

NOTE: All New Rules
Health Professionals' Services Program
OAR 415-065

415-065-0005

Purpose, Intent and Scope

The purpose of these rules is to establish a consolidated, statewide health professionals' monitoring program for licensees of participating health licensing boards, as required by ORS 676.190, who are unable to practice with professional skill and safety due to substance use disorders, mental health disorders, or both types of disorders. The program shall provide non-treatment compliance monitoring and reporting services.

Stat. Auth.: ORS 409.050 & ORS 676.190

Stats. Implemented: ORS 676.185 to 676.200

415-065-0010

Definitions

The following terms mean:

- (1) "Admitted to the hospital for mental illness" for purposes of ORS 676.190 means admitted to the hospital for treatment of a mental health disorder that gives rise to concerns about the licensee's ability or willingness to participate in the program. Admission for evaluation or diagnosis does not constitute being admitted to the hospital for mental illness.
- (2) "Assessment or evaluation" means the process an independent third-party evaluator uses to diagnose the licensee and to recommend treatment options for the licensee.
- (3) "Board" means a health professional regulatory board as defined in ORS 676.160 or the Oregon Health Licensing Agency for a board, council or program listed in ORS 676.606.
- (4) "Business day" means Monday through Friday, 8:00 a.m. to 5:00 p.m. Pacific Time, except legal holidays as defined in ORS 187.010 or ORS 187.020.
- (5) "Diagnosis" means the principal mental health or substance use diagnosis listed in the DSM. The diagnosis is determined through the assessment and any examinations, tests or consultations suggested by the assessment and is the medically appropriate reason for services.
- (6) "Division" means the Department of Human Services, Addictions and Mental Health Division.
- (7) "DSM" means the *Diagnostic and Statistical Manual of Mental Disorders-IV-R*, published by the American Psychiatric Association.
- (8) "Family" means any natural, formal, or informal support persons identified as important by the licensee.
- (9) "Federal regulations" means:

- (a) As used in ORS 676.190(1)(f)(D), a “positive toxicology test result as determined by federal regulations pertaining to drug testing” means test results meet or exceed the cutoff concentrations shown in 49 CFR § 40.87 (2009) for the substances listed there.
- (b) As used in ORS 676.190(4)(i), requiring a “licensee to submit to random drug or alcohol testing in accordance with federal regulations” means licensees are selected for random testing by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with licensees’ unique identification numbers or other comparable identifying numbers. Under the selection process used, each covered licensee shall have an equal chance of being tested each time selections are made, as described in 49 CFR § 199.105(c)(5)(2009). Random drug tests must be unannounced and the dates for administering random tests must be spread reasonably throughout the calendar year, as described in 49 CFR § 199.105(c)(7)(2009).
- (10) “Fitness to practice evaluation” means the process a qualified, independent third-party evaluator uses to determine if the licensee can safely perform the essential functions of the licensee’s health practice.
- (11) “Independent third-party evaluator” means an individual who is approved by a licensee’s board to evaluate, diagnose, and offer treatment options for substance use disorders, mental health disorders, or co-occurring disorders.
- (12) “Individual service record” means the official permanent program documentation, written or electronic, for each licensee, which contains all information required by these rules and maintained by the program to demonstrate compliance with these rules.
- (13) “Licensee” means a health professional who is licensed or certified by or registered with a board and the professional is receiving services in the program under these rules.
- (14) “Mental health disorder” means a clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is associated with present distress or disability or with a significantly increased risk of suffering death, pain, disability, or an important loss of freedom that is identified in the DSM. “Mental health disorder” includes gambling disorders.
- (15) “Monitoring agreement” means an individualized agreement between a licensee and the vendor that meets the requirements for a diversion agreement set by ORS 676.190.
- (16) “Monitoring Entity” means an independent third-party that monitors licensees’ program enrollment status and monitoring agreement compliance.
- (17) “Non-treatment compliance monitoring” means the non-medical, non-therapeutic services employed by the vendor to track and report the licensee’s compliance with the monitoring agreement.
- (18) “Peer” means another licensee currently enrolled in the program.
- (19) “Provisional enrollment” means temporary enrollment, pending verification that a self-referred licensee meets all program eligibility criteria.
- (20) “Self-referred licensee” means a licensee who seeks to participate in the program without a referral from the board.

(21) "Substance Use Disorders" means disorders related to the taking of a drug of abuse including alcohol, to the side effects of a medication, and to a toxin exposure. The disorders include substance use disorders such as substance dependence and substance abuse, and substance-induced disorders, including substance intoxication, withdrawal, delirium, and dementia, as well as substance induced psychotic disorder, mood disorder and other disorders, as defined in DSM criteria.

