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**SENATE BILL 5496**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Senators Muzzall and Cleveland

AN ACT Relating to health professional monitoring programs by clarifying the application of the programs and confidentiality protections for program participants, and updating terminology, definitions, and references; amending RCW 18.22.250, 18.32.534, 18.57.015, 18.71.300, 18.71.310, 18.71.315, 18.71.320, 18.92.047, and 18.130.070; and reenacting and amending RCW 18.130.175.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

**Sec.**  RCW 18.22.250 and 2017 c 22 s 1 are each amended to read as follows:

(1) To implement ((~~an impaired~~)) a podiatric ((~~practitioner~~)) physician health program as authorized by RCW 18.130.175, the board shall enter into a contract with a physician health program or a voluntary substance ((~~abuse~~)) use disorder monitoring program. The ((~~impaired~~)) podiatric ((~~practitioner~~)) physician health program may include any or all of the following:

(a) Contracting with providers of treatment programs;

(b) Receiving and evaluating reports of suspected impairment from any source;

(c) Intervening in cases of verified impairment;

(d) Referring impaired podiatric ((~~practitioners~~)) physicians to treatment programs;

(e) Monitoring the treatment and rehabilitation of impaired podiatric ((~~practitioners~~)) physicians including those ordered by the board;

(f) Providing education, prevention of impairment, posttreatment monitoring, and support of rehabilitated impaired podiatric ((~~practitioners~~)) physicians; and

(g) Performing other related activities as determined by the board.

(2) A contract entered into under subsection (1) of this section shall be financed by a surcharge of fifty dollars per year on each license issuance or renewal to be collected by the department from every podiatric ((~~practitioner~~)) physician licensed under this chapter. These moneys must be placed in the health professions account to be used solely for implementation of the ((~~impaired~~)) podiatric ((~~practitioner~~)) physician health program.

**Sec.**  RCW 18.32.534 and 2013 c 129 s 1 are each amended to read as follows:

(1) To implement ((~~an impaired~~)) a dentist health program as authorized by RCW 18.130.175, the commission shall enter into a contract with a physician health program or a voluntary substance ((~~abuse~~)) use disorder monitoring program. The ((~~impaired~~)) dentist health program may include any or all of the following:

(a) Contracting with providers of treatment programs;

(b) Receiving and evaluating reports of suspected impairment from any source;

(c) Intervening in cases of verified impairment;

(d) Referring impaired dentists to treatment programs;

(e) Monitoring the treatment and rehabilitation of impaired dentists including those ordered by the commission;

(f) Providing education, prevention of impairment, posttreatment monitoring, and support of rehabilitated impaired dentists; and

(g) Performing other related activities as determined by the commission.

(2) A contract entered into under subsection (1) of this section shall be financed by a surcharge of up to fifty dollars per year on each license issuance or renewal to be collected by the department of health from every dentist licensed under this chapter ((~~18.32 RCW~~)). These moneys shall be placed in the health professions account to be used solely for the implementation of the ((~~impaired~~)) dentist health program.

**Sec.**  RCW 18.57.015 and 2016 c 42 s 1 are each amended to read as follows:

(1) To implement an ((~~impaired~~)) osteopathic ((~~practitioner~~)) physician health program as authorized by RCW 18.130.175, the board shall enter into a contract with a physician health program or a voluntary substance ((~~abuse~~)) use disorder monitoring program. The ((~~impaired~~)) osteopathic ((~~practitioner~~)) physician health program may include any or all of the following:

(a) Contracting with providers of treatment programs;

(b) Receiving and evaluating reports of suspected impairment from any source;

(c) Intervening in cases of verified impairment;

(d) Referring impaired osteopathic ((~~practitioners~~)) physicians to treatment programs;

(e) Monitoring the treatment and rehabilitation of impaired osteopathic ((~~practitioners~~)) physicians including those ordered by the board;

(f) Providing education, prevention of impairment, posttreatment monitoring, and support of rehabilitated impaired osteopathic ((~~practitioners~~)) physicians; and

(g) Performing other related activities as determined by the board.

(2) A contract entered into under subsection (1) of this section shall be financed by a surcharge of fifty dollars per year on each license issuance or renewal to be collected by the department from every osteopathic ((~~practitioner~~)) physician licensed under this chapter. These moneys shall be placed in the health professions account to be used solely for the implementation of the ((~~impaired~~)) osteopathic ((~~practitioner~~)) physician health program.

