

NM NURSING PRACTICE ACT

61-3-29.1. Diversion program created; advisory committee; renewal fee; requirements; immunity from civil actions. (Repealed effective July 1, 2010.)

A. The board shall establish a diversion program to rehabilitate nurses whose competencies may be impaired because of the abuse of drugs or alcohol so that nurses can be treated and returned to or continue the practice of nursing in a manner that will benefit the public. The intent of the diversion program is to develop a voluntary alternative to traditional disciplinary actions and an alternative to lengthy and costly investigations and administrative proceedings against such nurses, at the same time providing adequate safeguards for the public.

B. The board shall appoint one or more evaluation committees, hereinafter called "regional advisory committees", each of which shall be composed of members with expertise in chemical dependency. At least one member shall be a registered nurse. No current member of the board shall be appointed to a regional advisory committee. The executive officer of the board or his designee shall be the liaison between each regional advisory committee and the board.

C. Each regional advisory committee shall function under the direction of the board and in accordance with regulations of the board. The regulations shall include directions to a regional advisory committee to:

- (1) establish criteria for continuance in the program;
- (2) develop a written diversion program contract to be approved by the board that sets forth the requirements that shall be met by the nurse and the conditions under which the diversion program may be successfully completed or terminated;
- (3) recommend to the board in favor of or against each nurse's discharge from the diversion program;
- (4) evaluate each nurse's progress in recovery and compliance with his diversion program contract;
- (5) report violations to the board;
- (6) submit an annual report to the board; and
- (7) coordinate educational programs and research related to chemically dependent nurses.

D. The board may increase the renewal fee for each nurse in the state not to exceed twenty dollars (\$20.00) for the purpose of implementing and maintaining the diversion program.

E. Files of nurses in the diversion program shall be maintained in the board office and shall be confidential except when used to make a report to the board concerning a nurse who is not cooperating and complying with the diversion program contract or, with written consent of a nurse, when used for research purposes as long as the nurse is not specifically identified. However, such files shall be subject to discovery or subpoena. The confidential provisions of this subsection are of no effect if the

nurse admitted to the diversion program leaves the state prior to the completion of the program.

F. Any person making a report to the board or to a regional advisory committee regarding a nurse suspected of practicing nursing while habitually intemperate or addicted to the use of habit-forming drugs or making a report of a nurse's progress or lack of progress in rehabilitation shall be immune from civil action for defamation or other cause of action resulting from such reports if the reports are made in good faith and with some reasonable basis in fact.

G. Any person admitted to the diversion program for chemically dependent nurses who fails to comply with the provisions of this section or with the rules and regulations adopted by the board pursuant to this section or with the written diversion program contract or with any amendments to the written diversion program contract may be subject to disciplinary action in accordance with [Section 61-3-28](#) NMSA 1978.

NM ADMINISTRATIVE RULES

16.12.2.16 DIVERSION PROGRAM FOR CHEMICALLY DEPENDENT NURSES

A. Purpose. The diversion program is a voluntary alternative to traditional disciplinary action for a nurse whose competencies may be impaired because of the habitual use of drugs and/or alcohol. Individuals may request admission into the program following the filing of a complaint against their nursing license or by self-referral.

(I) Admission into the diversion program

(a) Nurses licensed in New Mexico who have had a complaint filed against their nursing license alleging the use and/or abuse of drugs/alcohol, or who voluntarily submit a written request shall be given an opportunity to be admitted into the diversion program.

(i) Following a complaint, individuals who do not accept the opportunity for admission into the program shall be processed as a disciplinary case.

(ii) Individuals who voluntarily requested admission and do not complete the admission process within thirty (30) days of request may be subject to disciplinary action by the board.

(iii) It may be recommended that individuals obtain a professional evaluation for chemical dependency and/or mental health diagnosis and submit a copy of the evaluation to the diversion program.

(iv) The initial contract is a "no use" contract to include prescription medications unless notification is given by the physician prescribing the medication.

(v) Signatures on the initial contract and amendments constitute a release of information for the diversion program to contact all supporting individuals.

(b) Request for admission shall be made, in writing, to the executive director of the board of nursing.

(c) Each nurse requesting admission shall be scheduled for an admission interview and preparation of an initial contract.

(i) The initial contract shall include conditions which must be met by a participant.

(ii) The contract may be individualized but the form may not be substantially changed without the approval of the board.