(22) "Substantial non-compliance" means that a licensee is in violation of the terms of his or her monitoring agreement in a way that gives rise to concerns about the licensee's ability or willingness to participate in the program. Substantial non-compliance and non-compliance include, but are not limited to, the factors listed in ORS 676.190(1)(f). Conduct that occurred before a licensee entered into a monitoring agreement does not violate the terms of that monitoring agreement.

(23) "Successful completion" means that for the period of service deemed necessary by the vendor or by the licensee's board by rule, the licensee has complied with the licensee's monitoring agreement to the satisfaction of the program, and has met the terms of the fee agreement between the program and the licensee.

(24) "Toxicology testing" means urine testing or alternative chemical monitoring including but not limited to blood, saliva, or breath.

(25) "Treatment" means the planned, specific, individualized health and behavioral-health procedures, activities, services and supports that a treatment provider uses to remediate symptoms of a substance use disorder, mental health disorder or both types of disorders.

(26) "Vendor" means the entity that has contracted with the Division to conduct the program.

Stat. Auth.: ORS 409.050 & ORS 676.190
Stats. Implemented: ORS 676.185 to 676.200

415-065-0015

Clinical Council

(1) The Division, in collaboration with the boards, shall establish a Clinical Council that provides clinical guidance and advice to the vendor, in light of evidenced-based research and data about substance use disorders, mental health disorders or both types of disorders.

(2) The Clinical Council shall consist of eight members. The Division shall appoint one member and the boards, in consultation with the Division, shall appoint seven members.

(3) The Clinical Council shall select a chairperson from among its members.

(4) To be eligible for appointment to the Clinical Council, an individual must be a resident of Oregon and must have expertise in the recognition, intervention, assessment and treatment of persons who have a substance use disorders, mental health disorders or both types of disorders.

(5) In recruiting and selecting members for the Clinical Council, the Division and the boards shall seek members who have expertise with a range of culturally appropriate treatment options for people with substance use disorders, mental health disorders or both types of disorders.

Stat. Auth.: ORS 409.050 & ORS 676.190
Stats. Implemented: ORS 676.185 to 676.200

415-065-0020

Audits

- (1) The Division shall arrange for an independent third-party to audit the program and the monitoring entity to ensure compliance with the program guidelines.
- (2) The Division shall report the results of the audit to the Legislative Assembly, the Governor, and the boards.
- (3) The Division's report may not contain individually identifiable information about the licensees.

Stat. Auth.: ORS 409.050 & ORS 676.190
Stats. Implemented: ORS 676.185 to 676.200

415-065-0025

Record Maintenance and Disposition

- (1) If the vendor discontinues operations, the vendor shall transfer the individual service records and the program service records to the Division.
- (2) The Division shall identify a records administrator, who is responsible for:
 - (a) Assuring compliance with 42 CFR §2.19 and other applicable state and federal regulations;
 - (b) Keeping the transferred individual service records consistent with the applicable records retention schedule; and
 - (c) With a licensee's written consent, transferring individual service records to another vendor. ..

Stat. Auth.: ORS 409.050 & ORS 676.190
Stats. Implemented: ORS 676.185 to 676.200

415-065-0030

Administration Fee

- (1) Each board that participates in the program shall pay the Division a fee for participating in the program.
- (2) The Division shall calculate the total fee based on all the vendor costs and administration expenses, including but not limited to, Division personnel costs and ancillary expenses, and fees paid to the vendor, the monitoring entity, and the auditor.

Stat. Auth.: ORS 409.050 & ORS 676.190
Stats. Implemented: ORS 676.185 to 676.200

415-065-0035

Board Referrals

- (1) A board that refers a licensee to the program must make the referral in writing. The referral must include:
 - (a) A copy of a report from an independent third-party evaluator who diagnosed the licensee with a substance use disorder, a mental health disorder or both types of disorder, stating the diagnosis and the applicable diagnostic code from the DSM;
 - (b) The treatment options developed by the independent third-party evaluator;

- (c) A statement that the board has investigated the licensee's professional practice and has determined whether the licensee's professional practice, while impaired, presents or has presented a danger to the public;
- (d) A description of any restrictions imposed by the board or recommended by the board on the licensee's professional practice;
- (e) A statement that the licensee has agreed to report any arrest for or conviction of a misdemeanor or felony crime to the board within three business days after the licensee is arrested or convicted; and
- (f) A written statement from the licensee agreeing to enter the program and agreeing to abide by all terms and conditions established by the vendor.

