

HOUSE BILL REPORT

SSB 5496

As Passed House:

March 1, 2022

Title: 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.

Brief Description: Concerning health professional monitoring programs.

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

Brief History:

Committee Activity:

Health Care & Wellness: 2/16/22, 2/23/22 [DP].

Floor Activity:

Passed House: 3/1/22, 94-1.

Brief Summary of Substitute Bill

- Changes requirements relating to voluntary substance abuse monitoring programs for health professionals who have committed unprofessional conduct.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: Do pass. Signed by 15 members: Representatives Cody, Chair; Bateman, Vice Chair; Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Bronoske, Davis, Harris, Macri, Maycumber, Riccelli, Rude, Simmons, Stonier, Tharinger and Ybarra.

Staff: Jim Morishima (786-7191).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Background:

Substance Abuse Monitoring Programs.

A disciplining authority may refer a licensee to a substance abuse monitoring program (also known as an impaired practitioner 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.

Program Records.

Treatment and pre-treatment records of participating practitioners are exempt from public disclosure, discovery, and admission as evidence in court proceedings. Monitoring records may be released to the disciplining authority, but may not be disclosed by the disciplining authority or subject to discovery except by the practitioners themselves.

Civil Immunity.

Individuals who report information or take action in connection with impaired practitioner programs are immune for civil immunity for such reports or actions. The persons and entities entitled to the immunity include approved programs, individuals reporting a practitioner as being possibly impaired or information on a practitioner's impairment, and professionals supervising or monitoring the course of the practitioner's treatment and rehabilitation.

Costs/Fees.

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.

Summary of Bill:

Substance Abuse Monitoring Programs.

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.

The purpose of the program is broadened to include applicable impairing or potentially impairing health conditions, instead of only substance abuse. It is clarified that potentially impaired physicians (in addition to impaired physicians) are eligible for the PHP. References to "treatment" are removed to reflect that the program does not provide treatment to practitioners.

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

Program Records.

The disclosure protections for treatment and pretreatment records are eliminated and replaced with disclosure protections for "program records." Program records include case notes, progress notes, laboratory reports, evaluation and treatment records, and correspondence relating to program participants. Subject to certain exceptions, program records are confidential, exempt from public disclosure, not subject to discovery, and inadmissible as evidence.

The disclosure protections for program records do not apply in defense of any civil action by a practitioner regarding the restriction or revocation of their clinical or staff privileges or termination of their employment. In case of a subpoena issued in such an action, the program will provide written disclosure of enumerated information pertaining to the practitioner's participation in the program.

The disclosure protections also do not apply for required disclosures relating to a practitioner's compliance with program requirements or ability to practice with reasonable skill or safety. Program records relating to practitioners mandated to the program, through order or by stipulation, by the disciplining authority or relating to practitioners reported to the disciplining authority by the program for cause, must be released to the disciplining authority at the authority's request. Such records in the custody of the disciplining authority are exempt from public disclosure and are not subject to discovery by subpoena except by the practitioner.

Civil Immunity.

The civil immunity protections for program participants apply to students and trainees when

they are served by the program.

Costs/Fees.

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.

Terminology Updates.

References to addiction and substance abuse are changed to "substance use disorders."

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The Washington Physicians Health Program (WPHP) is a successful program that has been a national model. Its mission is to increase public safety by supporting physician and provider health. The program is especially important during the pandemic when providers are burdened and short-staffed. This is a national moment of mental and physical duress for providers. The enabling statutes for the WPHP were enacted many years ago and are outdated. This bill will update the enabling statutes by modernizing language to reflect how the program operates. The bill will ensure that records maintained by the WPHP will remain confidential. This is common sense legislation that will allow the program to continue to provide high-quality services in Washington.

(Opposed) None.

Persons Testifying: Chris Bundy and Sheldon Cooper, Washington Physicians Health Program; and Jeb Shepard, Washington State Medical Association.

Persons Signed In To Testify But Not Testifying: None.