

117TH CONGRESS  
2D SESSION

# H. R. 8890

To amend title XVIII of the Social Security Act to establish exceptions for certain physician wellness programs, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 19, 2022

Mr. RUIZ (for himself, Mr. BUCSHON, Mr. BEYER, and Mr. MURPHY of North Carolina) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend title XVIII of the Social Security Act to establish exceptions for certain physician wellness programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Physician Wellness  
5 Program Act of 2022”.

6 **SEC. 2. EXCEPTION FOR PHYSICIAN WELLNESS PROGRAMS.**

7 (a) EXCEPTION FOR PHYSICIAN WELLNESS PRO-  
8 GRAMS.—

1           (1) IN GENERAL.—Section 1877(e) of the So-  
2           cial Security Act (42 U.S.C. 1395nn(e)) is amended  
3           by adding at the end the following:

4           “(9) PHYSICIAN WELLNESS PROGRAMS.—A  
5           bona fide mental health or behavioral health im-  
6           provement or maintenance program offered to a phy-  
7           sician by an entity, if—

8                   “(A) such program—

9                           “(i) consists of counseling, mental  
10                           health services, a suicide prevention pro-  
11                           gram, or a substance use disorder preven-  
12                           tion and treatment program;

13                           “(ii) is made available to a physician  
14                           for the primary purpose of preventing sui-  
15                           cide, improving mental health and resil-  
16                           iency, or providing training in appropriate  
17                           strategies to promote the mental health  
18                           and resiliency of such physician;

19                           “(iii) is set out in a written policy, ap-  
20                           proved in advance of the operation of the  
21                           program by the governing body of the enti-  
22                           ty providing such program, that includes—

23                                   “(I) a description of the content  
24                                   and duration of the program;

1                   “(II) a description of the evi-  
2                   dence-based support for the design of  
3                   the program;

4                   “(III) the estimated cost of the  
5                   program;

6                   “(IV) the personnel (including  
7                   the qualifications of such personnel)  
8                   implementing the program; and

9                   “(V) the method by which such  
10                  entity will evaluate the use and suc-  
11                  cess of the program;

12                  “(iv) is offered by an entity with a  
13                  formal medical staff to all physicians who  
14                  practice in the geographic area served by  
15                  such entity, including physicians who hold  
16                  bona fide appointments to the medical  
17                  staff of such entity or otherwise have clin-  
18                  ical privileges at such entity;

19                  “(v) is offered to all such physicians  
20                  on the same terms and conditions and  
21                  without regard to the volume or value of  
22                  referrals or other business generated by a  
23                  physician for such entity;

24                  “(vi) is evidence-based and conducted  
25                  by a qualified health professional; and

1 “(vii) meets such other requirements  
2 the Secretary may impose by regulation as  
3 needed to protect against program or pa-  
4 tient abuse;

5 “(B) such entity is—

6 “(i) a hospital;

7 “(ii) an ambulatory surgical center;

8 “(iii) a community health center;

9 “(iv) a rural emergency hospital;

10 “(v) a rural health clinic;

11 “(vi) a skilled nursing facility; or

12 “(vii) a similar entity, as determined  
13 by the Secretary; and

14 “(C) neither the provision of such pro-  
15 gram, nor the value of such program, are con-  
16 tingent upon the number or value of referrals  
17 made by a physician to such entity.”.

18 (2) REGULATION.—Not later than 1 year after  
19 the date of enactment of this Act, the Secretary of  
20 Health and Human Services shall promulgate such  
21 regulations as are necessary to carry out the amend-  
22 ment made by paragraph (1).

23 (b) EXCEPTION UNDER THE ANTI-KICKBACK STAT-  
24 UTE.—Section 1128B(b)(3) of the Social Security Act (42  
25 U.S.C. 1320a–7b(b)(3)) is amended—

1           (1) in subparagraph (J), by striking “and” at  
2 the end;

3           (2) in subparagraph (K), by striking the period  
4 at the end and inserting “; and”; and

5           (3) by adding at the end the following:

6           “(L) a bona fide mental health or behavioral  
7 health improvement or maintenance program, if—

8                 “(i) such program—

9                         “(I) consists of counseling, mental  
10 health services, a suicide prevention pro-  
11 gram, or a substance use disorder preven-  
12 tion and treatment program;

13                         “(II) is made available to a physician  
14 and other clinicians for the primary pur-  
15 pose of preventing suicide, improving men-  
16 tal health and resiliency, or providing  
17 training in appropriate strategies to pro-  
18 mote the mental health and resiliency of  
19 such physician;

20                         “(III) is set out in a written policy,  
21 approved in advance of the operation of  
22 the program by the governing body of the  
23 entity providing such program, that in-  
24 cludes—

1                   “(aa) a description of the content  
2                   and duration of the program;

3                   “(bb) a description of the evi-  
4                   dence-based support for the design of  
5                   the program;

6                   “(cc) the estimated cost of the  
7                   program;

8                   “(dd) the personnel (including  
9                   the qualifications of such personnel)  
10                  implementing the program; and

11                  “(ee) the method by which such  
12                  entity will evaluate the use and suc-  
13                  cess of the program;

14                  “(IV) is offered by an entity with a  
15                  formal medical staff to all physicians and  
16                  other clinicians who practice in the geo-  
17                  graphic area served by such entity, includ-  
18                  ing physicians who hold bona fide appoint-  
19                  ments to the medical staff of such entity or  
20                  otherwise have clinical privileges at such  
21                  entity;

22                  “(V) is offered to all such physicians  
23                  and clinicians on the same terms and con-  
24                  ditions and without regard to the volume  
25                  or value of referrals or other business gen-

1 erated by a physician or clinician for such  
2 entity;

3 “(VI) is evidence-based and conducted  
4 by a qualified health professional; and

5 “(VII) meets such other requirements  
6 the Secretary may impose by regulation as  
7 needed to protect against program or pa-  
8 tient abuse;

9 “(ii) such entity is—

10 “(I) a hospital;

11 “(II) an ambulatory surgical center;

12 “(III) a community health center;

13 “(IV) a rural emergency hospital;

14 “(V) a skilled nursing facility; or

15 “(VI) any similar entity, as deter-  
16 mined by the Secretary; and

17 “(iii) neither the provision of such pro-  
18 gram, nor the value of such program, are con-  
19 tingent upon the number or value of referrals  
20 made by a physician or other clinician to such  
21 entity.”.

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