

# HEA 1006: Structural Changes in Indiana Involuntary Treatment Laws

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# Presentation Agenda



I. BACKGROUND

II. CONTEXT WITH COMMITMENTS

III. EMERGENCY DETENTIONS

IV. PRACTICAL TAKEAWAYS



# I. BACKGROUND

All patients in Indiana have the right to consent to and/or refuse any treatment. Incapacitated patients are treated differently:

- Minors
- Unconscious
- Disabled
- Mentally ill

# I. BACKGROUND

The legal authority to make medical decisions can be shifted from the incapacitated patient to another person or entity in several ways:

- Power of Attorney – sometimes shifts authority to another
- Guardianship – permanently shifts authority to another
- Commitment – shifts authority to a Provider for a limited time

# I. BACKGROUND

## Power of Attorney (briefly):

- The requirements are statutory. IC § 30-5-4-1.
- The “Principal” (patient) designates decision-making authority to the “Attorney-in-Fact.” IC § 30-5-2-2; IC § 30-5-2-8. Only voluntary arrangement of the three.
- Defines the circumstances in which it shifts decision-making authority
- Defines the types of authority it shifts--which can include healthcare. IC § 30-5-5-16.
- A POA must be executed, **not** be recorded. IC § 30-5-3-2; IC § 30-5-3-3.

# I. BACKGROUND

## Guardianship (briefly):

- Court permanently shifts authority to another. IC § 29-3-1 *et seq.*
- Probate Court appoints a “Guardian” to make decisions on behalf of an “Incapacitated Person” or “Protected Person”. IC § 29-3-1-6; IC § 29-3-1-7.5; IC § 29-3-1-13.
- Guardianship proceedings are described at IC § 29-3-4 *et seq* and IC § 29-3-5 *et seq.*
- A Guardian has the power to consent to medical treatment. IC § 29-3-8-2(a)(4).

# I. BACKGROUND

Commitment (briefly):

- Probate Court permanently shifts authority to a healthcare provider or institution. IC §§ 12-26-6 & 7.
- Commitment does not compel the patient to remain hospitalized.
- Temporary Commitment can last up to 90-days and can be renewed.
- Regular Commitment can last up to a year and will be reviewed annually.

# II. CONTEXT WITH COMMITMENTS

- When a Probate Court “commits” a person, it assigns decision-making authority to a healthcare provider or institution.
- Indiana views commitment as a drastic restriction of rights. Thus, Indiana offers a substantially less intrusive and more temporary steps that can be taken first:

## EMERGENCY DETENTION



# II. CONTEXT WITH COMMITMENTS

A Probate Court can order Commitment when:

- A voluntary inpatient at a mental health facility requests to leave AMA but requires ongoing inpatient Tx (IC § 12-26-3);
- An Application for Emergency Detention is pending (IC § 12-26-5); or
- A Petition for Commitment is filed (IC § 12-26-6).

# II. CONTEXT WITH COMMITMENTS

## Voluntary Inpatients (IC § 12-26-3)

A mental health facility can seek commitment of voluntary inpatients who request to leave AMA in writing if the patient is:

- Mentally ill and
- Either **dangerous** or **gravely disabled**.

Otherwise, the patient must be released within 24-hours.



Commitment of  
Voluntary Patient



Physician's  
Statement

# II. CONTEXT WITH COMMITMENTS

## Emergency Detentions (IC § 12-26-5)

Any person can apply for emergency detention of a person believed to be suffering from mental illness who is therefore gravely disabled or a danger to themselves or others **and** requires continuing involuntary detention to receive care and treatment.

Unless discharged by the detaining facility within 14 business days of the emergency detention, the Probate Court must hold a hearing to determine if the patient should be committed.

# II. CONTEXT WITH COMMITMENTS

## Petitions for Commitment (IC § 12-26-6 & 7)

Any person can Petition for Commitment of someone believed to be suffering from mental illness who is therefore gravely disabled or a danger to self or others.

The Petition must be supported by a Physician's Statement.

