



IN THE GENERAL ASSEMBLY STATE OF _____

Physician Health Programs Act

1 Be it enacted by the People of the State of _____, represented in the General
2 Assembly:

3 **Section 1. Title.** This act shall be known as and may be cited as the “Physician Health
4 Programs Act.”

5 **Section 2. Purpose.** The Legislature hereby finds and declares that the purpose of this Act is to
6 enhance the protection of the public by providing for a successful means of confidential and
7 professional support of physicians and other licensed health care professionals who have a
8 potentially impairing substance use disorder, mental health condition, or other medical disease
9 that may adversely affect the physician’s or other health care professional’s ability to safely and
10 effectively treat patients.

11 Physician illness and impairment exist on a continuum with illness typically predating
12 impairment, often by many years. This is a critically important distinction. Illness is the
13 existence of a disease. Impairment is a functional classification and implies the inability of the
14 person affected by disease to perform specific activities.

15 Referral during early stages of an illness prior to signs of impairment is critical. Many
16 physicians and other health care professionals who are ill are able to function effectively in early
17 stages of an illness due to their training and dedication. Therefore, recognizing the time to refer
18 to a state physicians health program (PHP) is important and barriers to referral must be limited to

1 allow a physician to come forward safely without fear of retribution. Even if illness progresses
2 to impairment, treatment usually results in disease, remission, recovery and restoration of
3 function. PHPs are then in a position to monitor stability and continuing progress in recovery.

4 The AMA supports a system that supports referral to PHPs and mitigation of barriers to that
5 referral process.

6 **Section 3. Background.** In 1974, the American Medical Association (AMA) acknowledged
7 physician impairment from alcoholism and drug dependence occurs and recognized alcoholism
8 and addiction as illnesses. With the advice and consent of the AMA and the Federation of State
9 Medical Boards (FSMB), plans were launched for the development of therapeutic alternatives in
10 lieu of automatic discipline of physicians who needed assistance. By 1980, all but three medical
11 societies in the United States had authorized or implemented PHPs. In 1985, the AMA
12 published its *Model Impaired Physician Treatment Act*. This Physician Health Program Act is to
13 serve as an update to the 1985 *Model Impaired Physician Treatment Act*.

14 The AMA and PHPs support confidential and compassionate care for all people, including
15 physicians suffering from a substance use disorder, mental health condition, other medical
16 disease or other potentially impairing conditions. The AMA advocates for protecting the privacy
17 and confidentiality of a physician's health and treatment history, including participation in a
18 PHP.

19 [DRAFTING NOTE: Different relationships exist between state licensing boards and PHPs.
20 Most PHPs are independent non-profit entities, and some are affiliated with the state medical
21 association. Others may be programs or departments of the state licensing boards. Many PHPs
22 have written agreements with their state licensing board to define this relationship.]

23 When confidentiality is endorsed and assured by PHPs and licensure boards, the AMA
24 believes that physicians with potentially impairing conditions are more likely to come forward

1 and utilize PHP services earlier. This reduces the likelihood of the illness progressing to
2 functional impairment, and promotes patient safety.

3 The treatment of physicians and other licensed health care professionals occurs with the
4 knowledge that:

5 (1) Substance use disorder, mental health condition, or other medical disease and
6 potentially impairing conditions can be chronic, relapsing disorders; and

7 (2) Without appropriate treatment and ongoing support, individual health and public
8 safety may be at risk.

9 Appropriate coordination of the effective detection, evaluation and treatment of these
10 physicians at PHPs and treatment programs, experienced with the treatment of professionals in
11 safety sensitive employment, will ultimately enhance the health of the provider and better protect
12 the public. The PHP model facilitates early detection and appropriate management of behavior
13 indicative of the potential for relapse and relapse itself.

14 **Section 4. Basic Principles.**

15 (1) The AMA recognizes that relationships built upon the principles of communication,
16 collaboration, accountability and transparency are most effective in improving the health
17 and wellbeing of physicians.

18 (2) In the general population, substance use disorders, mental health conditions, or other
19 medical diseases are common. More than 10 percent of Americans will develop a
20 substance use disorder in their lifetime, representing over 30 million people.

