



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

May 17, 2006

Martin Pittioni
State Board of Psychologist Examiners
3218 Pringle Road SE, Suite 130
Salem, OR 97302-630

Re: Opinion Request OP-2006-1

Dear Mr. Pittioni:

You asked us to interpret two exemptions to ORS 675.020, which requires that persons practicing psychology in the State of Oregon be licensed by the State Board of Psychologist Examiners. What follows are your specific questions, our short answers and the analysis on which those answers are based.

1. Does the exemption granted by ORS 675.090(1)(e) to persons “employed by a community mental health program * * * licensed or certified by the State of Oregon” cover employees of private, noninpatient providers that treat mental or nervous conditions and have been approved by the Department of Human Resources (DHS) pursuant to ORS 743.556(3)? If not, what are the limits on the services that can be provided by employees of approved noninpatient providers of that nature?

Employees of approved noninpatient providers are not exempt from the licensure requirement of ORS 675.020. Consequently, without a license, they may not provide services that constitute the practice of psychology as defined by statute and rule.

2. Does the exemption granted by ORS 675.090(1)(c) to persons “licensed or certified by the State of Oregon to provide mental health services” cover someone who is a “qualified mental health professional” under DHS administrative rules?

No. A person who meets the criteria for being a “qualified mental health professional” under DHS rules is not licensed or certified by the state and therefore is not exempt from the licensure requirement imposed by ORS 675.020.

3. What types of employment relationships are exempted from the licensing requirement by ORS 675.090(1)(e)? Specifically, is the exemption limited to persons who are “employees” of a listed entity or does it include non-employees who provide services to a listed entity as either contractors or “independent contractors”?

We conclude that the ORS 675.090(1)(e) exemption is not limited to “employees” but also applies to non-employee contractors so long as the contractor is performing the work authorized and paid for by the employing entity and is subject to the entity’s regulation and supervision. For that reason, an “independent contractor” would not come under the exemption.

Discussion

1. **Exemption under ORS 675.090(1)(e)**
 - a. **Employees of certified noninpatient providers of mental health services**

ORS 675.020 prohibits the practice of psychology in Oregon without a license from the State Board of Psychologist Examiners. ORS 675.090(1)(e) exempts from that requirement:

A person who is employed by a local, state or federal government agency, **or employed by a community mental health program** or drug and alcohol treatment program licensed or certified by the State of Oregon to the extent that the person’s activities and services are rendered within the person’s scope of employment and are performed within the confines of the employing agency and provided that the person does not use the title “psychologist” in connection with the activities authorized under this paragraph.

(Emphasis added.)

You ask whether that provision covers persons employed by private, noninpatient providers that treat mental or nervous conditions and have been approved by DHS pursuant to ORS 743.556(3). Responding to your question requires that we interpret the relevant statutes. The Oregon Supreme Court specified the method for doing so in *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610, 859 P2d 1143 (1993). We begin our analysis by examining the text and context, which includes other provisions and prior versions of the same statute and other related statutes. *Id.* at 611. The text is considered the best evidence of legislative intent. *Id.* In interpreting text, we consider statutory and judicial rules of construction that directly bear on how to read text, such as “not to insert what has been omitted, or to omit what has been inserted” and to give words of common usage their plain meaning. *Id.*; ORS 174.010 (when construing statute, courts must not insert what has been omitted or omit what has been inserted). If the legislature’s intent is clear from the text and context, we inquire no further. If, after examining the text and context, there remains more than one reasonable interpretation, we consult legislative history to determine whether it clarifies the legislature’s intent. *Id.* at 611-12.

The legislature has not defined “community mental health program” for purposes of ORS 675.090(1)(e). Nor is that phrase a term of common usage, which means that we do not look to its plain, natural and ordinary meaning. See *Tharp v. Psychiatric Sec. Review Bd.*, 338 Or 413, 423, 110 P3d 103 (2005) (where term did not have a common usage, court did not attempt to give it a plain, natural and ordinary meaning). Therefore, we examine statutes relating to mental

health services to determine the meaning of the term, particularly statutes relating to licensure or certification of mental health services, because only community health programs that are “licensed or certified” by the state are exempt. See *PGE*, 317 Or at 611 (specifying that context includes other related statutes).

