

SENATE BILL REPORT

SSB 5496

As Passed Senate, January 26, 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 & Long Term Care: 1/12/22, 1/17/22 [DPS].

Floor Activity: Passed Senate: 1/26/22, 48-0.

Brief Summary of First Substitute Bill

- Allows a disciplining authority to refer a licensee to a physician health program or voluntary substance use monitoring program in lieu of formal discipline if the disciplining authority determines that unprofessional conduct is the product of an applicable impairing or potentially impairing health condition.
- Updates references of substance abuse monitoring program to substance use disorder monitoring program.
- Defines program records that are confidential and exempt from disclosures and expands circumstances for access to a participant's health monitoring program records.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Majority Report: That Substitute Senate Bill No. 5496 be substituted therefor, and the substitute bill do pass.

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.

Signed by Senators Cleveland, Chair; Frockt, Vice Chair; Muzzall, Ranking Member; Conway, Holy, Keiser, Padden, Randall, Rivers, Robinson, Sefzik and Van De Wege.

Staff: Julie Tran (786-7283)

Background: Substance Use Disorders. In 2013, the American Psychiatric Association released the fifth edition of the "Diagnostic and Statistical Manual of Mental Disorders" (DSM 5). DSM 5 replaced the terms substance abuse and substance dependence with the single term substance use disorder. The term substance use disorder includes a scale of subcategories of mild, moderate, and severe for defining the extent of the person's condition.

Substance Abuse Monitoring Programs. 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. The licensee must consent to the referral and the referral may include probationary conditions. 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 disciplining authorities for some health professions are directed by statute to enter into a contract with a voluntary substance abuse monitoring program.

Impaired Physician Program. The impaired physician program is for the prevention, detection, intervention, and monitoring of impaired physicians established by the commission. The license holder is responsible for the cost of treatment. The treatment and pretreatment records for the license holder, who are referred to or voluntarily participating in approved programs, are confidential and exempt from 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 Department of Health (DOH).

Monitoring records relating to license holders referred to the program by the disciplining 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 is exempt from public disclosure and is not subject to discovery by subpoena except by the license holder.

The immunity from civil liability is liberally construed and the people 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 of First Substitute Bill: Substance Use Disorder Monitoring Program. The voluntary substance abuse monitoring program changes to voluntary substance use disorder monitoring program. A disciplining authority may refer a licensee to a physician health program or voluntary substance use monitoring program in lieu of formal discipline if the disciplining authority determines that unprofessional conduct is the product of an applicable impairing or potentially impairing health condition. The license holder is responsible for the cost of evaluation and treatment.

The immunity from civil liability applies to license holders and students and trainees when students and trainees of the applicable professions are served by the program.

The following physician health program names changes from:

- impaired podiatric practitioner program to podiatric physician health program;
- impaired dentist program to dentist health program;
- impaired osteopathic practitioner program to osteopathic physician health program; and
- impaired veterinarian program to veterinarian health program.

The surcharge or an equivalent is collected by DOH per year for each license issuance or renewal.

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 or not 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. "Entity" means a nonprofit corporation formed by physicians who have expertise in substance use disorders, mental illness, and other potentially impairing health conditions and who broadly represent the physicians of the state and has been designated to perform any or all of the activities set forth by the commission.

"Impaired" or "impairment" means the inability to practice medicine with reasonable skill and safety to patients by reason of a health condition.

"Impaired physician program" changes to "physician health program," which means the program for the prevention, detection, intervention, referral for evaluation and treatment, and monitoring of impaired or potentially impaired physicians established by the commission.

"Physician" means a licensed person or a professional with another license whose disciplining authority has a contract with the entity for its license holders. Also, the reference to "practitioner" is removed from the "physician" definition.

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

References for the following terms changes from:

- clients to program participants;
- impaired license holder to program participants;
- monitoring treatment program to physician health program or voluntary substance use disorder monitoring program;
- practitioner to physician;
- relapse to return to substance use; and
- substance abuse to an impairing or potentially impairing health condition.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: Washington physician health program is a safety net for Washington physicians and other professions. The work directly benefits the healthcare workforce and the patients of Washington. This legislation strengthens and modernizes the statutes enabling the program that has become a national model for physician health programs. The bill removes stigmatizing language and clarifies language that protects the confidential health information of our patients as a lack of confidentiality is a key barrier to physicians and other health care professionals seeking support when its needed. Support for this measure will allow for the Washington physician health program to continue to be successful in its mission and a national leader at a time when our physicians and others are under extreme mental and physical duress.

Persons Testifying: PRO: Senator Ron Muzzall, Prime Sponsor; Christopher Bundy, MD, Wa. Physicians Health Program; Sheldon Cooper, Wa. Physicians Health Program; Jeb Shepard, WA State Medical Association (WSMA).

Persons Signed In To Testify But Not Testifying: No one.