

Health Care Professional Responsibility and Reporting Enhancement Act

This message is to alert you to the requirements of the Health Care Professional Responsibility and Reporting Enhancement Act, which went into effect on October 31, 2005. This law requires employers of health care workers to report to the Division of Consumer Affairs any activity which may affect patient care. The legislation was enacted following a series of tragic deaths involving a health care professional acting in a hospital setting. The expanded reporting of health care professionals required by this new law applies to the full range of health care professionals when there is demonstrated impairment or incompetence or professional misconduct. All reports are to be submitted to the Division's Health Care Reporting Unit, P.O. Box 46024, Newark, NJ 07101, Attention: Health Care Professional Information Clearinghouse Coordinator.

To assist with the implementation of this law, Frequently Asked Questions (FAQs) are provided below. The Health Care Professional Responsibility and Reporting Enhancement Act also requires that all health care professionals undergo criminal history background checks. The criminal history background checks are the subject of separate Frequently Asked Questions. The Criminal History Background Check FAQs are available at <http://www.njconsumeraffairs.com/chbcfaq.htm>

1. In connection with what actions or events must a health care entity report a health care professional to the Division of Consumer Affairs?

There are six categories of conduct, each of which must be based on reasons related to impairment, incompetency or professional misconduct, which incompetency or professional misconduct of a health care professional relates adversely to patient care or safety, for which a health care entity must make a report:

- (1) Privileges: The suspension, revocation, permanent reduction, discharge, contract termination or removal from health registry for reasons related to impairment, incompetency, or professional misconduct, which incompetency or professional misconduct relates adversely to patient care or safety;
- (2) Limitations on clinical privileges or practice: The imposition of limitations or conditions on clinical privileges or practice within the health care entity because of impairment, incompetency or professional misconduct which misconduct or incompetency relates adversely to patient care or safety. Examples include second opinion requirements, non-routine concurrent or retrospective review of admissions or care, non-routine supervision by one or more members of the staff, or the required completion of remedial education or training;
- (3) Voluntary resignation from the staff when:
 - (a) patient care of the health care professional is under review, based upon the entity's reasonable belief that the health care professional's incompetence or unprofessional conduct demonstrates an impairment, which conduct relates adversely to patient care or safety; or
 - (b) the health care entity, through any member of the medical or administrative staff of the health care entity has expressed an intention to do such a review;

(4) Voluntary relinquishment of any partial privilege or authorization to perform a specific procedure if:

- (a) the health care entity is reviewing the health care professional's patient care or reviewing whether, based upon its reasonable belief, the health care professional's conduct demonstrates an impairment or incompetence or is unprofessional, which incompetence or unprofessional conduct relates adversely to patient care or safety; or
- (b) the health care entity, through any member of the medical or administrative staff, has expressed an intention to do such a review;

(5) While under, or subsequent to, a review by the health care entity of the health care professional's patient care or professional conduct, is granted a leave of absence for reasons relating to a physical, mental or emotional condition or drug or alcohol use which impairs the health care professional's ability to practice with reasonable skill and safety, except that no report is required for pregnancy-related leaves of absence or if the health care professional has sought assistance from a professional assistance or intervention program approved or designated by the Division or a board to provide confidential oversight of the health care professional and is following the treatment regimen or monitoring as that program requires; or

(6) Is a party to a medical malpractice liability suit, to which the health care entity is also a party, and in which there is a settlement, judgment or arbitration award.

2. Who must report under the new law?

Entities that are listed in the law as "health care entities" must report. Under the new law, health care entities are the following:

- licensed health care facilities (C.26:2H-1 et seq.),
- health maintenance organizations authorized to operate under P.L.1973, c.337 (C.26:2J-1 et seq.),
- carriers which offer a managed care plan regulated pursuant to P.L.1997, c.192 (C.26:2S-1 et seq.),
- State or county psychiatric hospitals,
- State developmental centers,
- staffing registries, and
- home care services agencies (defined in N.J.S.A. 45:11-23).

3. What is considered to be "home care services agency" for purposes of reporting obligations?

A home care services agency is a "home health agency", which, in turn, is

- An assisted living residence;
- A comprehensive personal care home;
- An assisted living program;
- An alternate family care sponsor agency licensed by the Department of Health and Senior Services pursuant to P.L.1971, c.136 (C.26:2H-1 et al.);
- A nonprofit homemaker-home health aide agency; and

- A health care service firm, which, in turn, is regulated by the Division of Consumer Affairs, and is engaged in the business of obtaining or offering to obtain employment for homemaker-home health aides, where a fee may be exacted, charged or received directly or indirectly for obtaining or offering to obtain that employment.

4. Who else must make these types of reports to the Division of Consumer Affairs?

A health care professional must promptly notify the Division if he or she is in possession of information which reasonably indicates that another health care professional has demonstrated an impairment, gross incompetence or unprofessional conduct which would present an imminent danger to the public health, safety or welfare.

5. Are the reporting requirements that this new law has imposed upon licensed health care facilities and health maintenance organizations completely new and different?

No, the reporting requirements for licensed health care facilities and health maintenance organizations are not completely new. With respect to physicians and podiatrists the reports should be the same. Under a previously enacted law (the Professional Medical Conduct Reform Act), licensed health care facilities and health maintenance organizations have been required to report certain information concerning physicians and podiatrists to the State Board of Medical Examiners since 1990.