ORS 430.610 through ORS 430.695 provide for the creation and oversight of community mental health and developmental disabilities programs. ORS 430.610(4) authorizes the state to help county governments to establish these programs. In turn, the programs are authorized to contract with private mental health providers in order to meet the mental health demands of a particular community. ORS 430.670. DHS is responsible for promulgating rules to govern the programs. ORS 430.640(1)(g). DHS also is responsible for promulgating rules to govern “the approval, for insurance reimbursement purposes, of noninpatient programs for mental or nervous conditions that are not related to the department or any county mental health program.” ORS 743.556(3). It is the DHS rules implementing ORS 430.610 to 430.695 and 743.556 that define the terms “community mental health program” and “non-inpatient provider.”

OAR 309-012-0140(3) defines “community mental health program” to mean:

[T]he organization of all services for persons with mental or emotional disturbances, operated by, or contractually affiliated with, a local mental health authority, and operated in a specific geographic area of the state under an agreement or contract with the Mental Health Developmental Disability Services Division.^{1/}

To be included within the definition of a “community mental health program,” a provider must be “operated by, or contractually affiliated with, a local mental health authority.”^{2/}

OAR 309-012-0140(12) defines “non-inpatient provider” to mean:

[A]n organization not contractually affiliated with the Division, a CMHP, or other contractor of the Division providing services under group health insurance coverage for mental or nervous conditions which seeks or maintains Division approval under ORS 743.556(3).

Those definitions make clear that the terms refer to two distinct types of entities that are certified by DHS for different purposes and under different substantive standards. Because the government operates or is contractually affiliated with community mental health program providers, it requires them to be certified. Division 14 of OAR chapter 309 establishes the standards for certification of community mental health programs. By contrast, DHS certifies noninpatient providers solely for the purpose of approving them for insurance reimbursement. Division 39 of OAR chapter 309 establishes the standards for insurance reimbursement of noninpatient providers.

The insurance statutes directing DHS to promulgate the rules in division 39 specify that they relate to the approval of “noninpatient programs * * * that are not related to the department

or any county mental health program.” ORS 743.556(3),(4). Reading that statute and OAR 309-012-0140(12) together, a noninpatient provider cannot be a community mental health program.

The statutes and rules regarding certification of community mental health programs and noninpatient providers were in effect when the legislature enacted the current version of ORS 675.090(1)(e). Or Laws 1995, ch 810 §3. The statutes in ORS chapters 430 and 743 provide no basis to conclude that a noninpatient provider may qualify as a community mental health program. DHS administrative rules leave no question that the two terms are mutually exclusive. Because the legislature expressly included community mental health programs in ORS 675.090(1)(e), but omitted noninpatient providers, we conclude that employees of noninpatient providers are not exempt from the licensing requirement. To conclude otherwise would be to insert a term that the legislature omitted, contrary to the dictates of *PGE* and ORS 174.010.

b. Limits on services that may be provided by employees of noninpatient providers

Next you ask what limits apply to the services that may be provided by an unlicensed employee of a certified noninpatient provider. An unlicensed person who is not exempt from the licensing requirement may not “practice psychology” in the state. ORS 675.020(1)(a). ORS 675.010(4) defines “practice of psychology” to mean:

[R]endering or offering to render supervision, consultation, evaluation or therapy services to individuals, groups, or organizations for the purpose of diagnosing or treating behavioral, emotional or mental disorders. “Practice of psychology” also includes delegating the administration and scoring of tests to technicians qualified by and under the direct supervision of a licensed psychologist.

OAR 858-010-0001 explains the statutory terms:

- (1) Supervision: overseeing a professional’s work on the diagnosis or treatment of mental disorders;
- (2) Consultation: conferring or giving expert advice on the diagnosis or treatment of mental disorders;
- (3) Evaluation: assessing mental disorders or mental functioning, including administering, scoring, and interpreting tests of mental abilities or personality;
- (4) Therapy: remedial treatment of mental disorder.

