



April 10, 2015

ENGROSSED SENATE BILL No. 168

DIGEST OF SB 168 (Updated April 8, 2015 5:39 pm - DI 77)

Citations Affected: IC 12-23; IC 35-48.

Synopsis: Controlled substance treatment and data base. Authorizes the division of mental health and addiction (division) to approve before June 30, 2018, not more than five new opioid treatment programs if: (1) the programs are run by a hospital or a certified community mental health center; and (2) the division determines that there is a need for a new opioid treatment program in the proposed location. Authorizes the division to approve an opioid treatment program in the proposed location if a hospital or community mental health center has not applied to the division to operate an opioid treatment program in the area before June 30, 2016. Requires new opioid treatment programs to be Medicaid providers and offer medication assisted treatments. Authorizes the division to approve an opioid treatment program in certain areas where a public health emergency has been declared. Requires the division to report to the general assembly specified information concerning any new treatment facilities. Permits physicians who hold a temporary medical license to have access to confidential information in the Indiana scheduled prescription electronic collection and tracking (INSPECT) program.

Effective: July 1, 2015.

**Miller Patricia, Brown L, Arnold J,
Randolph**

(HOUSE SPONSORS — CLERE, KIRCHHOFFER, BROWN C)

January 6, 2015, read first time and referred to Committee on Health & Provider Services.
January 14, 2015, reported favorably — Do Pass.
January 20, 2015, read second time, ordered engrossed. Engrossed.
January 26, 2015, read third time, passed. Yeas 50, nays 0.

HOUSE ACTION

March 2, 2015, read first time and referred to Committee on Public Health.
April 9, 2015, amended, reported — Do Pass.

ES 168—LS 6319/DI 104



April 10, 2015

First Regular Session 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

ENGROSSED SENATE BILL No. 168

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

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

- 1 SECTION 1. IC 12-23-18-5.5, AS AMENDED BY P.L.116-2008,
2 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 5.5. **(a)** The division may not grant specific
4 approval to be a new opioid treatment program. This section does not
5 apply to **the following**:
- 6 **(1)** Applications for new opioid treatment programs pending prior
7 to March 1, 2007.
 - 8 **(2)** Applications for new opioid treatment programs that are
9 operated by a hospital licensed under IC 16-21 or a certified
10 community mental health center:
 - 11 **(A)** within the licensed hospital or the center; or
 - 12 **(B)** in a separate office that meets federal opioid treatment
13 program requirements.
 - 14 **(3)** Applications for new opioid treatment programs, other
15 than a hospital or certified community mental health center,
16 that meet the requirements under subsection (c).

ES 168—LS 6319/DI 104



1 **(4) Applications for a new opioid treatment program that is**
2 **operated in a geographical area that has been declared by the**
3 **governor to be a public health emergency due to heroin use in**
4 **the area.**

5 **(b) A hospital licensed under IC 16-21 or a certified community**
6 **mental health center may apply to the division to operate an opioid**
7 **treatment program. Upon approval, the hospital or community**
8 **mental health center may operate an opioid treatment program in**
9 **compliance with this chapter and federal law.**

10 **(c) Before June 30, 2018, the division may approve the operation**
11 **of additional opioid treatment programs described in subsection**
12 **(a)(2) only if the division determines as described in subsection (h)**
13 **that there is a need for a new opioid treatment program in the**
14 **proposed location and the requirements of this chapter are met.**
15 **However, if the division determines, as described in subsection (h),**
16 **that:**

17 **(1) there is a need for a new opioid treatment program in a**
18 **proposed program location's geographic area; and**

19 **(2) before June 30, 2016, a hospital or community mental**
20 **health center has not applied to the division to operate an**
21 **opioid treatment program in the proposed program location's**
22 **geographic area;**

23 **the division may approve an application for an opioid treatment**
24 **program that is in compliance with this chapter and federal law to**
25 **operate a new opioid treatment program in the geographical area.**
26 **The total number of new opioid treatment programs described in**
27 **subsection (a)(2) and (a)(3) the division may approve under this**
28 **subsection may not exceed five (5) opioid treatment programs.**

29 **(d) The division may not approve the operation of a new opioid**
30 **treatment program described in subsection (a)(2) or (a)(3) after**
31 **June 30, 2018.**

32 **(e) An opioid treatment program that is described in subsection**
33 **(a)(4) may apply to the division to operate an opioid treatment**
34 **program. Upon approval, an opioid treatment program may**
35 **operate in an area that has been declared a public health**
36 **emergency in compliance with this chapter and federal law.**

37 **(f) An opioid treatment program described in subsection (a)(2)**
38 **through (a)(4) must meet the following requirements:**

39 **(1) Be enrolled as a Medicaid provider.**

40 **(2) Provide medication assisted treatments to patients,**
41 **including Food and Drug Administration approved long**
42 **acting nonaddictive medication assisted treatments.**



