

**ORS 676.190**  
**Establishment of program**

IMPAIRED HEALTH PROFESSIONAL PROGRAM

**676.185 Definitions for ORS 676.185 to 676.200.** As used in ORS 676.185 to 676.200:

(1) "Health profession licensing board" means:

(a) A health professional regulatory board as defined in ORS 676.160; or

(b) The Oregon Health Licensing Agency for a board, council or program listed in ORS 676.606.

(2) "Impaired professional" means a licensee who is unable to practice with professional skill and safety by reason of habitual or excessive use or abuse of drugs, alcohol or other substances that impair ability or by reason of a mental health disorder.

(3) "Licensee" means a health professional licensed or certified by or registered with a health profession licensing board. [2009 c.697 §1]

**Note:** 676.185 becomes operative July 1, 2010. See section 22, chapter 697, Oregon Laws 2009, as amended by section 76, chapter 828, Oregon Laws 2009.

**Note:** Section 21, chapter 697, Oregon Laws 2009, provides:

**Sec. 21.** Sections 1 to 1c of this 2009 Act [676.185 to 676.200], the amendments to ORS 179.505, 192.690, 675.410, 675.510, 675.583, 675.600, 675.785, 678.112, 678.410, 684.010 and 687.081 by sections 2 to 12, 15 and 18 to 20 of this 2009 Act and the repeal of ORS 677.615, 677.625, 677.635, 677.645, 677.655, 677.665, 677.677, 684.103, 684.157, 689.342, 689.344, 689.346, 689.348, 689.352, 689.354 and 689.356 by section 14 of this 2009 Act apply to:

(1) A licensee who is the subject of a complaint filed with a health profession licensing board on or after July 1, 2010;

(2) A licensee about whom a board receives information that the licensee may be impaired on or after July 1, 2010; and

(3) A disciplinary proceeding commenced on or after July 1, 2010. [2009 c.697 §21]

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**676.190 Establishment of program; reports of noncompliance; diversion agreements; audit; rules.** (1) The Oregon Health Authority shall establish or contract to establish an impaired health professional program. 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 monitoring entity established under ORS 676.195, 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) Assess and evaluate compliance with diversion agreements by enrolled licensees;

(e) Assess the ability of an enrolled licensee's employer to supervise the licensee and require an enrolled licensee's employer to establish minimum training requirements for supervisors of enrolled licensees;

(f) Report substantial noncompliance with a diversion agreement to the monitoring entity established under ORS 676.195 within one business day after the program learns of the substantial noncompliance, including but not limited to information that a licensee:

(A) Engaged in criminal behavior;

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

(C) Was impaired in a health care setting in the course of the licensee's employment;

(D) Received a positive toxicology test result as determined by federal regulations pertaining to drug testing;

(E) Violated a restriction on the licensee's practice imposed by the program or the licensee's board;

(F) Was admitted to the hospital for mental illness or adjudged to be mentally incompetent;

(G) Entered into a diversion agreement, but failed to participate in the program; or

(H) Was referred to the program but failed to enroll in the program; and

(g) At least weekly, submit a list of licensees who are enrolled in the program and a list of licensees who successfully complete the program to the monitoring entity established under ORS 676.195.

(2) When the program reports noncompliance to the monitoring entity, the report must include:

(a) A description of the noncompliance;

(b) A copy of a report from the independent third party who diagnosed the licensee under ORS 676.200 (2)(a) or subsection (5)(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.

(3) The program may not diagnose or treat licensees enrolled in the program.

(4) The diversion agreement required by subsection (1) of this section must:

(a) Require the licensee to consent to disclosure and exchange of information between the program, the licensee's board, the monitoring entity established under ORS 676.195, the licensee's employer, evaluators and treatment 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) Based on an individualized assessment, require that the licensee abstain from mind-altering or intoxicating substances or potentially addictive drugs, unless the drug is approved by the program and prescribed for a documented medical condition by a person authorized by law to prescribe the drug to the licensee;

(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 treatment plan approved by a third party;

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

- (g) Provide for employer monitoring of the licensee;
  - (h) Provide that the program may require an evaluation of the licensee's fitness to practice before removing the limits on the licensee's practice of the licensee's health profession;
  - (i) Require the licensee to submit to random drug or alcohol testing in accordance with federal regulations;
  - (j) Require the licensee to report at least weekly to the program regarding the licensee's compliance with the agreement;
  - (k) 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;
  - (L) Require the licensee to report applications for licensure in other states, changes in employment and changes in practice setting; and
  - (m) Provide that the licensee is responsible for the cost of evaluations, toxicology testing and treatment.
- (5)(a) A licensee of a board participating in the program may self-refer to the program.
- (b) The program shall require the licensee 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.
- (6) The authority shall adopt rules establishing a fee to be paid by the boards participating in the impaired health professional program for administration of the program.
- (7) The authority shall arrange for an independent third party to audit the program 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 authority may adopt rules to carry out this section. [2009 c.697 §1b; 2009 c.828 §73]

**Note:** 676.190 becomes operative July 1, 2010. See section 22, chapter 697, Oregon Laws 2009, as amended by section 76, chapter 828, Oregon Laws 2009.