Unless otherwise exempt from licensure under ORS 675.010 to 675.150,^{3/} an unlicensed employee of a noninpatient provider who provides any of those services would be subject to the criminal penalties specified in ORS 675.990 and an injunction proceeding under ORS 675.150.^{4/}

2. Exemption under ORS 675.090(1)(c) for “qualified mental health professionals”

ORS 675.090(1)(c) exempts from the licensure requirement imposed by ORS 675.020:

A person who is licensed or certified by the State of Oregon to provide mental health services, provided that the services are rendered within the person’s lawful scope of practice and that the person does not use the title “psychologist” in connection with the activities authorized in this paragraph.

You ask whether this exemption applies to a person who meets the criteria for being a “qualified mental health professional” as defined by DHS rules. This requires us to interpret “person * * * licensed or certified by the State of Oregon to provide mental health services.” “Person” means “an individual human being.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY (unabridged) (1993) (WEBSTER’S) at 1686. “[L]icensed” is the past participle of “license,” which means “to grant or issue a license to (someone) usu. after special qualifications have been met” or, less formally, “to accord permission or consent to: ALLOW.” WEBSTER’S at 1304. “Certified” is the past participle of “certify,” which means “to designate as having met the requirements for pursuing a certain kind of study or work<~a student for college>” or “to attest by a certificate.” WEBSTER’S at 367. “Certificate” means “to furnish with, authorize, or license by a certificate.” *Id.* We look to the context of the statute to determine whether the legislature intended those terms to require a person to have a license or certificate or whether it intended them to require other, less formal forms of permission.

Both “licensed” and “certified” are used in two other subsections of ORS 675.090(1). We are guided by the rule that the same term in the same statute generally has the same meaning throughout the statute. *See Penland v. Redwood Sanitary Sewer Serv Dist*, 327 Or 1, 8, 956 P2d 964 (1998) (applying rule). ORS 675.090(1)(b)(C) exempts from the licensing requirement “[a] person pursuing certification or licensure * * * in any of the certified or licensed professions otherwise exempted from ORS 675.010 to 675.150.” “Certification” means “the act of certifying or certificating.” WEBSTER’S at 367. “Licensure” means “the granting of licenses esp[ecially] to practice a profession.” WEBSTER’S at 1304. ORS 675.090(1)(b)(C) uses the terms “certified” and “licensed” in the sense of having pursued and obtained a certificate or license to practice a profession. The terms have the same meaning in ORS 675.090(1)(d), which exempts a person who is “licensed, certified *or otherwise authorized* by the State of Oregon to render professional services.” (Emphasis added.) The phrase “otherwise authorized” would be superfluous if “licensed” or “certified” meant merely “authorized by the state.” *See* ORS 174.010 (instructing to omit no terms and to give effect to all statutory provisions).

Based on the foregoing, we conclude that “licensed” or “certified” means to have received a license or certificate to provide mental health services. “Mental health services” are services relating to a person’s mental or emotional health. *See* WEBSTER’S at 1411 (mental means “* * * relating to the total emotional and intellectual response of an organism to its environment * * *”); WEBSTER’S at 1043 (health is “the condition of the organism * * *.”)

We conclude that to qualify for the exemption in subsection (1)(c), an individual must hold a license or certificate from the State of Oregon to provide services relating to mental or emotional health. Licensed and certified individuals may render services “within the lawful scope of [their] practice” without running afoul of the licensing requirement to practice psychology.

ORS 675.090(1)(c) clearly applies to mental health professionals in disciplines other than psychology who are licensed or certified by their discipline’s professional regulatory board. *See, e.g.,* ORS 675.530 (licensure for social workers); ORS 675.537 (certification for clinical social workers); ORS 675.715 (licensure for professional counselors and marriage and family therapists); ORS 675.720(4)(a) (certification for intern professional counselors and marriage and family therapists).

