



NORTH DAKOTA BOARD OF NURSING

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House Human Services Committee ND Board of Nursing SB 2114

Chairman Weisz and members of the Committee. I am Dr. Stacey Pfenning, Executive Director of the North Dakota Board of Nursing (NDBON).

SB 2114 is an agency bill filed by the NDBON to amend and reenact sections 43-12.1-02 and 43-12.1-08 of the ND Century Code to establish and define an Alternative to Discipline Program, allow for flexibility in administration of nursing education funds; and remove redundant language related to short-term clinical education in healthcare facilities which is included in exemptions. *Appendix A* provides a copy of SB 2114. *Appendix B* provides an overview of the NDBON.

Section 1. Amendment, Section 43-12.1-02. Definitions adds a definition for Alternative to Discipline to provide context and clarify what an ATD program is and who it is designed to serve.

Section 2. Amendment, Section 43-12.1-08. Duties of the board.

Subsection 2.g. removes language referencing a loan program and adds language that provides flexibility for the NDBON to provide funding assistance for students and nurses pursuing nursing education without requiring loan criteria such as a co-signer and notarized promissory note. *Appendix C* gives detail of loan statistics.

Subsection 2.k. removes redundancy by eliminating language already included in exemptions allowing out of state licensed nurses to complete short-term continuing education in North Dakota facilities.

Subsection 2.p. allows for the establishment of an Alternative to Discipline (ATD) Program for nurses. The ATD program would provide a non-disciplinary approach to ensuring safety to practice for nurses with substance use or mental health issues.

With the onset of the COVID-19 pandemic the NDBON observed a surge in potential violation reports (PVRs), nurse self-reports of DUIs and other substance issues, and disciplinary determinations for nurses related to substance use and mental health concerns. *Appendix D* provides statistics regarding Board discipline for nurses with substance use. This surge compounded the already critical nursing workforce shortage as nurses with substance use and mental health concerns were removed from practice in a disciplinary manner to ensure public safety. Approximately 44 U.S. states and territories have ATD programs to manage substance use and mental health issues for nursing professionals.

The NDBON researched best practices of ATD programs across the nation and programs used by other professional licensing boards in ND. In October 2021, the NDBON initiated an ATD committee which designed and approved a pilot project which was initiated in April 2022. *Appendix E outlines the NDBON ATD pilot project.*

The NDBON requests your support for **SB 2114** to establish an ATD program for nurses. This program would support a safe nursing workforce by offering non-disciplinary monitoring for nurses suffering from substance use or mental health conditions, while allowing them to remain in the nursing workforce. *Refer to Appendix F for discipline versus ATD comparison.*

Thank you for your time and attention, and for your thoughtful consideration of SB 2114. I am open to any questions the Committee members may have.

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Introduced by

Workforce Development Committee

(At the request of the North Dakota Board of Nursing)

1 A BILL for an Act to amend and reenact sections 43-12.1-02 and 43-12.1-08 of the North
2 Dakota Century Code, relating to the establishment of an alternative to discipline program for
3 nurses licensed in North Dakota.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 43-12.1-02 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **43-12.1-02. Definitions.**

8 In this chapter, unless the context otherwise requires:

- 9 1. "Advanced practice registered nurse" means an individual who holds a current license
10 to practice in this state as an advanced practice registered nurse within one of the
11 roles of certified nurse practitioner, certified registered nurse anesthetist, certified
12 nurse midwife, or certified clinical nurse specialist, and who functions in one of the
13 population foci as approved by the board.
- 14 2. "Alternative to discipline" means a voluntary alternative to traditional discipline
15 program designed for nurses with substance use disorders, behavioral health
16 conditions, or medical health conditions.
- 17 3. "Board" means the North Dakota board of nursing.
- 18 ~~3.4.~~ "Licensed practical nurse" means an individual who holds a current license to practice
19 in this state as a licensed practical nurse and who practices dependently under the
20 supervision of a registered nurse, specialty practice registered nurse, advanced
21 practice registered nurse, or licensed practitioner.
- 22 ~~4.5.~~ "Nurse" means an individual who is currently licensed as an advanced practice
23 registered nurse, specialty practice registered nurse, registered nurse, or licensed
24 practical nurse.