The Probate Court must conduct a hearing within 14 days.



Petition



Physician's  
Statement

# III. EMERGENCY DETENTION

A creature of statutes (which have been revamped):

- IC § 12-26-5-0.5 – Initiation by law enforcement and judges
- IC § 12-26-5-1 – Initiation by others
- IC § 12-26-5-2 – Transportation by Law Enforcement
- IC § 12-26-5-3 – Examination and Treatment
- IC § 12-26-5-6 – Denial of AED
- IC § 12-26-5-9 – Discharge or Detention
- IC § 12-26-5-11 – Hearing on Commitment
- IC § 12-26-5-12 – Costs of Transportation (if no probable cause)
- IC § 12-26-5-13 – Immunity from Liability

# III. EMERGENCY DETENTION

What did the Legislature hope to accomplish?

1. Lower burden on busy probate courts
2. More treatment with less court intervention
3. Reduced financial strain on treating providers



# III. EMERGENCY DETENTION

Biggest clinical changes:

- You are authorized to treat the Patient “in accordance with generally accepted clinical care guidelines.”

Biggest procedural changes:

- APRNs and PAs may examine the patient and determine if an AED is appropriate (but a physician must sign).
- You must file the AED with the Court within 48-hours.
- Your local court may require a Report Following when you discharge the patient or a Petition if commitment is appropriate.

# III. EMERGENCY DETENTION

IC § 12-26-5-0.5 – Initiation by law enforcement and judges

Law enforcement and judges need no longer start with an immediate detention—they can apply for emergency detention.

“(f) If clinically, appropriate, a physician may authorize and begin a mental health or substance use disorder treatment plan using accepted clinical care guidelines, including medication, for an individual detained under this chapter.”

# III. EMERGENCY DETENTION

IC § 12-26-5-1 – Initiation by others

(a) Filing an AED allows the patient to be detained and treated for 72 business hours

(b) Completing an AED allows the patient to be detained **and treated** for 48 hours.

- The Emergency Detention can last 14 business days

- Midnight to 0800 roll over to 0800

(c) A physician must sign the AED, but an APRN or PA can examine the patient.



AED

STATE OF INDIANA )  
 )  
 COUNTY OF \_\_\_\_\_ ) IN THE \_\_\_\_\_  
 )  
 IN RE THE MENTAL HEALTH ) CASE NO. \_\_\_\_\_  
 PROCEEDINGS OF: )  
 \_\_\_\_\_ )

**APPLICATION FOR EMERGENCY DETENTION  
 OF MENTALLY ILL AND DANGEROUS AND/OR GRAVELY DISABLED PERSON**

(Facilities complete sections 1 through 5)

1. Comes now Applicant:

\_\_\_\_\_  
 Facility name

\_\_\_\_\_  
 Facility address

\_\_\_\_\_  
 Telephone number

\_\_\_\_\_  
 Email address or facsimile number

\_\_\_\_\_  
 Name of Applicant on behalf of the facility

\_\_\_\_\_  
 Admission Date and Time

2. And files this Application under Indiana Code 12-26-5 concerning:

\_\_\_\_\_  
 Name of individual

\_\_\_\_\_  
 Home address and County

\_\_\_\_\_ Location where  
 individual can be found (if different)

Identifying data: Sex \_\_\_\_\_

DOB or estimated age: \_\_\_\_\_

Other distinguishing characteristic(s):  
 \_\_\_\_\_

3. Applicant requests that the court authorize:

- Continued emergency detention in the following appropriate facility:  
 \_\_\_\_\_ (Name and location of facility)
- Law enforcement to take the individual into custody and transport to the following appropriate facility, which has been contacted and agreed to accept the individual:  
 \_\_\_\_\_ (Name and location of facility)

4. Physician's Attestation<sup>1</sup>:

I hold a valid license to practice medicine in Indiana, issued by the Medical Licensing Board of Indiana, or am a medical officer of the United States Government who is in Indiana performing official duties.