21 (3) The AMA supports the early detection, evaluation and treatment of physicians and other
22 licensed healthcare professionals suffering from a substance use disorder, mental health
23 condition, or other medical disease or potentially impairing conditions. Appropriate
24 evaluation and treatment of these physicians at programs experienced with the treatment

1 of professionals in a safety sensitive environment will ultimately enhance the health of
2 the provider and better protect the public.

3 (4) The AMA strongly opposes discrimination of physicians during licensing, employment,
4 credentialing or at any time, based on a history of substance use disorder, mental health
5 condition, or other medical disease.

6 (5) The AMA supports the use of PHP services, whenever possible, in lieu of disciplinary
7 action. When PHP services are not used, it is less likely that physicians will receive early
8 intervention and appropriate treatment. It is well-known that illness often predates
9 impairment by a period of years. The AMA believes earlier intervention in potentially
10 impairing illness to be more efficacious than intervention in later stages of disease.

11 (6) The AMA believes privacy and confidentiality of a physician's health and treatment
12 history must be paramount in the relationships between PHPs, and ill physicians and
13 other licensed health care professionals to allow those in need of help to come forward
14 without fear of punishment, disciplinary action, embarrassment, or professional isolation.
15 Confidentiality enhances the opportunity for recovery, is an incentive to participate in
16 early intervention. The AMA understands healthy professionals lead to healthy patients.

17 (7) The AMA recognizes the specific rules and regulations vary from state to state and health
18 care providers and/or physicians may have obligations to report a physician to their
19 respective medical board in such instances when impairment exists.

20 (8) The AMA believes adequate funding of PHPs is paramount in the provision of PHP
21 services. This funding provides long-term availability and viability of a cost-effective
22 PHP process to the mutual benefit of the public and ill professionals themselves.

1 **Section 5. Findings.**

2 (a) Physicians and other health care professionals who have received assistance and guidance
3 for a potentially impairing condition under the auspices of a PHP provide excellent care;

4 (b) Effective, confidential PHPs help reduce the stigma associated with having an alcohol,
5 prescription drug or other substance use disorder, a mental or behavioral health condition,
6 or other medical disease or condition, which often serves as a barrier for a person to
7 acknowledge that he or she needs evaluation and/or treatment;

8 (c) Effective PHPs have confidential referral, evaluation and/or treatment protocols to help
9 ensure that physicians and other health care professionals who need treatment can receive
10 it without fear of reflexive professional sanction as long as they remain compliant with
11 the PHP and associated treatment and remain in good standing with their professional
12 licensing board;

13 (d) Effective PHPs help ensure the integrity of the health care professions, enhance patient
14 safety and provide a reliable, cost-effective way to assist licensing boards appropriately
15 balance the needs of the state with the needs of the health care professional;

16 (e) Effective PHPs rely on clinical guidelines and treatment protocols from the American
17 Society of Addiction Medicine, American Academy of Addiction Psychiatry, American
18 Psychiatric Association, the Federation of State Physician Health Programs, and other
19 organizations with expertise in directing care to health care professionals;

20 (f) Many PHPs today rely on third-party institutions which may not provide important
21 privacy and confidentiality protections, including confidentiality of referral, patient
22 records and more. This privacy enabled through PHP participation has become the
23 hallmark of effective physician health programs;

1 (g) Many PHP services are limited by inadequate funding, which limits the ability to sustain
2 and expand scope of services to help physicians and other health care professionals.

3 **Section 6. Definitions.**

4 (a) “Board” shall mean the state professional licensing board governing physicians and other
5 licensed professionals.

6 [Drafting note: states may wish to add additional state licensing boards depending on the
7 populations served by the physician health program.]

8 (b) “Mental health disorder” shall mean a syndrome characterized by a clinically significant
9 disturbance in an individual’s cognition, emotion regulation, or behavior that reflects a
10 dysfunction in the psychological, biological, or developmental processes underlying
11 mental functioning. Mental disorders are usually associated with significant distress or
12 disability in social, occupational, or other important activities. (*See DSM-V*)

13 (c) “Professional incompetence” shall mean a finding by the Board that a physician or other
14 health care professional has failed to perform his or her professional obligations with
15 reasonable skill or safety as required by the Board.

16 (d) “Substance use disorder” shall mean a medical disease in which the essential feature is a
17 cluster of cognitive, behavioral, and physiological symptoms indicating that the
18 individual continues using the substance despite significant substance-related problems.
19 (*See DSM-V*).