**Sec.**  RCW 18.71.300 and 1998 c 132 s 3 are each amended to read as follows:

The definitions in this section apply throughout RCW 18.71.310 through 18.71.340 unless the context clearly requires otherwise.

(1) "Entity" means a nonprofit corporation formed by physicians who have expertise in ((~~the areas of alcohol abuse, drug abuse, alcoholism, other drug addictions, and~~)) substance use disorders, mental illness, and other potentially impairing health conditions and who broadly represent the physicians of the state and that has been designated to perform any or all of the activities set forth in RCW 18.71.310(1) by the commission.

(2) "Impaired" or "impairment" means the inability to practice medicine with reasonable skill and safety to patients by reason of ((~~physical or mental illness including alcohol abuse, drug abuse, alcoholism, other drug addictions, or other debilitating conditions~~)) a health condition.

(3) "((~~Impaired physician~~)) Physician health program" means the program for the prevention, detection, intervention, referral for evaluation and treatment, and monitoring((~~, and treatment~~)) of impaired or potentially impaired physicians established by the commission pursuant to RCW 18.71.310(1).

(4) "Physician" ((~~or "practitioner"~~)) means a person licensed under this chapter, chapter 18.71A RCW, or a professional licensed under another chapter of Title 18 RCW whose disciplining authority has a contract with the entity ((~~for an impaired practitioner program~~)) for its license holders.

((~~(5) "Treatment program" means a plan of care and rehabilitation services provided by those organizations or persons authorized to provide such services to be approved by the commission or entity for impaired physicians taking part in the impaired physician program created by RCW 18.71.310.~~))

**Sec.**  RCW 18.71.310 and 2009 c 98 s 1 are each amended to read as follows:

(1) The commission shall enter into a contract with the entity to implement ((~~an impaired~~)) a physician health program. The commission may enter into a contract with the entity for up to six years in length. The ((~~impaired~~)) physician health program may include any or all of the following:

(a) Entering into relationships supportive of the ((~~impaired~~)) physician health program with professionals who provide either evaluation or treatment services, or both;

(b) Receiving and assessing reports of suspected impairment from any source;

(c) Intervening in cases of verified impairment, or in cases where there is reasonable cause to suspect impairment;

(d) Upon reasonable cause, referring suspected or verified impaired physicians for evaluation or treatment;

(e) Monitoring the treatment and rehabilitation of ((~~impaired physicians~~)) participants including those ordered by the commission;

(f) Providing monitoring and ((~~continuing treatment and rehabilitative~~)) care management support of ((~~physicians~~)) program participants;

(g) Performing such other activities as agreed upon by the commission and the entity; and

(h) Providing prevention and education services.

(2) A contract entered into under subsection (1) of this section shall be financed by a surcharge of fifty dollars per year on each license renewal or issuance of a new license to be collected by the department of health from every physician ((~~and~~)), surgeon, and physician assistant licensed under this chapter in addition to other license fees. These moneys shall be placed in the impaired physician account to be used solely ((~~for the implementation of~~)) to support the ((~~impaired~~)) physician health program.

(3) All funds in the impaired physician account shall be paid to the contract entity within sixty days of deposit.

**Sec.**  RCW 18.71.315 and 1998 c 132 s 12 are each amended to read as follows:

The impaired physician account is created in the custody of the state treasurer. All receipts from RCW 18.71.310 from license surcharges on physicians and physician assistants shall be deposited into the account. Expenditures from the account may only be used for the ((~~impaired~~)) physician health program under this chapter. Only the secretary of health or the secretary's designee may authorize expenditures from the account. No appropriation is required for expenditures from this account.

**Sec.**  RCW 18.71.320 and 1998 c 132 s 5 are each amended to read as follows:

The entity shall develop procedures in consultation with the commission for:

(1) Periodic reporting of statistical information regarding ((~~impaired~~)) physician health program participant activity;

(2) Periodic disclosure and joint review of such information as the commission may deem appropriate regarding reports received, contacts or investigations made, and the disposition of each report. However, the entity shall not disclose any personally identifiable information except as provided in subsections (3) and (4) of this section;

(3) Immediate reporting to the commission of the name and results of any contact or investigation regarding any suspected or verified impaired physician who is reasonably believed probably to constitute an imminent danger to himself or herself or to the public;

(4) Reporting to the commission, in a timely fashion, any suspected or verified impaired physician who fails to cooperate with the entity, fails to submit to evaluation or treatment, or whose impairment is not substantially alleviated through treatment, or who, in the opinion of the entity, is probably unable to practice medicine with reasonable skill and safety;

(5) Informing each participant of the ((~~impaired~~)) physician health program of the program procedures, the responsibilities of program participants, and the possible consequences of noncompliance with the program.

