

SENATE, No. 649

STATE OF NEW JERSEY
211th LEGISLATURE

INTRODUCED JANUARY 26, 2004

Sponsored by:

Senator WALTER J. KAVANAUGH

District 16 (Morris and Somerset)

SYNOPSIS

Requires health care facilities to report certain information about their health care staff to their respective professional boards or DHSS.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain health care facility employees and
2 supplementing Title 26 of the Revised Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. As used in this act:

8 "Applicable board" means the New Jersey Board of Nursing or the
9 board of pharmacy of the State of New Jersey.

10 "Commissioner" means the Commissioner of Health and Senior
11 Services.

12 "Department" means the Department of Health and Senior Services.

13 "Health care professional" means: a person who is authorized to
14 practice as a registered professional nurse, licensed practical nurse or
15 certified homemaker-home health aide by the New Jersey Board of
16 Nursing pursuant to P.L.1947, c.262 (C.45:11-23 et seq.); a
17 pharmacist who is registered with the board of pharmacy of the State
18 of New Jersey pursuant to R.S.45:14-1 et seq.; or a nurse aide or
19 personal care assistant who is certified by the Department of Health
20 and Senior Services.

21
22 2. a. A health care facility licensed pursuant to P.L.1971, c.136
23 (C.26:2H-1 et seq.) shall notify the applicable board or the
24 department, as appropriate, in writing if a health care professional who
25 is employed by, or under contract to render professional services to,
26 that health care facility:

27 (1) voluntarily resigns from the staff of the facility if the facility is
28 reviewing the health care professional's conduct or patient care at the
29 facility, or has expressed an intention to resign to any member of the
30 health care professional or administrative staff at the facility;

31 (2) has been discharged from the staff of the facility or has had a
32 contract to render professional services terminated or rescinded for
33 reasons relating to the health care professional's incompetence,
34 misconduct or impairment;

35 (3) agrees to the placement of conditions or limitations on the
36 health care professional's practice within the facility, including, but not
37 limited to, nonroutine concurrent or retrospective review of care,
38 nonroutine supervision by one or more members of the staff, or the
39 completion of remedial education or training;

40 (4) is granted a leave of absence pursuant to which the health care
41 professional may not practice within the facility, if the reasons
42 provided in support of the leave relate to any physical, mental or
43 emotional condition or drug or alcohol use that might impair the health
44 care professional's ability to practice with reasonable skill and safety;
45 or

1 (5) is a party to a medical malpractice liability suit, to which the
2 facility is also a party, and there is a settlement, judgment or
3 arbitration award, in which case notification shall be made within
4 seven days of the date of the settlement, judgment or award.

5 b. The commissioner shall prescribe the form of notification, which
6 shall contain such information as may be required by the applicable
7 board or the department.

8 c. A health care facility that fails to provide notification to, or
9 cooperate with a request for information by, the applicable board or
10 the department shall be subject to such penalties as the department
11 may determine pursuant to sections 13 and 14 of P.L.1971, c.136
12 (C.26:2H-13 and 26:2H-14).

13 d. A health care facility, or any employee thereof, providing
14 information to the applicable board or the department regarding a
15 health care professional pursuant to the provisions of this section or
16 section 3 of this act, is not liable for damages for providing the
17 information unless the health care facility or employee knowingly
18 provided false information.

19
20 3. a. A health care facility shall maintain a record of all complaints
21 about, and disciplinary proceedings or actions against, a health care
22 professional who is employed by or otherwise has an affiliation with
23 the facility. The facility shall retain the information for a period of
24 seven years and make the record, including any information that the
25 facility has pertaining to a record maintained on the health care
26 professional prior to the effective date of this act, available to the
27 applicable board and the department, upon request.

28 b. A health care facility shall make the records relating to its
29 mortality, morbidity, complication, infection and readmission
30 experience, which it is required to make available to the department
31 pursuant to subsection b. of section 3 of P.L.1989, c.300 (C.26:2H-
32 12.2a), available to the applicable board, upon request.

33
34 4. a. If a health care professional employed by, or under contract
35 to render professional services to, a health care facility has taken or is
36 the subject of an action, or meets a condition, as described in
37 subsection a. of section 2 of this act, the facility and any employee
38 thereof, and any individual who otherwise has an affiliation with the
39 facility, shall be immune from liability for disclosing the action or
40 condition in good faith to another health care facility or other entity
41 that seeks to employ the person as a health care professional.