1 ~~5-6.~~ "Nursing" means the performance of acts utilizing specialized knowledge, skills, and
2 abilities for people in a variety of settings. The term includes the following acts, which
3 may not be deemed to include acts of medical diagnosis or treatment or the practice of
4 medicine as defined in chapter 43-17:

- 5 a. The maintenance of health and prevention of illness.
6 b. Assessing and diagnosing human responses to actual or potential health
7 problems.
8 c. Providing supportive and restorative care and nursing treatment, medication
9 administration, health counseling and teaching, case finding and referral of
10 individuals who are ill, injured, or experiencing changes in the normal health
11 processes.
12 d. Administration, teaching, supervision, delegation, and evaluation of health and
13 nursing practices.
14 e. Collaboration with other health care professionals in the implementation of the
15 total health care regimen and execution of the health care regimen prescribed by
16 a health care practitioner licensed under the laws of this state.

17 ~~6-7.~~ "Prescriptive practices" means assessing the need for drugs, immunizing agents, or
18 devices and writing a prescription to be filled by a licensed pharmacist.

19 ~~7-8.~~ "Registered nurse" means an individual who holds a current license to practice in this
20 state as a registered nurse and who practices nursing independently and
21 interdependently through the application of the nursing process.

22 ~~8-9.~~ "Specialty practice registered nurse" means an individual who holds a current license
23 to practice in this state as a specialty practice registered nurse and who has current
24 certification from a national certifying body in a specific area of nursing practice.

25 ~~9-10.~~ "Unlicensed assistive person" means an assistant to the nurse, who regardless of title
26 is authorized to perform nursing interventions delegated and supervised by a nurse.

27 **SECTION 2. AMENDMENT.** Section 43-12.1-08 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **43-12.1-08. Duties of the board.**

- 30 1. The board shall regulate the practice of nursing as provided in this chapter.
31 2. The board shall:

Sixty-eighth
Legislative Assembly

- 1 a. Enforce this chapter.
- 2 b. Adopt and enforce administrative rules necessary to administer this chapter after
- 3 collaborating and consulting with North Dakota nursing organizations and other
- 4 affected parties.
- 5 c. Appoint and employ a registered nurse to serve as executive director and
- 6 approve any additional staff positions necessary to administer this chapter.
- 7 d. Establish fees and receive all moneys collected under this chapter and authorize
- 8 all expenditures necessary to conduct the business of the board. Any balance of
- 9 fees after payment of expenditures must be used to administer this chapter.
- 10 e. Collect and analyze data regarding nursing education, nursing practice, and
- 11 nursing resources.
- 12 f. Issue and renew limited licenses or registrations to individuals requiring
- 13 accommodation to practice nursing or assist in the practice of nursing.
- 14 ~~g. Establish a nursing student loan program funded by license fees to encourage~~
- 15 ~~individuals to enter and advance in the nursing profession~~Conduct and support
- 16 projects pertaining to funding assistance for nurse or student participation in
- 17 nursing education.
- 18 h. Establish a registry of individuals licensed or registered by the board.
- 19 i. Report annually to the governor and nursing profession regarding the regulation
- 20 of nursing in the state.
- 21 j. Conduct and support projects pertaining to nursing education and practice.
- 22 ~~k. Adopt and enforce administrative rules to allow nurses licensed by another state~~
- 23 ~~to receive short-term clinical education in North Dakota health care facilities.~~
- 24 ~~l.~~ License qualified applicants for nurse licensure.
- 25 ~~m.~~ Register qualified applicants for the unlicensed assistive person registry.
- 26 ~~n.~~ Adopt and enforce rules for continuing competence of licensees and registrants.
- 27 ~~o.~~ Adopt and enforce rules for nursing practices.
- 28 ~~p.~~ Issue practice statements regarding the interpretation and application of this
- 29 chapter.
- 30 p. Adopt and enforce rules to establish an alternative to discipline program. Records
- 31 of an alternative to discipline program, including the identity of a nurse

