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# A BILL FOR AN ACT

RELATING TO DIVERSION PROGRAM FOR CHEMICALLY DEPENDANT NURSES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. In enacting Act 106, Session Laws of Hawaii  
2       1993, the legislature found that nursing is a stressful  
3       occupation and some nurses attempt to cope with the pressures of  
4       their jobs by consuming alcohol and drugs. Accordingly, the  
5       legislature established a diversion program for nurses with  
6       chemical dependency problems and placed the program under the  
7       oversight of the board of nursing.

8       The diversion program established by chapter 334D, Hawaii  
9       Revised Statutes, requires a third-party sponsor to objectively  
10      evaluate, counsel, monitor progress, and provide ongoing support  
11      for rehabilitative services. Under existing law, that third-  
12      party sponsor is the Hawaii Nurses Association (HNA) and since  
13      the diversion program is a component of the HNA's peer  
14      assistance program, only nurses who have been reported by HNA  
15      are able to participate. The legislature finds that the public  
16      would be better served by allowing the board of nursing to  
17      recognize programs that are provided by additional sponsors and  
18      meet the board's requirements.



Existing law also precludes the board of nursing from disciplining nurses who abide by the terms and conditions of the diversion program. The legislature finds that the public health, safety, and welfare would be better served by continuing the policy of no disciplinary action against a nurse who has successfully complied with a diversion program and has been successfully rehabilitated but also allowing the board of nursing to take action when nurses are noncompliant.

Finally, the legislature finds that reporting requirements in the existing law are obsolete since the board of nursing is already required to comply with state and federal law regarding reporting and the data bank maintained by the National Council of State Boards of Nursing has aligned its reporting requirements with federal law.

SECTION 2. Section 334D-1, Hawaii Revised Statutes, is amended to read as follows:

"[+]§334D-1[+] **Findings and purpose.** ~~[Nursing is a stressful occupation and some nurses may be tempted to escape the pressures of their job by consuming alcohol or taking drugs. Many times nurses do not realize that they have developed a chemical dependency problem, and that they need help before the problem gets worse.~~



1       ~~The legislature finds that there is no formal peer program~~  
2       ~~to assist nurses who have developed a chemical dependency~~  
3       ~~problem. There is, however, an informal peer program operated~~  
4       ~~by the Hawaii Nurses Association. This is a peer assistance~~  
5       ~~program for nurses who have not been reported to the department~~  
6       ~~of commerce and consumer affairs because of a chemical~~  
7       ~~dependency problem. The diversion program created by this~~  
8       ~~chapter is a component of the Hawaii Nurses Association's peer~~  
9       ~~assistance program, and is intended for nurses who have been~~  
10      ~~reported to the department of commerce and consumer affairs.]~~

11       The purpose of this chapter is to establish a diversion  
12      program for nurses with chemical dependency problems and to  
13      place the program under the [auspices] oversight of the board of  
14      nursing [~~for oversight purposes. It is the intent of this~~  
15      ~~chapter that nurses who are abiding by the terms and conditions~~  
16      ~~of the diversion program shall not be subject to further~~  
17      ~~disciplinary action for their chemical dependency problems by~~  
18      ~~the board of nursing]~~. The intent of the diversion program  
19      established by this chapter is to develop a voluntary  
20      alternative to traditional disciplinary actions that provides  
21      adequate protections for the public health, safety, and  
22      welfare."



1       SECTION 3. Section 334D-3, Hawaii Revised Statutes, is  
2 amended to read as follows:

3       "[+]§334D-3[+] **Diversion program.** (a) There is  
4 established a diversion program for chemically dependent  
5 nurses[-] which shall be administered and monitored by a  
6 professional association[-] or other entity approved by the  
7 board. The function of the diversion program shall be to assess  
8 and, where appropriate, rehabilitate nurses whose competencies  
9 may be impaired because of the abuse of drugs or alcohol and to  
10 provide treatment so that nurses are able to return to or  
11 continue the practice of nursing in a manner that is beneficial  
12 to the public.

13       (b) The board shall adopt rules in accordance with chapter  
14 91 setting forth the requirements for program approval and  
15 maintenance.

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

18       (d) If a nurse is subject to penalties, including  
19 revocation, suspension, or limitation of license and fines, and  
20 desires to effect a compromise settlement, the regulated  
21 industries complaint office and the nurse may enter into a



1 settlement agreement subject to approval and order of the board  
2 and acceptance by the diversion program.

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

5 (1) The executive [~~secretary~~] officer of the board; and

6 (2) The regulated industries complaints office[+],  
7 within three business days after the failure to comply becomes  
8 known to the individuals monitoring the nurse and the individual  
9 designated by the [~~professional association~~] monitoring entity  
10 to report the failure to comply.

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

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



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

6        SECTION 4. Section 334D-5, Hawaii Revised Statutes, is  
7 amended to read as follows:

8        "[~~§~~§334D-5~~§~~] **Records.** [~~(a) Nurses who comply with all~~  
9 ~~the terms and conditions of the diversion program shall not be~~  
10 ~~reported to the National Council of State Board of Nursing's~~  
11 ~~Data Bank unless sanctions have been taken.~~

12        ~~(b)~~ All records of a nurse participating in a [peer  
13 assistance] diversion program that [~~do not involve reporting]~~  
14 are not required by law to, ~~or disciplinary action by,~~ be  
15 reported to the board [~~of nursing]~~ or the regulated industries  
16 complaints office and do not involve disciplinary action by  
17 those entities shall be privileged and shall not be subject to  
18 discovery or subpoena~~[-]~~ by any person or entity other than the  
19 board and the regulated industries complaints office."

20        SECTION 5. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.



1 SECTION 6. This Act shall take effect upon its approval.

2



**Report Title:**

Board of Nursing; Diversion Program for Chemically Dependent Nurses

**Description:**

Amends requirements for diversion programs for chemically dependent nurses to allow the board of nursing to recognize alternative program sponsors. Clarifies disciplinary and reporting requirements. (SD1)

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