

Operational Realities of Complying with the HCPRREA

Sponsored by:
Healthcare Financial Management Association,
New Jersey Chapter
New Jersey Hospital Association

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Does the HCPRREA and/or the Patient Safety Act Work?

- “Bad Facts Make Bad Law”
- Lack of Data
- The Megan Law Experience

Motivations/Goals in Reporting Problematic Health Care Professionals to Regulatory Authorities

- Hate for the Professional, Desire for Vengeance
- Desire to Protect the Public, “Do the Right Thing”
- Desire to Avoid Any Issue with New Jersey Regulatory Authorities

Considerations in Reporting Problematic Health Care Professionals to Regulatory Authorities

- Are There Overlapping Reporting Obligations?
- How Do We Minimize Litigation Risk with the Employee in Question?
- How Do We Minimize the Cost/Effort of Reporting Health Care Professionals?
- How Do We Avoid Potential Issues with New Jersey Regulatory Authorities?

Are There Overlapping Reporting Obligations? Federal vs. New Jersey Obligations

- Triggering Event for Both Federal and State Reporting Obligations of Health Care Entities is the Imposition of Discipline, not the Underlying Conduct
- Investigations are Generally Not Reportable

Are There Overlapping Reporting Obligations? NPDB vs. Cullen Law

Federal

- Mandatory Reporting Only of Doctors/Dentists
- Report Required Only if Privileges affected for more than 30 days¹
- Only Report Terminations that are the Result of a “Professional Review Action,” Terminations via Other “Employment Termination Procedures” Not Reportable²
- Reports are Due within 30 days of action³

New Jersey

- Mandatory Reporting for Wide Range of Health Care Professionals
- No Minimum period of discipline
- All terminations related to Incompetence and Professional Misconduct that Adversely affects Patient Care or Safety
- Reports are Due within 7 days of action

¹ NPDB Guidebook, April 2015 at E-30.

² NPDB Guidebook, April 2015 at E-40.

³ 45 C.F.R. § 60.5(c)

Are There Overlapping Reporting Obligations? Other New Jersey Requirements

- Nurse Self-Reporting Obligation, *N.J.A.C. § 13:37-5.9*
 - Incapable of fulfilling duties “consistent with the public’s health, safety and welfare”
 - Indicted/convicted of a crime for moral turpitude or adversely relating to practice

- Physician Self Reporting Obligation, *N.J.A.C. § 13:35-6.19(c)*
 - Any arrest or conviction for any criminal or “quasi-criminal offense”
 - Health Care facility actions that curtail, limit, suspend or revoke privileges

Are There Overlapping Reporting Obligations? Other New Jersey Requirements

- Termination of Long Term Care Facility Administrator, *N.J.A.C. § 8:43-4.9(a)(1)*
- Resignation or Termination of Ambulatory Care Facility Administrator, *N.J.A.C. § 8:43A-3.8(a)*
- Termination of Administrator or Director of Nursing of Home Health Agency, *N.J.A.C. § 8:42-3.8(a)*

What is Conduct that Relates Adversely to Patient Care or Safety?

“Conduct relating to patient care or safety means conduct that a prudent health care professional reasonably would believe could put a patient in jeopardy of physical or emotional harm.”

N.J.A.C. § 13:45E-2.1

- Does not include “tardiness” or “insubordination”
- May include “disruptive conduct”

What is Conduct that Relates Adversely to Patient Care or Safety?

- Stealing money or valuables from a patient without their knowledge?
- Photographing a patient without their permission?
- Complimenting a patient's appearance and asking him or her out on a date?
- Up-coding CPT codes via improper Medicare modifiers

What is Conduct that Relates Adversely to Patient Care or Safety?

- Compare: *42 U.S.C. § 11151(9)*

[Professional Review Action]...based on the competence or professional conduct of an individual physician (which conduct affects or could affect adversely the health or welfare of a patient or patients)

- *Coach v. Bd. Of Trustees of the Mem. Hosp., No. 08-8001, 2009 U.S. App. LEXIS 25182 (10th Cir. Nov. 17, 2009)* (Federal Law requires reporting of billing and Medicare Fraud to NPDB)
- See sample NPDB Report form, “Improper or Abusive Billing Practices”

What is Conduct that Relates Adversely to Patient Care or Safety?