The above-named individual has been examined by a physician, an advanced practice registered nurse, or physician assistant, and that based on this examination, or based on other information provided, I believe there is *probable cause* to believe that the individual is mentally ill, meaning a psychiatric disorder that substantially disturbs an individual's thinking, feeling, or behavior and impairs the individual's ability to function, due to:

- intellectual disability,
- alcoholism,
- addiction to narcotics or dangerous drugs,
- temporary impairment as a result of alcohol or drug use, or
- other psychiatric disorder.

and the individual is:

- dangerous to self,
- dangerous to others, or
- gravely disabled (meaning a conditions in which the individual, as a result of mental illness, is in danger of coming to harm because the individual is unable to provide for the individual's essential needs or has a substantial impairment or obvious deterioration of that individual's judgment, reasoning, or behavior that results in the individual's inability to function independently),

<sup>1</sup> This Application is not complete without a Physician's Attestation.

and the individual requires involuntary detention to receive care and treatment for the following reasons:

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\_\_\_\_\_  
Physician name

\_\_\_\_\_  
Physician signature

\_\_\_\_\_  
Date/time

5. Applicant's Attestation (if other than the Physician above):

I believe there is *probable cause* to believe that the individual is mentally ill, meaning a psychiatric disorder that substantially disturbs an individual's thinking, feeling or behavior and impairs the individual's ability to function, due to:

- intellectual disability,
- alcoholism,
- addiction to narcotics or dangerous drugs,
- temporary impairment as a result of alcohol or drug use, or
- other psychiatric disorder.

and the individual is:

- dangerous to self,
- dangerous to others, or
- gravely disabled (meaning a condition in which the individual, as a result of mental illness, is in danger of coming to harm because the individual is unable to provide for the individual's essential needs or has a substantial impairment or obvious deterioration of that individual's judgment, reasoning, or behavior that results in the individual's ability to function independently),

and the individual requires involuntary detention to receive care and treatment for the following reasons:

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\_\_\_\_\_  
Applicant Name on behalf of the facility

\_\_\_\_\_  
Applicant Title

\_\_\_\_\_  
Applicant Signature

\_\_\_\_\_  
Date/time

*(Judicial Officers complete Section 6 or 7)*

6. Emergency Detention Order

The undersigned judicial officer, having reviewed this Application, finds:

- the Application was filed within forty-eight (48) hours of admission, excluding Saturdays, Sundays, and legal holidays (if the individual was admitted after midnight and before 8:00 a.m., the time period begins to run at 8:00 a.m.);
- there is *probable cause* to believe the individual has a mental illness, is either dangerous or gravely disabled, and requires involuntary detention to receive care and treatment;
- the court authorizes continued emergency detention in the following appropriate facility:  
  
\_\_\_\_\_ (Name and location of facility)
- the court authorizes law enforcement to take the individual into custody and transport to the following appropriate facility, which has been contacted and agreed to accept the individual:

\_\_\_\_\_ (Name and location of facility)

The individual may not be detained in the facility for more than fourteen (14) days from the time of admission, excluding Saturdays, Sundays, and legal holidays pending a final hearing.

If petitioner believes a temporary or regular commitment is necessary, Petitioner is ORDERED to file a request for final hearing within seven (7) days from the date of admission, excluding weekends and holidays. If no request for hearing has been filed, this order for detention expires as provided in Indiana Code 12-26-5-1.

The individual shall be discharged from the facility immediately if the superintendent of the facility or the physician believes detention is no longer necessary and the facility shall promptly notify the court of the same.

If clinically appropriate, a physician may authorize and begin a mental health or substance use disorder treatment plan using accepted clinical care guidelines, including medication, for the individual detained.

A copy of this Application for Emergency Detention shall be made a part of the individual's medical record.

If transfer to another facility is appropriate under accepted clinical care guidelines (check one):

- the facility must obtain judicial approval before transferring the individual to another appropriate facility, or
- the facility is not required to obtain judicial approval before transferring the individual to another appropriate facility in Indiana, so long as the facility has been contacted and has agreed to admit the individual under the emergency detention order.