**Note:** See second note under 676.185.

**676.195 Monitoring entity; reports to health professional licensing boards; audit; fees.** (1) The Oregon Health Authority shall contract with an independent third party to establish a monitoring entity for impaired professionals. The monitoring entity shall:

(a) Compare the weekly lists submitted by the impaired health professional program under ORS 676.190 to determine if any enrollees are no longer participating in the impaired health professional program; and

(b) Report to a health profession licensing board when:

(A) The monitoring entity receives a report from the impaired health professional program established under ORS 676.190 that a licensee is substantially noncompliant with the licensee's diversion agreement;

(B) Comparison of the weekly lists submitted by the impaired health professional program under ORS 676.190 shows that a licensee is no longer participating in the impaired health professional program; and

(C) The monitoring entity receives a report from the impaired health professional program under ORS 676.190 that a licensee referred by the board has completed the impaired health professional program.

(2) The monitoring entity may not have any contact with a licensee and has no discretion in deciding whether to make a report required under this section.

(3) The weekly lists submitted by the impaired health professional program under ORS 676.190 are exempt from disclosure under public records law.

(4) If a licensee self-refers to the impaired health professional program, the monitoring entity may not report the licensee's enrollment or successful completion of the impaired health professional program to the licensee's board.

(5) The authority shall arrange for an independent third party to audit the monitoring entity 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.

(6) The authority may adopt rules assessing fees to health profession licensing boards participating in the program for the costs of administering the monitoring entity. [2009 c.697 §1c; 2009 c.828 §74]

**Note:** 676.195 becomes operative July 1, 2010. See section 22, chapter 697, Oregon Laws 2009, as amended by section 76, chapter 828, Oregon Laws 2009.

**Note:** See second note under 676.185.

**676.200 Board participation in program; rules.** (1)(a) A health profession licensing board that is authorized by law to take disciplinary action against licensees may adopt rules opting to participate in the impaired health professional program established under ORS 676.190.

(b) A board may only refer impaired professionals to the impaired health professional program established under ORS 676.190 and may not establish the board's own impaired health professional program.

(c) A board may adopt rules establishing additional requirements for licensees referred to the impaired health professional program established under ORS 676.190.

(2) If a board participates in the impaired health professional program, the board shall establish by rule a procedure for referring licensees to the program. The procedure must provide that, before the board refers a licensee to the program, the board shall ensure that:

(a) An independent third party approved by the board to evaluate alcohol or substance abuse or mental health disorders has diagnosed the licensee with alcohol or substance abuse or a mental health disorder and provided the diagnosis and treatment options to the licensee and the board;

(b) The board has investigated to determine whether the licensee's professional practice while impaired has presented or presents a danger to the public; and

(c) 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.

(3) A board that participates in the impaired health professional program shall investigate reports received from the monitoring entity established under ORS 676.195. If the board finds that a licensee is substantially noncompliant with a diversion agreement entered into under ORS 676.190, the board may suspend, restrict, modify or revoke the licensee's license or end the licensee's participation in the impaired health professional program.

(4) A board may not discipline a licensee solely because the licensee:

a) Self-refers to or participates in the impaired health professional program;

b) Has been diagnosed with alcohol or substance abuse or a mental health disorder; or

(c) Used controlled substances before entry into the impaired health professional program, if the licensee did not practice while impaired. [2009 c.697 §1a]

**Note:** 676.200 becomes operative July 1, 2010. See section 22, chapter 697, Oregon Laws 2009, as amended by section 76, chapter 828, Oregon Laws 2009.

**Note:** See second note under 676.185.

**Note:** Sections 13 and 23, chapter 697, Oregon Laws 2009, provide:

**Sec. 13.** The Oregon Health Authority shall report on the impaired health professional program established under section 1b, chapter 697, Oregon Laws 2009 [676.190], to the Governor, to the Legislative Assembly as provided in ORS 192.245 and to health profession licensing boards as defined in section 1, chapter 697, Oregon Laws 2009 [676.185], on or before January 31, 2011. [2009 c.697 §13; 2009 c.828 §75]

**Sec. 23.** (1) Before the operative date specified in section 22, chapter 697, Oregon Laws 2009 [July 1, 2010], the Oregon Health Authority and the health profession licensing boards that opt to participate in the impaired health professional program established under section 1b, chapter 697, Oregon Laws 2009 [676.190], shall collaborate to transfer existing impaired professional programs and funding, and licensees who are subject to existing impaired professional programs, to the impaired health professional program established under section 1b, chapter 697, Oregon Laws 2009.

(2) When a licensee is transferred to the impaired health professional program established under section 1b, chapter 697, Oregon Laws 2009, pursuant to subsection (1) of this section, the program shall honor the terms of the licensee's existing diversion agreement if the terms of the agreement are consistent with the requirements of section 1b, chapter 697, Oregon Laws 2009. If the terms of the licensee's existing diversion agreement are not consistent with the requirements of section 1b, chapter 697, Oregon

Laws 2009, the diversion agreement entered into by the program and the licensee must comply with section 1b, chapter 697, Oregon Laws 2009.

(3) When a licensee who self-referred to an impaired professional program before the effective date of chapter 697, Oregon Laws 2009 [July 14, 2009], is transferred to the impaired health professional program established under section 1b, chapter 697, Oregon Laws 2009, pursuant to subsection (1) of this section:

(a) The program may not disclose the licensee's enrollment in the program to the licensee's board unless the licensee:

(A) Ceases to participate in the program before completing the program; or

(B) Engages in substantial noncompliance as described in section 1b (1)(f)(A) to (H), chapter 697, Oregon Laws 2009.

(b) The program may not disclose the licensee's successful completion of the program to the licensee's board. [2009 c.697 §23; 2009 c.828 §77]