

FINAL BILL REPORT

SSB 5496

C 43 L 22
Synopsis as Enacted

Brief Description: Concerning health professional monitoring programs.

Sponsors: Senate Committee on Health & Long Term Care (originally sponsored by Senators Muzzall and Cleveland).

Senate Committee on Health & Long Term Care
House Committee on Health Care & Wellness

Background: A disciplining authority may refer a licensee to a substance abuse monitoring program in lieu of formal discipline if the disciplining authority determines that unprofessional conduct is the product of substance abuse. If the licensee does not consent to the referral or fails to meet the requirements of the program, the disciplining authority may take formal disciplinary action against the licensee.

The Washington Medical Commission, the Board of Osteopathic Medicine and Surgery, the Dental Quality Assurance Commission, the Podiatric Medical Board, and the State Veterinarian Board of Governors all contract with the same entity to implement their impaired practitioner programs. The entity does not itself provide treatment, but provides services such as referring practitioners to treatment programs and monitoring compliance. Treatment is provided through providers approved by the disciplining authorities. Disciplining authorities are not prohibited from approving additional services and programs as an adjunct to treatment.

The treatment and pre-treatment records for the license holder, who are referred to or voluntarily participating in approved programs, are confidential and exempt from public disclosures. They are not subject to discovery by subpoena or admissible as evidence except for monitoring records reported to the disciplining authority for cause. Some impaired physician programs impose a surcharge for each license issuance or renewal collected by the Department of Health (DOH).

Monitoring records relating to license holders referred to the program by the disciplining

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authority by the program for cause must be released to the disciplining authority at the disciplining authority's request. Records held by the disciplining authority are exempt from public disclosure and are not subject to discovery by subpoena except by the license holder.

Program costs are financed by surcharges on license issuances or renewals. For physicians, dentists, and podiatric physicians, the fee is \$50. For veterinarians, the fee is \$25. The cost of treatment is the responsibility of the practitioner, but does not preclude the possibility of payment by an employer, insurance, or other sources.

Individuals who report information or take action in connection with impaired practitioner programs are immune for civil immunity for such reports or actions. The entities and individuals entitled to immunity include an approved monitoring treatment program; the professional association operating the program; members, employees, or agents of the program or association; persons reporting a license holder as being possibly impaired or providing information about the license holder's impairment; and professionals supervising or monitoring the course of the impaired license holder's treatment or rehabilitation.

Summary: Substance Use Disorder Monitoring Program. The Impaired Physicians Program is redesignated the Physician Health Program (PHP). The Washington Medical Commission, the Board of Osteopathic Medicine and Surgery, the Dental Quality Assurance Commission, the Podiatric Medical Board, and the State Veterinarian Board of Governors are each authorized to contract with the PHP or a voluntary substance use monitoring program. Potentially impaired physicians, in addition to impaired physicians, are eligible for the PHP.

Provisions indicating that disciplining authorities are not prohibited from approving additional treatment services and programs are eliminated.

Civil liability immunity protection applies to students and trainees when they are served by the program.

The license surcharge to implement the program is changed to a per year or equivalent surcharge. The surcharge applicable to physicians is made applicable to physician assistants.

In addition to the costs of treatment, the costs of evaluation are borne by the participating practitioner.

Program Records Confidentiality Exemptions. Program records are confidential and exempt from public disclosure. Program records include, but are not limited to, case notes and progress notes; laboratory reports and evaluation and treatment records; and electronic and written correspondence within the program, and between the program and the participant or other involved entities.

Other involved entities include, but are not limited to, employers; credentialing bodies; referents; or other collateral sources relating to license holders referred to or voluntarily participating in approved programs.

There are two circumstances under which program information may be disclosed as subject to discovery by subpoena or admissible as evidence.

One circumstance is upon a subpoena issued by either party to the action and upon the requesting party seeking a protective order for the requested disclosure. In this case the program will provide:

- verification of the health care professional's participation in the physician health program or voluntary substance use disorder monitoring program and the participation dates;
- whether the program identified an impairing or potentially impairing health condition;
- whether the health care professional was compliant with the requirements of the physician health program or voluntary substance use disorder monitoring program; and
- whether the health care professional successfully completed the physician health program or voluntary substance use disorder program.

The second circumstance is to provide records to the disciplining authority for cause if the licensee does not consent to the referral or fails to meet the program requirements. At the disciplining authority's request, program records must be released to the disciplining authority. The records held by the disciplining authority are exempt from public disclosure and are not subject to discovery by subpoena except by the license holder. The released records must relate to:

- the license holders mandated to the program through order or by stipulation from the disciplining authority; or
- the license holders reported to the disciplining authority by the program for cause.

Terminology and Definition Updates. References to addiction and substance abuse are changed to substance use disorders and references to clients and impaired license holder are changed to program participants.

The definitions for treatment program and physician or practitioner are removed.

Votes on Final Passage:

Senate	48	0
House	94	1

Effective: June 9, 2022.