

CHAPTER 701

H.B. No. 900

An Act relating to the establishment, administration, and financing of peer assistance programs to assist professionals impaired by chemical dependency or mental illness.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. DEFINITIONS. In this Act:

(1) "Approved peer assistance program" means a program designed to help an impaired professional and that is established by a licensing or disciplinary authority or that is approved by a licensing or disciplinary authority as meeting the criteria established by the Texas Commission on Alcoholism and any additional criteria established by that licensing or disciplinary authority.

(2) "Impaired professional" means an individual whose ability to perform professional services is impaired by chemical dependency on drugs or alcohol or by mental illness.

(3) "Licensing or disciplinary authority" means a state agency or board that licenses or has disciplinary authority over professionals.

(4) "Professional" means an individual who may incorporate under The Texas Professional Corporation Act (Article 1528e, Vernon's Texas Civil Statutes) or who is licensed, registered, certified, or otherwise authorized by the state to practice as a licensed vocational nurse, certified social worker, occupational therapist, speech-language pathologist, audiologist, or licensed dietitian.

(5) "Professional association" means a national or statewide association of professionals and includes any committee of a professional association and any nonprofit organization controlled by or operated in support of a professional association.

SECTION 2. APPLICATION. This Act does not apply to a peer assistance program for licensed physicians or pharmacists or for any other profession that is authorized under other law to establish a peer assistance program.

SECTION 3. ESTABLISHMENT OF PROGRAM. (a) A professional association or licensing or disciplinary authority may establish peer assistance programs to identify and assist impaired professionals in accordance with the minimum criteria established by the Texas Commission on Alcoholism and any additional criteria established by the appropriate licensing or disciplinary authority.

(b) A peer assistance program established by a professional association may not be governed by or entitled to the benefits of this Act unless the professional association submits to the appropriate licensing or disciplinary authority evidence that the association's program meets the minimum criteria established by the Texas Commission on Alcoholism and any additional criteria established by that licensing or disciplinary authority.

(c) If a licensing or disciplinary authority receives evidence demonstrating that a peer assistance program established by a professional association meets the minimum criteria established by the Texas Commission on Alcoholism and any additional criteria established by that licensing or disciplinary authority, the licensing or disciplinary authority shall approve the program.

(d) A licensing or disciplinary authority may revoke its approval of a program established by a professional association if the authority determines that the program no longer complies with

criteria established by the Texas Commission on Alcoholism or by that licensing or disciplinary authority and the professional association does not bring the program into compliance within a reasonable amount of time as determined by the licensing or disciplinary authority.

SECTION 4. FUNDING. (a) A licensing or disciplinary authority may add a surcharge of not more than \$1 to its license or license renewal fee to fund an approved program. The licensing or disciplinary authority must adopt the surcharge in accordance with the procedure the authority uses when the authority initiates and adopts an increase in its license or license renewal fee.

(b) A licensing or disciplinary authority may accept, transfer, and expend funds made available by the federal or state government or by another public or private source to fund approved peer assistance programs.

(c) A licensing or disciplinary authority may contract with, provide grants to, or make other arrangements with an agency, professional association, institution, or individual to implement this Act.

(d) Funds collected under this section may be used only to implement this Act and may not be used to pay for the actual treatment and rehabilitation costs required by an impaired professional.

SECTION 5. REPORTS. (a) If a person knows or suspects that a professional is impaired by chemical dependency on alcohol or drugs or by mental illness, the person may report the professional's name and any relevant information to an approved peer assistance program.

(b) If a person is required by law to report an impaired professional to a licensing or disciplinary authority, the requirement is satisfied if the person reports the professional to an approved peer assistance program.

(c) An approved peer assistance program may report in writing to the appropriate licensing or disciplinary authority the name of a professional the program knows or suspects may be impaired and any relevant information concerning that professional.

(d) The licensing or disciplinary authority shall treat the report in the same manner as it treats an initial allegation of misconduct against a professional.

SECTION 6. ASSISTANCE. (a) An approved peer assistance program that receives a report or referral under Subsection (b) or (c) of this section or under Section 5(a) of this Act may intervene to assist the impaired professional to obtain and successfully complete a course of treatment and rehabilitation.

(b) If a licensing or disciplinary authority receives an initial complaint relating to an impaired professional, the authority may:

- (1) refer the professional to an approved peer assistance program; or
- (2) require the professional to participate in or successfully complete a course of treatment or rehabilitation.

(c) If a licensing or disciplinary authority receives a second or subsequent complaint or a report from a peer assistance program relating to an impaired professional, the authority may, in addition to other actions the authority is authorized to take in disposing of the complaint:

- (1) refer the professional to an approved peer assistance program; or
- (2) require the professional to participate in or successfully complete a course of treatment or rehabilitation.

