

AN ACT

ENTITLED, An Act to revise certain provisions of the health professionals diversion program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 36-2A-1 be amended to read as follows:

36-2A-1. Terms used in this chapter mean:

- (1) "Health professionals assistance program," a confidential program designed to monitor the treatment and continuing care of any regulated health professional who may be unable to practice with reasonable skill and safety, if the professional's mental health issues or substance use disorder is not appropriately managed;
- (2) "Impaired," the inability of a licensee to practice his or her health-related profession with reasonable skill and safety as a result of mental health issues or substance use related disorders;
- (3) "Participating board," a health-related licensing board listed in Title 36 which agrees with other health-related licensing boards to jointly conduct a health professionals assistance program. The program is available to participating health-related licensing boards in conjunction with, or as an alternative to, other sanctions which a health-related board may impose upon its licensees pursuant to disciplinary actions within its jurisdiction;
- (4) "Program personnel," persons or contracted entities employed by, or contracted with, the health professionals assistance program service committee to provide services for the health professionals assistance program.

Section 2. That § 36-2A-2 be amended to read as follows:

36-2A-2. Health-related licensing boards listed under Title 36 may jointly conduct a health professionals assistance program to protect the public from impaired persons regulated by the boards. The health professionals assistance program does not affect a board's authority to discipline violators

of a board's practice act.

Section 3. That § 36-2A-3 be amended to read as follows:

36-2A-3. The participating boards shall establish a program service committee consisting of one representative appointed by each participating board from its board membership or staff. The committee shall meet at least annually or as often as necessary to transact its business. The duties of the committee include:

- (1) Establishing the annual health professionals assistance program budget and the pro rata share of program expenses to be borne by each participating board;
- (2) Determining the qualifications, duties, and compensation for program personnel;
- (3) Hiring program personnel or contracting with entities;
- (4) Approving policies and procedures for the health professionals assistance program and providing guidance to the program personnel;
- (5) Annually approving members of the health professionals assistance program evaluation committees as outlined in this chapter;
- (6) Approving treatment facilities and services to which health professionals assistance program participants may be referred; and
- (7) Conducting an annual evaluation of the health professionals assistance program.

Section 4. That § 36-2A-4 be amended to read as follows:

36-2A-4. The health professionals assistance program service committee shall establish one or more evaluation committees. Each evaluation committee shall include one actively practicing licensed health care professional with demonstrated expertise in the field of mental health or substance use disorder from each health-related profession participating in the health professionals assistance program.

Section 5. That § 36-2A-5 be amended to read as follows:

36-2A-5. Duties of an evaluation committee include:

- (1) Evaluate each applicant for admission to the health professionals assistance program according to criteria established pursuant to § 36-2A-14;
- (2) Develop individual participation agreements for health professionals assistance program participants;
- (3) Evaluation of any program participant for discharge according to criteria established pursuant to § 36-2A-14;
- (4) Review participant progress and recommend amendments for participation agreements as indicated;
- (5) Maintain the confidentiality of the names, identities, and treatments of applicants and participants considered by the committees; and
- (6) Report any applicant who has been denied admission to the health professionals assistance program to the applicable participating licensing board.

Section 6. That § 36-2A-6 be amended to read as follows:

36-2A-6. Any applicant may access the health professionals assistance program by self-referral, board referral, or referral from another person or agency, such as an employer, coworker, or family member. An evaluation of the admission application shall be conducted by program personnel. The health professionals assistance program personnel shall advise the applicant of the program requirements and the implications of noncompliance and shall secure the cooperation of the applicant with the health professionals assistance program. Any applicant who refuses to cooperate with the program admission evaluation shall be reported to the applicable participating board or entity.

Section 7. That § 36-2A-7 be amended to read as follows:

36-2A-7. Admission to the health professionals assistance program is available to any person who is impaired and:

- (1) Holds licensure as a health care professional in this state;
- (2) Is eligible for and in the process of applying for licensure as a health care professional in this state; or
- (3) Is enrolled as a student in a program leading to licensure as a health care professional.