**Sec.**  RCW 18.92.047 and 2016 c 42 s 3 are each amended to read as follows:

(1) To implement ((~~an impaired~~)) a veterinarian health program as authorized by RCW 18.130.175, the veterinary board of governors shall enter into a contract with a physician health program or a voluntary substance ((~~abuse~~)) use disorder monitoring program. The ((~~impaired~~)) veterinarian health program may include any or all of the following:

(a) Contracting with providers of treatment programs;

(b) Receiving and evaluating reports of suspected impairment from any source;

(c) Intervening in cases of verified impairment;

(d) Referring impaired veterinarians to treatment programs;

(e) Monitoring the treatment and rehabilitation of impaired veterinarians including those ordered by the board;

(f) Providing education, prevention of impairment, posttreatment monitoring, and support of rehabilitated impaired veterinarians; and

(g) Performing other related activities as determined by the board.

(2) A contract entered into under subsection (1) of this section shall be financed by a surcharge of twenty-five dollars per year on each license issuance or renewal of a new license to be collected by the department of health from every veterinarian licensed under this chapter ((~~18.92 RCW~~)). These moneys shall be placed in the health professions account to be used solely for the implementation of the ((~~impaired~~)) veterinarian health program.

**Sec.**  RCW 18.130.070 and 2007 c 273 s 23 are each amended to read as follows:

(1)(a) The secretary shall adopt rules requiring every license holder to report to the appropriate disciplining authority any conviction, determination, or finding that another license holder has committed an act which constitutes unprofessional conduct, or to report information to the disciplining authority, ((~~an impaired practitioner program,~~)) physician health program, or voluntary substance ((~~abuse~~)) use disorder monitoring program approved by the disciplining authority, which indicates that the other license holder may not be able to practice his or her profession with reasonable skill and safety to consumers as a result of a mental or physical condition.

(b) The secretary may adopt rules to require other persons, including corporations, organizations, health care facilities, ((~~impaired practitioner~~)) physician health programs, or voluntary substance ((~~abuse~~)) use disorder monitoring programs approved by ((~~a~~)) the disciplining authority, and state or local government agencies, to report:

(i) Any conviction, determination, or finding that a license holder has committed an act which constitutes unprofessional conduct; or

(ii) Information to the disciplining authority, ((~~an impaired practitioner~~)) physician health program, or voluntary substance ((~~abuse~~)) use disorder monitoring program approved by the disciplining authority, which indicates that the license holder may not be able to practice his or her profession with reasonable skill and safety to consumers as a result of a mental or physical condition.

(c) If a report has been made by a hospital to the department pursuant to RCW 70.41.210 or by an ambulatory surgical facility pursuant to RCW 70.230.110, a report to the disciplining authority is not required. To facilitate meeting the intent of this section, the cooperation of agencies of the federal government is requested by reporting any conviction, determination, or finding that a federal employee or contractor regulated by the disciplining authorities enumerated in this chapter has committed an act which constituted unprofessional conduct and reporting any information which indicates that a federal employee or contractor regulated by the disciplining authorities enumerated in this chapter may not be able to practice his or her profession with reasonable skill and safety as a result of a mental or physical condition.

(d) Reporting under this section is not required by:

(i) Any entity with a peer review committee, quality improvement committee or other similarly designated professional review committee, or by a license holder who is a member of such committee, during the investigative phase of the respective committee's operations if the investigation is completed in a timely manner; or

(ii) ((~~An impaired practitioner~~)) A physician health program or voluntary substance ((~~abuse~~)) use disorder monitoring program approved by a disciplining authority under RCW 18.130.175 if the license holder is currently enrolled in the ((~~treatment~~)) program, so long as the license holder actively participates in the ((~~treatment~~)) program and the license holder's impairment does not constitute a clear and present danger to the public health, safety, or welfare.

(2) If a person fails to furnish a required report, the disciplining authority may petition the superior court of the county in which the person resides or is found, and the court shall issue to the person an order to furnish the required report. A failure to obey the order is a contempt of court as provided in chapter 7.21 RCW.

