

SAFEHAVEN FATIGUE AND WELLNESS PROGRAM EXPANDED AGAIN IN VIRGINIA

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The Virginia General Assembly has passed two identical bills in the 2024 session to: 1) expand access to the SafeHaven program to dentists and dental hygienists; 2) authorize the SafeHaven program to provide outpatient health care to health care professionals; and 3) encourage health care professionals to voluntarily seek behavioral health services without fear of mandatory reports to health regulatory boards in every circumstance.

In 2020, Virginia became the first state in the nation to enact statutory protections to enable health care professionals to seek assistance for fatigue, wellness, and burnout without fear of licensure or liability repercussions for doing so. The initiative was launched by the Medical Society of Virginia and the program established pursuant to the statutory framework was branded and trademarked as “SafeHaven.” SafeHaven is voluntary, and enrollment may be by individual, by group or by employer. A tip of the hat is due to the Virginia Trial Lawyers Association (“VTLA”) for working with the Medical Society of Virginia on crafting the initial SafeHaven legislation and all subsequent expansions. Without the collaboration and cooperation of the VTLA, the pathway to achieve SafeHaven would have been extremely challenging.

In the years that followed the initial passage of the law, two trends developed. First, medical societies and associations in other states sought guidance and direction from the Medical Society of Virginia on how to introduce and secure passage of legislation to create similar protections with the goal of encouraging health care professionals to seek help and to take steps to preserve wellness. Secondly, the Medical Society of Virginia sought additional statutory protections to expand which health care professionals are eligible to avail themselves of the SafeHaven program.

The initial legislation in 2020 enabled any professional licensed, registered or certified by the Board of Medicine to participate in SafeHaven. Since 2020 and almost on an annual basis, favorable amendments to Virginia Code Section 8.01-581.16 were achieved to enable any person licensed by the Boards of Medicine, Nursing, and Pharmacy to enroll in SafeHaven along with any student enrolled in a school of medicine, osteopathic medicine, nursing, or pharmacy located in the Commonwealth.

In the 2024 session of the Virginia General Assembly, Senator Todd Pillion (R, Abingdon) and Delegate Patrick Hope (D, Arlington) introduced Senate Bill 629 and House Bill 42, respectively. These bills represented key priority legislative issues for the Medical Society of Virginia and the Virginia Dental Association. Both bills are identical and passed both the House of Delegates and the Senate of Virginia without a single vote in opposition.

The 2024 legislation accomplishes three goals. First, it expands the types of health care providers who can avail themselves of the SafeHaven program to include any person registered, certified or licensed by the Board of Dentistry, together with any student of a dental school or school of dental hygiene in the Commonwealth. The rationale for this addition stemmed from the significant prevalence of suicide and behavioral health needs of dental professionals. In fact, the American Dental Association reported in February of 2022 from their “2021 Dentist Well-Being Survey” that depression and anxiety disorders are higher among dentists than the general population.

Next, the scope of services that may be provided by the SafeHaven program was expanded to include the “arranging for [or provision of] outpatient health care related to career fatigue and wellness for health care professionals....” The rationale for this expansion stemmed from health care work force shortages and lack of timely access. For example, professionals served by SafeHaven often need prompt outpatient medical or behavioral health treatment. Securing appointments or providing services are often challenging. By enabling SafeHaven to schedule appointments or directly provide outpatient health care services, it greatly enhances achieving successful outcomes. “Health care” is defined in Virginia Code Section 8.01-581.1 to include many services and care, including medical, pharmacy and behavioral health. For example, if a professional in the SafeHaven program needed a psychiatric or psychological consultation, the SafeHaven program could arrange for the consultation or provide the consultation. If a professional is in need of a prescription for a behavioral health drug, it can be more timely obtained to provide more timely therapeutic results.

Finally, the legislation clarifies when mandatory reports are required to be made to health regulatory boards by Chief Executive Officers (CEO) or Chiefs of Staff (COS) for all hospitals pursuant to Virginia Code Section 54.1-2400.6. The current statute provides two reporting deadlines. First, if a professional is involuntarily admitted (temporary detention order) then a report must be made to the pertinent health regulatory board in five days. There is little ambiguity regarding that reporting provision.

The second reporting requirement in the statute centered on making a report to the pertinent health regulatory board when the CEO or COS was not clear on whether professionals who are in need of treatment or are voluntarily admitted must be reported to their respective health regulatory board within 30 days. For example, if a professional voluntarily seeks treatment or is admitted to a facility, is a report required within 30 days if the professional stabilizes and is no longer a threat to themselves or the public? This ambiguity resulted in inconsistent interpretations by facilities and their leadership.

The new legislation restructures the reporting obligations to better clarify when reports are required. The general rule will be that if a CEO or COS becomes aware in their official capacity that a health professional has been “voluntarily” admitted as a patient for treatment of a substance abuse or psychiatric illness and such illness may continue for more than 30 days after admission, then a report is required. The timing of the report to the health regulatory board is within five days of the conclusion of the 30-day period.

A key and significant exception to a report having to be made was included in the legislation. Specifically, no report has to be made to a health regulatory board if the “physician, physician assistant or nurse practitioner treating the health professional for substance abuse or psychiatric illness provides written confirmation to the entity required to make such report that the health care professional no longer is believed to be a danger to himself, the public or his patients.”

For example, if a physician voluntarily admits to a behavioral health unit for substance abuse or a psychiatric illness the requirement for a “30 day” report to be made is triggered. The reporting entity would be required to make such a report within five days of the conclusion of the 30-day period. However, if the treating physician, physician assistant or nurse practitioner provides written confirmation that the professional is no longer a danger to himself, the public or his patients, then no report is required.

The goal is to encourage providers to voluntarily seek help and assistance. Knowing today that seeking help will likely still result in a report to a health regulatory board is a huge impediment for professionals wanting to get help before they decompensate further. With this statutory revision, a professional can seek voluntary admission, be treated for a few days, a week, or 30 days and so long as the treating physician, physician assistant or nurse practitioner certifies in writing to the CEO or COS that the professional is no longer a danger, no report will be required to the health regulatory board.

The Governor signed both bills on March 20, 2024, and the legislation becomes effective July 1, 2024. It is not too early to launch the education efforts on these changes and encourage those health care professionals who need to plan ahead and enroll in SafeHaven so their wellbeing will remain steadfast and positive.

If you have any questions or need further guidance regarding Virginia’s SafeHaven program, please contact a member of Hancock Daniel’s [Government Relations](#) team.

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