

Enrolled House Bill 2949

Sponsored by Representatives BYNUM, ALONSO LEON, SCHOUTEN; Representatives DEXTER, FAHEY, GRAYBER, MARSH, NERON, NOSSE, PHAM, REARDON, REYNOLDS, RUIZ, SANCHEZ, SOLLMAN, VALDERRAMA, WILLIAMS, Senators FREDERICK, GELSER, LIEBER, PATTERSON (at the request of Dr. Anjabeen Ashraf, Dr. Keleigh Blount, Dr. Nathaniel Brown, Dr. Tanya Johnson, OCBA, OCHA, OCFW, OCAPIA) (Presession filed.)

CHAPTER

AN ACT

Relating to mental health; creating new provisions; amending ORS 675.375, 675.705, 675.720, 675.745, 675.785 and 675.825; and declaring an emergency.

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

SECTION 1. The Behavioral Health Incentive Subaccount is created in the Health Care Provider Incentive Fund established in ORS 676.450. The Behavioral Health Incentive Subaccount consists of moneys appropriated to the subaccount by the Legislative Assembly and gifts, grants and donations from public or private sources. Moneys in the subaccount are continuously appropriated to the Oregon Health Authority to carry out section 2 of this 2021 Act.

SECTION 2. (1) The Oregon Health Authority shall provide incentives to increase the recruitment and retention of providers in the behavioral health care workforce with associate, bachelor's, master's, or doctoral degrees or other credentials who are people of color, tribal members or residents of rural areas in this state and who can provide culturally responsive behavioral health services to:

- (a) Tribal members;**
- (b) People of color;**
- (c) Lesbian, gay, bisexual and transgender youth;**
- (d) Veterans;**
- (e) Persons with disabilities;**
- (f) Individuals with intellectual and developmental disabilities;**
- (g) Individuals with limited English proficiency;**
- (h) Individuals working in correctional facilities; and**
- (i) Other underserved communities.**

(2) The authority shall increase access to services for rural and underserved communities by:

- (a) Expanding funding to provide incentives to culturally specific peers, traditional health workers, unlicensed, licensed or certified providers of behavioral health care and licensed prescribers.**

(b) Developing programs and providing incentives to increase the number of individuals training for and entering the field of behavioral health and to improve the retention of behavioral health care providers in this state through:

(A) Scholarships for undergraduate and graduate students going into the behavioral health field;

(B) Loan forgiveness and repayment incentives for qualified behavioral health care providers;

(C) Housing assistance;

(D) Sign-on bonuses;

(E) Part-time and flex time opportunities;

(F) Retention bonuses;

(G) Professional development;

(H) Tax subsidies;

(I) Child care subsidies;

(J) Subsidized dual certification with a specific focus on rural and vulnerable populations and pay equity;

(K) Tuition assistance;

(L) Bonuses and stipends for supervisors of interns;

(M) Licensing examination preparation;

(N) Stipends for students enrolled in graduate behavioral health programs; or

(O) Other programs and incentives.

(3) The authority shall develop a program to award qualified mental health care providers student loan forgiveness or student loan repayment subsidies if the qualified mental health care provider commits to two consecutive years of full-time practice in:

(a) A publicly funded or public mental health facility;

(b) A nonprofit mental health facility that contracts with a county to provide mental health services;

(c) A mental health professional shortage area, as defined by the authority by rule; or

(d) Other programs or facilities that serve the communities described in subsection (1) of this section.

(4) The subsidy described in subsection (3) of this section applies to a qualified mental health care provider's student loans incurred for the educational program that led to the qualified mental health care provider's licensure or certification as:

(a) A licensed psychologist, as defined in ORS 675.010;

(b) A clinical social worker licensed under ORS 675.530;

(c) A master's social worker licensed under ORS 675.533;

(d) A clinical social work associate certified under ORS 675.537;

(e) A licensed marriage and family therapist, as defined in ORS 675.705;

(f) A licensed professional counselor, as defined in ORS 675.705; or

(g) Another type of behavioral health care provider as prescribed by the authority by rule.