<p>NATIONAL PRACTITIONER DATA BANK NPDB P.O. Box 10832 Charlottesville, VA 22915-0832 http://www.npdb.hrsa.gov</p>		<p>DCN: 795000078783659 Process Date: 01/10/2013 Page: 1 of 2 DOE, JOHN For authorized use by: TEST REPORTER</p>	
DOE, JOHN			
TEST REPORTER			
PEER REVIEW ORGANIZATION ACTION		Date of Action: 03/03/2009	
Initial Action		Basis for Initial Action	
- RECOMMENDATION TO SANCTION		- IMPROPER OR ABUSIVE BILLING PRACTICES	
A. REPORTING ENTITY	<p>Entity Name: TEST REPORTER Address: 7555 TEST ST City, State, ZIP: WASHINGTON, DC 20000 Country: Name of Office: JANE SMITH Title or Department: CERTIFIER Telephone: (202) 333-4444 Entity Internal Report Reference: Type of Report: INITIAL</p>		
B. SUBJECT IDENTIFICATION INFORMATION (INDIVIDUAL)	<p>Subject Name: DOE, JOHN Other Name(s) Used: Gender: MALE Date of Birth: 12/13/1946 Organization Name: ACME ORGANIZATION Work Address: 123 MAIN STREET SUITE 400 City, State, ZIP: FAIRFAX, VA 22033-4321 Organization Type: OTHER TYPE NOT CLASSIFIED - SPECIFY (999) Other, as Specified: THIS IS A SPECIAL ORGANIZATION Home Address: 1ST AVENUE APT # 123 City, State, ZIP: FAIRFAX, VA 22033-1234 Deceased: NO Federal Employer Identification Numbers (FEIN): 123456789 Social Security Numbers (SSN): ***-**-7890 National Provider Identifier (NPI): 1234567890 Professional School(s) & Year(s) of Graduation: ACME UNIVERSITY (2002) Occupation/Field of Licensure (Code): DENTIST State License Number, State of Licensure: VA123, VA Specialty: ORAL AND MAXILLOFACIAL RADIOLOGY Occupation/Field of Licensure (Code): DENTIST State License Number, State of Licensure: 45334, MD Specialty: ORTHODONTICS AND DENTOFACIAL ORTHOPEDICS Drug Enforcement Administration (DEA) Numbers: 123456789 Unique Physician Identification Numbers (UPIN): 484848 Name(s) of Health Care Entity (Entities) With Which Subject is Affiliated or Associated (Inclusion Does Not Imply Complicity in the Reported Action.): HOSPITAL Business Address of Affiliates: 456 MAIN STREET SUITE 111</p>		
CONFIDENTIAL DOCUMENT - FOR AUTHORIZED USE ONLY			

<p>NATIONAL PRACTITIONER DATA BANK NPDB P.O. Box 10832 Charlottesville, VA 22915-0832 http://www.npdb.hrsa.gov</p>		<p>DCN: 795000078783659 Process Date: 01/10/2013 Page: 2 of 2 DOE, JOHN For authorized use by: TEST REPORTER</p>	
		<p>City, State, ZIP: FAIRFAX, VA 2281-1234 Nature of Relationship(s): OTHER RELATIONSHIP - NOT CLASSIFIED, SPECIFY (996) Other, as Specified: THIS IS A RELATIONSHIP</p>	
C. INFORMATION REPORTED	Type of Adverse Action:	PEER REVIEW ORGANIZATION	
	Basis for Finding:	IMPROPER OR ABUSIVE BILLING PRACTICES (55)	
	Type of Negative Finding:	RECOMMENDATION TO SANCTION (1830)	
	Date of Finding:	03/03/2009	
	Description of Finding:	NARRATIVE DESCRIPTION	
D. SUBJECT STATEMENT	If the subject identified in Section B of this report has submitted a statement, it appears in this section.		
E. REPORT STATUS	<p>Unless a box below is checked, the subject of this report identified in Section B has not contested this report.</p> <p><input type="checkbox"/> If box is checked, this report has been disputed by the subject identified in Section B.</p> <p><input type="checkbox"/> If box is checked, at the request of the subject identified in Section B, this report is being reviewed by the Secretary of the U.S. Department of Health and Human Services to determine its accuracy and/or whether it complies with reporting requirements. No decision has been reached.</p> <p><input type="checkbox"/> If box is checked, at the request of the subject identified in Section B, this report was reviewed by the Secretary of the U.S. Department of Health and Human Services. The Secretary's decision is shown below:</p>		
	Date of Original Submission:	01/10/2013	
	Date of Most Recent Change:	01/10/2013	
This report is maintained under the provisions of: Section 1921			
<p>The information contained in this report is maintained by the National Practitioner Data Bank for restricted use under the provisions of Section 1921 of the Social Security Act as codified in 45 CFR Part 60. All information is confidential and may be used only for the purpose for which it was disclosed. Disclosure or use of confidential information for other purposes is a violation of Federal law. For additional information or clarification, contact the reporting entity identified in Section A.</p>			
END OF REPORT			
CONFIDENTIAL DOCUMENT - FOR AUTHORIZED USE ONLY			