The facility is ordered to promptly notify the court of any transfer.

SO ORDERED \_\_\_\_\_ (Date/time)

\_\_\_\_\_  
Judicial Officer

## 7. Emergency Detention Denial

The undersigned judicial officer, having reviewed this Application, finds:

- the Application was not filed within forty-eight (48) hours of admission, excluding Saturdays, Sundays, and legal holidays (if the individual was admitted after midnight and before 8:00 a.m., the time period begins to run at 8:00 a.m.); or
- there is no probable cause to further detain the individual, and the individual is hereby released.

SO ORDERED \_\_\_\_\_ (Date/time)

\_\_\_\_\_  
Judicial Officer



# III. EMERGENCY DETENTION

IC § 12-26-5-2 – Transportation by Law Enforcement

A Judge can order law enforcement to transport the patient.

- Patient is not under arrest;
- County where patient is located pays for transportation;
- Transportation is non-emergent;
- Patient is transported at least 30 miles to facility.

# III. EMERGENCY DETENTION

IC § 12-26-5-11 – Hearing on Commitment

The Patient can be detained and treated for up to 14 business days.

- Courts expect this treatment.
- Private insurance and Medicaid must treat it as medically necessary

The Patient must discharge or a hearing on commitment must occur within that timeframe.

- Courts generally only set a hearing on request.
- Some Courts require notice of discharge.



Report Following

# III. EMERGENCY DETENTION

- IC § 12-26-2-6 – Immunity from Liability

“A person who without malice, bad faith, or negligence acts according to this article and ... assists in the detention, care, and treatment of an individual alleged or adjudged to have a mental illness is immune from any civil or criminal liability that might otherwise be imposed as a result of the person's actions.”

- IC § 12-26-5-13 – Immunity from Liability

You and your providers “may not be held liable for an act or omission taken in good faith under this chapter, unless the act or omission constitutes gross negligence or willful or wanton misconduct.”

# III. EMERGENCY DETENTION

## DEFINITIONS:

1. Mental Illness – psychiatric disorder, intellectual disability, chemical addiction. IC § 12-7-2-130.
2. Grave Disability:
  1. in danger of coming to harm due to inability to provide for food, clothing, shelter, or other essential human needs or
  2. substantial impairment or obvious deterioration in judgment, reasoning, or behavior such that the patient cannot function independently. IC § 12-7-2-96.
3. Dangerousness – presents a substantial risk that the individual will harm the individual or others. IC § 12-7-2-53.
4. In Need of Immediate Restraint – not defined.

# III. EMERGENCY DETENTION

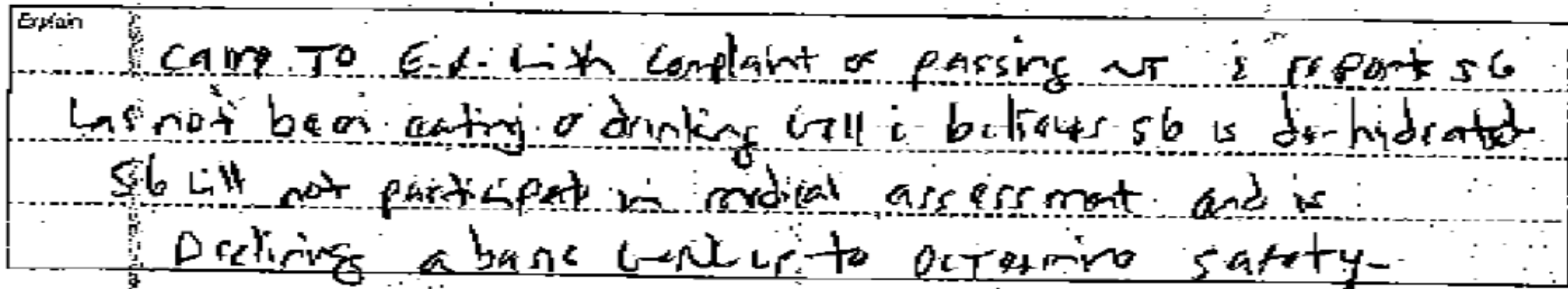
A facility can detain a person but must then complete an Application for Emergency Detention. IC § 12-26-5-1. That application must include two components:

1. A witness statement that the patient is mentally ill, gravely disabled or dangerous, and in need of immediate restraint.
2. A Physician Statement that the patient may be mentally ill AND either gravely disabled or dangerous.

