

Health Care Professional Responsibility Reporting Enhancement Act (HCPRREA)

Frequently Asked Questions October 2017

Courtesy of the New Jersey Hospital Association; prepared in collaboration with the New Jersey Division of Consumer Affairs and the New Jersey Department of Health.

1. Does the HCPRREA apply to programs licensed under the Department of Human Services such as group homes, private residential facilities?

The law covers state psychiatric hospitals and state developmental centers licensed by the Department of Human Services. However, even if the health care entity as defined in the law isn't required to report, health care professionals who work in that facility may have an obligation to report. A health care professional shall file a report with the Clearing House Coordinator if that health care professional 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 an individual patient or to the public health, safety or welfare.

2. Can you provide the website where we can obtain the CN-9 form?

The CN-9 form is available on the Department of Health website at www.nj.gov/health. When the home page opens, toward the right hand side there is a little blue box that says "health facility". If you click on the blue box for health facility, it will bring you to the home page and from there you can access forms.

It is also available via the Division of Consumer Affairs website at <http://www.njconsumeraffairs.gov/Pages/hcreporting.aspx>. You will see a copy of the law, a copy of the New Jersey Division of Consumer Affairs, Chapter 45E Health Care Professional Reporting Responsibility regulations, a link to the Department of Health's regulations, a copy of the NJ Division of Consumer Affairs Health Care Professional Responsibility and Reporting Enhancement Act Reporting Form and, a link to the NJ Department of Health's CN-9 form.

3. Is the CN-9 form required to be used only when requesting information for credentialed practitioners who have been reported to the Clearinghouse? Or is the form to be used for all inquiries to other entities?

It should be for all entities because you don't know that the person was reported to the Clearinghouse until you receive a completed CN-9.

4. **Who in the long term care facility is responsible in completing the CN-9 or the report to the Clearinghouse form?**

For the CN-9, the responsible person is based on facility policy.
For reports to the Clearinghouse, anyone can fill it out.

5. **How does it work with agencies who are not in the State of NJ?**

We don't regulate outside of NJ.

6. **What if a Health Care Entity from another state is seeking to employ a professional from NJ?**

The simple answer is you only have to comply with the NJ entity because that's what the statute says as far as using the form.

7. **Can a third party that does credentials verification on behalf of a licensed entity send a CN-9 request?**

No, that form needs to go from a health care entity to a health care entity.

8. **On the CN-9, it looks like if the HCE has not done a performance review on the employee, the entity does not need to answer the question about whether the individual has been reported. Is this the intent?**

As far as the written performance evaluation, you still need to answer everything in Section 2 that appears before you proceed. You need to provide whether or not they have been reported to the Clearinghouse, medical practitioner review board, or any of the boards.

9. **I recently submitted a CN-9 form to a health care facility to complete for an RN that was a potential candidate. I received the form back with only dates of employment. All other questions they indicated N/A. is this acceptable?**

No, it is not. You can contact the Department of Health's complaint hotline for this to be investigated.

10. **Does a flow sheet or decision tree exist which summarizes the reportables and the agencies & forms for reporting requirements?**

DOH will work with the field to develop such a tool.

11. **We always report reportable events to Department of Health - we now have to also complete a CN-9 and report to Division of Consumer Affairs?**

No. A CN-9 is when you're doing an inquiry to a health care facility about a health care professional. You still continue to report what you would report to the Department, whether

it's physical plant, power interruptions, or any of those alleged criminal events. **Some of those alleged criminal events may be something that has to be reported to the Clearinghouse as well.** If the DOH receives something that sounds like it might be reportable to the Clearinghouse, just as a reminder to the Health Care facility, DOH staff will say the facility may need to contact the Clearinghouse regarding this issue. And the clearinghouse may receive something that might be reportable to the Department of Health. The Clearinghouse staff will also say to that Health Care Professional or the Health Care Entity this might be reportable to the Department of Health. While the departments will not do that reporting for facilities, they will try to assist facilities in understanding there might be a dual obligation for certain things.