Minimizing Litigation Risk With the Health Care Professional

- Can take Position, When in Doubt Report, Regulations Contemplate Unnecessary Reports, *See N.J.A.C. § 13:45E-5.2(c)* (Clearing House Coordinator can reject reports)
- Health Care Facilities and Employees Are Generally Immune from Damages Unless They Knowingly Report False Information, i.e. act in bad faith or with malice, *N.J.S.A. § 26:2H-12.2b(g)*

Minimizing Litigation Risk With the Health Care Professional

- The Health Care Professional Who is the Subject of a Report Gets a Copy of Same, *N.J.A.C. § 13:45E-4.1*
- Information reported or developed pursuant to the Patient Safety Act is neither discoverable nor admissible in evidence, *N.J.A.C. § 8.43E-10.9(a)(1)*; *N.J.S.A. § 26:2H-12.25(g)(1)*
- *42 U.S.C. § 11111(a)(1)(D)* – provides immunity to those participating in a “Professional Review Action” or providing information to same

Minimizing Litigation Risk With the Health Care Professional

- Accuracy is crucial, report only facts, most important part of HCPREEA Form is Line 4 “Details of the Health Care Professional’s Conduct”
- Avoid claims of violation of due process, work through procedures set forth in Medical Staff By-Laws when Feasible
- Engage in a Dialogue with the Professional
 - Remind them of self-reporting obligations
 - In appropriate circumstances, offer substance abuse treatment to avoid reporting (*N.J.A.C. § 13:45E-3.1(c)*)
 - Consider sharing a draft of the report with the healthcare professional at issue

Minimizing Litigation Risk With the Health Care Professional

HEALTH CARE PROFESSIONAL RESPONSIBILITY AND REPORTING ENHANCEMENT ACT REPORTING FORM

HEALTH CARE ENTITY INFORMATION

Initial Report Follow-up to a previously filed report

Health Care Entity Type:

Health Care Facility Insurance company offering managed care plans HMO
 State or county psychiatric hospital State developmental center Staffing registry
 Home care services agency Assisted living residence or program
 Comprehensive personal care home Licensed alternate family care sponsor agency
 Nonprofit homemaker/home health aide agency

Name of person submitting report: _____
 Title or position of person submitting report: _____
 Telephone number (include area code): _____ Fax number (include area code): _____
 E-mail address: _____ DHSS facility ID# (if applicable): _____
 Health care entity name: _____ Health care entity license number: _____
 Health care entity street address: _____ City/ZIP code: _____ County: _____
 Name and telephone number of those who have first-hand knowledge of the reportable event: _____

HEALTH CARE PROFESSIONAL INFORMATION

Last name: _____ First: _____ Middle: _____
 Type of professional license or certificate held: _____ License or certificate number: _____
 Relationship of the health care professional to the health care entity (select one):
 employed by has privileges granted by
 under contract to provide professional services to provides services via a health care service firm or via a staffing registry

ADDITIONAL INFORMATION (Please complete A & B)

A. The reportable action or event taken by the health care entity was related to the health care professional's:
 Impairment
 Incompetency which relates adversely to patient care or safety
 professional misconduct which relates adversely to patient care or safety

B. The reportable action or event taken by the health care entity was:
 Full or partial privileges summarily or temporarily revoked or suspended, or permanently reduced, suspended or revoked.
 If checked, please provide details: _____

