

Agenda Item 11

Documents Prepared by MBC Staff

- 1) Chart: Sample of Best Practices for Physician Health Programs Compared to California's Proposed Physician Health and Wellness Program**
- 2) Physician Health Program Enabling Statutes for California, Washington, and Georgia**

Sample of Best Practices for Physician Health Programs Compared to California’s Proposed Physician Health and Wellness Program

Legend

Does Not Meet Best Practices	Meets Some Elements of Best Practices	Substantially Meets Best Practices
-------------------------------------	--	---

Sample of Best Practices for PHPs ¹	California’s Proposed PHWP
<p>PHP services should include evaluation, treatment, and monitoring for potentially impaired and impaired physicians and those in training, including medical students, suffering from substance use disorders, psychiatric, medical, behavioral, or other impairing conditions, including burnout.</p>	<p>Business and Professions Code (BPC) section 2340(a) limits the PHWP to physicians and surgeons with substance abuse issues.</p> <p>To meet best practices, services need to be expanded to provide evaluation, treatment and monitoring to medical students and those in training and also need to be expanded to address other impairing conditions in addition to substance use disorders.</p>

¹ Sources include the Federation of State Medical Board’s (FSMB) Policy on Physician Illness and Impairment: Towards a Model that Optimizes Patient Safety and Physician Health, Adopted by the FSMB House of Delegates, April 2021; American Medical Association Model Language for Physician Health Programs Act, 2016, and input from subject matter experts.

<p>The PHP should provide:</p> <ul style="list-style-type: none"> • Educational programs on topics, including but not limited to, the recognition, evaluation, treatment and continuing care of impairing conditions. • Educational resources for the profession, the public, and medical board about the role and function of the PHP. 	<ul style="list-style-type: none"> • BPC section 2340.2(a) requires the PHWP to provide for the education of all licensed physicians and surgeons with respect to the recognition and prevention of physical, emotional, and psychological problems. (The PHWP, however, only provides evaluation, treatment, and monitoring services relating to substance abuse issues pursuant to BPC section 2340(a).) • BPC section 2340.4(g)(1) requires the PHWP to be in regular communication with the Board, including providing aggregated data regarding the number of participants involved in the program, the number who successfully completed their agreement period, and the number of participants terminated from the program. • BPC section 2340.4(g)(2) requires the PHWP to submit to periodic audits. • The PHWP is funded by participant fees, however, so the education function is unlikely to be sufficiently supported financially.
<p>The PHP should be operated by an organization separate from the medical board.</p>	<p>Pursuant to BPC section 2340.4, the Board will contract with a private third-party independent administrating entity.</p> <p>However, the reporting requirements under the Uniform Standards means that the third-party organization would not have meaningful independence from the Board.</p>

<p>The PHP should have adequate and stable funding.</p>	<p>Pursuant to BPC sections 2340.6(a)(6) and 2340.8(b), the PHWP is funded by the participants, who are responsible for paying all the costs associated with the PHWP and the monitoring and treatment required by the PHWP. Interested parties have indicated that many individuals will not be able to afford to participate in the PHWP.</p>
<p>The PHP should have a method for ensuring quality review and transparency.</p>	<p>BPC section 2340.4(g)(1) requires the PHWP to be in regular communication with the Board, including providing aggregated data regarding the number of participants involved in the program, the number who successfully completed their agreement period, and the number of participants terminated from the program. Additionally, BPC section 2340.4(g)(2) requires the program to submit to periodic audits.</p>
<p>The PHP should have a confidential track where the participant is not known to the medical board unless there is substantive non-adherence to the monitoring agreement that the PHP reasonably believes poses an imminent danger to the public or participant is reported to the medical board.</p>	<p>BPC section 2340.2(d) requires the PHWP to allow for the confidential participation by a physician and surgeon with substance abuse issues, so long as they do not have a practice restriction. BPC section 2340.6(b)(2) indicates that participation in the PHWP will not be disclosed to the Board so long as the physician and surgeon is in compliance with the conditions and procedures in the agreement.</p>