A Physician **must** sign the AED.

# III. EMERGENCY DETENTION

The AED **will** be a court filing. It must be legible.



Additionally, be explicit—the probate judge’s decision turns only on the AED’s content.



# III. EMERGENCY DETENTION

You can detain and treat a patient for 48 business hours.

- Statute does not require you to complete or file the AED to start detention—**BEST PRACTICE DOES.**
- Statute offers 48-hours to file—**BEST PRACTICE IS BE FASTER.**
- Judges “assume” detention starts when patient is not free to leave.

Once you file the AED with the local probate court, you can detain and treat the patient for 72 business hours.

Once the probate judge signs the AED, you can detain and treat the patient for 14 business days.

# III. EMERGENCY DETENTION

Date and Time of Admission: Monday, 10/2/23 @ 22:00

48 Hours for Evaluation and Treatment

File AED: Wednesday, 10/4/23 @ 22:00

72 Hours for Judge to Endorse

Receive Signed AED: Thursday, 10/5/23 @ 22:00

14 Days for Continued Treatment

Commitment or Discharge: 10/20/23 @ 22:00

# III. EMERGENCY DETENTION

The dates of Indiana's legal holidays are identified in advance by decree of the Governor. They are:

New Year's Day, Martin Luther King, Jr. Day, Lincoln's Birthday\*, Washington's Birthday\*, Good Friday, Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day\*\*, Veteran's Day, Thanksgiving Day, and Christmas Day.

\* - these holidays can be "floated" by the Governor and are often celebrated the day before/after Thanksgiving and Christmas Eve

\*\* - there may be more than one Election Day



2023 Holidays



2024 Holidays

<https://www.in.gov/spd/benefits/files/2023-Holidays-memorandum.pdf>

<https://www.in.gov/spd/benefits/files/2024-Holidays-memorandum.pdf>

# III. EMERGENCY DETENTION

When does the 48/72-hour period expire?

- PT arrives Sunday at 0931. AED completed that day at 1908.
  - What if Monday is Memorial Day?
- PT arrives Tuesday at 1659. AED completed Wed. at 0058.
  - What if Friday was Good Friday?
  - What if Monday is Labor Day?
  - What if Tuesday is Election Day?

# III. EMERGENCY DETENTION

When does the 48/72-hour period expire?

- PT arrives Sunday at 0931. AED completed that day at 1908.

Sundays don't count.

Timer started 0800 Monday.

24-hours elapsed 0800 Tuesday.

48-hours elapsed 0800 Wednesday – AED MUST BE FILED BEFORE THIS DEADLINE.

72-hours elapsed 0800 Thursday – PT MUST DISCHARGE ABSENT JUDICIAL SIGNATURE.

➤ What if Monday is Memorial Day?

Timer starts 0800 Tuesday

# III. EMERGENCY DETENTION

When does the 48/72-hour period expire?

- PT arrives Tuesday at 1659. AED completed Wed. at 0058.

Timer started 0800 Wednesday.

24-hours elapsed 0800 Thursday.

48-hours elapsed 0800 Friday – AED MUST BE FILED BEFORE THIS DEADLINE.

72-hours elapsed 0800 Monday – PT MUST DISCHARGE ABSENT JUDICIAL SIGNATURE.

- What if Friday was Good Friday?
- What if Monday is Labor Day?
- What if Tuesday is Election Day?

# III. EMERGENCY DETENTION

## TYPES OF ENCOUNTERS:

- Patient at Emergency Department
  - Came in voluntarily (for any ailment)
  - Brought by family
  - Brought by law enforcement
- Patient at Mental Health Facility
  - Came in voluntarily
  - Brought by family
  - Brought by law enforcement
  - Transferred from external Emergency Department

# III. EMERGENCY DETENTION

When confronted with a patient suffering from mental illness, providers must decide:

Does this Patient's mental illness endanger themselves or others or prevent them from taking care of themselves independently?

