

## CHAPTER 198

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**PROFESSIONS AND OCCUPATIONS**

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**HOUSE BILL 07-1102**

BY REPRESENTATIVE(S) Gagliardi, McGihon, Borodkin, Buescher, Carroll M., Carroll T., Cerbo, Frangas, Kerr A., Labuda, Primavera, Soper, and Todd;  
also SENATOR(S) Johnson.

**AN ACT****CONCERNING THE NURSING PEER HEALTH ASSISTANCE DIVERSION PROGRAM.**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** 12-38-131, Colorado Revised Statutes, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

**12-38-131. Nursing peer health assistance or nurse alternative to discipline program - fund - rules.** (1) AS A CONDITION OF LICENSURE AND FOR THE PURPOSE OF SUPPORTING A NURSING PEER HEALTH ASSISTANCE PROGRAM OR A NURSE ALTERNATIVE TO DISCIPLINE PROGRAM, EVERY RENEWAL APPLICANT SHALL PAY TO THE ADMINISTERING ENTITY DESIGNATED PURSUANT TO PARAGRAPH (c) OF SUBSECTION (3) OF THIS SECTION A FEE IN AN AMOUNT SET BY THE BOARD, NOT TO EXCEED TWENTY-FIVE DOLLARS PER YEAR; EXCEPT THAT THE BOARD MAY ADJUST SUCH AMOUNT EACH JANUARY 1 TO REFLECT CHANGES IN THE UNITED STATES DEPARTMENT OF LABOR'S BUREAU OF LABOR STATISTICS CONSUMER PRICE INDEX, OR ITS SUCCESSOR INDEX, FOR THE DENVER-BOULDER CONSOLIDATED METROPOLITAN STATISTICAL AREA FOR THE PRICE OF GOODS PAID BY URBAN CONSUMERS.

(2) (a) NO LATER THAN JUNE 30, 2008, THE BOARD SHALL TRANSFER ANY REMAINING BALANCE IN THE IMPAIRED PROFESSIONAL DIVERSION FUND, AS SUCH FUND EXISTED PRIOR TO JANUARY 1, 2008, TO THE ADMINISTERING ENTITY CHOSEN BY THE BOARD PURSUANT TO PARAGRAPH (c) OF SUBSECTION (3) OF THIS SECTION.

(b) MONEYS IN THE FUND SHALL BE USED TO SUPPORT A NURSING PEER HEALTH ASSISTANCE PROGRAM OR NURSE ALTERNATIVE TO DISCIPLINE PROGRAM IN PROVIDING ASSISTANCE TO LICENSEES NEEDING HELP IN DEALING WITH PHYSICAL,

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

EMOTIONAL, PSYCHIATRIC, PSYCHOLOGICAL, DRUG ABUSE, OR ALCOHOL ABUSE PROBLEMS THAT MAY BE DETRIMENTAL TO THEIR ABILITY TO PRACTICE NURSING.

(3) (a) THE BOARD SHALL SELECT ONE OR MORE RECOGNIZED PEER HEALTH ASSISTANCE ORGANIZATIONS OR NURSE ALTERNATIVE TO DISCIPLINE PROGRAMS AS DESIGNATED PROVIDERS. FOR PURPOSES OF SELECTING DESIGNATED PROVIDERS, THE BOARD SHALL USE A COMPETITIVE BIDDING PROCESS THAT ENCOURAGES PARTICIPATION FROM INTERESTED VENDORS. TO BE ELIGIBLE FOR DESIGNATION BY THE BOARD PURSUANT TO THIS SECTION, A PEER HEALTH ASSISTANCE ORGANIZATION OR NURSE ALTERNATIVE TO DISCIPLINE PROGRAM SHALL:

(I) OFFER ASSISTANCE AND EDUCATION TO LICENSEES CONCERNING THE RECOGNITION, IDENTIFICATION, AND PREVENTION OF PHYSICAL, EMOTIONAL, PSYCHIATRIC, PSYCHOLOGICAL, DRUG ABUSE, OR ALCOHOL ABUSE PROBLEMS AND PROVIDE FOR INTERVENTION WHEN NECESSARY OR UNDER CIRCUMSTANCES THAT MAY BE ESTABLISHED IN RULES PROMULGATED BY THE BOARD;

(II) EVALUATE THE EXTENT OF PHYSICAL, EMOTIONAL, PSYCHIATRIC, PSYCHOLOGICAL, DRUG ABUSE, OR ALCOHOL ABUSE PROBLEMS AND REFER THE LICENSEE FOR APPROPRIATE TREATMENT;

(III) MONITOR THE STATUS OF A LICENSEE WHO HAS BEEN REFERRED FOR TREATMENT, INCLUDING ASSESSING CONTINUED PUBLIC PROTECTION;

(IV) PROVIDE COUNSELING AND SUPPORT FOR A LICENSEE AND FOR THE FAMILY OF A LICENSEE REFERRED FOR TREATMENT;

(V) RECEIVE REFERRALS FROM THE BOARD; AND

(VI) MAKE SERVICES AVAILABLE TO ALL LICENSEES STATEWIDE.

(b) THE BOARD CONTRACT WITH THE DESIGNATED PROVIDER OR PROVIDERS SELECTED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (3) SHALL INCLUDE SPECIFIC DELIVERABLES, PERFORMANCE MEASURES, AND DOCUMENTATION OF RESULTS.