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

SECTION 3. Notwithstanding any other law limiting expenditures, the amount of \$60,000,000 is established for the biennium beginning July 1, 2021, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the Oregon Health Authority, for the expenditure of American Rescue Plan Act State Fiscal Recovery Funds received by the Oregon Department of Administrative Services and transferred to the authority for deposit into the Behavioral Health Incentive Subaccount created in section 1 of this 2021 Act, to carry out section 2 of this 2021 Act.

SECTION 4. (1) The Oregon Health Authority shall establish a program to provide grants to licensed psychologists, licensed marriage and family therapists, licensed professional

counselors and licensed clinical social workers to provide supervised clinical experience to associates or other individuals who have the necessary education but need supervised clinical experience to obtain a license to practice:

- (a) Psychology;
 - (b) Marriage and family therapy, as defined in ORS 675.705;
 - (c) Professional counseling, as defined in ORS 675.705;
 - (d) Clinical social work, as defined in ORS 675.510; or
 - (e) Another behavioral health care discipline as prescribed by the authority by rule.
- (2) The authority shall adopt rules to carry out the provisions of this section.

SECTION 5. Notwithstanding any other law limiting expenditures, the amount of \$20,000,000 is established for the biennium beginning July 1, 2021, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by the Oregon Health Authority, for the expenditure of American Rescue Plan Act State Fiscal Recovery Funds received by the Oregon Department of Administrative Services and transferred to the authority, to be expended to carry out section 4 of this 2021 Act and distributed as follows:

- (1) \$7,000,000 to county mental health programs;
- (2) \$7,000,000 to private practitioners; and
- (3) \$6,000,000 for the authority to expend as necessary to carry out the purposes of section 4 of this 2021 Act.

SECTION 6. A public or private entity that employs mental health care providers who supervise associates, interns or other individuals who must have supervised clinical experience as a condition of licensure as a mental health care provider shall pay all costs incurred by the supervisor in providing supervision and the costs of the individual receiving supervision if the supervisor is:

- (1) A licensed psychologist, as defined in ORS 675.010;
- (2) A clinical social worker licensed under ORS 675.530;
- (3) A master's social worker licensed under ORS 675.533;
- (4) A licensed marriage and family therapist, as defined in ORS 675.705; or
- (5) A licensed professional counselor, as defined in ORS 675.705.

SECTION 7. (1) The Oregon Health Authority shall coordinate with systems of higher education and with the Higher Education Coordinating Commission in considering workforce investments under sections 2 and 4 of this 2021 Act.

(2) The authority shall ensure that investments made in accordance with sections 2 and 4 of this 2021 Act are aligned and coordinated with other state investments that are intended to improve behavioral health outcomes for residents of this state, including but not limited to investments made from moneys in the Drug Treatment and Recovery Services Fund established in section 5, chapter 2, Oregon Laws 2021 (Ballot Measure 110 (2020)).

SECTION 8. ORS 675.705 is amended to read:

675.705. As used in ORS 675.715 to 675.835:

(1) "Assessment" means assessment under standards developed by a national body responsible for accrediting graduate training programs in clinical counseling for professional counselors or in marriage and family therapy for marriage and family therapists.

(2) "Clinical experience" means the professional practice of applying psychotherapeutic principles and methods to provide assessment, diagnosis and treatment of mental disorders.

(3) "Licensed marriage and family therapist" means a person [to whom a license has been issued] **licensed** under ORS 675.715.

(4) "Licensed professional counselor" means a person [issued a license] **licensed** under ORS 675.715.

(5) "Licensee" means a licensed professional counselor or a licensed marriage and family therapist.

(6)(a) "Marriage and family therapy" means the assessment, diagnosis or treatment of mental, emotional or behavioral disorders involving the application of family systems or other psychotherapeutic principles and methods in the delivery of services to individuals, couples, children, families, groups or organizations.

