
ENGROSSED

HOUSE BILL No. 1060

DIGEST OF HB 1060 (Updated February 19, 1998 11:25 am - DI 96)

Citations Affected: IC 25-22.5.

Synopsis: Entitles an individual who has completed an informed consent to medical treatment that includes any experimental or nonconventional medical treatment if a licensed physician has personally examined the individual and agrees to treat the individual. Requires that, before providing such treatment, the physician must determine that the treatment, when administered as directed, does not pose an unreasonable and significant risk of danger to the individual receiving the treatment. Also requires the physician to provide specific information to the individual and to receive the written informed consent of the individual or the individual's legal representative before providing the treatment in a licensed hospital. Provides that the governing board of the hospital must have specifically approved the medical treatment. Provides that health insurers are not required to provide coverage for the treatment. Provides that treatment given in compliance with these requirements is not malpractice. Provides that no person nor organization be required to provide an individual with access to medical treatment not otherwise commercially available to that individual.

Effective: July 1, 1998.

Burton, Crosby, Budak, Wilson

(SENATE SPONSORS — MILLER, HUME)

January 6, 1998, read first time and referred to Committee on Insurance, Corporations and Small Business.

January 29, 1998, amended, reported — Do Pass.

February 2, 1998, read second time, amended, ordered engrossed.

February 3, 1998, engrossed. Read third time, made special order of business for 5:00 p.m. Reread third time, recommitted to a Committee of One, amended, passed. Yeas 84, nays 13. Engrossed.

SENATE ACTION

February 9, 1998, read first time and referred to Committee on Pensions and Labor

February 19, 1998, amended, reported favorably — Do Pass.

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Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

HOUSE ENROLLED ACT No. 1060

AN ACT to amend the Indiana Code concerning professions and occupations.

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

SECTION 1. IC 25-22.5-1-2, AS AMENDED BY HEA 1011-1998, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: Sec. 2. (a) This article, as it relates to the unlawful or unauthorized practice of medicine or osteopathic medicine, does not apply to any of the following:

- (1) A student in training in a medical school approved by the board, or while performing duties as an intern or a resident in a hospital under the supervision of the hospital's staff or in a program approved by the medical school.
- (2) A person who renders service in case of emergency where no fee or other consideration is contemplated, charged, or received.
- (3) Commissioned medical officers or medical service officers of the armed forces of the United States, the United States Public Health Service, and medical officers of the United States Department of Veterans Affairs in the discharge of their official duties in Indiana.
- (4) An individual who is not a licensee who resides in another state or country and is authorized to practice medicine or osteopathic medicine there, who is called in for consultation by an

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individual licensed to practice medicine or osteopathic medicine in Indiana.

(5) A person administering a domestic or family remedy to a member of the person's family.

(6) A member of a church practicing the religious tenets of the church if the member does not make a medical diagnosis, prescribe or administer drugs or medicines, perform surgical or physical operations, or assume the title of or profess to be a physician.

(7) A school corporation and a school employee who acts under IC 34-30-14 (or IC 34-4-16.5-3.5 before its repeal).

(8) A chiropractor practicing the chiropractor's profession under IC 25-10 or to an employee of a chiropractor acting under the direction and supervision of the chiropractor under IC 25-10-1-13.

(9) A dental hygienist practicing the dental hygienist's profession under IC 25-13.

(10) A dentist practicing the dentist's profession under IC 25-14.

(11) A hearing aid dealer practicing the hearing aid dealer's profession under IC 25-20.

(12) A nurse practicing the nurse's profession under IC 25-23. However, a registered nurse may administer anesthesia if the registered nurse acts under the direction of and in the immediate presence of a physician and holds a certificate of completion of a course in anesthesia approved by the American Association of Nurse Anesthetists or a course approved by the board.

(13) An optometrist practicing the optometrist's profession under IC 25-24.

(14) A pharmacist practicing the pharmacist's profession under IC 25-26.

(15) A physical therapist practicing the physical therapist's profession under IC 25-27.

(16) A podiatrist practicing the podiatrist's profession under IC 25-29.

(17) A psychologist practicing the psychologist's profession under IC 25-33.

(18) A speech-language pathologist or audiologist practicing the pathologist's or audiologist's profession under IC 25-35.6.