Section 8. That § 36-2A-8 be amended to read as follows:

36-2A-8. The evaluation committee may deny admission to the health professionals assistance program if the applicant:

- (1) Is not eligible for licensure in this state;
- (2) Diverted controlled substances for other than personal use;
- (3) Creates too great a risk to the public by participating in the health professionals assistance program as determined by the evaluation committee and program personnel;
- (4) Has engaged in sexual misconduct that meets the criteria for denial of admission established by the participating boards; or
- (5) Has been terminated from any health professional assistance program.

Section 9. That § 36-2A-9 be amended to read as follows:

36-2A-9. The health professionals assistance program participation components may include requirements for treatment and continuing care, work-site monitoring, practice restrictions, random drug screening, support group participation, filing of reports, and other requirements as necessary for successful completion of the health professionals assistance program.

Section 10. That § 36-2A-10 be amended to read as follows:

36-2A-10. Each health professionals assistance program participant shall pay an initial participation fee set pursuant to § 36-2A-14 as well as all costs associated with physical, psychosocial, or other related evaluations, treatment, and random drug screens.

Section 11. That § 36-2A-11 be amended to read as follows:

36-2A-11. The health professionals assistance evaluation committee may terminate a person's participation in the program based upon:

- (1) Failure to cooperate or comply with the individualized participation agreement; or
- (2) Violation of the practice act of the applicable health care profession during participation in the program.

The evaluation committee shall report terminations to the applicable participating board.

Section 12. That § 36-2A-12 be amended to read as follows:

36-2A-12. All records of health professionals assistance program participants are confidential and are not subject to discovery or subpoena. Only authorized program personnel and health professionals assistance evaluation committee members may have access to participant records unless the participant voluntarily provides for written release of the information. A participating board may only have access to records of participants who were referred by the board, who refused to cooperate with the health professionals assistance program, or who have been terminated by the health professionals assistance program in accordance with § 36-2A-11. Records shall be maintained in accordance with § 36-2A-14.

Section 13. That § 36-2A-13 be amended to read as follows:

36-2A-13. Any person, agency, institution, facility, or organization making reports to the participating board or health professionals assistance program regarding an individual suspected of practicing while impaired or reports of a participant's progress or lack of progress in the health professionals assistance program is immune from civil liability for submitting a report in good faith to the health professionals assistance program. Members and staff of the participating boards, health professionals assistance program evaluation committees, and health professionals assistance program personnel acting in good faith are immune from civil liability for any actions related to their duties under this chapter.

Section 14. That § 36-2A-14 be amended to read as follows:

36-2A-14. The Board of Nursing and the Board of Medical and Osteopathic Examiners, with the approval of the other participating boards, may jointly promulgate rules pursuant to chapter 1-26 for implementation of the health professionals assistance program, including:

- (1) Committee structure and program personnel;
- (2) Admission criteria;
- (3) Criteria for denial of admission;
- (4) Required participation components;
- (5) Termination of participation and discharge criteria;
- (6) Confidentiality and retention of program records;
- (7) Annual evaluation of effectiveness of the program;
- (8) Participation fees; and
- (9) Procedures for establishing the annual budget and prorating program expenses.

Section 15. That § 36-2A-15 be amended to read as follows:

36-2A-15. The health professionals assistance program expenses to be borne by each participating board shall be determined by the health professionals assistance program service committee in accordance with § 36-2A-14.

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I certify that the attached Act
originated in the

SENATE as Bill No. 69

Secretary of the Senate

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President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 69

File No. _____

Chapter No. _____

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Received at this Executive Office
this ____ day of _____ ,

20__ at _____ M.

By _____
for the Governor

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The attached Act is hereby
approved this _____ day of
_____, A.D., 20__

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____, 20__
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State