



## 2021 South Dakota Legislature

# Senate Bill 4

*Introduced by: The Committee on Health and Human Services at the request of the Department of Health*

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.**