual damages. An injunction issued under this section does not relieve a person from any other prosecution or enforcement action taken for violation of statutes listed in subsection (1) of this section.

SECTION 14. ORS 676.622 is amended to read:
676.622. (1) A transaction conducted through a state or local system or network that provides electronic access to the Health Licensing Office information and services is exempt from any requirement under ORS 675.365 to 675.410, 676.665 to 676.689, 676.810, 676.815, 676.992, 680.500 to 680.565, 681.700 to 681.730, 681.740 to 681.758, 687.405 to 687.495, 688.701 to 688.734, 688.800 to 688.840, 690.005 to 690.225, 690.350 to 690.410, 691.405 to 691.485 and 694.015 to 694.170 and ORS chapter 700 and sections 1 to 8 of this 2021 Act, and rules adopted thereunder, requiring an original signature or the submission of handwritten materials.
(2) Electronic signatures subject to ORS 84.001 to 84.061 and facsimile signatures are acceptable and have the same force as original signatures.

SECTION 15. ORS 676.992 is amended to read:
676.992. (1) Except as provided in subsection (3) of this section, and in addition to any other penalty or remedy provided by law, the Health Licensing Office may impose a civil penalty not to exceed $5,000 for each violation of the following statutes and any rule adopted under the following statutes:
(a) ORS 688.701 to 688.734 (athletic training);
(b) ORS 690.005 to 690.225 (cosmetology);
(c) ORS 680.500 to 680.565 (denture technology);
(d) Subject to ORS 676.616 and 687.445, ORS 687.405 to 687.495 (direct entry midwifery);
(e) ORS 690.350 to 690.410 (tattooing, electrolysis, body piercing, earlobe piercing, dermal implanting and scarification);
(f) ORS 694.015 to 694.170 (dealing in hearing aids);
(g) ORS 688.800 to 688.840 (respiratory therapy and polysomnography);
(h) ORS chapter 700 (environmental sanitation);
(i) ORS 675.365 to 675.410 (sexual abuse specific treatment);
(j) ORS 678.710 to 678.820 (nursing home administrators and residential care facility administrators);
(k) ORS 691.405 to 691.485 (dietitians);
(L) ORS 676.612 (prohibited acts);
(m) ORS 676.810 and 676.815 (applied behavior analysis);
(n) ORS 681.700 to 681.730 (music therapy);
(o) ORS 676.630 to 676.660 (advanced nonablative esthetics procedure);
(p) ORS 681.740 to 681.758 (art therapy); [and]
(q) ORS 676.665 to 676.689 (lactation consultation); and
(r) Sections 1 to 8 of this 2021 Act (alternative well-being care).

(2) The office may take any other disciplinary action that it finds proper, including but not limited to assessment of costs of disciplinary proceedings, not to exceed $5,000, for violation of any statute listed in subsection (1) of this section or any rule adopted under any statute listed in subsection (1) of this section.

(3) Subsection (1) of this section does not limit the amount of the civil penalty resulting from a violation of ORS 694.042.

(4) In imposing a civil penalty under this section, the office shall consider the following factors:
(a) The immediacy and extent to which the violation threatens the public health or safety;
(b) Any prior violations of statutes, rules or orders;
(c) The history of the person incurring a penalty in taking all feasible steps to correct any violation; and
(d) Any other aggravating or mitigating factors.

(5) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(6) The moneys received by the office from civil penalties under this section shall be deposited in the Health Licensing Office Account and are continuously appropriated to the office for the administration and enforcement of the laws the office is charged with administering and enforcing that govern the person against whom the penalty was imposed.

CAPTIONS

SECTION 16. The unit captions used in this 2021 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 2021 Act.

OPERATIVE AND EFFECTIVE DATES

SECTION 17. (1) Sections 1 to 8 of this 2021 Act and the amendments to ORS 676.565, 676.579, 676.590, 676.612, 676.613, 676.622 and 676.992 by sections 9 to 15 of this 2021 Act become operative on January 1, 2022.
(2) The Health Licensing Office may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the authority 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 office by sections 1 to 8 of this 2021 Act and the amendments to ORS 676.565, 676.579, 676.590, 676.612, 676.613, 676.622 and 676.992 by sections 9 to 15 of this 2021 Act.

SECTION 18. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.