20 (e) “Treatment” shall mean a course of in-patient or out-patient care, treatment or
21 rehabilitation services provided or supervised by an individual, organization or other
22 entity authorized to provide such services.

1 (f) “Physicians Health Program” (PHP) shall mean a confidential resource for physicians,
2 other licensed health care professionals, or those in training suffering from addictive,
3 psychiatric, medical, behavioral or other potentially impairing conditions. PHPs
4 coordinate effective detection, evaluation, treatment, and continuing care monitoring of
5 physicians with these conditions. This coordination and documentation of a participant’s
6 progress allows PHPs to provide documentation verifying a participant’s compliance with
7 treatment and/or continuing care recommendations. For the purposes of this model bill, a
8 PHP may include other professional assistance programs serving physicians and/or other
9 health care professionals.

10 (g) “Impairment”, shall mean the inability to practice medicine with reasonable skill and
11 safety due to 1) mental illness, 2) physical illnesses, including but not limited to
12 deterioration through the aging process, or loss of motor skill, or 3) excessive use or
13 abuse of drugs, including alcohol.

14 (h) “Participant” shall mean a health care professional or those in training enrolled in a PHP
15 pursuant to an agreement between the health care professional and the PHP.

16 (i) “Licensee” shall mean a licensed physician (or those to be licensed with respect to
17 physicians in training) or other health care provider whose practice falls under the state
18 licensure board.

19 **Section 7. Physicians Health Program.**

20 Under this Act, a PHP:

21 (1) Shall have legal authority to work with all health care professional licensure boards in the
22 provision of services mutually agreed upon.

23 (2) Shall have a voluntary, confidential track of participation for potentially impaired and/or
24 ill physicians and other licensed health care professionals.

1 (3) Shall be immune from civil liability for the provision of services as described in this Act.

2 (4) Shall have adequate funding by the state to ensure that the PHP and licensure board can
3 fulfill their respective missions and responsibilities as mutually agreed upon.

4 (5) Shall have peer review protection for the scope of services provided to its participants.

5 **Section 8 Application to a PHP for voluntary assistance.**

6 (a) A physician or other health care professional may voluntarily request participation in a
7 PHP for a substance use disorder, mental health condition or other medical disease if he
8 or she believes such participation is necessary to safeguard his or her own health and
9 safety.

10 (b) A physician or other health care professional who voluntarily requests participation in a
11 PHP for a substance use disorder, mental health condition or other medical disease shall
12 have his or her participation and subsequent treatment deemed confidential and shall not
13 be subject to disclosure or release to the Board or any other entity in a civil or criminal
14 proceeding except as provided in this Act or otherwise required by law.

15 (c) A physician or other health care professional who voluntarily participates in a PHP for a
16 substance use disorder, mental health condition or other medical disease shall not be
17 required to disclose such participation or subsequent treatment to any hospital, hospital
18 staff, health plan, government agency, or other entity that requests such information as a
19 condition of participation, employment, credentialing, licensure, compliance or other
20 requirement.

21 1. The failure to disclose this information shall not, by itself, be grounds for suspension,
22 removal or termination of employment or contract by a hospital, hospital staff, health
23 plan, government agency, or other entity.

1 2. The obligation to disclose this information shall not be a condition of participation,
2 employment, credentialing, licensure, compliance or other requirement by a hospital,
3 hospital staff, health plan, government agency, or other entity.

4 (d) The PHP shall be authorized to report the physician or other health care professional to
5 the Board if the PHP reasonably believes the physician or other health care professional
6 poses an imminent danger to the public and/or self.

7 (e) The provisions of this Section shall be maintained in force providing the physician or
8 other health care professional complies with all provisions of this Act and the state laws,
9 rules and regulations.

10 (f) A physician may be subject to the Board with respect to his or her professional license
11 being restricted or suspended as part of the voluntary referral process.

12 1. The Board may attach additional conditions as determined by the Board.

13 2. Removal of a voluntary restriction to practice medicine shall be subject to the
14 procedure for reinstatement of license by the Board.

15 3. Except as otherwise required by this Act or other state law, the Board shall not
16 discuss, release, publicize or otherwise publicly disclose information of the
17 physician's or other health care professional's voluntary restriction or suspension.

18 **Section 9. Referral to a PHP.**

19 (a) A physician or other health care professional who reasonably believes a colleague has a
20 substance use disorder, mental health condition or other medical disease that places the
21 colleague's patients' health, safety and welfare in jeopardy, may confidentially report
22 such colleague to the PHP.