(2) A board-referred licensee is enrolled in the program effective on the date the licensee signs the consents and the monitoring agreement required by ORS 676.190.

(3) Upon the licensee's enrollment in the program, the vendor shall send to the monitoring entity a copy of the licensee's monitoring agreement and the consents required by ORS 676.190.

Stat. Auth.: ORS 409.050 & ORS 676.190
Stats. Implemented: ORS 676.185 to 676.200

415-065-0040

Self-Referrals

- (1) Provisional Enrollment. To be provisionally enrolled in the program, a self-referred licensee must:
- (a) Sign a written consent allowing disclosure and exchange of information between the vendor, the monitoring entity, the licensee's employer, independent third-party evaluators, and treatment providers;
 - (b) Sign a written consent allowing disclosure and exchange of information between the vendor, the board, the monitoring entity, the licensee's employer, independent third-party evaluators and treatment providers in the event the vendor determines the licensee to be in substantial noncompliance with his or her monitoring agreement. The purpose of the disclosure is to permit the vendor and the monitoring entity to notify the board if the vendor determines the licensee to be in substantial non-compliance with his or her monitoring agreement;
 - (c) Sign a written statement that the licensee has agreed to report any arrest for or conviction of a misdemeanor or felony crime to the vendor within three business days after the licensee is arrested or convicted;
 - (d) Attest that the licensee is not, to the best of the licensee's knowledge, under investigation by his or her board; and
 - (e) Agree to and sign a monitoring agreement.
- (2) Upon provisional enrollment, the vendor shall send to the monitoring entity copies of the signed consents and the monitoring agreement, described in section (1) of this rule.
- (3) Enrollment: To move from provisional enrollment to enrollment in the program, a self-referred licensee must:
- (a) Obtain at the licensee's own expense and provide to the vendor, an independent third-party evaluator's written evaluation containing a DSM diagnosis and diagnostic code and treatment recommendations;
 - (b) Agree to cooperate with the vendor's investigation to determine whether the licensee's practice while impaired presents or has presented a danger to the public; and

(c) Enter into an amended monitoring agreement, if required by the vendor.

(4) Once a self-referred licensee is provisionally enrolled in the program, failure to complete enrollment may constitute substantial non-compliance and may be reported to the board.

(5) Upon enrollment of a self-referred licensee, the vendor shall send to the monitoring entity a copy of the written evaluation by the independent third-party evaluator and a copy of the amended monitoring agreement, if any.

Stat. Auth.: ORS 409.050 & ORS 676.190
Stats. Implemented: ORS 676.185 to 676.200

415-065-0045

Licensee Responsibilities

(1) Board-referred licensees must:

- (a) Comply continuously with his or her monitoring agreement, including any restrictions on his or her practice, for at least two years or longer, as specified by the board by rule or order; and
- (b) Be responsible for the cost of evaluations, toxicology testing and treatment.

(2) Self-referred licensees must:

- (a) Provide to the vendor a copy of a report of the licensee's criminal history periodically, as required by the vendor;
- (b) Comply continuously with his or her monitoring agreement, including any restrictions on his or her practice, for at least two years or longer, as specified by the board by rule or order; and
- (c) Be responsible for the cost of evaluations, toxicology testing and treatment.

Stat. Auth.: ORS 409.050 & ORS 676.190
Stats. Implemented: ORS 676.185 to 676.200

415-065-0050

Unique Identification Number

(1) The vendor shall assign a unique licensee identification number to each licensee the vendor enrolls in the program:

- (a) The vendor, the monitoring entity, and the Division shall use the same number and shall include the number in any communications or data exchanges involving the licensee;
- (b) The vendor shall not assign the identification number to any other licensee enrolled in the program;
- (c) The vendor shall retire the number when the licensee is no longer enrolled in the program; and
- (d) The vendor shall reassign the number to the licensee if the vendor reenrolls the licensee at a later date.

(2) The vendor may not use all or a portion of a licensee's social security number as the unique identification number.