1 participating in the alternative to discipline program, are exempt records under
2 section 44-04-17.1. Records of an alternative to discipline program may be
3 disclosed by the board when disclosure of the records is necessary to protect the
4 health, safety, and welfare of the public, when ordered by a court of competent
5 jurisdiction, and as otherwise determined by the board at the discretion of the
6 board.

Appendix B Overview of ND Board of Nursing

- The mission of the North Dakota Board of Nursing is to assure North Dakota citizens quality nursing care through the regulation of standards for nursing education, licensure and practice.
- NDBON licenses (FY 21-22): 17,979 RNs, 3,641 LPNs, 2,372 APRNs (1921 with prescriptive authority)
- Unlicensed Assistive Person (UAP) Registrations (FY 21-22): 1,179
- 11 NDBON staff members to assist the board with operations in licensing, practice, education, and compliance divisions.
- Current Board Members:
 - President, Dr. Kevin Buettner, APRN, Grand Forks
 - Vice-President, Wendi Johnston, LPN, Kathryn
 - Treasurer, Dr. Jamie Hammer, RN, Minot
 - Julie Dragseth, LPN, Watford City
 - Cheryl Froelich, Public Member, Mandan
 - Melodi Krank, RN, West Fargo
 - Dr. Michael Hammer, RN, Velva
 - Dana Pazdernik, RN, New Salem
 - Maggie Seamands, RN, Bismarck
- Turnaround time for complete licensure applications is 2-3 days, and 90-day temporary permits/work authorizations issued within 2-3 days of required documents. Licensure data is submitted to National Council of State Boards of Nursing Database, Nursys.
- NDBON continues to be US Department of Education recognized to approve nursing education programs.
- ND is a member of the Nurse Licensure Compact comprised of 39 states/territories and one of three members of the revised APRN compact.
- Compliance Division: 28 open/pending cases (FY 21-22); 80 cases resulted in disciplinary action/disciplinary actions are uploaded to Nursys and published on the NDBON website.
- In July 2022, NDBON approved 39 eligible individuals for the Nursing Education Loan, totaling \$109,986.65.
- NDBON publishes a quarterly newsletter, titled “North Dakota Nurses Connection.”

- The NDBON approved an Alternative to Discipline Program Committee and initiated a pilot project for nurses in ND in April 2022. The pilot has one current enrollee and two nurses with enrollment pending.
- Since the pandemic, the NDBON has offered an emergency limited license reactivation for ND nurses wanting to return to practice to assist with the workforce crisis. The NDBON issued 27 emergency limited license reactivations. Of those, 17 licensees opted to fully reactivate their ND nurse license.

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Appendix C

Nursing Education Loan Disbursements Per Fiscal Year

The following table identifies NEL disbursements by program type and monetary awards for the last five years.

<i>Nursing Education Loans</i>	2017-2018		2018-2019		2019-2020		2020-2021		2021-2022	
LPN Certificate Program	2	\$1400	2	\$1,816	0	\$0	7	\$630	3	\$3,000
LPN Associate Degree Program	0	\$0	1	\$908	0	\$0	0	\$0	1	\$1,375
RN Associate Degree Program	7	\$8960	5	\$7,652	4	\$9,092	2	\$2,510	2	\$4,000
RN Baccalaureate Degree Program	16	\$25,106	12	\$24,378	10	\$15,801.21	4	\$7,528	10	\$19,143
Master's Degree Program	19	\$35,895	15	\$37,294	16	\$38,478.49	5	\$4,930	11	\$29,098
Doctoral Program	12	\$17,510	11	\$26,962	8	\$21,478.30	1	\$622	13	\$46,054
Refresher Course	1	\$500	1	\$500	0	\$0	0	\$0	0	\$0
Total	57	\$89,371	47	\$99,510	39	\$84,850	19	\$20,000	40	\$102,670