23 1. The name of the referring physician or other care professional's name or other
24 identifying information obtained by the PHP shall not be disclosed to the colleague

1 under any circumstances except as necessary and with permission to determine
2 eligibility of participation based on case specifics.

3 2. No physician or other health care professional who has made a referral in good faith
4 shall be subject to civil or other damages as a result of such referral.

5 (b) The Board may refer a physician or other health care professional to the PHP under this
6 Act.

7 1. Such referral shall be deemed confidential and not subject to disclosure in any civil,
8 professional or other proceeding, unless part of an official Board action.

9 2. The participant must provide consent to the PHP to provide documentation of
10 compliance to relieve the referring physician or institution from reporting obligations.

11 3. The PHP shall report back to the Board – at its discretion – on the compliance of the
12 physician or other health care professional.

13 (c) A PHP which receives a referral shall assess such report to determine whether the
14 referred physician or other health care professional requires further screening, evaluation
15 and/or treatment or other action as determined by the PHP and associated treatment
16 providers.

17 (d) A physician or other health care professional who has been determined to require
18 additional evaluation, treatment or other action shall be offered an option to comply with
19 the PHP process.

20 (g) A physician or other health care professional who complies with the PHP process under
21 this Section shall not be reported to the Board or any other entity, and shall not be
22 required to disclose such participation to any hospital, hospital staff, health plan,
23 government agency, or other entity that requests such information as a condition of
24 participation, employment, credentialing, licensure, compliance or other requirement,

1 provided there has been compliance with the PHP process, and there have been no other
2 violations of state licensing board regulations or patient harm.

3 (e) If a physician or other health care professional fails to comply with the provisions of this
4 Section, or poses an imminent danger to the public safety, the referring individual, or
5 institution or the PHP shall be authorized to report the physician to the Board at its
6 discretion.

7 (f) Except as otherwise required by this Act or other state law, the Board shall not discuss,
8 release, publicize or otherwise publicly disclose information the physician's or other
9 health care professional's course of treatment.

10 **Section 10. Agreement with Licensing Board.**

11 (a) The Board shall have the authority to enter into an agreement with the state medical
12 society and other professional health care associations or other entities to establish a
13 PHP to provide for the coordination of care and treatment of physicians and other
14 health care professionals who have a substance use disorder, mental health disease or
15 other condition requiring treatment to ensure patient safety and participant well-
16 being.

17 (b) The PHP shall, at a minimum, establish the following rules and procedures for:

- 18 1. Entering into an agreement with the licensure board providing for the
19 provision of services under terms mutually agreed upon;
- 20 2. Contracting with or coordinating an adequate network of physicians and other
21 health care professionals to provide care for participants in the PHP;
- 22 3. Receiving and assessing reports of physicians and other health care
23 professionals who may be in need of PHPs assistance and guidance;

- 1 4. Safeguarding the privacy and confidentiality of physicians and other health
2 care professionals who have voluntarily applied or have been referred to
3 and/or received care under the direction of the PHP;
- 4 5. Monitoring the continuing care and support for physicians and other health
5 care professionals;
- 6 6. Intervening when physicians or other health care professionals violate the
7 terms of their care and may require additional evaluation and/or treatment
8 and/or referral to the Board;
- 9 7. Reporting on the compliance of physicians and other health care professionals
10 to the Board as required by this Act or associated PHP agreements;
- 11 8. Performing such other activities as agreed upon by the Board and the PHP;
- 12 9. Education on the early identification of potentially impairing conditions and
13 referral to the recognized state PHP.

14 (c) The PHP may be funded by the Board and through other such grants and
15 appropriations as authorized by the state.

16 (d) Notwithstanding any other provisions of law, the PHP and its officers and members
17 thereof, shall not be liable in damages to any person for any acts, omissions or
18 recommendations made in good faith while acting within the scope of this Act.

19 **Section 10. Nullification and voidance.** Any contract provision, written policy, or written
20 procedure in violation of this Section shall be deemed to be unenforceable and null and void.

Section 11. Severability. If any provision of this Act or the application thereof to any person or
circumstance is held invalid, such invalidity shall not affect other provisions of applications of
the Act which can be given effect without the invalid provision or application, and to this end the
provisions of this Act are declared to be severable.

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