(c) THE BOARD SHALL DESIGNATE AN ADMINISTERING ENTITY FOR A PROGRAM ESTABLISHED PURSUANT TO THIS SECTION. SUCH ENTITY SHALL BE A NONPROFIT PRIVATE ENTITY THAT IS QUALIFIED UNDER 26 U.S.C. SEC. 501 (c) (3) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AND SHALL BE DEDICATED TO PROVIDING SUPPORT FOR CHARITABLE, BENEVOLENT, EDUCATIONAL, OR SCIENTIFIC PURPOSES THAT ARE RELATED TO NURSING, NURSING EDUCATION, NURSING RESEARCH AND SCIENCE, AND OTHER NURSING CHARITABLE PURPOSES.

(d) THE ADMINISTERING ENTITY SHALL:

(I) BE RESPONSIBLE FOR THE MONEYS COLLECTED PURSUANT TO SUBSECTION (1) OF THIS SECTION;

(II) DISTRIBUTE THE MONEYS COLLECTED, LESS EXPENSES, TO THE APPROVED DESIGNATED PROVIDER, AS DIRECTED BY THE BOARD;

(III) PROVIDE AN ANNUAL ACCOUNTING TO THE BOARD OF ALL AMOUNTS COLLECTED, EXPENSES INCURRED, AND AMOUNTS DISBURSED; AND

(IV) POST A SURETY PERFORMANCE BOND IN AN AMOUNT SPECIFIED BY THE BOARD TO SECURE PERFORMANCE UNDER THIS SECTION.

(e) THE ADMINISTERING ENTITY MAY RECOVER FROM THE FEE REQUIRED BY SUBSECTION (1) OF THIS SECTION THE ACTUAL ADMINISTRATIVE COSTS INCURRED IN PERFORMING ITS DUTIES UNDER THIS SECTION. SUCH RECOVERY SHALL NOT EXCEED TEN PERCENT OF THE TOTAL AMOUNT COLLECTED.

(4) NOTWITHSTANDING SECTIONS 12-38-116.5 AND 24-4-104, C.R.S., THE BOARD MAY IMMEDIATELY SUSPEND THE LICENSE OF ANY LICENSEE WHO IS REFERRED TO A PEER HEALTH ASSISTANCE PROGRAM OR NURSE ALTERNATIVE TO DISCIPLINE PROGRAM BY THE BOARD AND WHO FAILS TO ATTEND OR TO COMPLETE THE PROGRAM. IF THE LICENSEE OBJECTS TO THE SUSPENSION, HE OR SHE MAY SUBMIT A WRITTEN REQUEST TO THE BOARD FOR A FORMAL HEARING ON THE SUSPENSION WITHIN TEN DAYS AFTER RECEIVING NOTICE OF THE SUSPENSION, AND THE BOARD SHALL GRANT THE REQUEST. IN THE HEARING, THE LICENSEE SHALL BEAR THE BURDEN OF PROVING THAT HIS OR HER LICENSE SHOULD NOT BE SUSPENDED.

(5) THE RECORDS OF A PROCEEDING PERTAINING TO THE REHABILITATION OF A LICENSEE UNDER A PROGRAM ESTABLISHED PURSUANT TO THIS SECTION SHALL BE CONFIDENTIAL AND SHALL NOT BE SUBJECT TO SUBPOENA UNLESS THE LICENSEE HAS BEEN REFERRED TO THE BOARD FOR DISCIPLINARY ACTION.

(6) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO CREATE ANY LIABILITY OF THE BOARD, MEMBERS OF THE BOARD, OR THE STATE OF COLORADO FOR THE ACTIONS OF THE BOARD IN MAKING AWARDS TO PEER HEALTH ASSISTANCE ORGANIZATIONS OR NURSE ALTERNATIVE TO DISCIPLINE PROGRAMS OR IN DESIGNATING LICENSEES TO PARTICIPATE IN THE PROGRAMS OF SUCH ORGANIZATIONS. NO CIVIL ACTION MAY BE BROUGHT OR MAINTAINED AGAINST THE BOARD, ITS MEMBERS, OR THE STATE FOR AN INJURY ALLEGED TO HAVE BEEN THE RESULT OF AN ACT OR OMISSION OF A LICENSEE PARTICIPATING IN OR REFERRED TO A PROGRAM PROVIDED BY A PEER HEALTH ASSISTANCE ORGANIZATION OR TO A NURSE ALTERNATIVE TO DISCIPLINE PROGRAM. HOWEVER, THE STATE SHALL REMAIN LIABLE UNDER THE PROVISIONS OF THE "COLORADO GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF TITLE 24, C.R.S., IF AN INJURY ALLEGED TO HAVE BEEN THE RESULT OF AN ACT OR OMISSION OF A LICENSEE PARTICIPATING IN OR REFERRED TO A PEER HEALTH ASSISTANCE DIVERSION PROGRAM OR NURSE ALTERNATIVE TO DISCIPLINE PROGRAM OCCURRED WHILE SUCH LICENSEE WAS PERFORMING DUTIES AS AN EMPLOYEE OF THE STATE.

(7) THE BOARD IS AUTHORIZED TO PROMULGATE RULES NECESSARY TO IMPLEMENT THIS SECTION.

**SECTION 2.** 12-38-103, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

**12-38-103. Definitions.** As used in this article, unless the context otherwise requires:

(7.4) "LICENSEE" MEANS A PERSON LICENSED PURSUANT TO THIS ARTICLE.

**SECTION 3. Effective date.** (1) This act shall take effect January 1, 2008.

(2) However, if a referendum petition is filed against this act or an item, section, or part of this act during the 90-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, then the act, item, section, or part, shall not take effect unless approved by the people at a biennial regular general election and shall take effect on the date specified in subsection (1) or on the date of the official declaration of the vote thereon by proclamation of the governor, whichever is later.

Approved: May 7, 2007