	<p>Because the program must comply with the Uniform Standards pursuant to BPC section 2340.2(e), however, practice restrictions must be reported to the Board and posted on the physician's and surgeon's profile and major and minor violations must be reported to the Board. This would include violations that are non-substantive and do not put the public or licensee in immediate danger.</p> <p>This means that virtually every confidential participant is likely to be reported to the Board, which will likely discourage people from referring their colleagues, friends, family, or themselves to the PHWP.</p>
<p>The PHP should have evaluation, diagnoses, and treatment performed by qualified providers.</p>	<p>BPC section 2340.4 requires the third-party independent administering entity to have expertise and experience in the areas of substance or alcohol abuse in healing arts professionals; to identify and use a statewide treatment resource network that includes treatment and screening programs and support groups and to establish a process for evaluating the effectiveness of those programs, and to provide counseling and support for the physician and surgeon and for the family of any physician and surgeon referred for treatment.</p> <p>To fully meet best practices, the PHWP would need qualified providers for other mental and physical health conditions beyond substance use disorders, which is not authorized under the existing law.</p>

<p>Mandated reporting of peers to the medical board or the PHP by physicians and other healthcare professionals who reasonably believe a peer has a substance use disorder or mental or physical health condition that places their patients at risk.</p>	<p>California does not have a mandated reporting requirement relating to physicians suspected of having a condition that impairs their ability to practice medicine safely.</p>
<p>Immunity for the entity that contracts with the board from civil liability for performance of services in accordance with the terms of the contract and the authorizing code sections.</p>	<p>Immunity from liability is not provided for under the PHWP.</p>

Physician Health Program Enabling Statutes For California, Washington, and Georgia

1. California

BUSINESS AND PROFESSIONS CODE (BPC)

BPC 2340. Establishment of a Physician and Surgeon Health and Wellness Program authorized.

(a) The board may establish a Physician and Surgeon Health and Wellness Program for the early identification of, and appropriate interventions to support a physician and surgeon in his or her rehabilitation from, substance abuse to ensure that the physician and surgeon remains able to practice medicine in a manner that will not endanger the public health and safety and that will maintain the integrity of the medical profession. The program, if established, shall aid a physician and surgeon with substance abuse issues impacting his or her ability to practice medicine.

(b) For the purposes of this article, "program" shall mean the Physician and Surgeon Health and Wellness Program.

(c) If the board establishes a program, the program shall meet the requirements of this article.

BPC 2340.2 Program Requirements.

If the board establishes a program, the program shall do all of the following:

(a) Provide for the education of all licensed physicians and surgeons with respect to the recognition and prevention of physical, emotional, and psychological problems.

(b) Offer assistance to a physician and surgeon in identifying substance abuse problems.

(c) Evaluate the extent of substance abuse problems and refer the physician and surgeon to the appropriate treatment by executing a written agreement with a physician and surgeon participant.

(d) Provide for the confidential participation by a physician and surgeon with substance abuse issues who does not have a restriction on his or her practice related to those substance abuse issues. If an investigation of a physician and surgeon occurs after the physician and surgeon has enrolled in the program, the board may inquire of the program whether the physician and surgeon is enrolled in the program and the program shall respond accordingly.

(e) Comply with the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees as adopted by the Substance Abuse Coordination Committee of the department pursuant to Section 315.

BPC 2340.4 Third-party independent administering entity.

