
HOUSE BILL 1654

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67th Legislature

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By Representatives Stokesbary, Simmons, Cody, Eslick, Macri, and Riccelli

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1 AN ACT Relating to health professional monitoring programs by
2 clarifying the application of the programs and confidentiality
3 protections for program participants, and updating terminology,
4 definitions, and references; amending RCW 18.22.250, 18.32.534,
5 18.57.015, 18.71.300, 18.71.310, 18.71.315, 18.71.320, 18.92.047, and
6 18.130.070; and reenacting and amending RCW 18.130.175.

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

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

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

- 16 (a) Contracting with providers of treatment programs;
17 (b) Receiving and evaluating reports of suspected impairment from
18 any source;
19 (c) Intervening in cases of verified impairment;
20 (d) Referring impaired podiatric ~~((practitioners))~~ physicians to
21 treatment programs;

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

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

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

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

16 **Sec. 2.** RCW 18.32.534 and 2013 c 129 s 1 are each amended to
17 read as follows:

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

23 (a) Contracting with providers of treatment programs;

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

26 (c) Intervening in cases of verified impairment;

27 (d) Referring impaired dentists to treatment programs;

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

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

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

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

1 used solely for the implementation of the (~~impaired~~) dentist health
2 program.

3 **Sec. 3.** RCW 18.57.015 and 2016 c 42 s 1 are each amended to read
4 as follows:

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

11 (a) Contracting with providers of treatment programs;

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

14 (c) Intervening in cases of verified impairment;

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

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

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

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

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

32 **Sec. 4.** RCW 18.71.300 and 1998 c 132 s 3 are each amended to
33 read as follows:

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

36 (1) "Entity" means a nonprofit corporation formed by physicians
37 who have expertise in (~~the areas of alcohol abuse, drug abuse,~~
38 ~~alcoholism, other drug addictions, and~~) substance use disorders,

1 mental illness, and other potentially impairing health conditions and
2 who broadly represent the physicians of the state and that has been
3 designated to perform any or all of the activities set forth in RCW
4 18.71.310(1) by the commission.

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

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

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

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

25 **Sec. 5.** RCW 18.71.310 and 2009 c 98 s 1 are each amended to read
26 as follows:

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

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

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

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

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

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

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

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

10 (h) Providing prevention and education services.

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

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

21 **Sec. 6.** RCW 18.71.315 and 1998 c 132 s 12 are each amended to
22 read as follows:

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

31 **Sec. 7.** RCW 18.71.320 and 1998 c 132 s 5 are each amended to
32 read as follows:

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

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

37 (2) Periodic disclosure and joint review of such information as
38 the commission may deem appropriate regarding reports received,

1 contacts or investigations made, and the disposition of each report.
2 However, the entity shall not disclose any personally identifiable
3 information except as provided in subsections (3) and (4) of this
4 section;

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

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

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

19 **Sec. 8.** RCW 18.92.047 and 2016 c 42 s 3 are each amended to read
20 as follows:

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

- 26 (a) Contracting with providers of treatment programs;
- 27 (b) Receiving and evaluating reports of suspected impairment from
28 any source;
- 29 (c) Intervening in cases of verified impairment;
- 30 (d) Referring impaired veterinarians to treatment programs;
- 31 (e) Monitoring the treatment and rehabilitation of impaired
32 veterinarians including those ordered by the board;
- 33 (f) Providing education, prevention of impairment, posttreatment
34 monitoring, and support of rehabilitated impaired veterinarians; and
- 35 (g) Performing other related activities as determined by the
36 board.

37 (2) A contract entered into under subsection (1) of this section
38 shall be financed by a surcharge of twenty-five dollars per year on
39 each license issuance or renewal of a new license to be collected by

1 the department of health from every veterinarian licensed under this
2 chapter (~~(18.92-RCW)~~). These moneys shall be placed in the health
3 professions account to be used solely for the implementation of the
4 (~~(impaired)~~) veterinarian health program.

5 **Sec. 9.** RCW 18.130.070 and 2007 c 273 s 23 are each amended to
6 read as follows:

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

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

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

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

34 (c) If a report has been made by a hospital to the department
35 pursuant to RCW 70.41.210 or by an ambulatory surgical facility
36 pursuant to RCW 70.230.110, a report to the disciplining authority is
37 not required. To facilitate meeting the intent of this section, the
38 cooperation of agencies of the federal government is requested by
39 reporting any conviction, determination, or finding that a federal

1 employee or contractor regulated by the disciplining authorities
2 enumerated in this chapter has committed an act which constituted
3 unprofessional conduct and reporting any information which indicates
4 that a federal employee or contractor regulated by the disciplining
5 authorities enumerated in this chapter may not be able to practice
6 his or her profession with reasonable skill and safety as a result of
7 a mental or physical condition.

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

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

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

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

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

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

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

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

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

1 **Sec. 10.** RCW 18.130.175 and 2019 c 446 s 43 and 2019 c 444 s 21
2 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

25 (ii) The dates of participation;

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

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

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

34 (b) Records provided to the disciplining authority for cause as
35 described in subsection (3) of this section. Program records relating
36 to license holders mandated to the program, through order or by
37 stipulation, by the disciplining authority or relating to license
38 holders reported to the disciplining authority by the program for
39 cause, must be released to the disciplining authority at the request
40 of the disciplining authority. Records held by the disciplining

1 authority under this section are exempt from chapter 42.56 RCW and
2 are not subject to discovery by subpoena except by the license
3 holder.

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

8 ~~((7))~~ (6) A person who, in good faith, reports information or
9 takes action in connection with this section is immune from civil
10 liability for reporting information or taking the action.

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

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

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

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

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

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

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

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

35 ~~((8))~~ (7) In the case of a person who is applying to be a
36 substance use disorder professional or substance use disorder
37 professional trainee certified under chapter 18.205 RCW, if the
38 person is:

39 (a) Less than one year in recovery from a substance use disorder,
40 the duration of time that the person may be required to participate

1 in (~~the voluntary~~) an approved substance (~~abuse~~) use disorder
2 monitoring program may not exceed the amount of time necessary for
3 the person to achieve one year in recovery; or

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

7 (~~(9)~~) (8) In the case of a person who is applying to be an
8 agency affiliated counselor registered under chapter 18.19 RCW and
9 practices or intends to practice as a peer counselor in an agency, as
10 defined in RCW 18.19.020, if the person is:

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

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

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