The information that was previously required to be reported, and is still required to be reported, is information about a physician and/or podiatrist who:

- is party to a malpractice suit which also names the health care facility or health maintenance organization and there is a judgment, settlement, or arbitration award;
- is the subject of an action taken by the licensed health care facility against his/her privileges;
- voluntarily relinquishes or limits his/her hospital privileges; or
- resigns in the face of investigation or takes a leave of absence for reasons related to physical conditions or drug or alcohol use which might impair him/her.

The new law requires the submission of essentially the same reports as the prior law required, when adverse actions are taken against physicians and podiatrists. But, in addition, the new law also requires that reports be made about a broader range of health care professionals and that more types of health care entities are required to make reports.

6. Is there a reporting obligation related to health care professionals enrolled in a professional assistance program?

A health care entity must notify the Division in writing, if it is in possession of information that indicates that a health care professional has failed to comply with a request to seek assistance from an approved professional assistance program, or has failed to follow the treatment regimen or

monitoring program required by that program to assure that the health care professional's physical, mental or emotional condition or drug or alcohol use does not impair his or her ability to practice with reasonable skill and safety.

7. How does the report have to be made and what information must the report contain?

A written report must be made or by a health care entity to the Division of Consumer Affairs. The reporting form is available online at www.state.nj.us/lps/ca/HealthCare/HealthCareForm.pdf

Required reports concerning *any* health care professional are to be sent to the attention of the Francine Widrich, Health Care Professional Information Clearinghouse Coordinator (“Clearinghouse Coordinator”) within the Division of Consumer Affairs at P.O. Box 46024, Newark, NJ 07101. The fax number for reports is 973- 648-3409. The reports are to be faxed to the attention of the Francine Widrich, Clearinghouse Coordinator.

Questions about report requirements may be submitted by e-mail and addressed to S1804@dca.lps.state.nj.us . DO NOT send reports by e-mail.

The report must contain the:

- health care professional’s name;
- license number of the health care entity;
- reporting entity’s name;
- reportable conduct of the health care professional which affects patient care;
- reportable action of reporting entity (suspension, revocation, limitation etc);
- licensing board;
- date of the health care professional’s conduct;
- date of the reporting entity’s action;
- date of the report to the Division; and
- name and telephone number of a contact person employed by the reporting entity.

8. Does a health care entity have to report every health care professional about which it learns information?

No, not if there is no professional relationship. The health care entity must report the health care professional who is employed by, is under contract to render professional services to, or has privileges granted by, that health care entity, or must be a health care professional who provides such services to the health care entity under an agreement with a health care services firm or staffing registry.

9. Does every kind of conduct have to be reported?

No. Changes in employment status arising from issues relating to personal conduct (such as tardiness or insubordination) that do not relate to patient care or safety need not be reported.

10. What health care professionals must be reported if the other requirements for reporting are met?
Licensees of the following boards, committees and councils:

State Board of Medical Examiners which licenses the following: Medical Doctors (M.D.s), Doctors of Osteopathy (D.O.s), Athletic Trainers, Electrologists, Hearing Aid Dispensers, Certified Registered Nurse Midwives, Perfusionists and Physician Assistants.

New Jersey Board of Nursing,

New Jersey State Board of Dentistry,

New Jersey State Board of Optometrists,

New Jersey State Board of Pharmacy,

State Board of Chiropractic Examiners,

Acupuncture Examining Board,

State Board of Physical Therapy,

State Board of Respiratory Care,

Orthotics and Prosthetics Board of Examiners,

State Board of Psychological Examiners,

State Board of Social Work Examiners,

State Board of Veterinary Medical Examiners,

State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians,

Audiology and Speech-Language Pathology Advisory Committee,

State Board of Marriage and Family Therapy Examiners,

Occupational Therapy Advisory Council, and

Certified Psychoanalysts Advisory Committee.

Health care professionals who must be reported under this law also include nurse's aides and personal care assistants, certified by the Department of Health and Senior Services.

11. Is an entity required to file a report every time a health care professional on staff leaves or is fired?

No, the legislation is intended to assure that the licensing boards are alerted when the underlying reason for the change in status relates to impairment, incompetency or professional misconduct which relates adversely to patient care or safety.

As used in this subsection, incompetence, professional misconduct and unprofessional conduct does not include personal conduct, such as tardiness, insubordination or other similar behavior, which does not relate to patient care or safety.

12. What if the conditions or limitations on a health care professional that were previously reported have changed?

A report must be filed with the Division.

13. Is the entity obligated to make a report to anyone else?

If the professional is providing services at the entity, but has been placed at the entity by a health care services firm or staffing agency, notice must also be provided to that agency.

14. Can a health care entity disclose, to another health care entity, that a report has been made to the Division of Consumer Affairs about a health care professional?

A health care entity must truthfully disclose, upon inquiry:

(a) whether, within the seven years preceding the inquiry, the health care entity provided a notice to the Division in compliance with this law concerning a health care professional; and

(b) information about a current or former employee's job performance as it relates to patient care and, in the case of former employees, the reason for separation.

15. Can the entity be sued for filing a report?

While a lawsuit could be filed, reports made in good faith are not liable for civil damages.

16. If the Division requests additional information must the entity provide it?

Yes. The law requires that the entity maintain records relating to the complaints and disciplinary proceedings for seven (7) years. It must make those records available to the board, the Division or the Department of Health and Senior Services, upon request. Data concerning complications, infections, readmissions, mortality and morbidity are to be retained for four (4) years and must also be made available to the board or Division upon request.

17. What will the Division do with the notices submitted?

The Division will retain a copy of the report, but will immediately refer the matter to the respective licensing board for appropriate action.

18. Is the licensing board required to take action against the professional?

No, the board will review the matter, but will only pursue action if there is sufficient proof that a violation of the board's statutes or regulations has occurred.