

SENATE BILL No. 365

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-30-15.5.

Synopsis: Immunity for physician wellness programs. Defines the term "wellness program" as any board, committee, commission, group, organization, or other entity that evaluates or addresses issues concerning: (1) the wellness of licensed physicians; and (2) career fatigue in licensed physicians. Excludes: (1) impaired physician committees; and (2) employee assistance programs; from the definition of the term. Specifies that the proceedings and deliberations of a wellness program are confidential. Specifies certain exceptions. Specifies that all minutes, records, reports, written expert opinions, written communications, and other comparable memoranda prepared or created by a wellness program are privileged. Specifies certain exceptions. Prohibits all wellness program personnel and participants from revealing or disclosing the substance of wellness program communications, records, and determinations to any person or entity outside of the wellness program. Specifies certain exceptions. Requires a person seeking the production or discovery of confidential or privileged information to prove an exception to specified confidentiality and privilege provisions to a court with competent jurisdiction. Allows a court to mandate the discovery or production of confidential or privileged wellness program information in certain instances. Requires a court to issue a written order when mandating the discovery of confidential or privileged information or memoranda. Provides that the exchange of confidential or privileged information or memoranda between wellness groups does not result in the waiver of applicable confidentiality and privilege provisions. Provides that confidentiality and privilege provisions applicable to certain records do
(Continued next page)

Effective: July 1, 2021.

Crider

January 11, 2021, read first time and referred to Committee on Health and Provider Services.



Digest Continued

not make the records inaccessible to people or entities that would otherwise be eligible to receive or access the records under existing state or federal law. Provides that the confidentiality and privilege provisions applicable to wellness groups do not abrogate, limit, or restrict any other privacy protection applicable to a patient or the patient's health or medical information. Provides that any member, consultant, or participant who comprises or participates in a wellness program is immune from civil liability and damages, including punitive damages, for any act or omission related to the person's role in the wellness group. Specifies certain exceptions. Provides that a member, consultant, or participant who comprises or participates in a wellness program is not required to report a licensed physician to the medical licensing board for any act, omission, statement, discovery, or disclosure unless the licensed physician presents a threat to himself or herself, to his or her patients, or to the general public. Defines certain terms.



First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in *this style type*, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

SENATE BILL No. 365



A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-30-15.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2021]:
4 **Chapter 15.5. Health Care: Wellness Programs for Physicians**
5 **Sec. 1. This chapter applies to the following:**
6 **(1) Any board, committee, commission, group, organization,**
7 **or other entity that acts as a physician wellness program.**
8 **(2) Any member, consultant, participant, or expert witness**
9 **that comprises or participates in a physician wellness**
10 **program.**
11 **(3) Any person who provides or furnishes records or**
12 **information to a physician wellness program in compliance**
13 **with applicable state and federal laws concerning patient**
14 **confidentiality.**
15 **Sec. 2. As used in this chapter, "licensed physician" means:**



1 (1) an individual who holds an unlimited license to practice
2 medicine in Indiana under IC 25-22.5;

3 (2) a physician with a restricted license; or

4 (3) any:

5 (A) student in training in a medical school approved by the
6 medical licensing board; or

7 (B) any intern or resident who performs duties in a
8 hospital under the supervision of the hospital's staff or in
9 a program approved by the medical school.

10 Sec. 3. As used in this chapter, "wellness program" means any
11 board, committee, commission, group, organization, or other entity
12 that:

13 (1) is organized or contracted for by a statewide association
14 under 26 USC 501(c)(6) of the Internal Revenue Code;

15 (2) primarily advocates for physicians in multiple specialties;
16 and

17 (3) evaluates or addresses issues concerning the wellness of
18 licensed physicians and career fatigue in licensed physicians.

19 The term does not include an impaired physician committee or an
20 employee assistance program (EAP).

21 Sec. 4. (a) Subject to subsection (f), all verbal communication
22 belonging to or performed as part of a wellness program are
23 confidential and privileged and may not be used in any
24 administrative or judicial proceeding.

25 (b) Subject to subsection (f), all minutes, records, reports,
26 written expert opinions, written communications, and other
27 comparable memoranda created or prepared by a wellness
28 program are confidential and privileged and may not be used in
29 any administrative or judicial proceeding.