This brings us to whether a person who meets the criteria for being a “qualified mental health professional” is licensed or certified by the state to provide mental health services. The phrase “qualified mental health professional” appears and is defined in numerous DHS rules.^{5/} Most concern community mental health programs and providers that contract directly with the division or noninpatient providers. None of the rules purports to license or certify individuals as qualified mental health professionals. Rather, the programs and providers must comply with specified standards, including standards for staff qualification. Insofar as DHS reviews staff qualifications, including whether an employee qualifies as a qualified mental health professional, it does so only to *certify the program*, not to certify the employee. We find no process for an individual to seek certification or licensure as a “qualified mental health professional” and that term appears to be relevant only in the context of a person’s employment with a certified employer. By contrast, some drug and alcohol treatment counselors do obtain individual licenses or certificates. *See* OAR 415-020-0075(12)(c) (opiate treatment providers must hold current license or certificate); OAR 415-051-0057(1)(c) (drug and alcohol outpatient and residential treatment providers must hold a certificate or license from the state).

We conclude that ORS 675.090(1)(c) does not exempt a person who meets the criteria to be a “qualified mental health professional,” because the state does not license or certify persons as “qualified mental health professionals.”^{6/}

3. Employment relationships that are exempt from licensure under ORS 675.090(1)(e).

ORS 675.090(1)(e) exempts from the licensing requirement persons “employed by [a listed entity] to the extent that the person’s activities and services are rendered within the person’s scope of employment and are performed within the confines of the employing agency * * *.” You ask whether the requirement that the person be “employed by” one of the listed entities means that the person must be an employee of that entity or whether it also includes contractors and independent contractors.

As dictated by *PGE*, the starting point of our analysis is the plain, natural and ordinary meaning of “employed by.” “Employed by” is the passive voice of the verb “employ,” the ordinary definition of which is:

[1]c: to use or engage the services of ([employ] a lawyer to straighten out a legal tangle); *also*: to provide with a job that pays wages or a salary or with a means of earning a living (he is [employ]ed by a local plumbing concern).

WEBSTER’S at 743. That definition does not distinguish between employees and persons providing services under contract. The first clause – “to use or engage the services of” – encompasses anyone who provides services, regardless of the exact nature of the employment relationship. It would apply to persons who hold a job in the employer’s organization as well as to persons who contract to provide services. The example – employing a lawyer to straighten out a legal tangle – illustrates the point, because a lawyer is hired to perform a specific task, rather than given a job.

By contrast, the second clause – “to provide with a job that pays wages or a salary or with a means of earning a living” – has a more restrictive meaning. It expressly requires the employer to provide the person with a “job” that pays wages, salary or other “means of earning a living.” The word “job” has two potentially relevant meanings. The first is:

1a: a piece of work <did odd [jobs] for the neighborhood housewives>
<gave up the marriage as a bad <job> <the [job] before her, that of phrasing and rephrasing a fugue * * * > <the bridge was a bigger and longer <job> than the firm expected.

Webster’s at 1217. That definition appears to be much broader than the meaning of “job” in the definition of “employed by,” because it need involve neither an employer nor payment, both of which are necessary elements of the second definition of “employed by.” The meaning of “job” which appears most relevant is:

5a: a regular remunerative employment: POSITION; SITUATION <got a part-time [job] as a waiter in a café> <holds a key [job] in the government>.

WEBSTER’S at 1217. Applying that meaning, the second definition of “employed by” means to provide a person with a regular paid position within an employer’s organization. Consequently, there are two possible plain meanings of the phrase “employed by” that could apply in ORS 675.090(1)(e).

We next examine the context of the provision to attempt to determine which, if either, of those meanings the legislature intended. Context includes other provisions and prior versions of the same statute, related statutes, and case law interpreting those statutes. *PGE* at 611. ORS 675.090(1)(g) exempts school psychologists “if the person is an employee of an educational institution.” The plain, natural and ordinary definition of “employee” is “one employed by another usu. in a position below the executive level and usu. for wages.” WEBSTER’S at 743.

That definition is more similar to the second definition of “employed by” than to the first. There is a rule of statutory construction that assumes that when the legislature used different, but similar, language in the same statute, it intended distinct meanings. *See State v. Pine*, 336 Or 194, 205, 82 P3d 130 (2003) (court assumed the legislature intended distinct meanings by using different, but similar, terms in same statute); *PGE*, 317 Or at 611 (citing *Emerald PUD v. PP&L*, 302 Or 256, 269, 729 P2d 552 (1986) and *Racing Com. v. Multnomah Kennel Club*, 242 Or 572, 586, 411 P2d 65 (1966) for proposition that use of a term in one section of a statute and not another indicates a purposeful omission). That rule would suggest that the legislature intended “employed by” to mean “to use or engage the services of,” because it would have used “employee” if it intended a narrower meaning of “employed by.”