(3) A person is immune from civil liability, whether direct or derivative, for providing information to the disciplining authority pursuant to the rules adopted under subsection (1) of this section.

(4)(a) The holder of a license subject to the jurisdiction of this chapter shall report to the disciplining authority:

(i) Any conviction, determination, or finding that he or she has committed unprofessional conduct or is unable to practice with reasonable skill or safety; and

(ii) Any disqualification from participation in the federal medicare program, under Title XVIII of the federal social security act or the federal medicaid program, under Title XIX of the federal social security act.

(b) Failure to report within thirty days of notice of the conviction, determination, finding, or disqualification constitutes grounds for disciplinary action.

**Sec.**  RCW 18.130.175 and 2019 c 446 s 43 and 2019 c 444 s 21 are each reenacted and amended to read as follows:

(1) In lieu of disciplinary action under RCW 18.130.160 and if the disciplining authority determines that the unprofessional conduct may be the result of ((~~substance abuse~~)) an applicable impairing or potentially impairing health condition, the disciplining authority may refer the license holder to a physician health program or a voluntary substance ((~~abuse~~)) use disorder monitoring program approved by the disciplining authority.

The cost of ((~~the~~)) evaluation and treatment shall be the responsibility of the license holder, but the responsibility does not preclude payment by an employer, existing insurance coverage, or other sources. ((~~Primary alcoholism or other drug addiction~~)) Evaluation and treatment shall be provided by ((~~approved treatment programs under RCW 70.96A.020 or by any other provider~~)) providers approved by the entity or the commission. ((~~However, nothing shall prohibit the disciplining authority from approving additional services and programs as an adjunct to primary alcoholism or other drug addiction treatment.~~)) The disciplining authority may also approve the use of out-of-state programs. Referral of the license holder to the physician health program or voluntary substance use disorder monitoring program shall be done only with the consent of the license holder. Referral to the physician health program or voluntary substance use disorder monitoring program may also include probationary conditions for a designated period of time. If the license holder does not consent to be referred to the program or does not successfully complete the program, the disciplining authority may take appropriate action under RCW 18.130.160 which includes suspension of the license unless or until the disciplining authority, in consultation with the director of the ((~~voluntary substance abuse monitoring~~)) applicable program, determines the license holder is able to practice safely. The secretary shall adopt uniform rules for the evaluation by the disciplining authority of ((~~a relapse or program violation on the part of a license holder in the substance abuse monitoring program~~)) return to substance use or program violation on the part of a license holder in the program. The evaluation shall encourage program participation with additional conditions, in lieu of disciplinary action, when the disciplining authority determines that the license holder is able to continue to practice with reasonable skill and safety.

(2) In addition to approving the physician health program or the voluntary substance ((~~abuse~~)) use disorder monitoring program((~~s~~)) that may receive referrals from the disciplining authority, the disciplining authority may establish by rule requirements for participation of license holders who are not being investigated or monitored by the disciplining authority ((~~for substance abuse~~)). License holders voluntarily participating in the approved programs without being referred by the disciplining authority shall not be subject to disciplinary action under RCW 18.130.160 for their ((~~substance abuse~~)) impairing or potentially impairing health condition, and shall not have their participation made known to the disciplining authority, if they meet the requirements of this section and the program in which they are participating.

(3) The license holder shall sign a waiver allowing the program to release information to the disciplining authority if the licensee does not comply with the requirements of this section or is unable to practice with reasonable skill or safety. The ((~~substance abuse~~)) physician health program or voluntary substance use disorder program shall report to the disciplining authority any license holder who fails to comply with the requirements of this section or the program or who, in the opinion of the program, is unable to practice with reasonable skill or safety. License holders shall report to the disciplining authority if they fail to comply with this section or do not complete the program's requirements. License holders may, upon the agreement of the program and disciplining authority, reenter the program if they have previously failed to comply with this section.