Stat. Auth.: ORS 409.050 & ORS 676.190
Stats. Implemented: ORS 676.185 to 676.200

415-065-0055

Program Requirements

The vendor shall:

- (1) Inform the licensee about the program services, requirements, benefits, risks, and confidentiality limitations and ensure that the licensee has signed a consent for services. The consent for services explains:
 - (a) Information the vendor will give to the board or to the monitoring entity and under what circumstances;
 - (b) Information the monitoring entity will give to the board and under what circumstances; and
 - (c) That the board may take action to suspend, restrict, modify, or revoke the licensee's license or end the licensee's participation in the program based on information from the vendor or the monitoring entity.
- (2) Enter into a monitoring agreement with the licensee;
- (3) Assess the licensee's compliance with his or her monitoring agreement;
- (4) Assess the ability of the licensee's employer, when an employer exists to supervise the licensee, and require the employer to establish minimum training requirements for the licensee's supervisor;
- (5) Report the licensee's substantial noncompliance with his or her monitoring agreement to the monitoring entity within one business day after the vendor learns of any substantial noncompliance; and
- (6) At least weekly, submit a list to the monitoring entity of licensees who are enrolled in the program and a list of licensees who successfully completed the program.

Stat. Auth.: ORS 409.050 & ORS 676.190
Stats. Implemented: ORS 676.185 to 676.200

415-065-0060

Reports of Substantial Noncompliance

- (1) Unless otherwise prohibited by law, when the vendor reports a licensee's substantial noncompliance to the monitoring entity, the report shall include:
 - (a) A description of the noncompliance;
 - (b) A copy of the report from the independent third-party evaluator who diagnosed the licensee stating the licensee's diagnosis;
 - (c) A copy of the licensee's monitoring agreement; and
 - (d) The licensee's practice or employment status.
- (2) In addition to reporting substantial noncompliance to the monitoring entity, the vendor may report substantial noncompliance directly to the licensee's board.
- (3) The vendor and the licensee's board may also exchange information in the absence of substantial noncompliance, consistent with the licensee's consent to disclose information.
- (4) A positive toxicology result as determined by 49 CFR § 40.87 (2009) must be reported as substantial non-compliance, but positive toxicology results for other drugs and for alcohol may also constitute and may be reported as substantial non-compliance

Stat. Auth.: ORS 409.050 & ORS 676.190
Stats. Implemented: ORS 676.185 to 676.200

415-065-0065

Program Services

The vendor shall provide the following services:

(1) Safe Practice Investigations of Self-referred Licensees:

(a) The vendor shall conduct a focused safe-practice investigation of a self-referred licensee to determine whether the licensee's practice while impaired presents or has presented a danger to the public. The investigation may include vendor interviews with the licensee's employer, supervisor, co-workers, family, or significant others.

(b) The vendor shall complete the investigation within 10 business days of the licensee's provisional enrollment in the program.

(2) Monitoring Agreements:

(a) The vendor shall develop and the licensee shall sign an individualized, written monitoring agreement that is based on the vendor's comprehensive review of the independent third-party's evaluation and treatment recommendations and any other relevant and appropriate information, which may include information from employers, supervisors, co-workers, family, and significant others.

(b) The vendor shall amend the monitoring agreement as necessary to respond to changes in the licensee's situation, with the goal of protecting the public.

(c) The vendor shall give the licensee and their employer, when an employer exists, a copy of the licensee's monitoring agreement, including any amendments, and shall immediately place a copy of the monitoring agreement, including any amendments, in the licensee's individual service record.

(d) The monitoring agreement shall:

(A) Require the licensee to participate in the program for at least two years or longer, as specified by board rule or order;

(B) Require the licensee to participate in a treatment provider's treatment plan;

(C) Outline the limits on the licensee's health profession practice by the vendor and the board;

(D) Notify the licensee that the program, in its discretion, may require the licensee to obtain an evaluation of the licensee's fitness to practice before the program removes limits on the licensee's health profession practice;

(E) Outline methods for the licensee's employer to monitor and report on the licensee's safe practice;

(F) Based on the independent third-party evaluator's evaluation, require the licensee to abstain from all mind-altering or intoxicating substances or potentially addictive drugs, unless the program approves the licensee to use a particular drug prescribed for the licensee by a person authorized by law to prescribe for the licensee's documented medical condition;

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

(H) Require the licensee to submit to random toxicology testing, per an individualized schedule;

(I) Require the licensee to report his or her arrest for or conviction of a misdemeanor or felony crime to the vendor within three business days if the licensee is arrested or convicted;

(J) Require the licensee to report to the vendor any of the licensee's applications for licensure in other states, changes in employment, changes in practice setting, and changes in residence;

(K) Require the licensee to report at least weekly to the program regarding the licensee's compliance with the agreement; and

(L) Require the licensee to attend compliance consultation group meetings on an individualized schedule based on the vendor's assessment of the licensee's need for additional accountability and structure and based on board's monitoring requirements.