30 (c) Subject to section 8 of this chapter, neither the personnel of
31 a wellness program nor any participant in a wellness program may
32 reveal the content of any wellness program:

33 (1) communication;

34 (2) record; or

35 (3) determination;

36 to any person or entity outside of the wellness program.

37 (d) Subject to subsection (f), a person who comprises, attends,
38 or otherwise participates in a wellness program must invoke the
39 confidentiality and privilege provisions described in this section
40 during all administrative and judicial proceedings.

41 (e) A person or entity seeking the production, disclosure, or
42 discovery of any confidential or privileged information belonging



1 to a wellness program must prove, to a court with competent
 2 jurisdiction, good cause for any discovery request concerning any
 3 material or communication protected by the privilege and
 4 confidentiality provisions established under this chapter.

5 (f) A court of competent jurisdiction, after being petitioned by
 6 an appropriate party with standing and conducting a hearing, may
 7 order the discovery of confidential or privileged information
 8 belonging to a wellness program upon a showing of good cause that
 9 necessitates the discovery of the confidential or privileged
 10 information. A court mandating the discovery of confidential or
 11 privileged information under this subsection must do so via written
 12 court order.

13 (g) Information that is otherwise discoverable or admissible
 14 from original sources outside of the wellness group is not
 15 confidential, privileged, or otherwise immune from discovery or
 16 use in any administrative or judicial proceeding merely because it
 17 was presented or used during a wellness group proceeding.

18 Sec. 5. (a) The exchange of privileged or confidential
 19 information between or among one (1) or more wellness programs
 20 does not constitute a waiver of any confidentiality or privilege
 21 provision established in section 4 of this chapter.

22 (b) The referral of a licensed physician from a wellness program
 23 to an impaired physician committee shall not require the reporting
 24 of the licensed physician to the medical licensing board under
 25 section 8 of this chapter and does not violate any privilege or
 26 confidentiality established by this chapter.

27 Sec. 6. Nothing in this chapter may be construed to:

28 (1) make confidential, privilege, or otherwise preclude the
 29 production or discovery of information or records to any
 30 person entitled to the applicable information or records under
 31 applicable state or federal law; or

32 (2) abrogate, limit, or restrict any other privacy protection
 33 applicable to the information or records at issue under
 34 applicable state or federal law.

35 Sec. 7. (a) Subject to subsection (b), each:

36 (1) member, consultant, or participant who participates in a
 37 wellness program; and

38 (2) person or entity that complies with applicable state and
 39 federal confidentiality laws when providing or furnishing
 40 records to a wellness program in good faith;

41 shall be immune from civil liability and all damages, including
 42 punitive damages, for any act or omission related to the person or



1 entity's role in or contribution to the wellness program.

2 (b) The immunity described in subsection (a) does not apply to:

3 (1) any act or omission that constitutes gross negligence or
4 willful or wanton misconduct;

5 (2) any act or omission that constitutes a violation of
6 applicable state or federal law concerning patient or patient
7 record privacy; or

8 (3) any member, consultant, or participant who:

9 (A) has:

10 (i) an ownership; or

11 (ii) financial;

12 interest in the wellness program; or

13 (B) violates, in bad faith, any confidentiality or privilege
14 provision specified in section 4 of this chapter.

15 Sec. 8. (a) No member, consultant, or participant who
16 participates in a wellness program shall be required to report a
17 licensed physician to the medical licensing board for any act,
18 omission, statement, discovery, or disclosure subject to a wellness
19 program's consideration or review unless one (1) or more of the
20 following circumstances exist:

21 (1) The licensed physician is not competent to continue
22 practice.

23 (2) The licensed physician presents a danger to:

24 (A) himself or herself; or

25 (B) the health and welfare of:

26 (i) the licensed physician's patients; or

27 (ii) the general public.

28 (b) The referral of a licensed physician from a wellness program
29 to an impaired physician committee shall not require the reporting
30 of the licensed physician to the medical licensing board and does
31 not violate any privilege or confidentiality established by this
32 chapter.

33 Sec. 9. Notwithstanding any other law or provision, no
34 restraining order or injunction may be issued for the purpose of
35 precluding a wellness program from operating in good faith with
36 respect to the issues of licensed physician career fatigue and
37 licensed physician wellness.