- (a) If the board establishes a program, the board shall contract for the program's administration with a private third-party independent administering entity pursuant to a request for proposals. The process for procuring the services for the program shall be administered by the board pursuant to Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code. However, Section 10425 of the Public Contract Code shall not apply to this subdivision.
- (b) The administering entity shall have expertise and experience in the areas of substance or alcohol abuse in healing arts professionals.
- (c) The administering entity shall identify and use a statewide treatment resource network that includes treatment and screening programs and support groups and shall establish a process for evaluating the effectiveness of those programs.
- (d) The administering entity shall provide counseling and support for the physician and surgeon and for the family of any physician and surgeon referred for treatment.
- (e) The administering entity shall make their services available to all licensed California physicians and surgeons, including those who self-refer to the program.
- (f) The administering entity shall have a system for immediately reporting a physician and surgeon, including, but not limited to, a physician and surgeon who withdraws or is terminated from the program, to the board. This system shall ensure absolute confidentiality in the communication to the board. The administering entity shall not provide this information to any other individual or entity unless authorized by the participating physician and surgeon or this article.
- (g) The contract entered into pursuant to this section shall also require the administering entity to do the following:
- (1) Provide regular communication to the board, including annual reports to the board with program statistics, including, but not limited to, the number of participants currently in the program, the number of participants referred by the board as a condition of probation, the number of participants who have successfully completed their agreement period, and the number of participants terminated from the program. In making reports, the administering entity shall not disclose any personally identifiable information relating to any participant.
 - (2) Submit to periodic audits and inspections of all operations, records, and management related to the program to ensure compliance with the requirements of this article and its implementing rules and regulations. Any audit conducted pursuant to this section shall maintain the confidentiality of all records reviewed and information obtained in the course of conducting the audit and shall not disclose any information identifying a program participant.
- (h) If the board determines the administering entity is not in compliance with the requirements of the program or contract entered into with the board, the board may terminate the contract.

BPC 2340.6 Participant's written agreement; Confidentiality and admissibility of information; Coordination with disciplinary action.

(a) A physician and surgeon shall, as a condition of participation in the program, enter into an individual agreement with the program and agree to pay expenses related to treatment, monitoring, laboratory tests, and other activities specified in the participant's written agreement. The agreement shall include all of the following:

- (1) A jointly agreed-upon plan and mandatory conditions and procedures to monitor compliance with the program.
- (2) Compliance with terms and conditions of treatment and monitoring.
- (3) Criteria for program completion.
- (4) Criteria for termination of a physician and surgeon participant from the program.
- (5) Acknowledgment that withdrawal or termination of a physician and surgeon participant from the program shall be reported to the board.
- (6) Acknowledgment that expenses related to treatment, monitoring, laboratory tests, and other activities specified by the program shall be paid by the physician and surgeon participant.

(b) Any agreement entered into pursuant to this section shall not be considered a disciplinary action or order by the board and shall not be disclosed to the board if both of the following apply:

- (1) The physician and surgeon did not enroll in the program as a condition of probation or as a result of an action by the board.
- (2) The physician and surgeon is in compliance with the conditions and procedures in the agreement.

(c) Any oral or written information reported to the board shall remain confidential and shall not constitute a waiver of any existing evidentiary privileges. However, confidentiality regarding the physician and surgeon's participation in the program and related records shall not apply if the board has referred a participant as a condition of probation or as otherwise authorized by this article.

(d) Nothing in this section prohibits, requires, or otherwise affects the discovery or admissibility of evidence in an action by the board against a physician and surgeon based on acts or omissions that are alleged to be grounds for discipline.

(e) Participation in the program shall not be a defense to any disciplinary action that may be taken by the board. This section does not preclude the board from commencing disciplinary action against a physician and surgeon who is terminated unsuccessfully from the program. However, that disciplinary action shall not include as evidence any confidential information unless authorized by this article.

BPC 2340.8 Physician and Surgeon Health and Wellness Program Account established; Funding and fees.

(a) The Physician and Surgeon Health and Wellness Program Account is hereby established within the Contingent Fund of the Medical Board of California. Any fees collected by the board pursuant to subdivision (b) shall be deposited in the Physician and Surgeon Health and Wellness Program Account and shall be available, upon appropriation by the Legislature, for the support of the program.

(b) The board shall adopt regulations to determine the appropriate fee that a physician and surgeon participating in the program shall provide to the board. The fee amount adopted by the board shall be set at a level sufficient to cover all costs for participating in the program, including any administrative costs incurred by the board to administer the program.

(c) Subject to appropriation by the Legislature, the board may use moneys from the Contingent Fund of the Medical Board of California to support the initial costs for the board to establish the program under this article, except these moneys shall not be used to cover any costs for individual physician and surgeon participation in the program.

2. Washington

Revised Code of Washington (RCW)

RCW 18.71.300 Physician health program – Definitions.

