

65-xxxx. The board may contract with or establish an impaired provider program, purpose of program, screening, completion of program, effect of, disciplinary action for failure to complete, confidentiality.

- (a) The state board of nursing may contract for or establish an impaired provider program to promote the identification, intervention, treatment, and monitoring of registered professional nurses, licensed practical nurses, advanced practice registered nurses, registered nurse anesthetists or mental health technicians whose license is issued by the board who may be impaired by reason of substance use or potential for substance use or by mental or behavioral health conditions affecting the ability to practice.
- (b) The impaired provider program is available, upon board discretion, to applicants and licensees who:
 - (1) admit to the use of substances that for purposes of this section, substance means alcohol, drugs, controlled substances, or any combination thereof;
 - (2) self-refer;
 - (3) test positive in a pre-employment or for-cause drug or alcohol screen;
 - (4) have refused to obtain an alcohol or drug screen requested by an employer, the board, or a professional licensing agency in Kansas, another state, United States territory, or country; or
 - (5) have entered a plea of nolo contendere, pled guilty to, been found guilty, or entered into a diversion, agreed disposition, or deferred judgment program in a court of competent jurisdiction in Kansas, another state, territory of the United States, or country of any offenses, whether classified as a felony or misdemeanor, involving alcohol, drugs, or a controlled substance.
- (c) The program shall be a minimum of one year in duration and may require:
 - (1) random drug and alcohol testing at the participant's expense;
 - (2) substance dependency evaluation at the participant's expense;
 - (3) mental/behavioral health evaluation at the participant's expense; or
 - (4) any other conditions deemed necessary by the board to protect the public or as provided for in rules and regulations promulgated by the board.
- (d) Upon receiving a complaint or an application, the board shall screen the information submitted to determine whether the individual may be eligible for the impaired provider program. Upon enrollment, applicant or licensee shall enter into a written agreement setting forth the requirements of the impaired provider program. If declined, the board may proceed with its regular process of investigating a complaint or application for a determination of any disqualification for licensure or discipline as set forth in K.S.A. 65-1120 and amendments thereto. The board shall retain sole discretion to offer the program at any time.
- (e) Upon successful completion of the impaired provider program, the licensee shall be deemed to have no disciplinary action against his or her license and shall not be required to disclose participation in the program, except evidence of such participation in the program may be admitted or considered for a subsequent violation involving alcohol, drugs, or controlled substances.
- (f) If a licensee does not successfully complete the impaired provider program or violates any term of the program prior to completion of the program, the board may pursue disciplinary action as set forth in K.S.A. 65-1120 and amendments thereto. Records from the program may be used as evidence in any such proceedings or hearings initiated under the Kansas administrative proceedings act.
- (g) The board may promulgate administrative rules and regulations subject to the provisions of this section and K.S.A. 65-1120 and amendments thereto to administer, implement, and enforce any impaired provider program established pursuant to this section.
- (h) The board may expend appropriated funds necessary to provide for operational expenses of any impaired provider program established pursuant to this section.
- (i) Any board member, board staff member, members of the programs, as well as any administrator, staff member, consultant, agent, or employee of the programs, acting within the scope of his or her duties and without actual malice, and all other persons who furnish information to the programs in good faith and without actual malice, shall not be liable for any claim of damages as a result of any statement, decision, opinion, investigation, or action taken by the programs, or by any individual member of the programs, by any board member, by any board staff member or by a presiding officer in any administrative proceeding or hearing.
- (j) All information, interviews, reports, statements, memoranda, drug or alcohol testing results, or other documents furnished to or produced by the programs, as well as communications to or from the

programs, any findings, conclusions, interventions, treatment, rehabilitation, or other proceedings of the programs which in any way pertain to an applicant or licensee who may be, or who actually is, impaired shall be privileged and confidential. Any records produced in conjunction with the impaired provider program shall not be considered public records under the Kansas Open Records Act and shall not be subject to court subpoena or subject to discovery or introduction as evidence in any civil, criminal, or administrative proceedings except as set forth in subsection (f) of this section.

(k) This section shall be part of and supplemental to the Kansas nurse practice act.

History:

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