SECTION 7. CONFIDENTIALITY OF INFORMATION. (a) Any information, report, or record an approved peer assistance program or a licensing or disciplinary authority receives, gathers, or maintains under this Act is confidential. Except as prescribed by Section 5(c) of this Act and Subsection (b) of this section, the information, report, or record may not be disclosed without the written approval of the impaired professional or other interested person.

(b) Information made confidential by Subsection (a) of this section may be disclosed:

- (1) at a disciplinary hearing before a licensing or disciplinary authority in which the authority considers taking disciplinary action against an impaired professional whom it has referred to a peer assistance program under Section 6(b) or 6(c) of this Act;
- (2) at an appeal from a disciplinary action or order imposed by a licensing or disciplinary authority;
- (3) to qualified personnel for bona fide research or educational purposes if information that would identify a person is removed;
- (4) to health care personnel to whom an approved peer assistance program or licensing or disciplinary authority has referred an impaired professional; or
- (5) to other health care personnel to the extent necessary to meet a health care emergency.

SECTION 8. CIVIL IMMUNITY. (a) A person who, in good faith, reports information or takes action in connection with a peer assistance program is immune from civil liability for reporting the information or taking the action.

(b) The immunity from civil liability provided by this section shall be liberally construed to accomplish the purposes of this Act and the persons entitled to immunity shall include:

- (1) an approved peer assistance program;
- (2) the professional association, licensing or disciplinary authority operating the program;
- (3) members, employees, or agents of the program, association, and authority;
- (4) persons reporting a professional as being impaired or providing information about the professional's impairment;
- (5) professionals supervising or monitoring the course of the impaired professional's treatment or rehabilitation; and
- (6) persons employing an impaired professional in connection with the professional's rehabilitation, unless the persons know or should have known the professional is incapable of performing the job functions involved or fail to take reasonable precautions to monitor the professional's performance.

(c) A professional association, licensing or disciplinary authority, program, or person is presumed to have acted in good faith. A person alleging a lack of good faith has the burden of proof on that issue.

(d) The immunity provided by this section is in addition to other immunity provided by law.

SECTION 9. AMENDMENT. Section 5, Chapter 411, Acts of the 53rd Legislature, Regular Session, 1953 (Article 5561c, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5. DUTIES AND FUNCTIONS OF THE COMMISSION. The Commission shall have only the following duties and functions:

(1) *carry* [~~Carry~~] on a continuing study of the problems of alcoholism in this State, and seek to focus public attention on such problems; [-]

(2) *establish* [~~Establish~~] cooperative relationships with other State and local agencies, hospitals, clinics, public health, welfare, and law enforcement authorities, educational and medical agencies and organizations, and other related public and private groups; [-]

(3) *promote* [~~Promote~~] or conduct educational programs on alcoholism; purchase and provide books, films, and other educational material; and furnish funds or grants to the Texas Education Agency, institutions of higher education, and medical schools for study, research, and modernized instruction regarding the problems of alcoholism; [-]

(4) *provide* [~~Provide~~] for treatment and rehabilitation of alcoholics and allocate funds for:

(A) *establishing* [~~(a) The establishment of~~] local alcoholic clinics, with or without short-term hospitalization facilities, by providing funds for not to exceed seventy-five per cent (75%) of the total operating cost of such clinics operated by a city or a county; [-]

(B) *providing* [~~(b) Providing~~] treatment for those alcoholics needing from fifteen (15) to ninety (90) days hospitalization, whether voluntary patients, or admitted on court order, by furnishing the Hospital Board all of the funds needed for the proper operation of segregated wards for treatment of such patients; such funds and necessary personnel to be in addition to all funds and personnel provided the Hospital Board in the regular Departmental Appropriation Bill; [-]

(C) *contracting* [~~(c) Contracting~~] with hospitals or institutions not under its control for the care, custody and treatment of alcoholics; [-]

(D) *providing* [~~(d) Providing~~] for the detention, care, and treatment of recalcitrants and alcoholics with long police court records, by furnishing funds for the operation of farm or colony type facilities under the provisions of *Subdivision (A) or (B) of this subsection; and* [~~(4) or of 4(b);~~]

(5) *establish minimum criteria that peer assistance programs must meet to be governed by and entitled to the benefits of a law that authorizes licensing and disciplinary authorities to establish or approve peer assistance programs for impaired professionals. Such criteria shall be developed in consultation with the Drug Abuse Prevention Division of the Texas Department of Community Affairs and the Texas Department of Mental Health and Mental Retardation and will encompass problems associated with alcohol and drug dependency and mental illness.*

SECTION 10. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on April 18, 1985, by a non-record vote; House concurred in Senate amendments to H.B. No. 900 on May 17, 1985, by the following vote: Yeas 126, Nays 1, 1 present, not voting; passed by the Senate, with amendments, on May 15, 1985, by the following vote: Yeas 31, Nays 0.

Approved: June 14, 1985

Effective: Immediately