



March 25, 2021

ENGROSSED SENATE BILL No. 365

DIGEST OF SB 365 (Updated March 24, 2021 4:01 pm - DI 106)

Citations Affected: IC 34-30.

Synopsis: Immunity for physician wellness programs. Defines "wellness program". Specifies that the proceedings and deliberations of a wellness program are confidential. Specifies certain exceptions. Provides 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. Allows a court to order in writing the release of confidential or privileged information belonging to a wellness program after a hearing if the court makes specified findings. Provides that the exchange of confidential or privileged information or memoranda between wellness groups does
(Continued next page)

Effective: July 1, 2021.

**Crider, Charbonneau,
Randolph Lonnie M**

(HOUSE SPONSORS — SCHAIBLEY, FLEMING, BARRETT)

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

February 18, 2021, amended, reported favorably — Do Pass.

February 22, 2021, read second time, ordered engrossed. Engrossed.

February 23, 2021, read third time, passed. Yeas 47, nays 0.

HOUSE ACTION

March 4, 2021, read first time and referred to Committee on Judiciary.

March 25, 2021, amended, reported — Do Pass.

ES 365—LS 7283/DI 123



Digest Continued

not result in the waiver of applicable confidentiality and privilege provisions. Provides that confidentiality and privilege provisions applicable to certain records do 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. Specifies that certain individuals may not be named as a party in a civil suit in connection with certain actions taken with respect to a wellness program. 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.



March 25, 2021

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.

ENGROSSED 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**

ES 365—LS 7283/DI 123



- 1 **confidentiality.**
- 2 **Sec. 2. As used in this chapter, "licensed physician" means:**
- 3 **(1) an individual who holds an unlimited license to practice**
- 4 **medicine in Indiana under IC 25-22.5;**
- 5 **(2) a physician with a restricted license; or**
- 6 **(3) any:**
- 7 **(A) student in training in a medical school approved by the**
- 8 **medical licensing board; or**
- 9 **(B) intern or resident who performs duties in a hospital**
- 10 **under the supervision of the hospital's staff or in a**
- 11 **program approved by the medical school.**
- 12 **Sec. 3. As used in this chapter, "wellness program" means any**
- 13 **board, committee, commission, group, organization, or other entity**
- 14 **that provides services by licensed health care providers and**
- 15 **physician peer coaches for the purpose of evaluating or addressing**
- 16 **issues concerning the wellness of licensed physicians and career**
- 17 **fatigue in licensed physicians. The term does not include an**
- 18 **impaired physician committee or an employee assistance program**
- 19 **(EAP).**
- 20 **Sec. 4. (a) Subject to subsection (f), all verbal communication**
- 21 **belonging to or performed as part of a wellness program are**
- 22 **confidential and privileged and may not be used in any**
- 23 **administrative or judicial proceeding.**
- 24 **(b) Subject to subsection (f), all minutes, records, reports,**
- 25 **written expert opinions, written communications, and other**
- 26 **comparable memoranda created or prepared by a wellness**
- 27 **program are confidential and privileged and may not be used in**
- 28 **any administrative or judicial proceeding.**
- 29 **(c) Subject to section 8 of this chapter, neither the personnel of**
- 30 **a wellness program nor any participant in a wellness program may**
- 31 **reveal the content of any wellness program:**
- 32 **(1) communication;**
- 33 **(2) record; or**
- 34 **(3) determination;**
- 35 **to any person or entity outside of the wellness program.**
- 36 **(d) Subject to subsection (f), a person who comprises, attends,**
- 37 **or otherwise participates in a wellness program must invoke the**
- 38 **confidentiality and privilege provisions described in this section**
- 39 **during all administrative and judicial proceedings.**
- 40 **(e) The production, disclosure, or discovery of any confidential**
- 41 **or privileged information belonging to a wellness program is:**
- 42 **(1) subject to IC 16-39-3; and**