(4) ((~~The treatment and pretreatment records of license holders referred to or voluntarily participating in approved programs shall be confidential, shall be exempt from chapter 42.56 RCW, and shall not be subject to discovery by subpoena or admissible as evidence except for monitoring records reported to the disciplining authority for cause as defined in subsection (3) of this section. Monitoring records relating to license holders referred to the program by the disciplining authority or relating to license holders reported to the disciplining authority by the program for cause, shall be released to the disciplining authority at the request of the disciplining authority. Records held by the disciplining authority under this section shall be exempt from chapter 42.56 RCW and shall not be subject to discovery by subpoena except by the license holder.~~

~~(5) "Substance abuse," as used in this section, means the impairment, as determined by the disciplining authority, of a license holder's professional services by an addiction to, a dependency on, or the use of alcohol, legend drugs, or controlled substances.~~

~~(6)~~)) Program records including, but not limited to, case notes, progress notes, laboratory reports, evaluation and treatment records, electronic and written correspondence within the program, and between the program and the participant or other involved entities including, but not limited to, employers, credentialing bodies, referents, or other collateral sources, relating to license holders referred to or voluntarily participating in approved programs are confidential and exempt from disclosure under chapter 42.56 RCW and shall not be subject to discovery by subpoena or admissible as evidence except:

(a) To defend any civil action by a license holder regarding the restriction or revocation of that individual's clinical or staff privileges, or termination of a license holder's employment. In such an action, the program will, upon subpoena issued by either party to the action, and upon the requesting party seeking a protective order for the requested disclosure, provide to both parties of the action written disclosure that includes the following information:

(i) Verification of a health care professional's participation in the physician health program or voluntary substance use disorder monitoring program as it relates to aspects of program involvement at issue in the civil action;

(ii) The dates of participation;

(iii) Whether or not the program identified an impairing or potentially impairing health condition;

(iv) Whether the health care professional was compliant with the requirements of the physician health program or voluntary substance use disorder monitoring program; and

(v) Whether the health care professional successfully completed the physician health program or voluntary substance use disorder monitoring program; and

(b) Records provided to the disciplining authority for cause as described in subsection (3) of this section. Program records relating to license holders mandated to the program, through order or by stipulation, by the disciplining authority or relating to license holders reported to the disciplining authority by the program for cause, must be released to the disciplining authority at the request of the disciplining authority. Records held by the disciplining authority under this section are exempt from chapter 42.56 RCW and are not subject to discovery by subpoena except by the license holder.

(5) This section does not affect an employer's right or ability to make employment-related decisions regarding a license holder. This section does not restrict the authority of the disciplining authority to take disciplinary action for any other unprofessional conduct.

((~~(7)~~)) (6) A person who, in good faith, reports information or takes action in connection with this section is immune from civil liability for reporting information or taking the action.

(a) The immunity from civil liability provided by this section shall be liberally construed to accomplish the purposes of this section ((~~and the~~)), and applies to both license holders and students and trainees when students and trainees of the applicable professions are served by the program. The persons entitled to immunity shall include:

(i) An approved ((~~monitoring treatment~~)) physician health program or voluntary substance use disorder monitoring program;

(ii) The professional association ((~~operating~~)) affiliated with the program;

(iii) Members, employees, or agents of the program or ((~~association~~)) associations;

(iv) Persons reporting a license holder as being possibly impaired or providing information about the license holder's impairment; and

(v) Professionals supervising or monitoring the course of the ((~~impaired license holder's~~)) program participant's treatment or rehabilitation.

(b) The courts are strongly encouraged to impose sanctions on ((~~clients~~)) program participants and their attorneys whose allegations under this subsection are not made in good faith and are without either reasonable objective, substantive grounds, or both.

(c) The immunity provided in this section is in addition to any other immunity provided by law.

((~~(8)~~)) (7) In the case of a person who is applying to be a substance use disorder professional or substance use disorder professional trainee certified under chapter 18.205 RCW, if the person is:

(a) Less than one year in recovery from a substance use disorder, the duration of time that the person may be required to participate in ((~~the voluntary~~)) an approved substance ((~~abuse~~)) use disorder monitoring program may not exceed the amount of time necessary for the person to achieve one year in recovery; or

(b) At least one year in recovery from a substance use disorder, the person may not be required to participate in the approved substance ((~~abuse~~)) use disorder monitoring program.

((~~(9)~~)) (8) In the case of a person who is applying to be an agency affiliated counselor registered under chapter 18.19 RCW and practices or intends to practice as a peer counselor in an agency, as defined in RCW 18.19.020, if the person is:

(a) Less than one year in recovery from a substance use disorder, the duration of time that the person may be required to participate in the ((~~voluntary~~)) approved substance ((~~abuse~~)) use disorder monitoring program may not exceed the amount of time necessary for the person to achieve one year in recovery; or

(b) At least one year in recovery from a substance use disorder, the person may not be required to participate in the approved substance ((~~abuse~~)) use disorder monitoring program.

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