

## ACT 54

S.B. NO. 2898

A Bill for an Act Relating to Diversion Program for Chemically Dependant Nurses.

*Be It Enacted by the Legislature of the State of Hawaii:*

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

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

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

The purpose of this chapter is to establish a diversion program for nurses with chemical dependency problems and to place the program under the [auspices] oversight of the board of nursing [for oversight purposes. It is the intent

of this chapter that nurses who are abiding by the terms and conditions of the diversion program shall not be subject to further disciplinary action for their chemical dependency problems by 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.”

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

~~“[§334D-3]~~ **Diversion program.** (a) There is established a diversion program for chemically dependent nurses<sup>[5]</sup> which shall be administered and monitored by a professional association<sup>[-]</sup> 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 ~~secretary~~ officer of the board; and

(2) The regulated industries complaints office<sup>[5]</sup>,

within three business days after the failure to comply becomes known to the individuals monitoring the nurse and the individual designated by the ~~professional association~~ 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.”

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

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

(b) All records of a nurse participating in a ~~peer assistance~~ diversion program that ~~[do not involve reporting]~~ are not required by law to<sup>[-]</sup> ~~or disciplin-~~

any action by,] be reported to the board [of nursing] 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.”

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

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

(Approved April 23, 2010.)

#### Note

1. Quote should be underscored.