Removed from the list of eligible employees of a health services firm or staffing registry
 Discharged from the staff
 Contract to render professional services terminated or rescinded
 Conditions or limitations placed on the exercise of clinical privileges or practice within the health care entity (including, but not limited to second opinion requirements, non-routine concurrent or retrospective review of admissions or care, non-routine supervision by one or more members of the staff, completion of remedial education or training)

or

Voluntary resignation of health care professional from staff if:
 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 safety.
 The health care entity, through any member of the medical or administrative staff, has expressed an intention to do such a review.

or

Voluntary relinquishment by health care professional of any partial privileges or authorization to perform a specific procedure if:
 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 safety.
 The health care entity, through any member of the medical or administrative staff has expressed an intention to do such a review.

or

Leave of Absence granted to the health care professional, while under, or subsequent to a review of the health care professional's patient care or professional conduct, 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 for pregnancy and related leaves or documented participation in an approved professional assistance or intervention program.

or

Medical malpractice liability suit resulting in a settlement, judgment or arbitration award, in which both the health care professional and health care entity are parties

or

Professional Assistance Program or Intervention Program
 Health care professional has failed to comply with a request to seek assistance from a professional assistance or intervention program
 Health care professional has failed to follow the treatment or monitoring program required by a professional assistance or intervention program

or

Follow-up to a previously filed report
 Health care professional, who has been the subject of a previous report, has had conditions or limitations on the exercise of clinical privileges or practice within the health care entity altered, or privileges restored, or has resumed exercising clinical privileges that had been voluntarily relinquished.

2. Date of the reportable action or event taken by the health care facility: _____
 3. Date of the health care professional's conduct: _____
 4. Details of the health care professional's conduct: _____

Signature of person submitting report: _____ Date of report: _____

Has a copy of this report been provided to the health care professional who is the subject of this report? Yes No
 Has a copy of this report been provided to the health care service firm or staffing agency with which the health care professional is employed? Not Applicable Yes No

Reports are to be submitted within seven (7) days of reportable action or event via mail to:

Francine Widrich
 New Jersey Division of Consumer Affairs
 PO Box 46024
 Newark, NJ 07102

To fax a report, please call 973-594-6310 for the fax number.

For Office Use Only

Case numbers DCA
 (To be assigned by the Division of Consumer Affairs)

The Snitch Rules

- Health Care Professionals Are Required to Report Elder Abuse or Neglect to Adult Protective Services, *N.J.S.A. § 52:27D-409(a)*
- Health Care Professionals Are Required to Report Other Professionals Who Exhibit Conduct that “would present an imminent danger to an individual patient or to the public health, safety or welfare” *N.J.S.A. § 26:2H-12.2d; N.J.A.C. § 13:45E-3.2*
- Health Care Facilities are Required to report “potentially criminal acts” including, but not limited to, care by an impersonator, abduction, sexual assaults and injury from physical assaults, *N.J.A.C. § 8:43E-10.11(d)*
- Nurses are required to report any incident which they believe is a violation of the Nurse Practice Act, *N.J.A.C. § 12:37-5.8*

The Snitch Rules cont'd

- If a Health Care Facility Learns of a Serious Preventable Adverse Event that Occurred at Another Facility, it has an Affirmative Reporting Obligation, Including Identifying the Other Facility, *N.J.A.C. § 8:43E-10.6(b)(2)(i)*
- Health Care Professionals Who Act in Good Faith and Without Malice Are Not Liable for Civil Damages for Reporting Misconduct by Other Health Care Professionals *N.J.S.A. § § 26:2H-12.2d(b); 45:1-35*

Minimizing Cost/Effort of Reporting Health Care Professionals

- Pay Attention to Complaints/Negative Information, Intervene Before Discipline Becomes Necessary
- Engage With the Health Care Professional in the Reporting Process
- Explore Alternatives to Formal Discipline
- Conduct Privileged Investigation in Lieu of Formal Medical Staff By-Laws Process