This is a clinical decision. Therefore, you should:

- Educate your clinicians about when and how Indiana allows them to make decisions for their patients;
- Encourage your clinicians to make clinical decisions for the best interests of their patients; and
- Support their clinical decisions within the statutory framework.



# III. EMERGENCY DETENTION

## PAYMENT:

- Courts want less involvement—they want you to detain and treat the patient for up to 14 business days (12/1 – 12/19).
- You only get paid for services that are medically necessary.
- Emergency Detention is now medically necessary.
  - Indiana Medicaid: IC § 12-15-5-13.5(b)
  - Accident and Sickness: IC § 27-8-5-15.9
  - Individual and Group Contracts: IC § 27-13-7-28

# III. EMERGENCY DETENTION

## OTHER OBLIGATIONS:

- EMTALA

- Mental Health patients must still be stable before transfer.
- What if the patient needs mental health treatment and treatment for other medical conditions?
- Can the mental health treatment facility care for the patient's other medical conditions?

# III. EMERGENCY DETENTION

## OTHER OBLIGATIONS:

- HIPAA

- Healthcare providers cannot disclose Protected Health Information without court process or statutory command.
- Can you call the phone number in a patient's pocket to come pick up the patient?
- Can you call the patient's identified family members or supportive loved ones to get useful patient history?

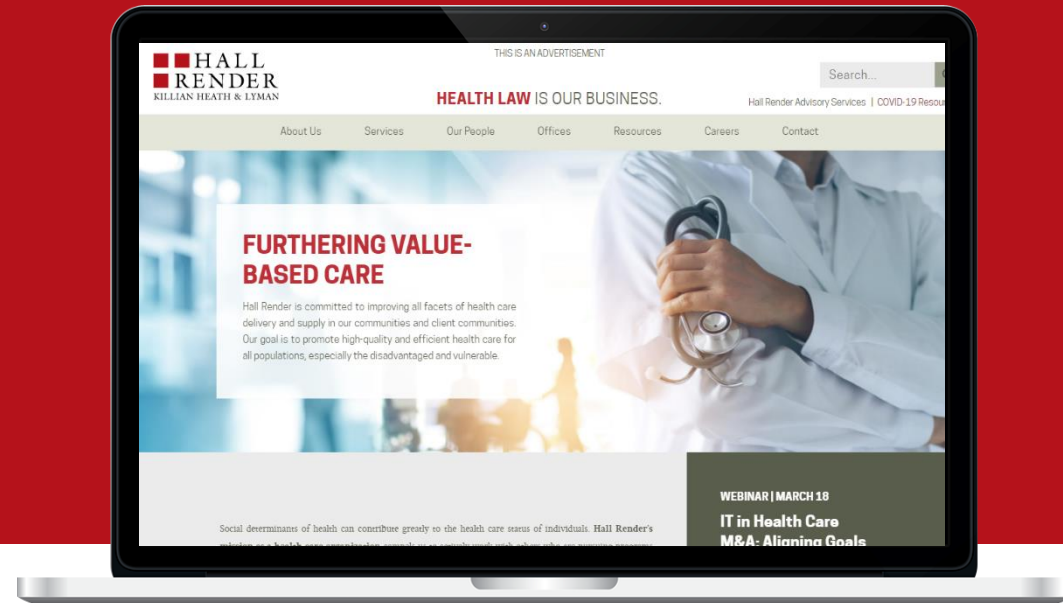
## IV. PRACTICAL TAKEAWAYS

- Have legal review POAs/Guardianships.
- Identify, track, and meet AED deadlines.
- Assess patients for emergency detention on the first possible business day.
- File AEDs as early as possible.
- Transfer emergently detained patients **with** a copy of the AED showing it was filed or signed by a judge.

# Questions?

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