If a Health Care Professional gets arrested, and it's a patient safety issue, a facility can expect to get a call from the clearinghouse coordinator if it happened in your facility.

12. Please explain the difference between the clearinghouse form and the CN-9

The Clearinghouse form is what the Health Care Entity is going to use to report a Health Care Professional because the Health Care Entity took action against the Health Care Professional. If there was impairment, unprofessional conduct, incompetence, if someone resigned while under investigation, medical malpractice payment was made on behalf of the health care entity and the health care professional, you use the Health Care Professional Responsibility and Reporting Enhancement Act to report that to the Clearinghouse coordinator in the Division of Consumer Affairs.

The CN-9 form is called the Health Care Facility Inquiry Regarding Health Care Professional. As a Health Care Entity you are reaching out to another Health Care Entity to find out about someone that you are either hiring, granting privileges, continuing employment, or continuing privileges. If you are the inquiring entity, you fill out the first page of the CN-9. But if you are the responding Health Care Entity, you fill out the second page of the CN-9. When you see the CN-9, you will understand that it's absolutely not something that needs to be submitted to the Department or to the Clearinghouse. It's strictly about an entity inquiry or response.

13. What specific information must be provided regarding an employee's performance evaluation as it pertains to patient care?

On the CN-9, Section 2, the bottom half asks whether or not the professional employee received a written evaluation, and in the instructions, you can provide information regarding the evaluation itself as well as answering the question whether or not the Health Care Professional is eligible for re-employment or is the Health Care Professional eligible for reinstatement.

14. Should a CN-9 be part of all job applications?

. It is not required, but is a good idea

15. What can a facility do when trying to verify for employment purposes and the prior employer refuses to complete the CN9?

You can contact the Department of Health and we will let them know what the response to inquiry requirements are. You could also query the Clearinghouse coordinator, with a written certification from the Health Care Professional.

16. If I am credentialing a physician for hospital privileges and I need to confirm affiliation dates with another facility, is the CN-9 form the required method of obtaining this information?

No. If you are looking for affiliation dates, the CN-9 is not the way to go about that.

17. What is the definition of a validly executed written inquiry under the Act?

The completed CN-9. The regulation does say that if it includes everything that would be on that first page of the CN-9, but it's in Word document or any written format, and if it is validly executed in what the person is asking (e.g. does it include every one of the components of the CN-9, but is not using the form) it would be considered validly executed. For example, if you receive an inquiry from a Health Care Entity but they didn't put it on the CN-9, you cannot reply "no" just because it's not on the CN-9 form.

18. Many facilities are now charging for references via 'the work number'. Since this is required, do they have the right to charge?

You cannot charge to complete the CN-9.

19. What do we do for (Personal Care professional) whom previous work experience is not from a Health Care Entity but rather from private home care? Does the CN-9 form apply?

They still have to disclose the information. The CN-9 form is only applicable for Health Care Entities that are licensed by the Department of Health. But this disclosure of information still pertains to Health Care Entities and home care service firms are Health Care Entities under the law. So they have to give the information and they also can query the Clearinghouse coordinator.

20. What if the person was employed privately by an individual or family?

In the case of a nurse that relationship can happen, but with a homemaker and home health aide, that relationship can't happen without the agency.

21. We use a third party vendor for background checks. Are they no longer allowed to obtain our Cullen forms?

They should never have used the CN-9 form. They can do the rest of the background check, but they cannot use the CN-9. That has to be from facility to facility or entity to entity.

22. What office should we report HCE who does not want to complete CN-9?

This is reported to the Department of Health. You can call the 1-800 number, 1-800-792-9770, and you can speak to one of our complaints investigators. We can only take complaints against Health Care Entities that are within our authority. If you are reaching out to a health care service firm that is not licensed by the Department of Health, we can't take a complaint against them. Nor would we be able to take a complaint against an HMO or anything that's under DOBI authority. If you are not able to get a response to your inquiry from another licensed health care provider that's within the Department of Health, such as another hospital, nursing, assisted living, home health, hospice, that would fall under our authority, we would take that complaint and ensure that the facility that's not responding to you understands what their regulatory requirements are.

