

Senate Bill 171

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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**.

Requires impaired health professional program to maintain physical location or locations in this state that are sufficient to allow enrolled licensees to physically meet with program representatives.

Requires Oregon Health Authority, at request of health profession licensing boards participating in impaired health professional program, to establish supervisory councils or contract with independent third parties for purposes related to making recommendations to program or providing additional services.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the impaired health professional program; creating new provisions; amending ORS
3 676.190; and declaring an emergency.

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

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

7 676.190. (1) The Oregon Health Authority shall establish or contract to establish an impaired
8 health professional program. The program must:

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

11 **(b) Maintain a physical location or locations in this state that are sufficient to allow en-**
12 **rolled licensees to physically meet with program representatives;**

13 *[(b)]* (c) Require that a licensee sign a written consent prior to enrollment in the program al-
14 lowing disclosure and exchange of information between the program, the licensee's board, the
15 licensee's employer, evaluators and treatment entities in compliance with ORS 179.505 and 42 C.F.R.
16 part 2;

17 *[(c)]* (d) Enter into diversion agreements with enrolled licensees;

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

19 *[(e)]* (f) Assess the ability of an enrolled licensee's employer to supervise the licensee and re-
20 quire an enrolled licensee's employer to establish minimum training requirements for supervisors of
21 enrolled licensees;

22 *[(f)]* (g) Report substantial noncompliance with a diversion agreement to a noncompliant
23 licensee's board within one business day after the program learns of the substantial noncompliance,
24 including but not limited to information that a licensee:

25 (A) Engaged in criminal behavior;

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

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 (C) Was impaired in a health care setting in the course of the licensee's employment;
- 2 (D) Received a positive toxicology test result as determined by federal regulations pertaining to
- 3 drug testing;
- 4 (E) Violated a restriction on the licensee's practice imposed by the program or the licensee's
- 5 board;
- 6 (F) Was admitted to the hospital for mental illness or adjudged to be mentally incompetent;
- 7 (G) Entered into a diversion agreement, but failed to participate in the program; or
- 8 (H) Was referred to the program but failed to enroll in the program; and
- 9 [(g)] (h) At least weekly, submit to licensees' boards:
- 10 (A) A list of licensees who were referred to the program by a health profession licensing board
- 11 and who are enrolled in the program; and
- 12 (B) A list of licensees who were referred to the program by a health profession licensing board
- 13 and who successfully complete the program.
- 14 (2) The lists submitted under subsection [(1)(g)] (1)(h) of this section are exempt from disclosure
- 15 as a public record under ORS 192.410 to 192.505.
- 16 (3) When the program reports noncompliance to a licensee's board, the report must include:
- 17 (a) A description of the noncompliance;
- 18 (b) A copy of a report from the independent third party who diagnosed the licensee under ORS
- 19 676.200 (2)(a) or subsection (6)(a) of this section stating the licensee's diagnosis;
- 20 (c) A copy of the licensee's diversion agreement; and
- 21 (d) The licensee's employment status.
- 22 (4) The program may not diagnose or treat licensees enrolled in the program.
- 23 (5) The diversion agreement required by subsection (1) of this section must:
- 24 (a) Require the licensee to consent to disclosure and exchange of information between the pro-
- 25 gram, the licensee's board, the licensee's employer, evaluators and treatment providers, in compli-
- 26 ance with ORS 179.505 and 42 C.F.R. part 2;
- 27 (b) Require that the licensee comply continuously with the agreement for at least two years to
- 28 successfully complete the program;
- 29 (c) Based on an individualized assessment, require that the licensee abstain from mind-altering
- 30 or intoxicating substances or potentially addictive drugs, unless the drug is approved by the pro-
- 31 gram and prescribed for a documented medical condition by a person authorized by law to prescribe
- 32 the drug to the licensee;
- 33 (d) Require the licensee to report use of mind-altering or intoxicating substances or potentially
- 34 addictive drugs within 24 hours;
- 35 (e) Require the licensee to agree to participate in a treatment plan approved by a third party;
- 36 (f) Contain limits on the licensee's practice of the licensee's health profession;
- 37 (g) Provide for employer monitoring of the licensee;
- 38 (h) Provide that the program may require an evaluation of the licensee's fitness to practice be-
- 39 fore removing the limits on the licensee's practice of the licensee's health profession;
- 40 (i) Require the licensee to submit to random drug or alcohol testing in accordance with federal
- 41 regulations;
- 42 (j) Require the licensee to report at least weekly to the program regarding the licensee's com-
- 43 pliance with the agreement;
- 44 (k) Require the licensee to report any arrest for or conviction of a misdemeanor or felony crime
- 45 to the program within three business days after the licensee is arrested or convicted;