- (e) Boards may provide other requirements by rule, including allowing for practice supervision of sole practice licensees or other licensees not in an employment setting.
- (3) Compliance Consultation Group Meetings. If required by a board's rules, a licensee identified by the board must attend compliance consultation group meetings. Any board-referred or self-referred licensee may elect to attend the meetings. There may be a fee for the meetings.
- (a) The vendor shall conduct or arrange for non-treatment compliance consultation group meetings in which a monitoring consultant meets face-to-face, either directly or by televideo, with licensees identified by a board to determine the licensee's overall compliance with his or her monitoring agreement and for the licensee to gain peer support for his or her compliance efforts.
- (b) A monitoring consultant shall conduct each compliance consultation group meeting.
- (c) The monitoring consultants shall assess the licensee's progress with his or her monitoring agreement and provide holistic progress reports to the vendor regarding the licensee's status in relation to, but not limited to, his or her: compliance with the monitoring agreement, compliance with the treatment provider's treatment plan, recovery activities, emotional and physical health, work-place dynamics, and relationship and boundary concerns.
- (d) The licensee's board may elect to pay for the licensee's participation in the compliance consultation group meetings or the board may require the licensee to pay for the service.
- (4) Toxicology Testing. The vendor shall ensure that:
- (a) The licensee receives a baseline toxicology test within five business days of the date the vendor enrolls the licensee in the program;
- (b) The licensee receives a final toxicology test before the licensee is deemed to successfully complete the program;
- (c) All monitoring agreements contain provisions requiring three types of toxicology testing:
- (A) Testing customized to the licensee's circumstances, including where appropriate requiring expanded toxicology testing drug panels and long-acting alcohol consumption toxicology testing;
- (B) Random testing; and
- (C) Testing that is required when the vendor has reason to believe that the licensee may have used alcohol or other drugs in violation of the licensee's monitoring agreement.
- (d) The vendor's toxicology testing laboratory is certified by the Substance Abuse and Mental Health Services Administration and accredited through the College of American Pathologists Forensic Drug Testing Accreditation Program.
- (e) In addition, the laboratory shall perform testing in compliance with OAR 333-024-0305 through OAR 333-024-0350.
- (f) Urinalysis specimens are collected in a way that preserves the integrity of the specimen. Unless otherwise provided by the licensee's board by rule, the person collecting the sample must be able to see the licensee void.
- (g) If the vendor suspects that the licensee has used alcohol or other drugs in violation of the licensee's monitoring agreement or suspects that the licensee has attempted to provide a false or dilute urine sample, the licensee may be required to provide a directly observed urine specimen under the procedures described in 49 CFR 40.67(g) through (k), including:
- (A) A person of the same gender as the licensee must ask the licensee to raise his or her shirt, blouse, or dress/skirt, as appropriate, above the waist, and lower clothing and underpants to demonstrate, by turning around, that the licensee does not have a prosthetic device to dispense urine; and
- (B) A person of the same gender as the licensee must watch the urine go from the licensee's body into the specimen collection container.

415-065-0070

Monitoring Entity

(1) The monitoring entity shall perform its services in cooperation with the program, the Division, the boards and an independent party that will audit the monitoring entity to ensure compliance with program guidelines.

(2) Board referrals. When a board refers a licensee to the program, the monitoring entity shall:

(a) Compare the weekly lists of licensees submitted by the program; and

(b) Report to the licensee's board when the monitoring entity receives information from the program that indicates that:

(A) A licensee is substantially noncompliant with the licensee's monitoring agreement or is no longer participating in the program, but has not successfully completed the program.

(3) Self-referred licensees. When a licensee is self-referred to the program, the monitoring entity:

(a) May not report to the board the licensee's enrollment, participation in the program or successful completion of the program;

(b) Shall compare the weekly lists of licensees submitted by the program; and

(c) Shall report to the licensee's board when the monitoring entity receives information that indicates that a licensee is substantially noncompliant with the licensee's monitoring agreement or is no longer participating in the program, but has not successfully completed the program.

(4) The monitoring entity's reports of licensee substantial non-compliance or failure to complete the program shall include:

(a) A description of the noncompliance;

(b) The independent third-party evaluator's DSM diagnosis and diagnostic code;

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

(d) A description of the licensee's employment status.

(5) The monitoring entity shall perform its services in compliance with applicable federal and state confidentiality laws and regulations.