

Enrolled
House Bill 4016

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Health Care)

CHAPTER

AN ACT

Relating to impaired health professional programs; creating new provisions; amending ORS 676.190; and declaring an emergency.

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

SECTION 1. ORS 676.190 is amended to read:

676.190. (1) The [*Oregon Health Authority shall*] **health profession licensing boards may** establish or contract to establish an impaired health professional program.

(2) A program established or contracted for under this section [*The program*] must:

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

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

(c) Enter into diversion agreements with enrolled licensees;

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

(e) Report substantial noncompliance with a diversion agreement to a noncompliant licensee's board within one business day after the program learns of the substantial noncompliance; and

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

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

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

[(2)] **(3)** The lists submitted under subsection [(1)(f)] **(2)(f)** of this section are exempt from disclosure as a public record under ORS 192.410 to 192.505.

[(3)] **(4)** When the program reports substantial noncompliance under subsection [(1)(e)] **(2)(e)** of this section to a licensee's board, the report must include:

(a) A description of the substantial noncompliance;

(b) A copy of a report from the independent third party who diagnosed the licensee under ORS 676.200 (2)(a) or subsection [(6)(a)] **(7)(a)** of this section stating the licensee's diagnosis;

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

(d) The licensee's employment status.

[(4)] **(5)** The program may not diagnose or treat licensees enrolled in the program.

[(5)] (6) The diversion agreement required by subsection [(1)] (2) of this section must:

(a) Require the licensee to consent to disclosure and exchange of information between the program, the licensee's board, the licensee's employer, evaluators and treatment programs or providers, in compliance with ORS 179.505 and 42 C.F.R. part 2;

(b) Require that the licensee comply continuously with the agreement for at least two years to successfully complete the program;

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

(A) Prescribed for a documented medical condition by a person authorized by law to prescribe the drug to the licensee; and

(B) Approved by the program if the licensee's board has granted the program that authority;

(d) Require the licensee to report use of mind-altering or intoxicating substances or potentially addictive drugs within 24 hours;

(e) Require the licensee to agree to participate in a recommended treatment plan;

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

(g) Require the licensee to submit to random drug or alcohol testing in accordance with federal regulations, unless the licensee is diagnosed with solely a mental health disorder and the licensee's board does not otherwise require the licensee to submit to random drug or alcohol testing;

(h) Require the licensee to report to the program regarding the licensee's compliance with the agreement;

(i) Require the licensee to report any arrest for or conviction of a misdemeanor or felony crime to the program within three business days after the licensee is arrested or convicted;

(j) Require the licensee to report applications for licensure in other states, changes in employment and changes in practice setting; and

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

[(6)(a)] (7)(a) *[If a health profession licensing board participating in the program establishes by rule an option for self-referral to the program, a licensee of the health profession licensing board may self-refer to the program.]* **A health profession licensing board may establish by rule an option to permit licensees of the health profession licensing board to self-refer to the program.**

(b) The program shall require a licensee who self-refers to the program to attest that the licensee is not, to the best of the licensee's knowledge, under investigation by the licensee's board. The program shall enroll the licensee on the date on which the licensee attests that the licensee, to the best of the licensee's knowledge, is not under investigation by the licensee's board.

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

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

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

(d) When a licensee self-refers to the program, the program may not report the licensee's enrollment in or successful completion of the program to the licensee's board.

[(7) *The authority shall adopt rules establishing a fee to be paid by the health profession licensing boards participating in the program for administration of the program.*]

[(8) *The authority shall arrange for an independent third party to audit the program every four years to ensure compliance with program guidelines. The authority shall report the results of the audit to the Legislative Assembly, the Governor and the health profession licensing boards. The report may not contain individually identifiable information about licensees.*]

(8) The health profession licensing boards shall arrange for an independent third party to conduct an audit every four years of an impaired health professional program for the licensees of those health profession licensing boards to ensure compliance with program guidelines. The health profession licensing boards shall report the results of the audit to the

Legislative Assembly in the manner provided by ORS 192.245 and to the Governor. The report may not contain individually identifiable information about licensees.

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

SECTION 2. Section 3 of this 2016 Act is added to and made a part of ORS 676.185 to 676.200.

SECTION 3. (1) The Impaired Health Professional Program Work Group is established.

(2) The work group consists of the designees of any health profession licensing boards that elect to establish or contract for an impaired health professional program as described in ORS 676.190.

(3) The work group shall facilitate the establishment and continuation of the impaired health professional program described in ORS 676.190.

(4) A majority of the members of the work group constitutes a quorum for the transaction of business.

(5) Official action by the work group requires the approval of a majority of the members of the work group.

(6) The work group shall elect one of its members to serve as chairperson.

(7) The work group shall meet at times and places specified by the call of the chairperson or of a majority of the members of the work group.

(8) The work group may adopt rules necessary for the operation of the work group.

(9) The Oregon Medical Board shall provide staff support to the work group.

(10) Members of the work group are not entitled to compensation, but may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495. Claims for expenses shall be paid out of funds appropriated to the health professional licensing board that the member represents for purposes of the work group.

(11) All agencies of state government, as defined in ORS 174.111, are directed to assist the work group in the performance of duties of the work group and, to the extent permitted by laws relating to confidentiality, to furnish information and advice the members of the work group consider necessary to perform their duties.

SECTION 4. The amendments to ORS 676.190 by section 1 of this 2016 Act become operative on July 1, 2017.

SECTION 5. This 2016 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect on its passage.

Passed by House February 9, 2016

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate February 19, 2016

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2016

Approved:

.....M,....., 2016

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2016

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Jeanne P. Atkins, Secretary of State