The definitions in this section apply throughout RCW 18.71.310 through 18.71.340 unless the context clearly requires otherwise.

(1) "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 that has been designated to perform any or all of the activities set forth in RCW 18.71.310(1) by the commission.

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

(3) "Physician health program" 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 pursuant to RCW 18.71.310(1).

RCW 18.71.310 Physician health program—License surcharge—Payment of funds.

(1) The commission shall enter into a contract with the entity to implement a physician health program. The commission may enter into a contract with the entity for up to six years in length. The physician health program may include any or all of the following:

- (a) Entering into relationships supportive of the physician health program with professionals who provide either evaluation or treatment services, or both;
- (b) Receiving and assessing reports of suspected impairment from any source;
- (c) Intervening in cases of verified impairment, or in cases where there is reasonable cause to suspect impairment;
- (d) Upon reasonable cause, referring suspected or verified impaired physicians for evaluation or treatment;

- (e) Monitoring the treatment and rehabilitation of participants including those ordered by the commission;
 - (f) Providing monitoring and care management support of program participants;
 - (g) Performing such other activities as agreed upon by the commission and the entity; and
 - (h) Providing prevention and education services.
- (2) A contract entered into under subsection (1) of this section shall be financed by a surcharge of fifty dollars per year or equivalent on each license renewal or issuance of a new license to be collected by the department of health from every physician, surgeon, and physician assistant licensed under this chapter in addition to other license fees. These moneys shall be placed in the impaired physician account to be used solely to support the physician health program.
- (3) All funds in the impaired physician account shall be paid to the contract entity within sixty days of deposit.

RCW 18.71.315 Impaired physician account—Created.

The impaired physician account is created in the custody of the state treasurer. All receipts from RCW 18.71.310 from license surcharges on physicians and physician assistants shall be deposited into the account. Expenditures from the account may only be used for the physician health program under this chapter. Only the secretary of health or the secretary's designee may authorize expenditures from the account. No appropriation is required for expenditures from this account.

RCW 18.71.320 Physician health program—Procedures.

- The entity shall develop procedures in consultation with the commission for:
- (1) Periodic reporting of statistical information regarding physician health program participant activity;
 - (2) Periodic disclosure and joint review of such information as the commission may deem appropriate regarding reports received, contacts or investigations made, and the disposition of each report. However, the entity shall not disclose any personally identifiable information except as provided in subsections (3) and (4) of this section;
 - (3) Immediate reporting to the commission of the name and results of any contact or investigation regarding any suspected or verified impaired physician who is reasonably believed probably to constitute an imminent danger to himself or herself or to the public;
 - (4) Reporting to the commission, in a timely fashion, any suspected or verified impaired physician who fails to cooperate with the entity, fails to submit to evaluation or treatment, or whose impairment is not substantially alleviated through treatment, or who, in the opinion of the entity, is probably unable to practice medicine with reasonable skill and safety;
 - (5) Informing each participant of the physician health program of the program procedures, the responsibilities of program participants, and the possible consequences of noncompliance with the program.

RCW 18.71.330 Impaired physician program—Evaluation of physician.

If the commission has reasonable cause to believe that a physician is impaired, the commission shall cause an evaluation of such physician to be conducted by the entity or the entity's designee or the commission's designee for the purpose of determining if there is an impairment. The entity or appropriate designee shall report the findings of its evaluation to the commission.

RCW 18.71.340 Impaired physician program—Entity records protected. All entity records are not subject to disclosure pursuant to chapter 42.56 RCW. (Public Records Act)

RCW 18.130.175 Physician health and voluntary substance use disorder monitoring programs (as amended by 2023 c 425).

(1) In lieu of disciplinary action under RCW **18.130.160** and if the disciplining authority determines that the unprofessional conduct may be the result of an applicable impairing or potentially impairing health condition, the disciplining authority may refer the license holder to a physician health program or a voluntary substance use disorder monitoring program approved by the disciplining authority.