On the other hand, it may be that the legislature used “employed by” rather than “employee” in ORS 675.090(1)(e) because it was defining the relationship from the perspective of the employer, rather than because it intended a different meaning. We think that conclusion plausible, particularly because the term “employed by” is ordinarily used to characterize the employment relationship of an “employee” but not persons who provide services on contract. *See WEBSTER’S* at 495 (defining a “contractor” as “one that formally undertakes to do something for another * * * one that performs work * * * according to a contractual agreement at a price predetermined by his own calculations.”); *Id.* at 1148 (defining “independent contractor” as “one that contracts to do work or perform a service for another and that retains total and free control over the means or method used in doing the work or performing the service.”)

We return to other relevant text. Reading ORS 675.090(1)(e) as a whole, even if a person is “employed by” a listed entity, he or she is exempt only “to the extent that the person’s activities and services are rendered within the person’s scope of employment and are performed within the confines of the employing agency * * * .” That language further limits the exemption. We first address the phrase “scope of employment.”

The relevant ordinary definition of “scope” is “**4a:** the general range or extent of cognizance, consideration, activity, or influence * * * .” *WEBSTER’S* at 2035. In other words, “scope” is the range within which the person may act. That range is circumscribed by the term “employment,” the relevant plain meaning of which is “**2a(1):** work (as in customary trade) paid for by an employer < [employment] as a mechanic > < in the [employment] of the contractor. > ” *WEBSTER’S* at 743. Thus, for purposes of ORS 675.090(1)(e), a person’s activities and services are rendered within his or her “scope of employment” only when the person is performing work that a listed entity authorizes and pays for (we assume a listed entity only pays for work that it authorized). That limitation clarifies that a person’s employment with a listed entity does not confer an exemption upon that person in all circumstances, but only when performing work authorized and paid for by a listed entity.

We next turn to the second limitation in ORS 675.090(1)(e) – that a person’s activities and services must be “performed within the confines of the employing agency[.]”⁷¹ “Within” means “on the inside * * * enclose[ed] or contain[ed] * * * not going outside the scope or influence of: subject to.” *WEBSTER’S* at 2627. “Confine” means “**3. usu pl:** constricting limits (as of an area of activity or operation): **SCOPE** * * * **4. usu pl:** enclosed or otherwise limited in

space or area.” WEBSTER’S at 476. In the context of ORS 675.090(1)(e), “within the confines of the employing agency” could mean either that the exemption is limited to work performed inside the physical workplace of a listed entity or to the performance of activities and services inside the scope of the constricting limits imposed by a listed entity.

Once again the legislature used a phrase that has two potentially relevant meanings and once again we contrast the language in ORS 675.090(1)(e) with the language in ORS 675.090(1)(g), the school psychologist exemption. The legislature limited that exemption to “activities within a school setting.” The relevant definition of “setting” is “**4a:** the temporal or spatial environment of the action of a narrative * * * **b:** the scenic environment indoors or out including the physical surroundings * * * within which a scene of a play or motion picture is enacted. WEBSTER’S at 2079. Although the legislature may have used the term imprecisely to apply outside the dramatic context, it is clear that it meant “setting” as in “physical surroundings.” Because there are no countervailing considerations in this instance to applying the rule that where the legislature used similar, but different language in the same statute the legislature intended distinct meanings, we conclude that the rule applies. *State v. Pine*, 336 Or at 205. Consequently, we conclude that the legislature intended “within the confines” to mean the performance of activities and services inside the scope of the constricting limits imposed by a listed entity.