1 (2) protected by the privilege and confidentiality provisions
 2 established under this chapter.
 3 (f) A court of competent jurisdiction may order the release of
 4 confidential or privileged information belonging to a wellness
 5 program only after conducting a hearing and the court finds by a
 6 preponderance of the evidence that:
 7 (1) other reasonable methods of obtaining the information are
 8 not available or would not be effective; and
 9 (2) the need for disclosure outweighs the potential harm to the
 10 patient. In weighing the potential harm to the patient, the
 11 court shall consider the impact of disclosure on the
 12 provider-patient privilege and the patient's rehabilitative
 13 process.
 14 A court mandating the discovery of confidential or privileged
 15 information under this subsection must do so via written court
 16 order.
 17 (g) Information that is otherwise discoverable or admissible
 18 from original sources outside of the wellness group is not
 19 confidential, privileged, or otherwise immune from discovery or
 20 use in any administrative or judicial proceeding merely because it
 21 was presented or used during a wellness group proceeding.
 22 Sec. 5. (a) The exchange of privileged or confidential
 23 information between or among one (1) or more wellness programs
 24 does not constitute a waiver of any confidentiality or privilege
 25 provision established in section 4 of this chapter.
 26 (b) The referral of a licensed physician from a wellness program
 27 to an impaired physician committee shall not require the reporting
 28 of the licensed physician to the medical licensing board under
 29 section 8 of this chapter and does not violate any privilege or
 30 confidentiality established by this chapter.
 31 Sec. 6. Nothing in this chapter may be construed to:
 32 (1) make confidential, privilege, or otherwise preclude the
 33 production or discovery of information or records to any
 34 person entitled to the applicable information or records under
 35 applicable state or federal law; or
 36 (2) abrogate, limit, or restrict any other privacy protection
 37 applicable to the information or records at issue under
 38 applicable state or federal law.
 39 Sec. 7. (a) A:
 40 (1) wellness program;
 41 (2) director, volunteer, or employee of a wellness program;
 42 and



1 **(3) physician peer coach or licensed health care provider who**
 2 **evaluates or addresses issues relating to the wellness of a**
 3 **physician as part of a wellness program;**
 4 **may not be named as a party in a civil action with respect to an**
 5 **official act taken in good faith and in furtherance of the work of**
 6 **the wellness program.**

7 **(b) A person acting without malice who gives information to a**
 8 **person described in subsection (a) relating to the treatment or**
 9 **evaluation of a licensed physician by a wellness program may not**
 10 **be named as a party in a civil action with respect to the provision**
 11 **of information.**

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

18 **(1) The licensed physician is not competent to continue**
 19 **practice.**

20 **(2) The licensed physician presents a danger to:**

21 **(A) himself or herself; or**

22 **(B) the health and welfare of:**

23 **(i) the licensed physician's patients; or**

24 **(ii) the general public.**

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

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



COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred Senate Bill No. 365, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 7, delete "any".

Page 2, line 12, delete ":" and insert "**provides services by licensed health care providers and physician peer coaches for the purpose of evaluating or addressing issues concerning the wellness of licensed physicians and career fatigue in licensed physicians. The term does not include an impaired physician committee or an employee assistance program (EAP).**".

Page 2, delete lines 13 through 20.

Page 2, line 41, delete "A person or entity seeking the" and insert "**The**".

Page 3, line 1, delete "must prove, to a court with competent".

Page 3, delete line 2.

Page 3, line 3, delete "material or communication" and insert "**is:**

(1) subject to IC 16-39-3; and

(2)".

Page 3, line 5, delete ", after being petitioned by".

Page 3, line 6, delete "an appropriate party with standing and conducting a hearing,".

Page 3, line 7, delete "discovery" and insert "**release**".

Page 3, line 8, delete "upon a showing of good cause that" and insert "**only after conducting a hearing and the court finds by a preponderance of the evidence that:**

(1) other reasonable methods of obtaining the information are not available or would not be effective; and

(2) the need for disclosure outweighs the potential harm to the patient. In weighing the potential harm to the patient, the court shall consider the impact of disclosure on the provider-patient privilege and the patient's rehabilitative process.".

Page 3, delete line 9.

Page 3, line 10, delete "information.".

Page 3, line 10, beginning with "A court" begin a new line blocked left.

and when so amended that said bill do pass.



(Reference is to SB 365 as introduced.)

CHARBONNEAU, Chairperson

Committee Vote: Yeas 11, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 365, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 3, delete lines 39 through 42, begin a new paragraph and insert:

"Sec. 7. (a) A:

(1) wellness program;

**(2) director, volunteer, or employee of a wellness program;
and**

(3) physician peer coach or licensed health care provider who evaluates or addresses issues relating to the wellness of a physician as part of a wellness program;

may not be named as a party in a civil action with respect to an official act taken in good faith and in furtherance of the work of the wellness program.

(b) A person acting without malice who gives information to a person described in subsection (a) relating to the treatment or evaluation of a licensed physician by a wellness program may not be named as a party in a civil action with respect to the provision of information."

Page 4, delete lines 1 through 18.

and when so amended that said bill do pass.

(Reference is to SB 365 as printed February 19, 2021.)

TORR

Committee Vote: yeas 8, nays 0.

