

JAN 27 2010

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:

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 provided by additional sponsors that provide
18 programs that meet the board's requirements.



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

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

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

17 "[+]§334D-1[+] Findings and purpose. ~~[Nursing is a~~
18 ~~stressful occupation and some nurses may be tempted to escape~~
19 ~~the pressures of their job by consuming alcohol or taking drugs.~~
20 ~~Many times nurses do not realize that they have developed a~~
21 ~~chemical dependency problem, and that they need help before the~~
22 ~~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
8 rehabilitate nurses whose competencies may be impaired because
9 of the abuse of drugs or alcohol and to provide treatment so
10 that nurses are able to return to or continue the practice of
11 nursing in a manner that is beneficial to the public.

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

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

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



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

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

4 (2) The regulated industries complaints office;

5 within three business days after the failure to comply becomes
6 known to the individuals monitoring the nurse and the individual
7 designated by the [~~professional association~~] monitoring entity
8 to report the failure to comply.

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

15 (g) A nurse who participates in a diversion program that
16 complies with the requirements of this chapter shall not be
17 subject to further disciplinary action by the board upon full
18 compliance with this chapter, the rules adopted by the board
19 pursuant to this chapter, and all requirements of the diversion
20 program.

21 (h) A nurse admitted to the diversion program who fails to
22 comply with the requirements of this chapter, the rules adopted



1 by the board pursuant to this chapter, or the requirements of
2 the diversion program may be subject to disciplinary action in
3 accordance with section 457-12 and chapter 436B."

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

6 "[~~+~~]§334D-5[~~+~~] **Records.** [~~(a)~~—Nurses who comply with all
7 the terms and conditions of the diversion program shall not be
8 reported to the National Council of State Board of Nursing's
9 Data Bank unless sanctions have been taken.

10 ~~(b)~~] All records of a nurse participating in a [peer
11 assistanee] diversion program that [~~do not involve reporting~~]
12 are not required to be reported to[~~, or disciplinary action by,~~]
13 the board of nursing or the regulated industries complaints
14 office and do not involve disciplinary action by those entities
15 shall be privileged and shall not be subject to discovery or
16 subpoena."

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

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

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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.

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