(iii) The initial preparation of the contract will be done by the diversion program coordinator, executive director, or experienced regional advisory committee member.

(iv) Participants may be prohibited from access to narcotics, overtime, and agency/home health care work.

(2) Monitoring participants in the diversion program.

(a) Participants must assure that required written reports and drug screens are submitted in accordance with the provisions of the diversion program contract and contract amendments. Written reports and drug screens MUST be received regularly by the program.

(i) Written reports of the same type and/or several drug screens received together are not acceptable and may result in the participant being noncompliant.

(ii) Drug screens shall be scheduled randomly and shall be observed in accordance with the guidelines and protocols approved by the board.

(iii) Drug screens must include participant's drugs of choice.

(b) Participants are required to meet with representatives of the program periodically for an evaluation of their progress in recovery and participation in the program.

(i) Amendments may be made in the participant's contract based on the participant's progress in recovery and participation in the program.

(ii) Contracts and contract amendments must be submitted with all required signatures within two (2) weeks of the meeting date.

(iii) Failure to meet regularly as scheduled may result in being reported to the board for noncompliance.

(c) Participant shall notify the executive director of the board, immediately, of a pending relocation out-of-the state of New Mexico. The executive director shall notify the board of nursing in the state in which participant intends to practice that the licensee is a participant in the New Mexico board of nursing's diversion program for chemically dependent nurses. Participants who relocate out-of-state must comply with the NM diversion program requirements until participants have been discharged from the program.

(d) The confidential provisions of Section 61-3-29.1 NMSA 1978 are not in effect if the participant leaves New Mexico prior to discharge from the program or has disciplinary action taken or pending by the board.

(3) Relapses and noncompliance with the diversion program contract.

(a) Participants who are noncompliant with their contract and/or who do not cooperate with the program shall be reported to the board of nursing.

(i) Reports shall be made to the board using the participant's confidential file number.

(ii) The participant's name shall not be disclosed to the board until formal disciplinary proceedings occur.

(b) The diversion program coordinator or the executive director shall file a sworn complaint after a verbal or written report of a relapse, positive drug screen and/or no verbal or written communication with the diversion program for three (3) months.

(i) A relapse is defined as the unauthorized use of any mind-altering drug and/or alcohol.

(ii) The relapse shall be reported to the board of nursing at its next regularly scheduled meeting.

(c) The board shall move for a Notice of Contemplated Action (NCA) and may summarily suspend the license of the participant for a period not to exceed ninety (90) days pending the completion of a formal disciplinary proceeding before the board of nursing for relapse or positive drug screen.

(d) An individual whose license is reinstated following a summary suspension shall remit the reinstatement fee of one-hundred dollars (\$100.00).

(e) Participants who appear before the board for a disciplinary hearing may be required to enter into a new diversion program contract.

(4) Discharge from the diversion program.

(a) Participants who remain drug and/or alcohol free for two (2) full years and comply with all conditions of their diversion program contract for at least twelve (12) months may request discharge from the diversion program.

(b) Participants must be evaluated for discharge by a quorum of advisory committee members and must submit letters of recommendation from supervisor, sponsor, counselor (if applicable), and self.

(c) The advisory committee shall make a recommendation to the board of nursing at its next regularly scheduled meeting regarding the approval/disapproval of discharge for the participant.

(5) Regional advisory committees.

(a) The board shall establish regional advisory committees throughout the state in accordance with Section 61-3-29.1 NMSA 1978 for the purpose of assisting the program coordinator to conduct admission interviews, prepare initial contract and to periodically evaluate participant's progress in recovery and participation in the program.

(b) Members of advisory committees shall be appointed by the board and shall function under the direction of the board. No current member of the board shall be appointed to an advisory committee.

(6) Diversion program participant's records.

(a) All program participants' records are confidential and are maintained in accordance with Section 61-3-29.1 NMSA 1978.

(b) Upon discharge from the program, all files and records shall be destroyed.

(c) Records concerning licensees who violate the diversion program contract shall become a matter of public record upon disciplinary action by the board of nursing. File may contain complaint, investigation report, documentary evidence, contract, drug screen reports, documents relevant to the hearing, notice of contemplated action, notice of hearing. All other portions of the diversion program file shall be destroyed.

[1-1-98; 16.12.2.16 NMAC – Rn & A, 16 NMAC 12.2.14, 7-30-01]