(19) An employee of a physician or group of physicians who performs an act, a duty, or a function that is customarily within the specific area of practice of the employing physician or group of physicians, if the act, duty, or function is performed under the direction and supervision of the employing physician or a

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physician of the employing group within whose area of practice the act, duty, or function falls. An employee may not make a diagnosis or prescribe a treatment and must report the results of an examination of a patient conducted by the employee to the employing physician or the physician of the employing group under whose supervision the employee is working. An employee may not administer medication without the specific order of the employing physician or a physician of the employing group. Unless an employee is licensed or registered to independently practice in a profession described in subdivisions (8) through (17), nothing in this subsection grants the employee independent practitioner status or the authority to perform patient services in an independent practice in a profession.

(20) A hospital licensed under IC 16-21 or IC 12-25.

(21) A health care organization whose members, shareholders, or partners are individuals, partnerships, corporations, facilities, or institutions licensed or legally authorized by this state to provide health care or professional services as:

- (A) a physician;
- (B) a psychiatric hospital;
- (C) a hospital;
- (D) a health maintenance organization or limited service health maintenance organization;
- (E) a health facility;
- (F) a dentist;
- (G) a registered or licensed practical nurse;
- (H) a midwife;
- (I) an optometrist;
- (J) a podiatrist;
- (K) a chiropractor;
- (L) a physical therapist; or
- (M) a psychologist.

(22) A physician assistant practicing the physician assistant's profession under IC 25-27.5.

(23) A physician providing medical treatment under IC 25-22.5-1-2.1.

(b) A person described in subsection (a)(8) through (a)(17) is not excluded from the application of this article if:

- (1) the person performs an act that an Indiana statute does not authorize the person to perform; and
- (2) the act qualifies in whole or in part as the practice of medicine or osteopathic medicine.



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(c) An employment or other contractual relationship between an entity described in subsection (a)(20) through (a)(21) and a licensed physician does not constitute the unlawful practice of medicine under this article if the entity does not direct or control independent medical acts, decisions, or judgment of the licensed physician. However, if the direction or control is done by the entity under IC 34-30-15 (or IC 34-4-12.6 before its repeal), the entity is excluded from the application of this article as it relates to the unlawful practice of medicine or osteopathic medicine.

(d) This subsection does not apply to a prescription or drug order for a legend drug that is filled or refilled in a pharmacy owned or operated by a hospital licensed under IC 16-21. A physician licensed in Indiana who permits or authorizes a person to fill or refill a prescription or drug order for a legend drug except as authorized in IC 16-42-19-11 through IC 16-42-19-19 is subject to disciplinary action under IC 25-1-9. A person who violates this subsection commits the unlawful practice of medicine under this chapter.

(e) A person described in subsection (a)(7) shall not be authorized to dispense contraceptives or birth control devices.

SECTION 2. IC 25-22.5-1-2.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1998]: **Sec. 2.1. (a) An individual who consents under IC 34-18-12 may receive any experimental or nonconventional medical treatment if:**

(1) a licensed physician has personally examined the individual and agrees to treat the individual;

(2) there is no reasonable basis to conclude that the medical treatment, when administered as directed, poses an unreasonable and significant risk of danger to the individual receiving the medical treatment; and

(3) the physician has provided the individual with a written statement and an oral explanation of the medical treatment that the individual has acknowledged by the individual's signature or the signature of the individual's legal representative and that discloses the following:

(A) That the medical treatment is experimental or nonconventional.

(B) That the drug or medical device has not been approved by the United States Food and Drug Administration for any indication.

(C) The material risks generally recognized by a reasonably prudent physician of the medical treatment's



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side effects.

(b) If the medical treatment is provided on an inpatient or outpatient basis at a hospital licensed under IC 16-21, then the treatment must have been specifically preapproved by the governing board of the hospital.

(c) The medical licensing board shall develop protocols for medical treatments that are provided in a setting other than the inpatient or outpatient hospital setting specified in subsection (b). A physician who fails to comply with a protocol developed under this subsection shall be subject to discipline by the medical licensing board.

(d) This section does not require any person or organization to provide an individual with access to a medical treatment not otherwise commercially available to that individual.

(e) This section does not require:

- (1) an insurer;
- (2) a fraternal benefit society;
- (3) a nonprofit corporation;
- (4) a health maintenance organization (as defined in IC 27-13-1-19);
- (5) a preferred provider arrangement under IC 27-8-11; or
- (6) a limited service health maintenance organization (as defined in IC 27-13-34-4);

to provide coverage or make payment beyond the terms and conditions of the contract for medical treatment authorized under this section.

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