The cost of evaluation and treatment shall be the responsibility of the license holder, but the responsibility does not preclude payment by an employer, existing insurance coverage, or other sources. Evaluation and treatment shall be provided by providers approved by the entity or the commission. The disciplining authority may also approve the use of out-of-state programs. Referral of the license holder to the physician health program or voluntary substance use disorder monitoring program shall be done only with the consent of the license holder. Referral to the physician health program or voluntary substance use disorder monitoring program may also include probationary conditions for a designated period of time. If the license holder does not consent to be referred to the program or does not successfully complete the program, the disciplining authority may take appropriate action under RCW **18.130.160** which includes suspension of the license unless or until the disciplining authority, in consultation with the director of the applicable program, determines the license holder is able to practice safely. The secretary shall adopt uniform rules for the evaluation by the disciplining authority of return to substance use or program violation on the part of a license holder in the program. The evaluation shall encourage program participation with additional conditions, in lieu of disciplinary action, when the disciplining authority determines that the license holder is able to continue to practice with reasonable skill and safety.

(2) In addition to approving the physician health program or the voluntary substance use disorder monitoring program that may receive referrals from the disciplining authority, the disciplining authority may establish by rule requirements for participation of license holders who are not being investigated or monitored by the disciplining authority. License holders voluntarily participating in the approved programs without being referred by the disciplining authority shall not be subject to disciplinary action under RCW **18.130.160** for their impairing or potentially impairing health condition, and shall not have their participation made known to the disciplining authority,

if they meet the requirements of this section and the program in which they are participating.

(3) The license holder shall sign a waiver allowing the program to release information to the disciplining authority if the licensee does not comply with the requirements of this section or is unable to practice with reasonable skill or safety. The physician health program or voluntary substance use disorder program shall report to the disciplining authority any license holder who fails to comply with the requirements of this section or the program or who, in the opinion of the program, is unable to practice with reasonable skill or safety. License holders shall report to the disciplining authority if they fail to comply with this section or do not complete the program's requirements. License holders may, upon the agreement of the program and disciplining authority, reenter the program if they have previously failed to comply with this section.

(4) Program records including, but not limited to, case notes, progress notes, laboratory reports, evaluation and treatment records, electronic and written correspondence within the program, and between the program and the participant or other involved entities including, but not limited to, employers, credentialing bodies, referents, or other collateral sources, relating to license holders referred to or voluntarily participating in approved programs are confidential and exempt from disclosure under chapter [42.56](#) RCW and shall not be subject to discovery by subpoena or admissible as evidence except:

(a) To defend any civil action by a license holder regarding the restriction or revocation of that individual's clinical or staff privileges, or termination of a license holder's employment. In such an action, the program will, upon subpoena issued by either party to the action, and upon the requesting party seeking a protective order for the requested disclosure, provide to both parties of the action written disclosure that includes the following information:

(i) Verification of a health care professional's participation in the physician health program or voluntary substance use disorder monitoring program as it relates to aspects of program involvement at issue in the civil action;

(ii) The dates of participation;

(iii) Whether or not the program identified an impairing or potentially impairing health condition;

(iv) Whether the health care professional was compliant with the requirements of the physician health program or voluntary substance use disorder monitoring program; and

(v) Whether the health care professional successfully completed the physician health program or voluntary substance use disorder monitoring program; and

(b) Records provided to the disciplining authority for cause as described in subsection (3) of this section. Program records relating to license holders mandated to the program, through order or by stipulation, by the disciplining authority or relating to license holders reported to the disciplining authority by the program for cause, must be released to the disciplining authority at the request of the disciplining authority. Records held by the disciplining authority under this section are exempt from chapter [42.56](#) RCW and are not subject to discovery by subpoena except by the license holder.

(5) This section does not affect an employer's right or ability to make employment-related decisions regarding a license holder. This section does not restrict

the authority of the disciplining authority to take disciplinary action for any other unprofessional conduct.

(6) A person who, in good faith, reports information or takes action in connection with this section is immune from civil liability for reporting information or taking the action.