(b) "Marriage and family therapy" may include, but is not limited to:

(A) Application of counseling techniques for the purpose of resolving intrapersonal or interpersonal conflict or changing perceptions, attitudes, behaviors or interactional processes in the area of human relationships and family life;

(B) Provision of services to address wellness or optimal functioning in human relationships or family life;

(C) Research activities, including reporting, designing or conducting research in marriage and family therapy with human subjects;

(D) Referral activities, including the referral to other specialists when indicated to provide ethical treatment;

(E) Consulting activities that apply marriage and family therapy procedures to provide assistance to organizations that support or enrich marriage and family life; and

(F) Record keeping activities, including documentation of counseling treatment, therapeutic services or clinical supervision.

(7)(a) "Professional counseling" means the assessment, diagnosis or treatment of mental, emotional or behavioral disorders involving the application of mental health counseling or other psychotherapeutic principles and methods in the delivery of services to individuals, couples, children, families, groups or organizations.

(b) "Professional counseling" may include, but is not limited to:

(A) Application of intervention methods based on cognitive, affective, behavioral, systemic or human development principles;

(B) Provision of counseling services to address personal growth or wellness;

(C) Definition of goals and the planning of action reflecting interests, abilities, aptitudes or needs as they relate to problems, disabilities or concerns in personal, social, educational, rehabilitation or career adjustments;

(D) Research activities, including reporting, designing or conducting research in counseling with human subjects;

(E) Referral activities, including the referral to other specialists when indicated to provide ethical treatment;

(F) Consulting activities that apply counseling procedures and interpersonal skills to provide assistance in solving problems relating to an individual, group or organization; and

(G) Record keeping activities, including documentation of counseling treatment, therapeutic services or clinical supervision.

(8) "Registered [*intern*] **associate**" means an applicant for licensure who is registered to obtain post-degree supervised clinical experience toward licensure according to an approved plan pursuant to ORS 675.720.

SECTION 9. ORS 675.720 is amended to read:

675.720. (1) If an applicant for a license under ORS 675.715 possesses the graduate degree required by ORS 675.715 but has not submitted documentation satisfactory to the Oregon Board of Licensed Professional Counselors and Therapists that the applicant has the required supervised clinical experience, the applicant must register [*an internship*] a plan to obtain acceptable post-degree supervised clinical experience to qualify for a license as a professional counselor or as a marriage and family therapist.

(2) To register as a professional counselor [*intern*] **associate** or as a marriage and family therapist [*intern*] **associate** under this section, the applicant shall submit in the form and manner determined by the board:

(a) A request for registration; and

(b) A plan to obtain or complete the supervised clinical experience required for licensure.

(3) The board shall register the applicant as an *[intern]* **associate** upon receipt and approval of the completed request and plan required in subsection (2) of this section.

(4)(a) A registered *[intern]* **associate** must renew the certificate of registration annually on or before the first day of the month in which the board approved the initial registration. To renew a certificate of registration, a registered *[intern]* **associate** shall:

(A) Submit a renewal application in the form and manner established by the board accompanied by a renewal fee pursuant to ORS 675.785; and

(B) Document fulfillment of all other requirements established by the board by rule.

(b) Failure to renew a registration within 30 days of the annual renewal date terminates the registration and the application for licensure.

(5) Registered *[interns]* **associates** are subject to all ethical standards adopted by the board.

SECTION 10. ORS 675.745 is amended to read:

675.745. (1) The Oregon Board of Licensed Professional Counselors and Therapists may deny, suspend, revoke or refuse to issue or to renew any license issued under ORS 675.715 to 675.835 upon proof that the applicant for licensure or the licensee:

(a) Has been convicted of violating ORS 675.825 or of a crime in this or any other state or territory or against the federal government that brings into question the competence of the licensee in the role of a counselor or a therapist;

(b) Is unable to perform the practice of professional counseling or marriage and family therapy by reason of physical illness;

(c) Has an impairment as defined in ORS 676.303;

(d) Has been grossly negligent in the practice of professional counseling or marriage and family therapy;

(e) Has violated any provision of ORS 675.715 to 675.835 or 675.850;

(f) Has violated any rule of the board pertaining to the licensure of professional counselors or licensed marriage and family therapists;

(g) Has failed to file a professional disclosure statement or has filed a false, incomplete or misleading professional disclosure statement;

(h) Has practiced outside the scope of activities, including administering, constructing or interpreting tests or diagnosing or treating mental disorders, for which the licensee has individual training and qualification;

(i) Has been disciplined by a state mental health licensing board or program in this or any other state for violation of competency or conduct standards; 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.

