

ENROLLED

COMMITTEE SUBSTITUTE

FOR

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FOR

Senate Bill No. 379

(SENATORS STOLLINGS, LAIRD, FOSTER, KESSLER (MR. PRESIDENT),
PLYMALE AND JENKINS, *original sponsors*)

[Passed March 10, 2012; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-7-11a; and to amend said code by adding thereto a new article, designated §30-7E-1, §30-7E-2 and §30-7E-3, all relating to authorizing the West Virginia Board of Examiners for Registered Professional Nurses to designate nurse health programs for licensees and applicants for treatment and recovery for alcohol abuse, chemical dependency or major mental illness; enrolling on a voluntary basis without being subject to disciplinary action if the person complies with the goals and restrictions of the program; confidentiality, disclosure and waiver requirements; definitions; requirements for nurse health programs; and immunity from civil liability and civil action.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §30-7-11a; and that said code be amended by adding thereto a new article, designated §30-7E-1, §30-7E-2 and §30-7E-3, all to read as follows:

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-11a. Voluntary agreements relating to alcohol or chemical dependency; confidentiality.

1 (a) In order to encourage voluntary participation in
2 monitored alcohol, chemical dependency or major mental
3 illness programs and in recognition of the fact that major
4 mental illness, alcoholism and chemical dependency are
5 illnesses, any person who holds a license to practice regis-
6 tered nursing in this state or who is applying for a license to
7 practice registered nursing in this state may enter into a
8 voluntary agreement with a nurse health program as defined
9 in section one, article seven-e of this chapter. The agreement
10 between the licensee or applicant and the nurse health
11 program shall include a jointly agreed upon treatment
12 program and mandatory conditions and procedures to
13 monitor compliance with the program of recovery.

14 (b) Any voluntary agreement entered into pursuant to
15 this section shall not be considered a disciplinary action or
16 order by the board, shall not be disclosed to the board and
17 shall not be public information if:

18 (1) Such voluntary agreement is the result of the licensee
19 or applicant self enrolling or voluntarily participating in the
20 board- designated nurse health program;

21 (2) The board has not received nor filed any written
22 complaints regarding said licensee or applicant relating to an
23 alcohol, chemical dependency or major mental illness
24 affecting the care and treatment of patients; and

25 (3) The licensee or applicant is in compliance with the
26 voluntary treatment program and the conditions and proce-
27 dures to monitor compliance.

28 (c) Pursuant to this section, if any licensee or applicant
29 enters into a voluntary agreement with a nurse health
30 program as defined in section one, article seven-e of this
31 chapter, and then fails to comply with or fulfill the terms of
32 said agreement, the nurse health program shall report the
33 noncompliance to the board within twenty-four hours. The
34 board may initiate disciplinary proceedings pursuant to
35 section eleven of this article or may permit continued
36 participation in the nurse health program or both.

37 (d) If the board has not instituted any disciplinary
38 proceeding as provided for in this article, any information
39 received, maintained or developed by the board relating to
40 the alcohol or chemical dependency impairment of any
41 licensee or applicant and any voluntary agreement made
42 pursuant to this section shall be confidential and not
43 available for public information, discovery or court sub-
44 poena, nor for introduction into evidence in any medical
45 professional liability action or other action for damages
46 arising out of the provision of or failure to provide health
47 care services.

48 (e) Notwithstanding any of the foregoing provisions, the
49 board may cooperate with and provide documentation of any
50 voluntary agreement entered into pursuant to this section to
51 licensing boards in other jurisdictions of which the board has
52 become aware and may be appropriate.

ARTICLE 7E. NURSE HEALTH PROGRAMS.

§30-7E-1. Definitions.

1 For the purposes of this article, the following words and
2 terms have the meanings ascribed to them, unless the context
3 clearly indicates otherwise.

4 (1) “Board” means the West Virginia Board of Examiners
5 for Registered Professional Nurses.