23. When sending the CN-9 form to a previous Health Care facility to complete, we are being redirected to a website that charges \$25 per request? Is this legal?

No.

24. If I receive an inquiry from an HCE that is not on a CN9 form, am I required to respond?

Yes, as long as the form you received includes all the required elements that are on the CN-9 and it was validly executed.

25. The CN-9 doesn't seem to have a signature line that the applicant signs authorizing the release of information from the former HCE. The former request form we used included the signature line for the applicant.

There's no requirement for the applicant to agree on the CN-9.

26. Do we need to get professional's permission when hiring them that a CN 9 might be used for hiring information?

No.

27. How could the CN-9 not be required if it is connected to the Health Care Responsibility and Reporting Enhancement Act?

. The Act requires the elements, but it doesn't require the specific CN-9 form

28. Should professionals be using the CN-9 form to respond when asked for a "letter of recommendation" by other licensed coworkers?

No.

29. Does a copy of the performance evaluation have to be attached to the CN9 form when responding?

No.

30. Please clarify. Can the HCE send the CN9 without the applicant's signature and are we obligated to respond to a CN9 request without a signature?

Yes. There's no requirement for the applicant to sign the CN-9.

31. Does RAMP have access to a CN-9 forms?

No.

32. Why can't we use an authorized third party to handle CN-9?

You cannot use an authorized third party because the statute says that the inquiry needs to be sent by an entity to another entity. The Health Care Entity is defined in the statute.

33. How can I contact the Clearinghouse Coordinator?

On the reverse side of the Health Care Professional Responsibility and Reporting and Enhancement Act Reporting Form is the clearinghouse coordinator's name, Francine Widrich and telephone number. Her direct line is 973-504-6310.

34. If an RN breaks his/her leg, he/she can't work, is that reportable? We use a third party for leave administration and we don't always know the nature of a leave.

If the leave of absence is granted because you're investigating someone for patient care or safety related to the breaking of the leg, then yes. If not, then no.

35. Does a health care entity have to make an inquiry to the Clearinghouse for every new hire?

There is no requirement to query the Clearinghouse, but the law allows you to query the Clearinghouse with a written certification that the inquiry is being made for the purpose of evaluating a health care professional for hiring, continued employment, or continued privileges and written authorization from the health care professional to release information on the status of or final disposition of any matter that was the subject of a report regarding that health care professional.

36. Do you have a sample policy that you suggest employers can review on what all needs to be included in a policy?

The Department of Health does not have a sample policy. It would be based on facility policy and who best has that information for your Health Care Entity.

37. Do we need to report voluntary medical staff to Clearinghouse?

The law states that a health care entity should notify the Division of Consumer Affairs (DCA) in writing if a health care professional is someone who is employed by, under contract to render professional services to, or has privileges granted by that health care entity.

There are a lot of reports going directly to boards that should be going to the clearinghouse.

38. Does putting a physician on focused peer review after an investigation because of a bad patient outcome require reporting?

If a health care entity takes action against a health care professional for something related to patient care or safety it should probably be reported. If you were to submit something to the Clearinghouse coordinator that didn't meet the requirements of the law, our regulations require that every report be reviewed and it is either accepted or rejected. If you were to send something and it didn't rise to the level of requiring a report, DCA would send a letter that said this doesn't meet the requirements of the law. Also for every report that comes in, DCA sends a letter that acknowledging that we have received it, we reviewed it, and whether we accepted it.

39. How does it work with agencies when they provide staff to NJ companies but the agencies are not based in NJ? Are they still responsible for responding?

If the agency is providing services to clients in NJ, they need to be registered in NJ. This should be followed-up on with the Office of Consumer Protection, under the NJ Division of Consumer Affairs.