(2)(a) The board may reprimand or impose probation on a licensee or a registered *[intern]* **associate** upon proof of any of the grounds for discipline provided in subsection (1) of this section.

(b) If the board elects to place a licensee or a registered *[intern]* **associate** on probation, the board may impose:

(A) Restrictions on the scope of practice of the licensee or *[intern]* **associate**;

(B) Requirements for specific training;

(C) Supervision of the practice of the licensee or *[intern]* **associate**; or

(D) Other conditions the board finds necessary for the protection of the public.

(3) The board may initiate injunctive proceedings in any circuit court against persons violating any provision of ORS 675.715 to 675.835 or any rules adopted by the board.

(4) Pursuant to ORS 183.745, the board may impose a civil penalty of not more than \$2,500 for each ground for discipline listed in subsection (1) of this section found by the board.

(5) Pursuant to ORS 183.745, the board may impose a civil penalty of not more than \$2,500 for each violation of or failure to observe any limitation or condition imposed by the board on the licensee's or registered *[intern's]* **associate's** practice under subsection (2) of this section.

(6) Information that the board obtains as part of an investigation into licensee or applicant conduct or as part of a contested case proceeding, consent order or stipulated agreement involving licensee or applicant conduct is confidential as provided under ORS 676.175.

(7) In addition to the actions authorized by subsections (1) and (2) of this section, the board may take such disciplinary action as the board in its discretion finds proper, including but not limited to the assessment of the costs of the disciplinary process.

SECTION 11. 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 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*] **associate**.

(f) Examinations. Examination fees 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 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 must be available to the public, 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 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) 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 Oregon Board of Psychology, the duties of the Director of the Mental Health Regulatory Agency.

SECTION 12. ORS 675.825 is amended to read:

675.825. (1) A person may not:

(a) Attempt to obtain or obtain a license or license renewal by bribery or fraudulent representation.

(b) Engage in or purport to the public to be engaged in the practice of professional counseling under the title "licensed professional counselor" unless the person is a licensee.

(c) Engage in or purport to the public to be engaged in the practice of marriage and family therapy under the title of "licensed marriage and family therapist" unless the person is a licensee.

(d) Engage in the practice of professional counseling or marriage and family therapy unless:

(A) The person is a licensee, registered [*intern*] **associate** or graduate student pursuing a graduate degree in counseling or marriage and family therapy; or

(B) The person is exempted from the licensing requirements of ORS 675.715 to 675.835 by subsection (3) of this section.

(e) Provide counseling or therapy services of a psychotherapeutic nature if the person's license to practice as a professional counselor or as a marriage and family therapist has been revoked by the Oregon Board of Licensed Professional Counselors and Therapists because the person engaged in sexual activity with a client.

(2) A licensed psychologist whose license, or a regulated social worker whose authorization to practice regulated social work, was issued prior to October 1, 1991, may use the title "marriage and family therapist."

(3) The licensing requirements of ORS 675.715 to 675.835 do not apply to a person who is:

(a) Licensed, certified, registered or similarly regulated under the laws of this state and who is performing duties within the authorized scope of practice of the license, certification, registration or regulation.

(b) A recognized member of the clergy, provided that the person is acting in the person's ministerial capacity.

(c) Employed by a local, state or federal agency, a public university listed in ORS 352.002 or any agency licensed or certified by the state to provide mental health or health services, if the person's activities constituting professional counseling or marriage and family therapy are performed within the scope of the person's employment.

(d) Authorized to provide addiction treatment services under rules of the Department of Human Services.

(4) Nothing in ORS 675.715 to 675.835 limits or prevents the practice of a person's profession or restricts a person from providing counseling services or services related to marriage and family if the person:

- (a) Does not meet the requirements of ORS 675.715 (1)(b); or
- (b) Does not practice:
 - (A) Marriage and family therapy as defined in ORS 675.705 (6)(a); or
 - (B) Professional counseling as defined in ORS 675.705 (7)(a).
- (5) Each violation of this section is a separate violation.