6 (2) “Major mental illness” means a diagnosis of a mental
7 disorder within the axis of psychotic or affective or mood,

8 alcohol or chemical abuse or alcohol or chemical dependency
9 as stipulated in the International Code of Diagnosis.

10 (3) "Nurse" means those health care professionals
11 licensed by the West Virginia Board of Examiners for
12 Registered Professional Nurses.

13 (4) "Nurse health program" means a program meeting
14 the requirements of this article.

15 (5) "Qualifying illness" means the diagnosis of alcohol or
16 substance abuse, alcohol or substance dependency or major
17 mental illness.

§30-7E-2. Nurse health program.

1 (a) The board is authorized to designate one or more
2 nurse health programs. To be eligible for designation by the
3 board, a nurse health program shall:

4 (1) Enter into an agreement with the board outlining
5 specific requirements of the program;

6 (2) Agree to make its services available to all licensed
7 West Virginia registered professional nurses with a qualify-
8 ing illness;

9 (3) Provide for the education of nurses with respect to the
10 recognition and treatment of alcohol, chemical dependency
11 and mental illness and the availability of the nurse health
12 program for qualifying illnesses;

13 (4) Offer assistance to any person in referring a nurse for
14 purposes of assessment or treatment or both for a qualifying
15 illness;

16 (5) Monitor the status of a nurse who enters treatment for
17 a qualifying illness pursuant to a written, voluntary agree-
18 ment during treatment;

19 (6) Monitor the compliance of a nurse who enters into a
20 written, voluntary agreement for a qualifying illness with the
21 nurse health program setting forth a course for recovery;

22 (7) Agree to accept referrals from the board to provide
23 monitoring services pursuant to a board order; and

24 (8) Include such other requirements as the board deems
25 necessary.

26 (b) A designated nurse health program shall:

27 (1) Set and collect reasonable fees, grants and donations
28 for administration and services provided;

29 (2) Work collaboratively with the board to develop model
30 compliance agreements;

31 (3) Work collaboratively with the board to identify
32 qualified providers of services as may be needed by the
33 individuals participating in the nurse health program;

34 (4) Report to the board, no less than annually, statistics
35 including the number of individuals served; the number of
36 compliant individuals; the number of individuals who have
37 successfully completed their agreement period; and the
38 number of individuals reported to the board for suspected
39 noncompliance: *Provided*, That in making such report the
40 nurse health program shall not disclose any personally
41 identifiable information relating to any nurse participating
42 in a voluntary agreement as provided herein: *Provided*,
43 *however*, That in the case of a nurse not in compliance with
44 the requirements, full disclosure of information will be
45 provided to the board.

46 (c) The fact that a nurse is participating in a designated
47 nurse health program is confidential, as is all nurse patient
48 information acquired, created or used by the nurse health
49 program, and it shall remain confidential and may not be
50 subject to discovery or subpoena in a civil case. The disclo-
51 sure of participation and noncompliance to the board, as
52 required by a compliance agreement, waives the confidenti-
53 ality as to the board for disciplinary purposes.

54 (d) The nurse health program and all persons engaged in
55 nurse health program activities are immune from civil

56 liability and no civil action may be brought or maintained
57 while the nurse health program and all persons engaged in
58 nurse health program activities are acting in good faith and
59 within the scope of their duties.

60 (e) The board is immune from civil liability and no civil
61 action may be brought or maintained against the board or
62 the state for an injury alleged to have been the result of the
63 activities of the nurse health program or the board referral
64 of an individual to the nurse health program when they are
65 acting in good faith and within the scope of their duties.

**§30-7E-3. Discretionary authority of boards to designate
programs.**

1 The West Virginia Board of Examiners of Registered
2 Professional Nurses has the sole discretion to designate nurse
3 health programs for licensees of the board and no provision
4 of this article may be construed to entitle any nurse to the
5 creation or designation of a nurse health program for any
6 individual qualifying illness or group of qualifying illnesses.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the

Day of, 2012.

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Governor