1 (L) Require the licensee to report applications for licensure in other states, changes in employ-
 2 ment and changes in practice setting; and

3 (m) Provide that the licensee is responsible for the cost of evaluations, toxicology testing and
 4 treatment.

5 (6)(a) A licensee of a board participating in the program may self-refer to the program.

6 (b) The program shall require the licensee to attest that the licensee is not, to the best of the
 7 licensee's knowledge, under investigation by the licensee's board. The program shall enroll the
 8 licensee on the date on which the licensee attests that the licensee, to the best of the licensee's
 9 knowledge, is not under investigation by the licensee's board.

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

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

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

16 (d) The program may not report a self-referred licensee's enrollment in or successful completion
 17 of the program to the licensee's board.

18 (7) The authority shall adopt rules establishing a fee to be paid by the boards participating in
 19 the impaired health professional program for administration of the program.

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

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

25 **SECTION 2. Section 3 of this 2013 Act is added to and made a part of ORS 676.185 to**
 26 **676.200.**

27 **SECTION 3. (1) At the request of a health profession licensing board participating in the**
 28 **impaired health professional program established under ORS 676.190, the Oregon Health Au-**
 29 **thority shall:**

30 (a) Establish by rule a supervisory council for the purposes of:

31 (A) Monitoring and evaluating the program with respect to licensees of the health pro-
 32 fession licensing board who are enrolled in the program;

33 (B) Devising potential resources for the program to offer those licensees;

34 (C) Receiving grievances related to the program made by those licensees; and

35 (D) Making recommendations to the program regarding resources devised under subpar-
 36 agraph (B) of this paragraph or grievances received under subparagraph (C) of this para-
 37 graph; or

38 (b) Contract with an independent third party for the purposes of:

39 (A) Monitoring and evaluating the recovery of licensees of the health profession licensing
 40 board who are enrolled in the program;

41 (B) Mentoring those licensees; and

42 (C) Providing recovery support for those licensees.

43 (2)(a) A supervisory council established under subsection (1) of this section must consist
 44 of:

45 (A) At least one licensee of the health profession licensing board who has expertise in

1 alcohol or substance abuse or mental disorders;

2 (B) At least one licensee of the health profession licensing board who successfully com-
3 pleted treatment for alcohol or substance abuse or a mental disorder;

4 (C) At least one member who has an interest in impaired health professional treatment;
5 and

6 (D) One public member.

7 (b) A member of a supervisory council established under subsection (1) of this section is
8 not entitled to compensation, but is entitled to expenses as provided in ORS 292.495.

9 (3) Information identifying a licensee who makes a grievance with a supervisory council
10 under subsection (1)(a)(C) of this section or who participates in activities authorized by
11 subsection (1)(b) of this section is confidential and may not be disclosed except to the extent
12 that disclosure is necessary to resolve a grievance.

13 (4) Information received by a supervisory council under subsection (1)(a) of this section
14 or by an independent third party under subsection (1)(b) of this section may not be used to
15 make an allegation of substantial noncompliance under ORS 676.190 (1)(g).

16 SECTION 4. The amendments to ORS 676.190 by section 1 of this 2013 Act apply to con-
17 tracts for the establishment of an impaired health professional program entered into on or
18 after the effective date of this 2013 Act.

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

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