Avoiding Potential Issues with New Jersey Regulatory Authorities

- Close Cases Make a Report, Clearinghouse has Option to Reject it
- Be Careful in Drafting Any Separation or Severance Agreements
 - Do not want to be accused of circumventing reporting requirements
 - Avoid criminal exposure, *N.J.S.A. § 2C:29-4*, Compounding (forbids receiving a pecuniary benefit in exchange for not reporting a crime)
- Conduct Investigations of Sensitive Matters Under Privilege to Limit Discovery of Underlying Information

Responding to or Making Reference Requests

- New Regulation, *N.J.A.C. § 8:30-1.4*, Requires Use of Specified Form in Soliciting and Responding to Reference Requests
- Health Care Entities Have Protection Against Civil Liability if they act in good faith and without malice in responding to reference requests *N.J.S.A. § 26:2H-12.2c(c)*
- Courts have upheld immunity from liability. *See, Weisman v. N.J. Dept. of Human Servs.* 593 Fed. Appx. 147 (3d Cir. 2014); *Senisch v. Carlino*, 423 N.J. Super. 269 (App. Div. 2011)
- Key is to be Accurate and Provide only Necessary Information

Responding to or Making Reference Requests

**HEALTH CARE FACILITY INQUIRY
REGARDING HEALTH CARE PROFESSIONAL**

SECTION I – INQUIRY (TO BE COMPLETED BY INQUIRING HEALTH CARE FACILITY)	
INQUIRING HEALTH CARE FACILITY	
Name of Inquiring Health Care Facility	Date of Inquiry
Address of Inquiring Health Care Facility	
Name and Title of Contact Person	Phone
Email Address	Fax Number
Certification pursuant to N.J.A.C. 13-45E-6.1(a): I certify that the Health Care Facility has authorized me to make this inquiry, and that I am making it for the purpose of evaluating a health care professional for (check all that apply): <input type="checkbox"/> Hiring <input type="checkbox"/> Granting Privileges <input type="checkbox"/> Continuing Employment <input type="checkbox"/> Continuing Privileges	
Signature	Date
HEALTH CARE FACILITY TO RECEIVE THIS INQUIRY	
Name of Health Care Facility	
Address of Health Care Facility	
Name and Title of Contact Person (if known)	Phone
Email Address	Fax Number
HEALTH CARE PROFESSIONAL ABOUT WHOM INQUIRY IS BEING MADE	
Name of Health Care Professional	
Maiden Name/Other Name(s) Used	
Credential of Professional	Professional License/Certification Number
SECTION II – RESPONSE (TO BE COMPLETED BY HEALTH CARE FACILITY RESPONDING TO THIS INQUIRY)	
Date Inquiry Received	Date Response Sent
Name of Health Care Professional	
Title(s) of Positions Held by Health Care Professional	
Dates the Health Care Professional was Employed by Responding Facility From: _____ To: _____	Is the Health Care Professional's employment ongoing with the Health Care Facility responding to this request? <input type="checkbox"/> Yes <input type="checkbox"/> No
Dates the Health Care Professional held Privileges at Responding Facility From: _____ To: _____	Does the Health Care Professional continue to hold privileges with the Health Care Facility responding to this request? <input type="checkbox"/> Yes <input type="checkbox"/> No

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**HEALTH CARE FACILITY INQUIRY REGARDING HEALTH CARE PROFESSIONAL
(Continued)**