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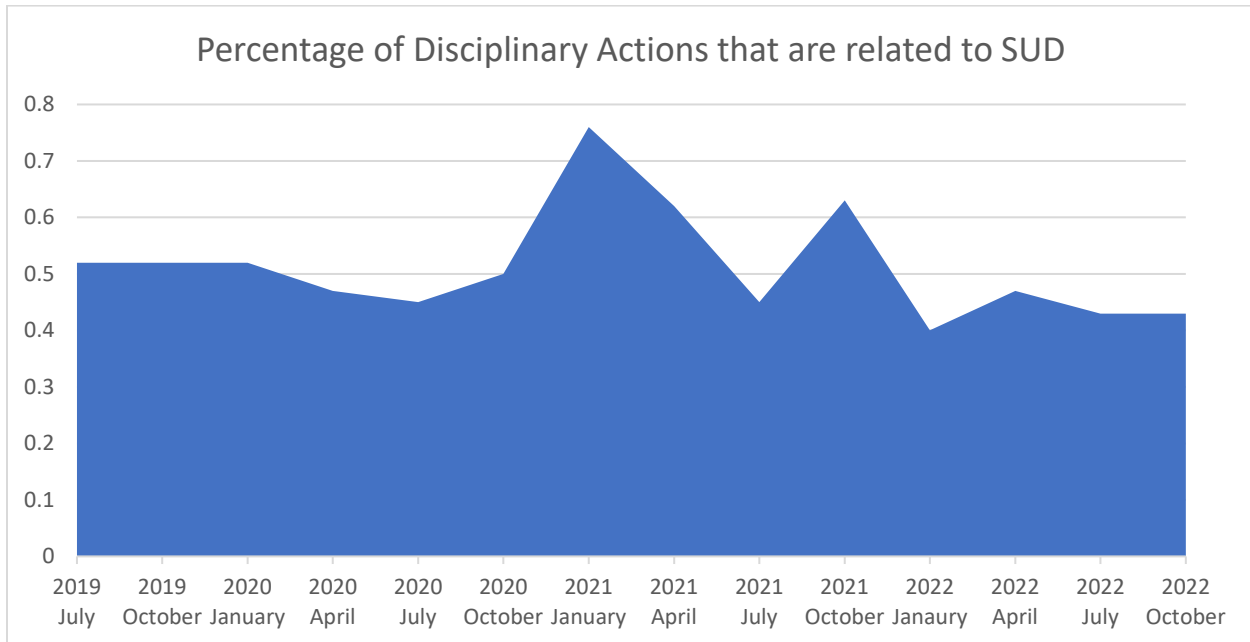
Nursing Education Loan Program Cancellations Per Fiscal Year

Prior NEL were cancelled in the last five years in the following manner:

<i>Nursing Education Loans</i>	2017-2018		2018-2019		2019-2020		2020-2021		2021-2022	
LPN Certificate Program	2	\$1400	2	\$1,816	0	\$0	7	\$630	3	\$3,000
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**Appendix D
NDBON Discipline and Substance Use Disorders (SUD)
[July 2019-October 2022]**



Why an Alternative to Discipline Program?

Per the statistics above, over a 40 month period (July 2019-October 2022), an average of 51% of disciplinary actions issued/approved by the ND Board of Nursing were related to SUD (for example: impairment at work, diversion of controlled substances, SUD).

According to the National Council for State Boards of Nursing (NCSBN), approximately 44 States in the United States have some form of a non-disciplinary alternative program for SUD. North Dakota does not have this kind of program. In April 2022, the Board of Nursing approved an alternative to discipline pilot program for nurses with SUD, behavioral health conditions, and physical health conditions that could affect their nursing practice.

Other healthcare licensing boards in North Dakota have similar non-disciplinary programs.

