

**TITLE 16 OCCUPATIONAL AND PROFESSIONAL LICENSING**  
**CHAPTER 12 NURSING AND HEALTH CARE RELATED PROVIDERS**  
**PART 13 DIVERSION PROGRAM FOR CHEMICALLY DEPENDENT NURSES**

**16.12.13.1 ISSUING AGENCY:** New Mexico Board of Nursing.  
[16.12.13.1 NMAC - N, 12/13/2022]

**16.12.13.2 SCOPE:** These rules apply to the board and all those licensed by or subject to the jurisdiction of the board.  
[16.12.13.2 NMAC - N, 12/13/2022]

**16.12.13.3 STATUTORY AUTHORITY:** These rules are promulgated pursuant to the Nursing Practice Act, Sections 61-3-1 to -30 NMSA 1978 and the Lactation Care Provider Act, Sections 61-36-1 to 61-36-6 NMSA 1978.  
[16.12.13.3 NMAC - N, 12/13/2022]

**16.12.13.4 DURATION:** Permanent.  
[16.12.13.4 NMAC - N, 12/13/2022]

**16.12.13.5 EFFECTIVE DATE:** December 13, 2022, unless a later date is cited at the end of a section.  
[16.12.13.5 NMAC - N, 12/13/2022]

**16.12.13.6 OBJECTIVE:** The objective of 16.12.13 NMAC is to promote, preserve and protect the public health, safety, and welfare.  
[16.12.13.6 NMAC - N, 12/13/2022]

**16.12.13.7 DEFINITIONS:** [RESERVED]  
[16.12.13.7 NMAC - N, 12/13/2022]

**16.12.13.8 PURPOSE OF DIVERSION PROGRAM:** The diversion program is a voluntary alternative to traditional disciplinary action for a nurse whose competencies may be impaired because of the habitual use of drugs or alcohol. Individuals may request admission into the program following the filing of a complaint against their nursing license or by self-referral.  
[16.12.13.8 NMAC - N, 12/13/2022]

**16.12.13.9 ADMISSION INTO THE DIVERSION PROGRAM:**

**A.** Nurses licensed in New Mexico who have had a complaint filed against their nursing license alleging the use or abuse of drugs or alcohol, or who voluntarily submit a written request, shall be given an opportunity to be admitted into the diversion program.

**(1)** Following a complaint, individuals who do not accept the opportunity for admission into the program shall be processed as a disciplinary case.

**(2)** Individuals who voluntarily requested admission and do not complete the admission process within 30 days of request may be subject to disciplinary action by the board.

**(3)** It may be recommended that individuals obtain a professional evaluation for chemical dependency or mental health diagnosis and submit a copy of the evaluation to the diversion program.

**(4)** The initial contract is a “no use” contract to include prescription medications unless written notification is given by the physician prescribing the medication.

**(5)** Signatures on the initial contract and amendments constitute a release of information for the diversion program to contact all supporting individuals.

**B.** Request for admission shall be made, in writing, to the diversion program coordinator or executive director of the board of nursing.

**C.** Each nurse requesting admission shall be scheduled for an admission interview and preparation of an initial contract.

- (1) The initial contract shall include conditions which must be met by a participant.
  - (2) The contract may be individualized but the form may not be substantially changed without the approval of the board.
  - (3) The initial preparation of the contract will be done by the diversion program coordinator, executive director, or experienced regional advisory committee member.
  - (4) Participants may be prohibited from access to narcotics, overtime, night shift work and agency/home health care work.
  - (5) Beginning on December 1, 2022, any diversion program contract shall include the following conditions to which any participant entering into a new diversion program contract shall knowingly and voluntarily consent in writing as a prerequisite to program participation:
    - (a) the participant in the program agrees that the board may summarily suspend the participant's nursing license (or multiple licenses, if applicable) upon receiving information deemed to be credible by the board suggesting that the participant has violated the terms of the diversion program contract;
    - (b) any summary suspension may last no longer than ninety days; and
    - (c) the board may order a summary suspension without a hearing, provided that beforehand the board shall provide the participant notice of the possible suspension and an opportunity to submit any evidence, argument, or other information in writing as to why the board should not summarily suspend the participant's license.
- [16.12.13.9 NMAC - N, 12/13/2022]