(6) The board may levy a civil penalty not to exceed \$2,500 for each separate violation of this section.

SECTION 13. ORS 675.375 is amended to read:

675.375. (1) To obtain certification as a clinical sexual offense therapist, associate sexual offense therapist, secondary clinical sexual offense therapist or sexual offense therapist intern, an applicant must complete an application developed and prescribed by the Sexual Offense Treatment Board and file a professional disclosure statement with the Health Licensing Office. The documents must be accompanied by the applicable fees established under ORS 676.576.

(2) Subject to the provisions of ORS 676.612, the office may issue four types of certification to qualified applicants under this section:

- (a) Clinical sexual offense therapist;
 - (b) Associate sexual offense therapist;
 - (c) Secondary clinical sexual offense therapist; and
 - (d) Sexual offense therapist intern.
- (3) To qualify as a certified clinical sexual offense therapist, the applicant must:

- (a) Be in compliance with applicable provisions and rules adopted by the office;
- (b) Have at least a master's degree in the behavioral sciences;
- (c) Have an active Oregon mental health professional license or equivalent license as determined by the office;

(d) Within not more than six years prior to application, have had a minimum of 2,000 hours of direct clinical contact with persons described in ORS 675.368, including:

- (A) 1,000 hours of direct treatment services; and
- (B) 500 hours of evaluations; and

(e) Have a minimum of 60 hours of formal training applicable to sexual abuse specific treatment and evaluation, achieved within the six years prior to application.

(4) To qualify as a certified associate sexual offense therapist, the applicant must:

- (a) Be in compliance with applicable provisions and rules adopted by the office;
- (b) Have at least a bachelor's degree in the behavioral sciences;
- (c) Have had a minimum of 1,000 hours of direct clinical contact with persons described in ORS 675.368;

(d) Have a minimum of 30 hours of formal training applicable to sexual abuse specific treatment and evaluation, achieved within the three years prior to application; and

(e) Be under the direct supervision of a certified clinical sexual offense therapist.

(5) To qualify as a certified secondary clinical sexual offense therapist, the applicant must:

- (a) Be in compliance with applicable provisions and rules adopted by the office;
- (b) Have at least a master's degree in the behavioral sciences;
- (c) Have an active Oregon mental health professional license or equivalent license as determined by the office or be a registered intern **or associate** for a mental health professional licensed in Oregon;

(d) Have a minimum of 15 hours of formal training applicable to sexual abuse specific treatment and evaluation, achieved within the three years prior to application;

(e) Be under the direct supervision of a certified clinical sexual offense therapist; and

(f) Provide sexual abuse specific treatment services to not more than nine clients in a calendar month, unless the applicant is accruing hours to qualify for application as a certified associate sexual offense therapist.

(6) To qualify as a certified sexual offense therapist intern, the applicant must:

- (a) Be in compliance with applicable provisions and rules adopted by the office;
- (b) Have at least a bachelor's degree in the behavioral sciences; and
- (c) Be under the direct supervision of a certified clinical sexual offense therapist.

(7)(a) A certified associate sexual offense therapist and a certified sexual offense therapist intern must obtain:

(A) A minimum of two hours of direct supervision, at least one hour of which must be individual supervision, in a month if the certified associate sexual offense therapist or certified sexual offense therapist intern has 45 or fewer hours in the month of direct clinical contact with a person described in ORS 675.368.

(B) A minimum of three hours of direct supervision, at least 90 minutes of which must be individual supervision, in a month if the certified associate sexual offense therapist or certified sexual offense therapist intern has more than 45 hours in the month of direct clinical contact with a person described in ORS 675.368.

(b) A certified secondary clinical sexual offense therapist must obtain at least two hours of direct supervision for every 10 hours of direct clinical contact with a person described in ORS 675.368.

SECTION 14. 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 July 1, 2021.

Passed by House June 24, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 26, 2021

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State