SECTION II – RESPONSE (Continued)
If the health care professional no longer is employed by, and/or no longer holds privileges at, the responding health care facility, state the reason for the separation of the health care professional from employment and/or the cessation of the health care professional's privileges at the responding health care facility. (attach additional sheets if necessary).
During the seven years preceding the date of this inquiry, have you submitted any report about this health care professional to (check all that apply): <input type="checkbox"/> the Clearinghouse Coordinator within the Division pursuant to N.J.S.A. 26:2H-12.2b7 <input type="checkbox"/> the Medical Practitioner Review Panel pursuant to N.J.S.A. 26:2H-12.2a? and/or <input type="checkbox"/> any Board? (state Name of Board): _____
If you submitted a report to any of the entities above, please indicate the status of the Report: <input type="checkbox"/> Clearinghouse Coordinator..... <input type="checkbox"/> Accepted <input type="checkbox"/> Rejected <input type="checkbox"/> Pending <input type="checkbox"/> Medical Practitioner Review Panel..... <input type="checkbox"/> Accepted <input type="checkbox"/> Rejected <input type="checkbox"/> Pending <input type="checkbox"/> Board: <input type="checkbox"/> Accepted <input type="checkbox"/> Rejected <input type="checkbox"/> Pending
If report is either "accepted" by or "pending" before any of the above, attach copies of reports and any supporting documentation submitted to these entities when returning this form to the inquiring facility. If report was "rejected," do not attach copies.
Did the health care professional receive a written performance evaluation from the responding facility? <input type="checkbox"/> Yes <input type="checkbox"/> No (If "No," proceed to Section III.) If "Yes," a. was the evaluation signed by the evaluator? <input type="checkbox"/> Yes <input type="checkbox"/> No b. was the evaluation shared with the employee? <input type="checkbox"/> Yes <input type="checkbox"/> No c. did the health care professional have the opportunity to respond to the evaluation? <input type="checkbox"/> Yes <input type="checkbox"/> No If the answer to any of the questions above is "No," proceed to Section III.
If the answers to all questions above are "Yes," then, taking into consideration the health care professional's response to the evaluation, if any, provide information about the health care professional's job performance as it relates to patient care. (See instructions. Attach additional sheets if necessary.)
Is the health care professional eligible for re-employment by the responding health care facility? <input type="checkbox"/> Yes <input type="checkbox"/> No
Is the health care professional eligible for reinstatement of privileges at the responding health care facility? <input type="checkbox"/> Yes <input type="checkbox"/> No
SECTION III - SIGNATURE
I certify that the foregoing statements made by me are truthful and made in good faith and without malice. I am aware that if any of the foregoing statements made by me are untruthful, made in bad faith, and/or with malice, I am subject to punishment and the responding health care facility is subject to penalties pursuant to N.J.S.A. 26:2H-12.2c and N.J.A.C. 8:30-1.6.
Name (print) _____ Title _____ Signature _____ Date _____

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Responding to or Making Reference Requests

INSTRUCTIONS FOR COMPLETING THE HEALTH CARE FACILITY INQUIRY REGARDING HEALTH CARE PROFESSIONAL FORM

1. Purpose of form

The purpose of the Health Care Facility Inquiry Regarding Health Care Professional form is to implement the Health Care Professional Responsibility and Reporting Enhancement Act, P.L. 2005, c.83 (approved May 3, 2005) ("Act"), particularly § 15, codified at N.J.S.A. 26:2H-12.2c, and the implementing rules at N.J.A.C. 8:30 and N.J.A.C. 13:45E ("Rules").

When a word or term used in these instructions appears in **bold**, it refers to a term for which a definition is provided in Section 2 below, and/or in the Act or the Rules.

The Health Care Facility Inquiry Regarding Health Care Professional form is to be used by a health care facility (inquiring facility) licensed by the Department of Health to make an inquiry to another health care facility licensed by the Department (responding facility) about a health care professional who is currently or was formerly employed by, and/or who holds or formerly held privileges at the responding facility pursuant to the Act and the Rules. A health care entity other than a facility may elect to use this form to inquire of a facility or a health care entity. Facilities that receive an inquiry from any health care entity shall respond using this form.

2. Definitions

Following are definitions of words and terms used in the form as defined in the Act and/or the Rules.

