



2021 South Dakota Legislature
Senate Bill 4
ENROLLED

AN ACT

ENTITLED An Act to revise certain provisions regarding the health professionals assistance program.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 36-2A-1 be AMENDED.

36-2A-1. Definitions.

Terms used in this chapter mean:

- (1) "Board," a licensing board authorized in title 36;
- (2) "Health professionals assistance program," or "program," a confidential program designed to monitor and manage the treatment and continuing care of a health professional who may be unable to practice with reasonable skill or safety, or whose practice poses a risk to the public, if the professional's mental health or substance use related issue or disorder is not appropriately managed;
- (3) "Impaired," the inability of a licensee to practice with reasonable skill or safety, or whose practice poses a risk to the public as a result of unmanaged or undermanaged mental health or substance use related issue or disorder;
- (4) "Program personnel," persons or entities providing services for or on behalf of a licensing board's health professionals assistance program.

Section 2. That a NEW SECTION be added:

36-2A-1.1. Health professional assistance program--Relation to sanctions.

A board may use the program as an alternative to, or in conjunction with, other sanctions that may be imposed by the board.

Section 3. That § 36-2A-2 be AMENDED.

36-2A-2. Health professional assistance program--Standards.

A board may conduct, or contract for services with an entity to conduct, a health professionals assistance program to protect the public from impaired persons regulated by the board. The program does not affect a board's authority to discipline violators of a board's practice act.

A health professionals assistance program shall include the following standards:

- (1) Program personnel qualified to manage mental health and substance use related issues and disorders;
- (2) Admission criteria;
- (3) Criteria for denial of admission pursuant to § 36-2A-8;
- (4) Program participation components;
- (5) Termination criteria; and
- (6) Successful discharge criteria.

Section 4. That § 36-2A-3 be REPEALED.

36-2A-3. Program service committee--Duties.

Section 5. That § 36-2A-4 be REPEALED.

36-2A-4. Evaluation committees.

Section 6. That § 36-2A-5 be REPEALED.

36-2A-5. Duties of evaluation committee.

Section 7. That § 36-2A-6 be AMENDED.

36-2A-6. Application to program--Admission evaluation.

An applicant that meets admission criteria shall be allowed access to the program by self-referral, board referral, or referral from another person or agency. Program personnel shall advise the applicant of the program requirements and the implications of noncompliance and shall secure an agreement with the applicant that includes participation components before the applicant enters the program. An applicant who refuses to cooperate with the program admission process may be reported to the applicable board.

Section 8. That § 36-2A-7 be AMENDED.

36-2A-7. Eligibility.

Admission to the program is available to any person who meets the admission criteria and:

- (1) Holds licensure as a health care professional in this state;
- (2) Is eligible for and in the process of applying for licensure as a health care professional in this state; or
- (3) Is enrolled as a student in a program leading to licensure as a health care professional.

Section 9. That § 36-2A-8 be AMENDED.

36-2A-8. Denial of admission.

Admission to the program may be denied if the applicant:

- (1) Is not eligible for licensure in this state;
- (2) Diverted controlled substances for other than personal use;
- (3) Creates too great a risk to the public by participating in the program as determined by program personnel; or
- (4) Has engaged in sexual misconduct that meets the criteria for denial of admission.

Section 10. That § 36-2A-9 be AMENDED.

36-2A-9. Participation components.

The program participation components may include requirements for treatment and continuing care, work-site monitoring, practice restrictions, random drug screening, support group participation, filing of reports, compliance documentation, and other requirements as necessary to manage mental health or substance use related issues or disorders and for successful completion of the program.

Section 11. That § 36-2A-10 be REPEALED.

36-2A-10. Fees and costs.

Section 12. That § 36-2A-11 be REPEALED.

36-2A-11. Termination of participation--Report to board.

Section 13. That § 36-2A-12 be AMENDED.

36-2A-12. Confidentiality of participants' records.

All records of program participants are confidential and are not subject to discovery or subpoena. Only authorized program personnel may have access to participant records unless the participant voluntarily provides for written release of the information. A board may only have access to records of participants who were referred by the board, who refused to cooperate with the program, or who have been terminated by the program.

Section 14. That § 36-2A-13 be AMENDED.

36-2A-13. Immunity for reports and actions related to duties.

Any person, agency, institution, facility, or organization making reports to the board or health professionals assistance program regarding an individual suspected of practicing while impaired or reports of a participant's progress or lack of progress in the program is immune from civil liability for submitting a report in good faith to the program. Members, agents, and staff of the board and program personnel acting in good faith are immune from civil liability for any actions related to their duties under this chapter.

Section 15. That § 36-2A-14 be AMENDED.

36-2A-14. Promulgation of rules.

Each board conducting a health professionals assistance program may promulgate rules, pursuant to chapter 1-26, pertaining to:

- (1) Program structure;
- (2) Admission criteria;
- (3) Criteria for denial of admission;
- (4) Required participation components;
- (5) Termination of participation and discharge criteria;
- (6) Confidentiality and retention of program records;
- (7) Program evaluation criteria; and
- (8) Participation fees.

Section 16. That § 36-2A-15 be REPEALED.

36-2A-15. Determination of expenses to be borne by participating boards.

An Act to revise certain provisions regarding the health professionals assistance program.

I certify that the attached Act originated in the:

Received at this Executive Office this ____ day of _____,

Senate as Bill No. 4

2021 at _____ M.

Secretary of the Senate

By _____
for the Governor

President of the Senate

The attached Act is hereby approved this _____ day of _____, A.D., 2021

Attest:

Secretary of the Senate

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

Speaker of the House

Attest:

Filed _____, 2021
at _____ o'clock __ M.

Chief Clerk

Secretary of State

Senate Bill No. 4
File No. _____
Chapter No. _____

By _____
Asst. Secretary of State