40. How about settlement prior to a court judgment when there is no admission of wrongdoing?

A report to the Clearinghouse Coordinator is required if the health care professional 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.

41. Does the Cullen Law only pertain to licensed individuals, like RNs? When a hospital is sent an inquiry on a Tech or Nurse Aide would they be required to respond to the Cullen Form questions?

Nurse aides are covered under the Cullen Law, as are personal care assistants. Those are the two professions regulated outside of the Division of Consumer Affairs. And it's more than RNs. For example, when there are issues with a pharmacist, that's reportable as well. The definition of "Health care professional" means a person licensed 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, and The State Board of Polysomnography. "Health care professional" also includes a nurse aide and a personal care assistant certified by the Department of Health and Senior Services and a homemaker home-health aide certified by the Board of Nursing.

42. For clarity, MDs and Advance Practice Nurses are reported where?

Reports in compliance with Health Care Professional Responsibility and Reporting Enhancement Act should be filed with the Clearinghouse in the New Jersey Division of Consumer Affairs.

43. Are radiology staff included under reporting? MRI, CT, Rad techs etc.?

They are not licensed by the Division of Consumer Affairs and they are not reportable to the clearinghouse. However, if an alleged criminal event occurred within a licensed health care facility, and it involved an MRI tech, x-ray tech, that would still be reportable to the Department of Health. Any criminal event occurring within your facility regardless of who did it, that still comes to the Department of Health. So if there is any theft, any alleged abuse by techs, those are still reportable to the Department of Health, not to the Clearinghouse.

44. So you only have to contact the clearing house for gross negligence? Or for all new hires?

You contact the Clearinghouse coordinator when you take action against someone who is employed by you or has privileges at your facility for reasons relating to impairment, unprofessional conduct, incompetency, or anything that relates to patient care or safety.

45. If I check an employee's license and nothing is noted do I need to inquire further?

The Health Care Professional Responsibility and Reporting Enhancement Act does not require a health care entity to make an inquiry about employees.

46. When I reported a nurse I got the form on the consumer affairs website but sent it to the board of nursing so is the clearing house the division of consumer affairs?

The Clearinghouse is within the Division of Consumer Affairs, but that form should not be sent to the Board of Nursing. It should be sent to the Clearinghouse coordinator.

47. When is the effective date of this?

The Health Care Professional Responsibility and Reporting Enhancement Act was passed in 2005 and the Division of Consumer Affairs regulations were passed in 2011. All Health Care Entities and Health Care Professionals under the statute were expected to be compliant. Now we have the NJ Department of Health regulations which enhance the focus on compliance.

48. When do we have to report limitation of privileges when recommended by MEC or after the physician has had the opportunity to have a fair hearing process?

What the law requires is that 7 days after the Health Care Entity takes action against the Health Care Professional, a report has to be filed with the Clearinghouse coordinator.

49. What does the Clearinghouse capture that the Licensing Board would not?

The Clearinghouse coordinator has no ability to take any action against any Health Care Professional. The law provides one central reporting place for Health Care Entities and health care professionals to report. The reports are immediately sent to the appropriate licensing board.

50. If a CNA is suspended pending an allegation of abuse but the allegation is not substantiated and it has been reported via Hippocrates, do we need to submit a CN9?

No, because a CN-9 is only going to be used when a Health Care Entity is querying another Health Care Entity to either hire, grant privileges, continue employment, or continue privileges. You would not be using a CN-9 in this case at all.

If you suspended somebody while under investigation, the clearinghouse coordinator will reject that because the CNA is suspended pending the investigation of an allegation we don't know the results of the investigation.

51. Are physician offices considered HCEs?

No. Health Care Entities include all of those entities that are licensed by the Department of Health, State and County Psychiatric facilities, State Developmental Centers, HMOs and a carrier which offers a managed care plan regulated by DOBI, and staffing registries and home care service firms regulated by the Division of Consumer Affairs. While that doctor's office isn't a Health Care Entity under the law, if there's been gross incompetence, if there's an impairment issue, unprofessional conduct that could present an imminent danger to patients or to the public at large, there's probably a doctor or nurse in that facility that should be reporting.