- 1 **(3) Meet the requirements of this section.**
- 2 **(g) Not later than June 30, 2018, the division shall report to the**
- 3 **general assembly in an electronic format under IC 5-14-6**
- 4 **concerning whether any new opioid treatment programs have been**
- 5 **approved under subsection (c). The report must include the**
- 6 **following:**
 - 7 **(1) The impact on access to opioid treatment programs.**
 - 8 **(2) The number of individuals served in the opioid treatment**
 - 9 **programs approved under subsection (c).**
 - 10 **(3) Treatment outcomes for individuals receiving services in**
 - 11 **the opioid treatment programs approved under subsection (c).**
 - 12 **(4) Any recommendations the division has concerning future**
 - 13 **treatment programs.**
- 14 **(h) The division shall adopt rules under IC 4-22-2 setting forth**
- 15 **the manner in which the division will determine whether there is**
- 16 **a need for a new opioid treatment program in a proposed program**
- 17 **location's geographic area.**
- 18 SECTION 2. IC 35-48-7-11.1, AS AMENDED BY P.L.131-2014,
- 19 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 20 JULY 1, 2015]: Sec. 11.1. (a) Information received by the INSPECT
- 21 program under section 8.1 of this chapter is confidential.
- 22 (b) The board shall carry out a program to protect the confidentiality
- 23 of the information described in subsection (a). The board may disclose
- 24 the information to another person only under subsection (c), (d), or (g).
- 25 (c) The board may disclose confidential information described in
- 26 subsection (a) to any person who is authorized to engage in receiving,
- 27 processing, or storing the information.
- 28 (d) Except as provided in subsections (e) and (f), the board may
- 29 release confidential information described in subsection (a) to the
- 30 following persons:
 - 31 (1) A member of the board or another governing body that
 - 32 licenses practitioners and is engaged in an investigation, an
 - 33 adjudication, or a prosecution of a violation under any state or
 - 34 federal law that involves a controlled substance.
 - 35 (2) An investigator for the consumer protection division of the
 - 36 office of the attorney general, a prosecuting attorney, the attorney
 - 37 general, a deputy attorney general, or an investigator from the
 - 38 office of the attorney general, who is engaged in:
 - 39 (A) an investigation;
 - 40 (B) an adjudication; or
 - 41 (C) a prosecution;
 - 42 of a violation under any state or federal law that involves a



- 1 controlled substance.
- 2 (3) A law enforcement officer who is an employee of:
- 3 (A) a local, state, or federal law enforcement agency; or
- 4 (B) an entity that regulates controlled substances or enforces
- 5 controlled substances rules or laws in another state;
- 6 that is certified to receive controlled substance prescription drug
- 7 information from the INSPECT program.
- 8 (4) A practitioner or practitioner's agent certified to receive
- 9 information from the INSPECT program.
- 10 (5) A controlled substance monitoring program in another state
- 11 with which Indiana has established an interoperability agreement.
- 12 (6) The state toxicologist.
- 13 (7) A certified representative of the Medicaid retrospective and
- 14 prospective drug utilization review program.
- 15 (8) A substance abuse assistance program for a licensed health
- 16 care provider who:
- 17 (A) has prescriptive authority under IC 25; and
- 18 (B) is participating in the assistance program.
- 19 **(9) An individual who holds a valid temporary medical permit**
- 20 **issued under IC 25-22.5-5-4 or IC 25-22.5-5-4.6.**
- 21 (e) Information provided to an individual under:
- 22 (1) subsection (d)(3) is limited to information:
- 23 (A) concerning an individual or proceeding involving the
- 24 unlawful diversion or misuse of a schedule II, III, IV, or V
- 25 controlled substance; and
- 26 (B) that will assist in an investigation or proceeding; and
- 27 (2) subsection (d)(4) may be released only for the purpose of:
- 28 (A) providing medical or pharmaceutical treatment; or
- 29 (B) evaluating the need for providing medical or
- 30 pharmaceutical treatment to a patient.
- 31 (f) Before the board releases confidential information under
- 32 subsection (d), the applicant must be approved by the INSPECT
- 33 program in a manner prescribed by the board.
- 34 (g) The board may release to:
- 35 (1) a member of the board or another governing body that licenses
- 36 practitioners;
- 37 (2) an investigator for the consumer protection division of the
- 38 office of the attorney general, a prosecuting attorney, the attorney
- 39 general, a deputy attorney general, or an investigator from the
- 40 office of the attorney general; or
- 41 (3) a law enforcement officer who is:
- 42 (A) authorized by the state police department to receive