That limitation must mean something more than that the person is doing the work authorized and paid for by a listed entity, because that much is subsumed in the phrase “scope of employment” and we assume that the legislature did not intend “performed within the confines” to be redundant. *See* ORS 174.010 (when construing a statute we must give effect to all provisions). Instead, it appears to mean that a person’s *performance* of their activities and services must fall within the constrictions and limitations of the listed entity. The plain language of the limitation supports that interpretation, because it limits the exemption to activities and services “*performed* within the confines of the employing agency.” (Emphasis added.) The limitation necessarily assumes, then, that the listed entity has the right and ability to control the performance of an exempted person’s work.

In other words, the legislature intended ORS 675.090(1)(e) to exempt only persons who are subject to the control of a listed entity in the performance of their activities and services. The second clause of the definition of “employed by” – to provide a person with a regular paid position within an employer’s organization – is consistent with that intent, because an employer has the right and ability to control the performance of people within its organization. The same is not necessarily true of the first clause – to use or engage the services of. That clause is broad enough to include people who are not subject to the control of a listed entity as to the performance of their services, namely, “independent contractors.” However, the legislature may have intended “employed by” in its broader sense and intended the other language in ORS 675.090(1)(e) to winnow out people whose performance is not controlled by a listed entity. That would be particularly likely if there are people who are not employed within a listed entity’s organization, but whose performances (by the terms of their contracts) are subject to the direction and control of the entity. It is conceivable that there are people who have such an employment relationship with a listed entity and text and context do not rule out that the

legislature intended those people to be exempt from the licensing requirement. Because, after analysis of the text and context of ORS 675.090(1)(e), we cannot say with certainty what the legislature intended “employed by” to mean, we examine the legislative history.

The legislature enacted the current version of ORS 675.090 in 1995 as part of Senate Bill 918 (1995). Eric Johnson, the President of the Oregon Psychological Association, and Nan Heim, also representing the Oregon Psychological Association, were actively involved in the creation of SB 918. In written testimony they explained that:

What * * * [SB 918] does in essence is to prohibit persons from practicing psychology for a fee unless they are licensed in a profession and working within the scope of that profession, *or unless they work in programs certified or licensed by the State of Oregon.*

* * * * *

SB 918 exempts the following professionals and mental health care providers because they are already licensed or certified by the state, *or because they are regulated and supervised in state programs* or educational institutions:

[G]overnment employees * * * [and] persons who are employed in state licensed or certified community mental health programs * * *.

Testimony of Eric Johnson and Nan Heim, Minutes, Senate Health and Human Services Committee (SB 918), April 7, 1995, Exhibit B at 2 (emphasis added).

That history explains that the exemption for persons “employed by” an approved entity was predicated on their being subject to “regulation and supervision” by that entity. It confirms that regulation and control by listed entities is the key to the exemption and accords with our reading of the text and context.^{8/} It also tells us that the legislature was concerned only with the degree of oversight and not with other particulars of the employment relationship.

Based on the text, context, and legislative history, we conclude that a person is “employed by” a listed entity under ORS 675.090(1)(e) if the person is paid to provide services to the entity *and* is regulated and supervised by the entity in performing those services.

With that in mind, we turn to your specific question whether a person who contracts to provide services to a listed entity is “employed by” the entity under ORS 675.090(1)(e). A person is a “contractor” in the ordinary sense if he performs work “according to a contractual agreement at a price predetermined by his own calculations.” WEBSTER’S at 495. That definition speaks to how the person is paid, rather than to whether the person is regulated and controlled by the employer in performing his services. Therefore, a contractor could be “employed by” a listed entity and would be exempt if the entity regulated and supervised his or her performance.

You also ask whether a person who is an “independent contractor” could be exempt from the licensing requirement. The phrase “independent contractor” often refers to a legal conclusion based on specific factual requirements and has different legal ramifications depending on the circumstance in which it is used. We assume, however, that you mean “independent contractor” in the plain, natural, and ordinary sense as “one that contracts to do work or perform a service for another and that retains total and free control over the means or methods used in doing the work or performing the service.” WEBSTER’S at 1148; *see also Walter v. Scherzinger*, 339 Or 408, 420, 121 P3d 644 (independent contractors work “according to [their] own methods, and without being subject to the control of [the] employer.”). An “independent contractor” in that sense is not subject to the regulation and supervision of the entity in performing his or her services. Accordingly, ORS 675.090(1)(e) does not exempt “independent contractors” from the licensing requirement.

