

State of South Dakota

EIGHTY-EIGHTH SESSION
LEGISLATIVE ASSEMBLY, 2013

400U0247

SENATE HEALTH AND HUMAN SERVICES ENGROSSED NO. **SB 69** - 01/18/2013

Introduced by: The Committee on Health and Human Services at the request of the Board of
Nursing

1 FOR AN ACT ENTITLED, An Act to revise certain provisions of the health professionals
2 diversion program.

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

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

5 36-2A-1. Terms used in this chapter mean:

- 6 (1) "~~Diversion~~ Health professionals assistance program," a ~~rehabilitative~~ confidential
7 program designed ~~and administered by program personnel which is available to~~
8 ~~participating health-related licensing boards in conjunction with, or as an alternative~~
9 ~~to, other sanctions which a health-related board may impose upon its licensees~~
10 ~~pursuant to disciplinary actions within its jurisdiction~~ to monitor the treatment and
11 continuing care of any regulated health professional who may be unable to practice
12 with reasonable skill and safety, if the professional's mental health issues or
13 substance use disorder is not appropriately managed;
- 14 (2) "Impaired," the ~~condition of a person whose health-related professional practice has~~



1 ~~been affected by the use or abuse of alcohol or other drugs and whose practice could~~
2 ~~endanger the health or safety of those persons entrusted to the affected professional's~~
3 ~~care~~ inability of a licensee to practice his or her health-related profession with
4 reasonable skill and safety as a result of mental health issues or substance use related
5 disorders;

6 (3) "Participating board," a health-related licensing board listed in Title 36 which agrees
7 with other health-related licensing boards to ~~the joint~~ jointly ~~conduct of a diversion~~
8 ~~a health professionals assistance~~ program. The program is available to participating
9 health-related licensing boards in conjunction with, or as an alternative to, other
10 sanctions which a health-related board may impose upon its licensees pursuant to
11 disciplinary actions within its jurisdiction;

12 (4) "Program personnel," persons or contracted entities employed by, or contracted with,
13 ~~the diversion~~ health professionals assistance program service committee ~~under~~
14 ~~contract~~ to provide services for the ~~diversion~~ health professionals assistance program.

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

16 36-2A-2. ~~Two or more of the health-related~~ Health-related licensing boards listed under
17 Title 36 may jointly conduct a ~~diversion~~ health professionals assistance program ~~for health~~
18 ~~professionals~~ to protect the public from impaired persons regulated by the boards. The ~~diversion~~
19 health professionals assistance program does not affect a board's authority to discipline violators
20 of a board's practice act.

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

22 36-2A-3. The participating boards shall establish a program service committee consisting
23 of one representative appointed by each participating board from its board membership or staff.
24 The committee shall meet at least annually or as often as necessary to transact its business. The

1 duties of the committee include:

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

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

16 36-2A-4. The ~~diversion~~ health professionals assistance program service committee shall
17 establish one or more ~~diversion~~ evaluation committees. Each ~~diversion~~ evaluation committee
18 shall ~~be composed of~~:

- 19 ~~—(1)—~~ ~~One~~ include one actively practicing licensed health care professional with
- 20 demonstrated expertise in the field of ~~chemical dependency~~ mental health or
- 21 substance use disorder from each health-related profession participating in the
- 22 ~~diversion~~ health professionals assistance program;
- 23 ~~—(2)—~~ ~~One~~ actively practicing licensed physician who specializes in the diagnosis and
- 24 ~~treatment of addictive diseases; and~~

1 ~~(3) One public member who is knowledgeable in the field of chemical dependency.~~

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

3 36-2A-5. Duties of a ~~diversion~~ an evaluation committee include:

4 (1) ~~Evaluation of applicants~~ Evaluate each applicant for admission to the ~~diversion~~
5 health professionals assistance program according to criteria established pursuant to
6 § 36-2A-14;

7 (2) ~~Development of~~ Develop individual ~~monitoring plans~~ participation agreements for
8 ~~diversion~~ health professionals assistance program participants; and

9 (3) ~~Preparation of reports on program participation and outcomes to the diversion~~
10 ~~program service committee~~ Evaluation of any program participant for discharge
11 according to criteria established pursuant to § 36-2A-14;

12 (4) Review participant progress and recommend amendments for participation
13 agreements as indicated;

14 (5) Maintain the confidentiality of the names, identities, and treatments of applicants and
15 participants considered by the committees; and

16 (6) Report any applicant who has been denied admission to the health professionals
17 assistance program to the applicable participating licensing board.

18 ~~The diversion evaluation committee shall meet as needed to consider applicants for~~
19 ~~admission to the diversion program or consider reports on participants in the diversion program.~~

20 ~~The committee shall keep confidential the names, identities, and treatment of applicants and~~
21 ~~participants considered by the committee.~~

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

23 36-2A-6. Any applicant may access the ~~diversion~~ health professionals assistance program
24 by self-referral, board referral, or referral from another person or agency, such as an employer,

1 coworker, or family member. ~~After the admission evaluation, the diversion evaluation~~
 2 ~~committee~~ An evaluation of the admission application shall be conducted by program personnel.
 3 The health professionals assistance program personnel shall advise the applicant of the program
 4 requirements and the implications of noncompliance ~~with the diversion program~~ and shall
 5 secure the cooperation of the applicant with the ~~diversion~~ health professionals assistance
 6 program. ~~The diversion evaluation committee shall report applicants who refuse~~ Any applicant
 7 who refuses to cooperate with the ~~diversion~~ program admission evaluation shall be reported to
 8 the applicable participating board ~~for disciplinary review~~ or entity.