- 1 controlled substance prescription drug information; and
2 (B) approved by the board to receive the type of information
3 released;
4 confidential information generated from computer records that
5 identifies practitioners who are prescribing or dispensing large
6 quantities of a controlled substance.
- 7 (h) The information described in subsection (g) may not be released
8 until it has been reviewed by:
- 9 (1) a member of the board who is licensed in the same profession
10 as the prescribing or dispensing practitioner identified by the data;
11 or
12 (2) the board's designee;
13 and until that member or the designee has certified that further
14 investigation is warranted. However, failure to comply with this
15 subsection does not invalidate the use of any evidence that is otherwise
16 admissible in a proceeding described in subsection (i).
- 17 (i) An investigator or a law enforcement officer receiving
18 confidential information under subsection (c), (d), or (g) may disclose
19 the information to a law enforcement officer or an attorney for the
20 office of the attorney general for use as evidence in the following:
- 21 (1) A proceeding under IC 16-42-20.
22 (2) A proceeding under any state or federal law that involves a
23 controlled substance.
24 (3) A criminal proceeding or a proceeding in juvenile court that
25 involves a controlled substance.
- 26 (j) The board may compile statistical reports from the information
27 described in subsection (a). The reports must not include information
28 that identifies any practitioner, ultimate user, or other person
29 administering a controlled substance. Statistical reports compiled under
30 this subsection are public records.
- 31 (k) Except as provided in IC 25-22.5-13, this section may not be
32 construed to require a practitioner to obtain information about a patient
33 from the data base.
- 34 (l) A practitioner is immune from civil liability for an injury, death,
35 or loss to a person solely due to a practitioner seeking or not seeking
36 information from the INSPECT program. The civil immunity described
37 in this subsection does not extend to a practitioner if the practitioner
38 receives information directly from the INSPECT program and then
39 negligently misuses this information. This subsection does not apply to
40 an act or omission that is a result of gross negligence or intentional
41 misconduct.
- 42 (m) The board may review the records of the INSPECT program. If



1 the board determines that a violation of the law may have occurred, the
2 board shall notify the appropriate law enforcement agency or the
3 relevant government body responsible for the licensure, regulation, or
4 discipline of practitioners authorized by law to prescribe controlled
5 substances.
6 (n) A practitioner who in good faith discloses information based on
7 a report from the INSPECT program to a law enforcement agency is
8 immune from criminal or civil liability. A practitioner that discloses
9 information to a law enforcement agency under this subsection is
10 presumed to have acted in good faith.



COMMITTEE REPORT

Madam President: The Senate Committee on Health & Provider Services, to which was referred Senate Bill No. 168, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to SB 168 as introduced.)

MILLER PATRICIA, Chairperson

Committee Vote: Yeas 9, Nays 0

COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred Senate Bill 168, 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 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 12-23-18-5.5, AS AMENDED BY P.L.116-2008, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 5.5. **(a)** The division may not grant specific approval to be a new opioid treatment program. This section does not apply to **the following:**

- (1)** Applications for new opioid treatment programs pending prior to March 1, 2007.
- (2)** Applications for new opioid treatment programs that are operated by a hospital licensed under IC 16-21 or a certified community mental health center:
 - (A)** within the licensed hospital or the center; or
 - (B)** in a separate office that meets federal opioid treatment program requirements.
- (3)** Applications for new opioid treatment programs, other than a hospital or certified community mental health center, that meet the requirements under subsection (c).
- (4)** Applications for a new opioid treatment program that is operated in a geographical area that has been declared by the governor to be a public health emergency due to heroin use in the area.

(b) A hospital licensed under IC 16-21 or a certified community mental health center may apply to the division to operate an opioid



treatment program. Upon approval, the hospital or community mental health center may operate an opioid treatment program in compliance with this chapter and federal law.

(c) Before June 30, 2018, the division may approve the operation of additional opioid treatment programs described in subsection (a)(2) only if the division determines as described in subsection (h) that there is a need for a new opioid treatment program in the proposed location and the requirements of this chapter are met. However, if the division determines, as described in subsection (h), that:

- (1) there is a need for a new opioid treatment program in a proposed program location's geographic area; and
- (2) before June 30, 2016, a hospital or community mental health center has not applied to the division to operate an opioid treatment program in the proposed program location's geographic area;

the division may approve an application for an opioid treatment program that is in compliance with this chapter and federal law to operate a new opioid treatment program in the geographical area. The total number of new opioid treatment programs described in subsection (a)(2) and (a)(3) the division may approve under this subsection may not exceed five (5) opioid treatment programs.

(d) The division may not approve the operation of a new opioid treatment program described in subsection (a)(2) or (a)(3) after June 30, 2018.

(e) An opioid treatment program that is described in subsection (a)(4) may apply to the division to operate an opioid treatment program. Upon approval, an opioid treatment program may operate in an area that has been declared a public health emergency in compliance with this chapter and federal law.

(f) An opioid treatment program described in subsection (a)(2) through (a)(4) must meet the following requirements:

- (1) Be enrolled as a Medicaid provider.
- (2) Provide medication assisted treatments to patients, including Food and Drug Administration approved long acting nonaddictive medication assisted treatments.
- (3) Meet the requirements of this section.

(g) Not later than June 30, 2018, the division shall report to the general assembly in an electronic format under IC 5-14-6 concerning whether any new opioid treatment programs have been approved under subsection (c). The report must include the following:



- (1) The impact on access to opioid treatment programs.**
- (2) The number of individuals served in the opioid treatment programs approved under subsection (c).**
- (3) Treatment outcomes for individuals receiving services in the opioid treatment programs approved under subsection (c).**
- (4) Any recommendations the division has concerning future treatment programs.**

(h) The division shall adopt rules under IC 4-22-2 setting forth the manner in which the division will determine whether there is a need for a new opioid treatment program in a proposed program location's geographic area."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 168 as printed January 15, 2015.)

CLERE

Committee Vote: yeas 10, nays 0.