Sincerely,

Donald C. Arnold
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DCA:DNH:AEA:clr/GEN259659

^{1/} Several other DHS rules define “community mental health program” or “community mental health and disability services program.” Although some of those definitions differ slightly, all include the language “operated by, or contractually affiliated with a local mental health authority.” That part of the definition is relevant to the issue we address here. Moreover, because ORS 675.090(1)(e) specifically applies to state certified community mental health programs, the definition contained in the certification rules is particularly relevant.

^{2/} “Local Mental Health Authority,” as defined in OAR 309-012-0140(9), means

[T]he county court or board of county commissioners of one or more counties who operate a community mental health program, or in the case of a Native American reservation, the tribal council, or if the county declines to operate or contract for all or part of a community mental health program, the board of directors of a public agency or private corporation with whom the Division directly contracts to provide the mental health services program area.

^{3/} *See* ORS 675.090.

^{4/} DHS standards for noninpatient providers to obtain certification allow certain unlicensed and non-exempt employees to provide services that the Psychologist Board’s statutes and rules prohibit. For example, OAR 309-039-0540(3)(a) provides that employees of a certified noninpatient provider who are termed “qualified mental health professionals” may “provide individual, group and family therapy.” ORS 675.010(4) and OAR 858-010-0001(4), however, prohibit unlicensed, non-exempt persons from providing therapy.

^{5/} Two definitions of “qualified mental health professional” appear in over half of those rules:

“Qualified Mental Health Professional” or “QMHP” means Licensed Medical Practitioner (LMP) or any other person meeting the following minimum qualifications as documented by the LMHA or designee:

- (a) Graduate degree in psychology;
- (b) Bachelor’s degree in nursing and licensed by the State of Oregon;
- (c) Graduate degree in social work;
- (d) Graduate degree in behavioral science field;
- (e) Graduate degree in recreational, art, or music therapy; or
- (f) Bachelor’s degree in occupational therapy and licensed by the State of Oregon; and
- (g) Whose education and experience demonstrates the competencies to identify precipitating events; gather histories of mental and physical disabilities, alcohol and drug use, past mental health services and criminal justice contacts; assess family, social and work relationships; conduct a mental status examination; document a multiaxial DSM diagnosis; write and supervise a Treatment Plan; conduct a Comprehensive Mental Health Assessment; and provide individual, family, and/or Group therapy within the scope of his or her practice.

OAR 309-016-0005(59); 309-016-0310(38); 309-032-1110(72); 309-032-0535(28); 309-035-0260(37); 309-039-0510(12); 309-039-0710(15); 309-048-0060(19).

^{6/} Returning to your first question, a “qualified mental health professional” employed by a certified community mental health provider would qualify for exemption under ORS 675.090(1)(e), as an employee of a certified community mental health program, but not ORS 675.090(1)(c). A “qualified mental health professional” employed by a noninpatient provider would not qualify for either exemption.

^{7/} The legislature used the phrase “employing agency,” which could be read to exclude CMHPs and drug and alcohol treatment programs from this requirement. The most reasonable reading of the exemption as a whole, however, is that all of its requirements apply to all listed entities. Originally, this exemption applied only to people employed by government agencies, thus it used the language “employing agency.” Or Laws 1973, ch 777, § 8. When the legislature added CMHPs and drug and alcohol treatment programs to the exemption in 1995, the legislature neglected to change the language, most likely as an oversight. Or Laws 1995, ch 810, § 3. We do not read the provision to place additional requirements on government agencies that do not apply to CMHPs and drug and alcohol treatment programs.

^{8/} We note that the Oregon Court of Appeals recently cautioned against reliance on the statements of non-legislator witnesses to determine legislative intent when that intent was not reflected in the wording of the statute. *Oregonians for Sound Econ. Policy v. State Accident Ins. Fund Corp.*, 187 Or App 621, 639-40, 69 P3d 742, *rev den* 336 Or 60 (2003). Here, however, we rely on statements that are reflected in the wording of the statute.