

State of Arkansas
91st General Assembly
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A Bill

HOUSE BILL 1413

By: Representatives Boyd, Pilkington

By: Senator Files

For An Act To Be Entitled

AN ACT TO CREATE THE ALTERNATIVE TO DISCIPLINE ACT;
TO PROVIDE FOR TREATMENT OF NURSES LICENSED IN
ARKANSAS WHO SUFFER FROM IMPAIRMENT; AND FOR OTHER
PURPOSES.

Subtitle

TO CREATE THE ALTERNATIVE TO DISCIPLINE
ACT; AND TO PROVIDE FOR TREATMENT OF
NURSES LICENSED IN ARKANSAS WHO SUFFER
FROM IMPAIRMENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 17, Chapter 87, is amended to add an additional subchapter to read as follows:

Subchapter 8 – Alternative to Discipline Act

17-87-801. Title.

This subchapter shall be known and may be cited as the "Alternative to Discipline Act".

17-87-802. Purpose.

The purpose of this subchapter is to:

- (1) Provide for the identification and treatment of nurses licensed by the Arkansas State Board of Nursing who suffer from impairments;
- (2) Promote public health and safety; and



(3) Ensure the continued availability of the skills of highly trained nursing professionals for the benefit of the public.

17-87-803. Definitions.

As used in this subchapter:

(1) "Alternative to discipline program" means a plan approved by the Arkansas State Board of Nursing for intervention, treatment, and rehabilitation of an impaired nurse;

(2) "Impairment" means the inability or significant potential for inability to practice with reasonable safety and skill as a result of a diagnosed substance use disorder or any diagnosed mental or physical health condition;

(3) "Participant" means an applicant or licensee who:

(A) Self reports an impairment to the board;

(B) Is referred to the alternative to discipline program by the board; or

(C) Signs an initial agreement with the program coordinator to oversee the impaired nurse; and

(4) "Rehabilitation" means the process whereby an impaired nurse advances in an alternative to discipline program to an optimal level of competence to practice nursing without endangering the public.

17-87-804. Alternative to Discipline Program – Program coordinator duties – Board review.

(a) The Arkansas State Board of Nursing shall create an alternative to discipline program which shall:

(1) Serve as a diversion program to which the board may refer licensees when appropriate in lieu of or in addition to other disciplinary action; and

(2) Be a source of referral for nurses who, on a strictly voluntary basis, desire to avail themselves of its services.

(b) The board may perform the following duties and powers while operating the alternative to discipline program:

(1) Approve addiction evaluators and treatment programs available through the alternative to discipline program;

(2) Contract with providers of treatment programs;

- (3) Receive and evaluate reports of suspected impairment, regardless of the source of the report;
- (4) Intervene in cases of verified impairment;
- (5) Refer impaired nurses to the program coordinator of the alternative to discipline program or another treatment program, or both;
- (6) Monitor the treatment and rehabilitation of impaired nurses and the post-treatment of impaired nurses who are rehabilitated; and
- (7) Perform other activities deemed necessary to accomplish the purposes of this subchapter.

(c)(1) The board shall employ a program coordinator to organize and administer the alternative to discipline program.

- (2) The program coordinator shall:
 - (A) Review and evaluate nurses who request participation in or are recommended for the alternative to discipline program;
 - (B) Review and designate treatment facilities and services to which nurses in the program may be referred;
 - (C) Receipt and review of information relating to the participation of nurses in the program;
 - (D) Preparation of reports for the board; and
 - (E) Other duties as deemed necessary by the board.
- (3)(A) The board shall review the activities of the program coordinator.
 - (B) As part of this evaluation, the board may review files of all participants in the alternative to discipline program.
 - (C) The board shall also resolve complaints voiced regarding the alternative to discipline program.

17-87-805. Reporting procedure.

The Arkansas State Board of Nursing shall develop rules and procedures for:

- (1) Reporting to the board:
 - (A) The names and results of any contact or investigation regarding an impaired nurse who is believed to be an imminent danger to the public or to himself or herself;
 - (B) An impaired nurse who:
 - (i) Fails or refuses to:

(a) Cooperate with the program coordinator; or
(b) Submit to treatment;
(ii) Exhibits professional incompetence; or
(iii) Does not have alleviation through treatment
for his or her impairment; and

(C) A participant of the alternative to discipline program
resuming the practice of nursing;

(2) Informing each participant of the alternative to discipline
program regarding the program requirements, program procedures,
responsibilities of the participant, and consequences of noncompliance; and

(3) Performing other activities as necessary to implement this
subchapter.

17-87-806. Program requirements.

(a)(1) Eligibility to participate in the alternative to discipline
program is at the sole discretion of the Arkansas State Board of Nursing.

(2) A person is not entitled to participate in the alternative
to discipline program.

(b) To establish eligibility, a nurse shall:

(1) Have a license issued or an application for licensure in the
State of Arkansas;

(2) Acknowledge that the nurse has a drug or alcohol abuse
problem or addiction; and

(3) Meet any other requirements determined by the board.

(c) A participant in the alternative to discipline program shall:

(1) Agree to:

(A) Complete an evaluation conducted by a board-approved
evaluator in order to outline the treatment required;

(B) Place his or her nursing license on inactive status
until a treatment provider determines that the participant can safely
practice nursing;

(C) Comply with:

(i) The written terms of the agreement to
participate in the alternative to discipline program; and

(ii) The terms and conditions of any contract
between the board and participant;

- (D) Pay all costs for treatment and monitoring;
- (E) Select from board-approved evaluators, treatment facilities, counselors, and laboratory facilities before utilization of services;
- (F) Admit in an affidavit to violations of § 17-87-101 et seq.; and
- (2) Perform other activities as determined necessary by the board.

17-87-807. Failure to comply.

- (a) Participation in the alternative to discipline program under this subchapter is not a defense to any disciplinary action that may be taken by the Arkansas State Board of Nursing.
- (b) This subchapter does not preclude the board from commencing disciplinary action against a nurse who is terminated from or fails to comply with the alternative to discipline program.

17-87-808. Liability.

- (a) A person acting on behalf of the Arkansas State Board of Nursing in the alternative to discipline program under this section is considered an officer or employee of the State of Arkansas for purposes of:
 - (1) Immunity from civil liability under § 19-10-301 et seq.; and
 - (2) Payment of actual damages on behalf of state officers or employees under § 21-9-201 et seq.
- (b)(1) Except as provided in subdivision (b)(3) of this section, all participant records shall be confidential and shall not be subject to public inspection except under an order of a court of competent jurisdiction.
- (2) However, the records may be introduced as evidence in any relevant proceedings before the board and shall be produced upon board request.
- (3) The records regarding an impaired nurse or a participant of the alternative to discipline program shall be available to:
 - (A) The board;
 - (B) The staff of the board;
 - (C) An employer;
 - (D) A treating healthcare provider;

- (E) Nursing education programs; and
- (F) Other states' nursing boards.

APPROVED: 03/02/2017