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

10 36-2A-7. Admission to the ~~diversion~~ health professionals assistance program is available
 11 to ~~individuals who are~~ any person who is impaired and:

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

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

18 36-2A-8. The ~~diversion~~ evaluation committee may deny admission to the ~~diversion~~ health
 19 professionals assistance program if the applicant:

- 20 (1) Is not eligible for licensure in this state;
- 21 (2) Diverted controlled substances for other than personal use;
- 22 (3) Creates too great a risk to the public by participating in the ~~diversion~~ health
 23 professionals assistance program as determined by the ~~diversion~~ evaluation
 24 committee and program personnel;

1 (4) Has ~~problems related to~~ engaged in sexual misconduct ~~based upon criteria~~
2 ~~established by the Board of Nursing and the Board of Medical and Osteopathic~~
3 ~~Examiners in consultation with the participating boards, the diversion program~~
4 ~~service committee, and program personnel~~ that meets the criteria for denial of
5 admission established by the participating boards; or

6 (5) Has been terminated from ~~this or another state diversion program for noncompliance~~
7 ~~with the program requirements.~~

8 ~~—The diversion evaluation committee shall report applicants who have been denied admission~~
9 ~~to the diversion program to the applicable participating board~~ any health professional assistance
10 program.

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

12 36-2A-9. The ~~diversion~~ health professionals assistance program ~~monitoring services~~
13 participation components may include ~~recommendation for chemical dependency requirements~~
14 for treatment and continuing care, work-site monitoring, practice restrictions, random drug
15 screening, support group participation, filing of reports ~~necessary to document compliance~~, and
16 other requirements as necessary for successful completion of the ~~individual monitoring~~ health
17 professionals assistance program.

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

19 36-2A-10. Each ~~diversion~~ health professionals assistance program participant shall pay an
20 initial participation fee set pursuant to § 36-2A-14 as well as all costs associated with physical,
21 psychosocial, or other related evaluations, ~~chemical dependency~~ treatment, and random drug
22 screens.

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

24 36-2A-11. The ~~diversion~~ health professionals assistance evaluation committee may

1 terminate ~~an individual's~~ a person's participation in the ~~diversion~~ program based upon:

2 (1) ~~Successful completion of the program monitoring plan;~~

3 ~~—(2)—~~ Failure to cooperate or comply with the ~~program monitoring plan~~ individualized
4 participation agreement; or

5 ~~(3)(2) If, during the individual's participation in the diversion program, the committee~~
6 ~~receives information indicating other possible violations of that individual's~~
7 ~~governing practice act~~ Violation of the practice act of the applicable health care
8 profession during participation in the program.

9 The ~~diversion~~ evaluation committee shall report terminations ~~based upon subdivisions (2)~~
10 ~~and (3) of this section and information regarding possible violations of the individual's practice~~
11 ~~act to the applicable participating board for disciplinary review.~~

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

13 36-2A-12. All records of ~~diversion~~ health professionals assistance program participants are
14 confidential and are not subject to discovery or subpoena. Only authorized program personnel
15 and ~~diversion~~ health professionals assistance evaluation committee members may have access
16 to participant records unless the participant voluntarily provides for written release of the
17 information. A participating board may only have access to records of participants who were
18 referred by the board, who refused to cooperate with the ~~diversion~~ health professionals
19 assistance program, or who have been terminated by the ~~diversion~~ health professionals
20 assistance program in accordance with ~~subdivision 36-2A-11(2) or 36-2A-11(3).~~

21 ~~—The diversion program shall provide statistical reports, containing aggregate data only, to~~
22 ~~the participating boards at least annually. The diversion program shall maintain records of~~
23 ~~program participants who have successfully completed the diversion program for five years and~~
24 ~~shall then destroy them~~ § 36-2A-11. Records shall be maintained in accordance with § 36-2A-

1 14.

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

3 36-2A-13. Any person, agency, institution, facility, or organization making reports to the
4 participating board or ~~diversion~~ health professionals assistance program regarding an individual
5 suspected of practicing while impaired or reports of a participant's progress or lack of progress
6 in the ~~diversion~~ health professionals assistance program is immune from civil liability for
7 submitting a report in good faith to the ~~diversion~~ health professionals assistance program.
8 Members and staff of the participating boards, ~~diversion~~ health professionals assistance program
9 evaluation committees, and health professionals assistance program personnel acting in good
10 faith are immune from civil liability for any actions related to their duties under this chapter.

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

12 36-2A-14. The Board of Nursing and the Board of Medical and Osteopathic Examiners, with
13 the approval of the other participating boards, may jointly promulgate rules pursuant to chapter
14 1-26 for implementation of the ~~diversion~~ health professionals assistance program, including:

- 15 (1) Committee structure and program personnel;
- 16 (2) Admission criteria;
- 17 (3) Criteria for denial of admission;
- 18 (4) ~~Monitoring services~~ Required participation components;
- 19 (5) Termination of participation and discharge criteria;
- 20 (6) Confidentiality and retention of program records;
- 21 (7) ~~Statistical reports and annual~~ Annual evaluation of effectiveness of the program;
- 22 (8) Participation fees; and
- 23 (9) Procedures for establishing the annual budget and prorating program expenses.

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

1 36-2A-15. The ~~diversion~~ health professionals assistance program expenses to be borne by
2 each participating board shall be determined by the ~~diversion~~ health professionals assistance
3 program service committee ~~through an interagency agreement approved by all participating~~
4 ~~boards executed annually on a fiscal year basis~~ in accordance with § 36-2A-14.