NDBON believes that such a program will offer assistance to nurses who are struggling, giving them options to seek the help they need for SUD, behavioral health condition, or physical health condition before it negatively affects their nursing practice and the safety of the public. It will also allow nurses with SUD to safely return/remain in the nursing workforce.

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**Appendix E
ATD Pilot Program Policy & Procedure**

Program Objectives:

- Protect the public while monitoring the nurse to assure safe practice
- Encourage early identification, entry into treatment, and entry into a contractual agreement for monitoring of compliance with treatment and practice monitoring
- Transparency to the public by providing information through policies and procedures, annual reports, and educational materials
- Facilitate nurses to maintain an ongoing recovery consistent with patient safety

Mission:

The pilot program shares the mission of the North Dakota Board of Nursing which is to protect the public health, safety, and welfare by regulating the licensure of nurses, the practice of nurses, nursing education and continuing education.

Relationship to the Board:

The program staff will maintain a working relationship with the North Dakota Board of Nursing. Participation in the program is confidential as long as the nurse remains in compliance with their individualized contract. Participants who satisfy the requirements of their contracts will not be reported to the Board. The project may refer a participant to the Board if participants refuse to comply with their contract or the program recommendations.

Confidentiality:

Participation in the program may be confidential as long as the nurse remains in compliance with their contract. Program noncompliance may result in Board notification. Board notification may result in a referral to the compliance division and possible public disciplinary action by the Board. To ensure public safety, and facilitate monitoring, the program contract authorizes the program to communicate directly with current and prospective employers, mental health and treatment providers, probation departments, drug court agencies, health providers, disciplinary and regulatory bodies, drug test collection sites, and third-party drug testing services.

Qualifications for Participation:

All participants are approved by the Program Advisory Committee (PAC). Participants are required to meet the following criteria:

- Actively licensed nurse in North Dakota; and
 - Have a physical or mental condition that is or may affect their nursing practice; and/or
 - Use alcohol or drugs to the extent that their nursing practice may be affected
- Voluntarily agree to enter the program and provide consent for appropriate medical/psychiatric evaluations; and
- Follow all recommendations of the evaluator; and

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- Agree to the terms set forth in the agreement and/or contract

Several factors may lead the program to make a determination of ineligibility for the program if the program finds sufficient evidence that the licensee or applicant has (this list is not all-inclusive):

- Diverted drugs for distribution to third parties or for personal gain
- Adulterated, misbranded, or otherwise tampered with drugs intended for the patient
- Provided inaccurate, misleading, or fraudulent information or failed to fully cooperate with the program
- Failed to sign a contract when recommended by the program advisory committee

Services:

The program provides ongoing support and monitoring for those enrolled in the program. This includes coordination with the treatment team. The program does not directly provide treatment, diagnosis, or aftercare services.

Policy:

1. Referrals can be made for participation in the program by:
 - a. The licensed nurse themselves
 - b. A friend or family member
 - c. The employer
 - d. The Board of Nursing
 - e. Another Alternative to Discipline program from another state
2. The Board appoints the program coordinator to approve participants for the program. The program also works with the special assistant attorney general for the Board who provides legal counsel for the program.
3. Participants are required to have a monitoring contract. Participants are required to complete the full term of their contract to be eligible for successful graduation. Participants who do not complete their contract may be reported to the Board. The contract is typically five (5) years, with an “early out” option for compliance at three (3) years.
4. Participants are responsible for all costs of the program including a small monthly monitoring fee, drug testing, recovery, and ongoing treatment. Participants are expected to fully participate in their recovery. Not fully participating in the program due to insufficient financial resources is not acceptable and may result in discharge from the program and potential report to the Compliance Division of the North Dakota Board of Nursing.
5. Participants with a history of substance use will complete a daily check in seven days per week from 0500 – 1200 and submit to 1-4 drug screens per month depending on circumstances. Most screens involve a urine specimen, but the program may require blood, hair, or nail testing. Monthly costs will vary based on testing requirements and are the participant’s responsibility.
6. Participants with a history of substance use will remain free from the use of alcohol, marijuana (and its derivatives), and all mind and mood altering, and potentially addictive drugs unless prescribed by a physician. The use of medical marijuana/CBD may be prohibited while in the program.