- "**Board**" means a professional and occupational licensing board within the Division of Consumer Affairs in the Department of Law and Public Safety which licenses or otherwise authorizes a health care professional to practice a health care profession.
- "**Clearinghouse Coordinator**" means a "Health Care Professional Information Clearinghouse Coordinator" as N.J.S.A. 45:1-40 uses that term, and a "Clearing House Coordinator" as N.J.A.C. 13:45E defines that term.
- "**Division**" means the Division of Consumer Affairs in the Department of Law and Public Safety.
- "**Facility**" means a health care facility licensed pursuant to P.L.1971, c.136 (N.J.S.A. 26:2H-1 et seq.).
- "**Health care entity**" means a health care facility licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), a health maintenance organization authorized to operate pursuant to P.L.1973, c.337 (C.26:2J-1 et seq.), a carrier which offers a managed care plan regulated pursuant to P.L.1997, c.192 (C.26:2S-1 et seq.), a State or county psychiatric hospital, a State developmental center, a staffing registry, and a home care services agency as defined in section 1 of P.L.1947, c.262 (C.45:11-23).
- "**Health care professional**" means a person licensed or otherwise authorized pursuant to Title 45 or Title 52 of the Revised Statutes to practice a health care profession that is regulated by the Director of the Division of Consumer Affairs or by one of the following boards: the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Dentistry, the New Jersey State Board of Optometrists, the New Jersey State Board of Pharmacy, the State Board of Chiropractic Examiners, the Acupuncture Examining Board, the State Board of Physical Therapy, the State Board of Respiratory Care, the Orthotics and Prosthetics Board of Examiners, the State Board of Psychological Examiners, the State Board of Social Work Examiners, the State Board of Veterinary Medical Examiners, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Audiology and Speech-Language Pathology Advisory Committee, the State Board of Marriage and Family Therapy Examiners, the Occupational Therapy Advisory Council and the Certified Psychoanalysts Advisory Committee. "Health care professional" also includes a nurse aide and a personal care assistant certified by the Department of Health[.]
- "**Medical Practitioner Review Panel**" or "**review panel**" means the Medical Practitioner Review Panel established pursuant to N.J.S.A. 45:9-19.8.
- "**Report**" means the completed written notification form used by a health care entity or a health care professional to notify the Clearinghouse Coordinator of the types of reportable conduct set forth in the Act[.]

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INSTRUCTIONS FOR COMPLETING THE HEALTH CARE FACILITY INQUIRY REGARDING HEALTH CARE PROFESSIONAL FORM (Continued)

3. Obligations of inquiring and receiving facilities pursuant to the Act:

A. N.J.A.C. 8:30-1.4 requires a facility that receives, from another health care entity, a duly executed Health Care Facility Inquiry Regarding Health Care Professional form to complete and return the form and any other documentation required pursuant to N.J.A.C. 13:45E-6.1 to the inquiring health care entity within eight business days of receipt of the form. A facility that fails to return the completed form and any other required documentation to the inquiring health care entity within eight business days of receipt of the form is subject to penalties pursuant to N.J.A.C. 8:30-1.6.

B. The Act at § 15 (N.J.S.A. 26:2H-12.2c) provides as follows:

26:2H-12.2c Disclosure of information by health care entity.

15. a. A health care entity, upon the inquiry of another health care entity, shall truthfully:

(1) disclose whether, within the seven years preceding the inquiry, it provided any notice to the division pursuant to section 2 of P.L.2005, c.83 (C.26:2H-12.2b), or to the review panel, as required by section 3 of P.L.1989, c.300 (C.26:2H-12.2a), with respect to the health care professional about whom the inquiry has been made, providing a copy of the form of notification and any supporting documentation that was provided to the division, a professional or occupational licensing board in the Division of Consumer Affairs in the Department of Law and Public Safety, or the review panel; and

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

b. For the purposes of this section, "job performance" shall relate to the suitability of the employee for re-employment at a health care entity, and the employee's skills and abilities as they relate to suitability for future employment at a health care entity.

Information about a current or former employee's job performance pursuant to this paragraph shall be

- based on the employee's performance evaluation, and

- provided to another health care entity only if:

(1) the evaluation has been signed by the evaluator and shared with the employee;

(2) the employee has had the opportunity to respond; and

(3) the employee's response, if any, has been taken into consideration when providing the information to another health care entity.

Job performance as it relates to patient care shall not include the current or former employee's participation in labor activities pursuant to the "National Labor Relations Act," 29 U.S.C. s.151 et seq.

c. A health care entity, or any employee designated by the entity, which, pursuant to this section, provides information in good faith and without malice to another health care entity concerning a health care professional, including information about a current or former employee's job performance as it relates to patient care, is not liable for civil damages in any cause of action arising out of the provision or reporting of the information.

d. A health care entity which fails to truthfully disclose information to another health care entity making an inquiry pursuant to this section or fails to cooperate with such request for information by the other health care entity shall be subject to such penalties as the Department of Health ... may determine pursuant to sections 13 and 14 of P.L.1971, c.136 (C.26:2H-13 and 26:2H-14) and section 16 of P.L.1997, c.192 (C.26:2S-16), or the director shall determine pursuant to P.L.1989, c.331 (C.34:8-43 et seq.), as applicable.

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Questions?



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