



Confidential Care to Support Physician Health and Wellness *Toolkit Part 3: Legislative Language Support*

In its effort to equip state health care advocates to address physician burnout, the American Medical Association has identified several policies that, with the proper legislative language, could significantly strengthen access to, and confidentiality for, physicians seeking self-care.

Wellness Program Definitions

The state laws below represent those the AMA has identified that define the phrase ‘physician wellness program’ or ‘wellness program’¹:

- **Indiana S.B. 365:** *“‘Wellness program’ means any board, committee, commission, group, organization, or other entity that 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).”*
- **South Dakota H.B. 1179:** *“The term, ‘physician wellness program,’ means a program of evaluation, counseling, or other modality to address an issue related to career fatigue or wellness in a person licensed to practice medicine or osteopathy or a physician assistant. The term does not include the provision of services intended to monitor for impairment.”*
- **Arizona H.B. 2429:** *“The term, ‘health professional wellness program,’ means a program of evaluation, counseling, including substance abuse counseling, or another modality to address an issue related to career fatigue or wellness in a health professional who is licensed pursuant to chapter 13, 15 or 17 of this title. The term does not include providing services that are intended to monitor for impairment.”*

No Obligation to Report

The state laws below clarify that wellness programs do not have an obligation to report a physician’s participation in a wellness program to regulatory authorities, with the following exceptions¹:

- **Virginia H. 115:** *“No person or entity shall be obligated to report information regarding a health care provider licensed to practice medicine or osteopathic medicine who is a participant in a professional program to address issues related to career fatigue and wellness that is organized or contracted for by a statewide association exempt under 26 U.S.C. § 501(c)(6) of the Internal Revenue Code and that primarily represents health care professionals licensed to practice medicine or osteopathic medicine in multiple specialties to the Board. The protections under this section do not apply if the person or entity has determined that there is reasonable probability that the participant is a danger to themselves or to the health and welfare of their patients or the public.”*
- **Indiana S. B. 365:** Reporting requirements are removed in two contexts:
 - **(a) Referral to impairment program:** *“The referral of a licensed physician from a wellness program to an impaired physician committee shall not require the reporting of the licensed physician to the medical licensing board under and does not violate any privilege or confidentiality established by S.B. 365.”*
 - **(b) No obligation to report participation:** *“No member, consultant, or participant who participates in a wellness program shall be required to report a licensed physician to the medical licensing board for any act, omission, statement, discovery, or disclosure subject to a wellness program’s consideration or review.”*



- **Exceptions to (a) and (b):** *“The exception from the obligation to report under (a) and (b) does not apply if (1) the licensed physician is not competent to continue practice; or (2) the licensed physician presents a danger to: (a) himself or herself; or (b) the health and welfare of: (i) the licensed physician’s patients; or (ii) the general public.”*
- **South Dakota S.D. 1179:** *“Any record of a person’s participation in a physician wellness program is confidential and not subject to discovery, subpoena, or a reporting requirement to the applicable board, unless the person voluntarily provides for written release of the information or the disclosure is required to meet the licensee’s obligation to report a criminal charge or action, or unprofessional or dishonorable conduct.”*

No Obligation to Disclose to Anyone Other than Regulatory Authorities

The AMA strongly recommends that any legislation ensures a physician, graduate medical resident or medical student is not obligated to report or disclose they sought assistance or participated in a wellness program to any third party (e.g., a hospital credentialing application). The AMA has proposed the following draft language for consideration¹:

- “A physician, graduate medical resident or medical student who contacts, seeks help from, or is a participant in, a physician wellness program or physician health program (PHP) shall not be required to disclose such contact, seeking assistance, or participation to any health care facility, hospital, medical staff, accrediting organization, graduate medical education oversight body, health insurer, government agency, or other entity that requests such information as a condition of participation, employment, credentialing, payment, licensure, compliance or other requirement.”
- “The failure to disclose the information described in this section shall not be grounds for suspension, removal, termination of employment or contract, or any other adverse action by a graduate medical school of higher education, health care facility, hospital, medical staff, health insurer, government agency, or other entity.”
- “The obligation to disclose information described in this section shall not be a condition of participation, employment, credentialing, licensure, compliance or, other requirement by a graduate medical school of higher education, health care facility, hospital, hospital staff, health insurer, government agency, or other entity.”

Identity Is Confidential and Privileged

State laws in Virginia, Indiana, Arizona and South Dakota provide confidentiality protections for wellness programs and participants. Virginia law appears to offer the most protections. The following protections are confidential and privileged and should be incorporated in other statutory or regulatory language related to physician health programs¹:

- **Records:** “The proceedings, minutes, records, and reports of any physician wellness program, together with all communications, whether oral, electronic, or written, originating in or provided to such committees or entities, are confidential and privileged communications that are privileged in their entirety, and are not discoverable.”
- **Analysis:** “The analysis, findings, conclusions, recommendations, and the deliberative process of any physician wellness program, as well as the proceedings, minutes, records, and reports, including the opinions and reports of experts, of such entities shall be confidential and privileged in their entirety, and are not discoverable.”
- **Physician’s identity:** “A physician who contacts, seeks assistance from, or is a participant in a physician wellness program or other entity providing counseling, coaching or similar services to address issues related to career fatigue and wellness shall have his or her



participation and identify deemed confidential, privileged in its entirety, and not discoverable.”

Patient Safety Organization

Communications among wellness programs and other organizations addressing patient safety and quality of care retain confidentiality and privilege. Indiana S.B. 365 is an example of concise language, stating, "The exchange of privileged or confidential information between or among one (1) or more wellness programs does not constitute a waiver of any confidentiality or privilege provision.”¹

Virginia H.115 more broadly applies confidentiality and privilege protections to extend to patient safety organizations with the following provisions¹:

- “The exchange of any of the following shall not constitute a waiver of any privilege established under H. 115:
 - Patient safety data among health care providers or patient safety organizations that does not identify any patient; or
 - Privileged information between physician wellness programs. [Note: states also are encouraged to broaden the scope to include graduate medical education programs, PHPs or committees, boards, groups, commissions, or other entities described under section A.]”

Immunity Protection

The AMA suggests the following language to provide immunity protection for individuals acting in the performance of their duties¹:

“Every member of, or consultant to, any physician wellness program or PHP or any committee, board, group, commission, or other entity that reviews, evaluates, or makes recommendations in connection with a physician wellness program or PHP, to address issues related to physician, graduate medical residents or medical student career fatigue and wellness shall be immune from civil liability or administrative action for any act, decision, omission, or utterance done or made in performance of his or her duties while serving as a member of or consultant to such physician wellness program, PHP or committee, board, group, commission, or other entity.”

Retaliation, Discrimination or Adverse Action Protections

The AMA suggests the following language to provide protections for individuals against retaliation, discrimination or adverse actions¹:

“No individual, person, or entity may retaliate, discriminate, or otherwise take adverse action with respect to a physician, graduate medical resident, or medical student who contacts, seeks assistance from, or is participating in a physician wellness program or PHP to address issues related to career fatigue and wellness or based solely on those actions or participation.”

References

1. American Medical Association. ARC Issue Brief: confidential care to support physician health and wellness. Advocacy Resource Center. Accessed July 18, 2023. <https://www.ama-assn.org/system/files/issue-brief-physician-health-wellness.pdf>