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7. Participants with a history of substance use will attend Alcoholics Anonymous (AA), Narcotics Anonymous (NA), or other 12-step meetings. Participants are required to attend 90 meetings in 90 days immediately upon discharge from an inpatient or intensive outpatient treatment. Following this, a minimum of three (3) meetings per week is required and may decrease as the participant progresses in recovery.
8. Participants with a history of substance use will have a recovery sponsor. Participants will notify the program of the sponsor's name and phone number. Participants will have contact with their sponsor at a minimum of three (3) times a week.
9. Participants with a history of substance use are required to attend all recommended aftercare meetings. This is arranged by the participant's treatment team. The frequency of meetings will be determined by the treatment team and may decrease as participant progresses in recovery.
10. All participants will report the use of prescribed medications, including medication assisted therapy (MAT) to the program. Participants are required to inform their healthcare provider(s) of participation in the program. The provider must report the medication(s) prescribed, the reason for the medication, quantity, and dosage to the program.
11. All participants will have an approved worksite monitor (WSM). WSM are unencumbered licensed health care providers (Registered Nurses, Advanced Practice Registered Nurses, Medical Doctors, or Doctors of Osteopathy) employed in the same setting as the nurse being monitored who are willing to provide oversight for the nurse on their return to nursing practice. If, at any time during participation in the program, there is a concern about the participant's ability to practice with reasonable skill and safety, they will be required to cease practice.
12. All participants are required to report a relapse to the program. Relapse is defined as a recurrence of symptoms after a period of improvement or during apparent recovery. Depending on circumstances, a relapse may result in increased testing, worksite restrictions, or Board notification.
13. All participants will report noncompliance to the program. Noncompliance is defined as the failure to adhere to the conditions of restrictions specified in a formal contract for monitoring or designated as conditions on a license to practice nursing. Depending on the circumstances, noncompliance may result in increased testing, worksite restrictions, or Board notification.

Procedure for Admission to the Program:

1. Intake
 - a. Applicant will submit self-report, or a referral form is received from the appropriate source
 - b. Intake form is completed by applicant and Program coordinator
 - c. Release of information (ROI) is completed by applicant
2. The Initial Agreement is obtained by the program coordinator
 - a. The applicant agrees to and obtains a chemical dependency or mental health evaluation by a provider approved by the program to determine eligibility for the program
 - b. The applicant agrees to follow all recommendations of the evaluator
3. The coordinator reviews intake materials, including the evaluation, to determine eligibility of the applicant for participation in the program.
4. Monitoring Contract is completed with the SAAG and signed with the participant.

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**Appendix F
Alternative to Discipline vs. Disciplinary Board Order**

	Board-Ordered Discipline	Alternative to Discipline (ATD)
Removed from practice until deemed safe to practice by a chemical dependency or mental health provider	Yes – by a Surrender of license or Emergency Suspension order which historically, has been 2-5 years	Yes – by a contract with the participant
Publicly reported to Nursys, National Practitioner Database (NPDB), and Office of Inspector General (OIG)	Yes	No Per NLC law, license is made single state until contract is complete
Once cleared to work, nursing license is encumbered (select major organizations in ND do not allow employment of encumbered nurses)	Yes	No
Practice is monitored by employing facility	Yes	Yes
Participant is required to abstain from the use of alcohol and all mood-altering chemicals and controlled substances unless authorized by a licensed practitioner	Yes	Yes
Random Drug testing is required if related to a substance use disorder (SUD)	Yes	Yes
Chemical Dependency Treatment is required if SUD related	Yes	Yes
Support Group attendance and obtaining a Sponsor is required if SUD related	Yes	Yes
Self-assessment report is required monthly	Yes	Yes