



2021 South Dakota Legislature

Senate Bill 4

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

1 **An Act to revise certain provisions regarding the health professionals assistance**
 2 **program.**

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

4 **Section 1.** That § 36-2A-1 be AMENDED.

5 **36-2A-1. Definitions.**

6 Terms used in this chapter mean:

7 (1) "Board," a licensing board authorized in title 36;

8 (2) "Health professionals assistance program," or "program," a confidential program
 9 designed to monitor and manage the treatment and continuing care of any
 10 regulated a health professional who may be unable to practice with reasonable skill
 11 and or safety, or whose practice poses a risk to the public, if the professional's
 12 mental health issues or substance use related issue or disorder is not appropriately
 13 managed;

14 ~~(2)~~(3) "Impaired," the inability of a licensee to practice his or her health-related profession
 15 with reasonable skill and or safety, or whose practice poses a risk to the public as
 16 a result of unmanaged or undermanaged mental health issues or substance use
 17 related disorders issue or disorder;

18 ~~(3)~~—"Participating board," a health-related licensing board listed in Title 36 which agrees
 19 with other health-related licensing boards to jointly conduct a health professionals
 20 assistance program. The program is available to participating health-related
 21 licensing boards in conjunction with, or as an alternative to, other sanctions which
 22 a health-related board may impose upon its licensees pursuant to disciplinary
 23 actions within its jurisdiction;

24 (4) "Program personnel," persons or contracted entities employed by, or contracted
 25 with, the health professionals assistance program service committee to provide

1 providing services for the or on behalf of a licensing board's health professionals
2 assistance program.

3 **Section 2.** That a NEW SECTION be added:

4 **36-2A-1.1. Health professional assistance program--Alternative to**
5 **discipline.**

6 A board may use the program as an alternative to, or in conjunction with, other
7 sanctions that may be imposed by the board.

8 **Section 3.** That § 36-2A-2 be AMENDED.

9 **36-2A-2. Health professional assistance program--Standards.**

10 ~~Health related licensing boards listed under Title 36 may jointly~~ A board may
11 conduct, or contract for services with an entity to conduct, a health professionals
12 assistance program to protect the public from impaired persons regulated by the ~~boards~~
13 board. The ~~health professionals assistance program~~ does not affect a board's authority to
14 discipline violators of a board's practice act.

15 A health professionals assistance program shall include the following standards:

- 16 (1) Program personnel qualified to manage mental health and substance use related
17 issues and disorders;
18 (2) Admission criteria;
19 (3) Criteria for denial of admission pursuant to § 36-2A-8;
20 (4) Program participation components;
21 (5) Termination criteria; and
22 (6) Successful discharge criteria.

23 **Section 4.** That § 36-2A-3 be REPEALED.

24 **36-2A-3. Program service committee--Duties.**

25 **Section 5.** That § 36-2A-4 be REPEALED.

26 **36-2A-4. Evaluation committees.**

27 **Section 6.** That § 36-2A-5 be REPEALED.

1 **36-2A-5. Duties of evaluation committee.**

2 **Section 7.** That § 36-2A-6 be AMENDED.

3 **36-2A-6. Application to program--Admission evaluation.**

4 ~~Any An applicant may that meets admission criteria shall be allowed access to the~~
 5 ~~health professionals assistance program by self-referral, board referral, or referral from~~
 6 ~~another person or agency, such as an employer, coworker, or family member. An~~
 7 ~~evaluation of the admission application shall be conducted by program personnel. The~~
 8 ~~health professionals assistance program. Program personnel shall advise the applicant of~~
 9 ~~the program requirements and the implications of noncompliance and shall secure the~~
 10 ~~cooperation of the applicant with the health professionals assistance program. Any an~~
 11 ~~agreement with the applicant that includes participation components before the applicant~~
 12 ~~enters the program. An applicant who refuses to cooperate with the program admission~~
 13 ~~evaluation shall process may be reported to the applicable participating board or entity.~~

14 **Section 8.** That § 36-2A-7 be AMENDED.

15 **36-2A-7. Eligibility.**

16 Admission to the ~~health professionals assistance program~~ is available to any person
 17 ~~who is impaired meets the admission criteria~~ and:

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

23 **Section 9.** That § 36-2A-8 be AMENDED.

24 **36-2A-8. Denial of admission.**

25 ~~The evaluation committee may deny admission~~ Admission to the health
 26 ~~professionals assistance program may be denied~~ if the applicant:

- 27 (1) Is not eligible for licensure in this state;
- 28 (2) Diverted controlled substances for other than personal use;
- 29 (3) Creates too great a risk to the public by participating in the ~~health professionals~~
 30 ~~assistance program as determined by the evaluation committee and program~~
 31 ~~personnel; or~~

- 1 (4) Has engaged in sexual misconduct that meets the criteria for denial of admission
2 established by the participating boards; or
3 (5) ~~Has been terminated from any health professional assistance program.~~

4 **Section 10.** That § 36-2A-9 be AMENDED.

5 **36-2A-9. Participation components.**

6 The ~~health professionals assistance program~~ participation components may include
7 requirements for treatment and continuing care, work-site monitoring, practice
8 restrictions, random drug screening, support group participation, filing of reports,
9 compliance documentation, and other requirements as necessary to manage mental
10 health or substance use related issues or disorders and for successful completion of the
11 ~~health professionals assistance program.~~

12 **Section 11.** That § 36-2A-10 be REPEALED.

13 **36-2A-10. Fees and costs.**

14 **Section 12.** That § 36-2A-11 be REPEALED.

15 **36-2A-11. Termination of participation--Report to board.**

16 **Section 13.** That § 36-2A-12 be AMENDED.

17 **36-2A-12. Confidentiality of participants' records.**

18 All records of ~~health professionals assistance program~~ participants are confidential
19 and are not subject to discovery or subpoena. Only authorized program personnel ~~and~~
20 ~~health professionals assistance evaluation committee members~~ may have access to
21 participant records unless the participant voluntarily provides for written release of the
22 information. A ~~participating~~ board may only have access to records of participants who
23 were referred by the board, who refused to cooperate with the ~~health professionals~~
24 ~~assistance program~~, or who have been terminated by the ~~health professionals assistance~~
25 ~~program in accordance with § 36-2A-11. Records shall be maintained in accordance with~~
26 ~~§ 36-2A-14.~~

27 **Section 14.** That § 36-2A-13 be AMENDED.

1 **36-2A-13. Immunity for reports and actions related to duties.**

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

11 **Section 15.** That § 36-2A-14 be AMENDED.

12 **36-2A-14. Promulgation of rules.**

13 ~~The Board of Nursing and the Board of Medical and Osteopathic Examiners, with~~
 14 ~~the approval of the other participating boards, may jointly promulgate rules pursuant to~~
 15 ~~chapter 1-26 for implementation of the~~ Each board conducting a health professionals
 16 assistance program, including may promulgate rules, pursuant to chapter 1-26, pertaining
 17 to:

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

27 **Section 16.** That § 36-2A-15 be REPEALED.

28 **36-2A-15. Determination of expenses to be borne by participating boards.**