

**[CHAPTER 334D]  
DIVERSION PROGRAM FOR CHEMICALLY  
DEPENDENT NURSES**

SECTION

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**§334D-1 Findings and purpose.** The purpose of this chapter is to establish a diversion program for nurses with chemical dependency problems and to place the program under the oversight of the board of nursing. The intent of the diversion program established by this chapter is to develop a voluntary alternative to traditional disciplinary actions that provides adequate protections for the public health, safety, and welfare.

**[§334D-2] Definitions.** As used in this chapter, unless the context requires otherwise:

"Board" means the board of nursing.

"Chemically dependent" means a condition wherein a nurse's cognitive, interpersonal, or psychomotor skills are affected by the habitual or intemperate use of alcohol or drugs, or both.

"Diversion program" means a program administered by professionals to assist chemically dependent nurses in obtaining evaluation, counseling, monitoring, and ongoing support for rehabilitative purposes.

"Nurse" means a person who has been or is currently licensed under chapter 457.

"Peer assistance program" means a program administered by professionals for the purpose of assisting nurses who are chemically dependent in obtaining evaluation, counseling, monitoring of progress, and ongoing support for rehabilitative purposes.

"Professional association" means a national or statewide association or committee of professionals, or a nonprofit organization operated in support of a professional association that is recognized by the board and designated to administer and monitor the diversion program.

**§334D-3 Diversion program.** (a) There is established a diversion program for chemically dependent nurses which shall be administered and monitored by a professional association or other entity approved by the board. The function of the diversion program shall be to assess and, where appropriate, rehabilitate chemically dependent nurses whose competencies may be impaired and to provide treatment so that nurses are able to return to or continue the practice of nursing in a manner that is beneficial to the public.

(b) The board shall adopt rules in accordance with chapter 91 setting forth the requirements for program approval and maintenance.

(c) Participation in the diversion program shall be voluntary.

(d) If a nurse is subject to penalties, including revocation, suspension, or limitation of license and fines, and desires to effect a compromise settlement, the regulated industries complaint office and the nurse may enter into a settlement agreement subject to approval and order of the board and acceptance by the diversion program.

(e) The names of nurses who fail to comply with the terms and conditions of the diversion program shall be reported to:

(1) The executive officer of the board; and

(2) The regulated industries complaints office,

within three business days after the failure to comply becomes known to the individuals monitoring the nurse and the individual designated by the monitoring entity to report the failure to comply.

(f) Nurses who participate in the diversion program pursuant to this chapter shall provide evidence verified by licensed professional health care providers of successful completion of all terms and conditions of the program and of sufficient rehabilitation to safely practice nursing, as provided by rules adopted by the board pursuant to chapter 91.

(g) A nurse who fully complies with this chapter and the rules adopted by the board pursuant to this chapter, and who completes all the requirements of a diversion program approved by the board, shall not be subject to further disciplinary action by the board for the cause described in section 457-12(a)(4).

(h) A nurse admitted to the diversion program who fails to comply with the requirements of this chapter, the rules adopted by the board pursuant to this chapter, or the requirements of the diversion program may be subject to disciplinary action in accordance with section 457-12 and chapter 436B.

**[§334D-4] Civil immunity of third persons.** (a) A person, entity, professional association, peer assistance program, diversion program, or employer who, in good faith, reports information or takes action in connection with a diversion program or peer assistance program, shall be immune from civil liability for reporting the information or taking the action.

(b) A person, entity, or organization that employs a chemically dependent nurse in connection with the nurse's rehabilitation shall be entitled to civil immunity under this section while the nurse is participating in the peer assistance program or diversion program unless the person, entity, or organization:

(1) Knows or should have known that the nurse is or was incapable of performing the job functions involved; or

(2) Fails to take reasonable precautions to monitor the nurse's job performance.

(c) Any professional association, person, entity, or employer acting under this chapter shall be presumed to have acted in good faith in actions relating to the peer assistance program or diversion program. A person alleging a lack of good faith shall have the burden of proof on this issue.

(d) The immunity provided by this section shall be in addition to other immunities provided by law and shall be liberally construed to accomplish the purpose of this chapter.

**§334D-5 Records.** All records of a nurse participating in a diversion program that are not required by law to be reported to the board or the regulated industries complaints office and do not involve disciplinary action by those entities shall be privileged and shall not be subject to discovery or subpoena by any person or entity other than a law enforcement agency investigating the conduct of the nurse, the board, or the regulated industries complaints office.

For purposes of this section:

"Law enforcement agency" means any county police department, the department of public safety, and any federal, state, or county public body that employs law enforcement officers.

"Law enforcement officer" means any public servant, whether employed by the United States, State, or county, vested by law with a duty to maintain public order or, to make arrests for offenses or to enforce the criminal laws, whether that duty extends to all offenses or is limited to a specific class of offenses.