52. What is an alleged or potential criminal event?

The regulations give examples of alleged or potential criminal events, but doesn't encompass everything. We can talk about instances of care ordered by or provided by someone impersonating a physician, nurse, pharmacist, or licensed health care provider; abduction of a patient or resident of any age; sexual assault on a patient, resident, staff member or visitor in or on the grounds of the facility; death or significant injury of a patient, resident, staff member, visitor, resulting from a physical assault that occurs within or on the grounds of the facility. We also talk about facilities' obligation to immediately report to appropriate police authorities all criminal acts or potentially criminal acts that occur within a facility and pose a danger to the life or safety of patients, residents, employees, medical staff, or members of the public present in the facility.

53. How does a Health Care facility doing credentialing on a physician obtain information from the you that was reported by other Health Care facilities?

A health care entity that makes an inquiry to the Clearing House Coordinator about a health care professional shall furnish to the Clearing House Coordinator a written certification that the inquiry is made for the purpose of evaluating a health care professional for hiring, continued employment, or continued privileges and written authorization from the health care professional to release information on the status of or final disposition of any matter that was the subject of a report regarding that health care professional.

54. **I read the act to require medical malpractice settlements be reportable Only where the profession qualifies as an "impaired individual" regardless of whether the entity took action. Please clarify. Also what if a settlement is reached pre suit**

If the Health Care Professional and the Health Care Entity are named in the medical malpractice suit and it results in payment due to a settlement, or an award, then that's reportable.

55. **I thought if you had someone go through the RAMP Program and they did not complete the process then the RAMP Program would report this? Does the facility also report since we may not know the specifics of the case?**

A report is not to be filed with the clearinghouse if you provide a leave of absence to that nurse to participate in RAMP. The Health Care Entity must follow the progress of the Health Care Professional while on a leave of absence, RAMP should be notifying you as the employer that the person dropped out of RAMP. At that point you as the Health Care Entity have the obligation to make that report to the clearinghouse.

56. **And does reporting a physician to the databank and BOME by his carrier satisfy the requirement of reporting to the Clearinghouse?**

No.

57. **If we do a random drug testing for the facility and C.N.A's come back positive (marijuana), do we have to report that?**

If you take action against the Health Care Professional, that would be the trigger. You do a random test and that would show the impairment. If you take no action against the Health Care Professional that doesn't trigger the report to the Clearinghouse coordinator.

58. **Once reported to the Clearinghouse, does the Board of Nursing need to be contacted?**

No, because the Clearinghouse coordinator sends the report to the appropriate board which satisfies your reporting obligation.

59. **Faxing the report to division of consumer affairs is burdensome at times (must be preceded by a call, followed by hard copy mail). Is there a possibility of scanning the report to a designated email in the future?**

The clearinghouse allows faxing. The requirement is to report within 7 days of the action you take. As a courtesy, the clearinghouse allows you to fax it so you can meet the 7-day deadline and you have send a hard copy in the mail.

60. There doesn't seem to be anything new here. What is new about the regulations? What has been changed?

There's a lot new. Now that the NJ Department of Health's regulations are in effect, if a facility or an entity that we license is not complying with the regulations, there are now civil monetary penalties associated with not reporting to the Clearinghouse or not properly replying to inquiries.

61. If a nurse's aide is disciplined for inappropriate touching of their colleague, does the HCE need to report the nurse's aide? The nurse's aide doesn't hold a license.

It depends. If A inappropriately touches B and impacts B's ability to do his or her job to the extent that patient care or safety is impacted, then yes.

62. If a licensed nurse was witnessed sleeping on the job, do we have to report this termination?

If you consider this unprofessional conduct as it relates to patient care and safety, then, yes.

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