(a) The immunity from civil liability provided by this section shall be liberally construed to accomplish the purposes of this section, and applies to both license holders and students and trainees when students and trainees of the applicable professions are served by the program. The persons entitled to immunity shall include:

(i) An approved physician health program or voluntary substance use disorder monitoring program;

(ii) The professional association affiliated with the program;

(iii) Members, employees, or agents of the program or associations;

(iv) Persons reporting a license holder as being possibly impaired or providing information about the license holder's impairment; and

(v) Professionals supervising or monitoring the course of the program participant's treatment or rehabilitation.

(b) The courts are strongly encouraged to impose sanctions on program participants and their attorneys whose allegations under this subsection are not made in good faith and are without either reasonable objective, substantive grounds, or both.

(c) The immunity provided in this section is in addition to any other immunity provided by law.

(7) In the case of a person who is applying to be a substance use disorder professional or substance use disorder professional trainee certified under chapter [18.205](#) RCW, if the person is:

(a) Less than one year in recovery from a substance use disorder, the duration of time that the person may be required to participate in an approved substance use disorder monitoring program may not exceed the amount of time necessary for the person to achieve one year in recovery; or

(b) At least one year in recovery from a substance use disorder, the person may not be required to participate in the approved substance use disorder monitoring program.

(8) In the case of a person who is applying to be an agency affiliated counselor (~~registered~~) credentialed under chapter [18.19](#) RCW and practices or intends to practice as a peer counselor in an agency, as defined in RCW [18.19.020](#), if the person is:

(a) Less than one year in recovery from a substance use disorder, the duration of time that the person may be required to participate in the approved substance use disorder monitoring program may not exceed the amount of time necessary for the person to achieve one year in recovery; or

(b) At least one year in recovery from a substance use disorder, the person may not be required to participate in the approved substance use disorder monitoring program.

3. Georgia

Official Code of Georgia Annotated (OCGA)

OCGA 43-34-5.1. Professional health program for monitoring and rehabilitation of impaired health care professionals; definitions; authorization; confidentiality; costs.

(a) As used in this Code section, the term:

(1) "Entity" means an organization or medical professional association which conducts professional health programs.

(2) "Health care professional" means any individual licensed, certified, or permitted by the board under this chapter.

(3) "Impaired" means the inability of a health care professional to practice with reasonable skill and safety to patients by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition.

(4) "Professional health program" means a program established for the purposes of monitoring and rehabilitation of impaired health care professionals.

(b) The board shall be authorized to conduct a professional health program to provide monitoring and rehabilitation of impaired health care professionals in this state. To this end, the board shall be authorized to enter into a contract with an entity for the purpose of establishing and conducting such professional health program, including but not limited to:

(1) Monitoring and rehabilitation of impaired health care professionals;

(2) Performing duties related to paragraph (13) of subsection (a) of Code Section 43-34-8; and

(3) Performing such other related activities as determined by the board.

(c) Notwithstanding the provisions of Code Sections 43-34-7 and 43-34-8, the board shall be authorized to provide pertinent information regarding health care professionals, as determined by the board and in its sole discretion, to the entity for its purposes in conducting a professional health program pursuant to this Code section.

(d) All information, interviews, reports, statements, memoranda, or other documents furnished to the entity by the board or other source or produced by the entity and any findings, conclusions, recommendations, or reports resulting from the monitoring or rehabilitation of health care professionals pursuant to this Code section are declared to be privileged and confidential and shall not be subject to Article 4 of Chapter 18 of Title 50, relating to open records. All such records of the entity shall be confidential and shall be used by such entity and its employees and agents only in the exercise of the proper function of the entity pursuant to its contract with the board. Such information, interviews, reports, statements, memoranda, or other documents furnished to or produced by the entity and any findings, conclusions, recommendations, or reports resulting from the monitoring or rehabilitation of health care professionals shall not be available for court subpoenas or for discovery proceedings.

(e) An impaired health care professional who participates in a professional health program conducted pursuant to this Code section shall bear all costs associated with such participation.

(f) Any entity that contracts with the board pursuant to this Code section shall be immune from any liability, civil or criminal, that might otherwise be incurred or imposed, for the performance of any functions or duties under the contract if performed in accordance with the terms of such contract and the provisions of this Code section.