**16.12.13.10 MONITORING PARTICIPANTS IN THE DIVERSION PROGRAM:**

- A. Participants must assure that required written reports and drug screens are submitted in accordance with the provisions of the diversion program contract and contract amendments. Written reports and drug screens *must* be received regularly by the program.
    - (1) Written reports of the same type and several drug screens received together are not acceptable and may result in the participant being noncompliant.
    - (2) Drug screens shall be scheduled randomly and shall be observed in accordance with the guidelines and protocols approved by the board.
    - (3) Drug screens must include participant's drugs of choice.
  - B. Participants are required to meet with representatives of the program periodically for an evaluation of their progress in recovery and participation in the program.
    - (1) After one year of acceptable compliance, amendments may be made in the participant's contract based on the participant's progress in recovery and participation in the program.
    - (2) Contracts and contract amendments must be submitted with all required signatures within two weeks of the meeting date.
    - (3) Failure to meet regularly as scheduled may result in being reported to the board for noncompliance.
  - C. Participant shall notify the diversion program coordinator and the executive director of the board, immediately, of a pending relocation out-of-the state of New Mexico. The participant shall complete and submit the out of state relocation form. The executive director shall notify the board of nursing in the state in which participant intends to practice that the licensee is a participant in the New Mexico board of nursing's diversion program for chemically dependent nurses. Participants who relocate out-of-state must comply with the NM diversion program requirements until participants have been discharged from the program.
- [16.12.13.10 NMAC - N, 12/13/2022]

**16.12.13.11 RELAPSES AND NONCOMPLIANCE WITH THE DIVERSION PROGRAM CONTRACT:**

- A. Participants who are noncompliant with their contract and who do not cooperate with the program shall be reported to the board of nursing.
  - (1) Reports shall be made to the board using the participant's confidential file number.
  - (2) The participant's name shall not be disclosed to the board until formal disciplinary proceedings occur.
- B. The diversion program coordinator or the executive director shall file a sworn complaint after a verbal or written report of a relapse, positive drug screen or no verbal or written communication with the diversion program for three months.
  - (1) A relapse is defined as the unauthorized use of any mind-altering drug or alcohol.

(2) The relapse shall be reported to the board of nursing at its next regularly scheduled meeting.

C. The board may move for a notice of contemplated action and may summarily suspend the license of the participant for a period not to exceed 90 days pending the completion of a formal disciplinary proceeding as provided by the diversion program contract, on the basis of a participant's relapse or positive drug screen.

D. An individual whose license is reinstated following a summary suspension shall remit the required reinstatement fee.

E. Participants who appear before the board for a disciplinary hearing may be required to enter into a new diversion program contract.

[16.12.13.11 NMAC - N, 12/13/2022]

#### **16.12.13.12 DISCHARGE FROM THE DIVERSION PROGRAM:**

A. Successful discharge:

(1) A participant who remains drug and alcohol free for three full years and complies with all conditions of the participant's diversion program contract for at least 24 months may request a successful discharge from the diversion program.

(2) Prior to the board's grant of any successful discharge, the participant must be evaluated for discharge by a quorum of advisory committee members or the diversion program coordinator. In addition, the participant must submit letters of recommendation from a supervisor, a sponsor, and (if applicable) a counselor, as well as an additional letter written by the participant personally.

(3) Upon the participant submitting all required documentation and the participant's completion of the required evaluation, the diversion program coordinator shall make a recommendation to the board at its next regularly scheduled meeting regarding the approval or disapproval of discharge for the participant.

B. Unsuccessful discharge:

(1) The board may unsatisfactorily discharge a participant from the diversion program based on the participant's failure to comply with the terms and conditions of the diversion program contract.

(2) An unsuccessful discharge does not constitute disciplinary action.

[16.12.13.12 NMAC - N, 12/13/2022]

#### **16.12.13.13 DIVERSION PROGRAM PARTICIPANT RECORDS:**

A. All diversion program participant records are strictly confidential and shall be maintained by the board in accordance with Section 61-3-29.1 NMSA 1978.

B. Subject to any additional confidentiality as otherwise provided by law, the board may disclose the records of a participant in the following circumstances:

(1) disclosure is required pursuant to the Nurse Licensure Compact;

(2) disclosure is for the purposes of reporting to the board concerning a nurse who is not cooperating and complying with the diversion program contract;

(3) the participant leaves the state prior to successful discharge; or

(4) the participant is no longer in the program and the board has taken disciplinary action against the participant based on noncompliance with the diversion program contract.

[16.12.13.13 NMAC - N, 12/13/2022]

#### **16.12.13.14 REGIONAL ADVISORY COMMITTEES:**

A. The board shall establish regional advisory committees throughout the state in accordance with Section 61-3-29.1 NMSA 1978 for the purpose of assisting the program coordinator to conduct admission interviews, prepare initial contract and to periodically evaluate participant's progress in recovery and participation in the program.

B. Members of advisory committees shall be appointed by the board and shall function under the direction of the board.

C. No current member of the board shall be appointed to an advisory committee.

D. As permitted and authorized by the executive director, the program coordinator shall be the liaison between each regional advisory committee and the board.

[16.12.13.14 NMAC - N, 12/13/2022]

**HISTORY of 16.12.13 NMAC: [RESERVED]**