42 b. A health care facility and any employee thereof, and any
43 individual who otherwise has an affiliation with the facility, that
44 discloses information to another health care facility or other entity
45 pursuant to subsection a. of this section shall be presumed to be acting
46 in good faith unless it is shown by clear and convincing evidence that

1 the facility, employee or other individual disclosing the information
2 acted with actual malice toward the person who is the subject of the
3 information.

4
5 5. The Commissioner of Health and Senior Services, pursuant to
6 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
7 seq.), shall adopt rules and regulations necessary to effectuate the
8 purposes of this act.

9
10 6. This act shall take effect on the 180th day after enactment, but
11 the Commissioner of Health and Senior Services may take such
12 anticipatory administrative action in advance as shall be necessary for
13 the implementation of the act.

14
15
16 STATEMENT

17
18 This bill requires licensed health care facilities to report to the
19 appropriate State professional licensing board or the Department of
20 Health and Senior Services (DHSS), as applicable, concerning certain
21 health care professionals whose conduct or care has been called into
22 question by the facility.

23 The health care professionals covered by this bill would include
24 nurses, homemaker-home health aides, pharmacists, nurse aides and
25 personal care assistants. The bill parallels a similar requirement in
26 State law for health care facilities to report to the Medical Practitioner
27 Review Panel established by the State Board of Medical Examiners
28 about physicians whose performance is under question, as provided in
29 N.J.S.A.26:2H-12.2.

30 Specifically, the bill directs a hospital or other health care facility
31 to provide written notification to the applicable board if a nurse,
32 homemaker-home health aide or pharmacist, or to DHSS if a nurse
33 aide or personal care assistant, who is employed by, or under contract
34 to render professional services to, that facility:

35 -- voluntarily resigns from the staff of the facility if the facility is
36 reviewing the health care professional's conduct or patient care or has
37 expressed an intention to resign to any member of the health care
38 professional or administrative staff at the facility;

39 -- has been discharged from the staff of the facility or has had a
40 contract to render professional services terminated or rescinded for
41 reasons relating to the health care professional's incompetence,
42 misconduct or impairment;

43 -- agrees to the placement of conditions or limitations on the health
44 care professional's practice within the facility, including, but not
45 limited to, nonroutine concurrent or retrospective review of care,
46 nonroutine supervision by one or more members of the staff, or the

1 completion of remedial education or training;

2 -- is granted a leave of absence pursuant to which the health care
3 professional may not practice within the facility, if the reasons
4 provided in support of the leave relate to any physical, mental or
5 emotional condition or drug or alcohol use that might impair the health
6 care professional's ability to practice with reasonable skill and safety;
7 or

8 -- is a party to a medical malpractice liability suit, to which the
9 facility is also a party, and there is a settlement, judgment or
10 arbitration award, in which case notification must be made within
11 seven days of the date of the settlement, judgment or award.

12 The bill provides that the form of notification is to be prescribed by
13 the Commissioner of Health and Senior Services, and contain such
14 information as may be required by the applicable board or DHSS.

15 The bill also stipulates that a health care facility that fails to provide
16 this notification or to cooperate with a request for information by the
17 applicable board or DHSS is subject to penalties pursuant to
18 N.J.S.A.26:2H-13 and 26:2H-14.

19 The bill further provides that:

20 * a health care facility, or any employee of the facility, providing
21 information to the applicable board or DHSS regarding a health care
22 professional pursuant to the bill, is not liable for damages for
23 providing the information unless the health care facility or employee
24 knowingly provided false information;

25 * a health care facility must maintain a record of all complaints
26 about, and disciplinary proceedings or actions against, a health care
27 professional who is employed by or otherwise has an affiliation with
28 the facility;

29 * the facility is to retain the information for a period of seven years
30 and make the record, including any information that the facility has
31 pertaining to a record maintained on the health care professional prior
32 to the effective date of the bill, available to the applicable board and
33 DHSS, upon request; and

34 * a health care facility must make the records relating to its
35 mortality, morbidity, complication, infection and readmission
36 experience, which it is required to make available to DHSS pursuant
37 to N.J.S.A.26:2H-12.2a, available to the applicable board, upon
38 request.

39 In addition, the bill provides that:

40 -- if a health care professional who is employed by, or under
41 contract to render professional services to, a health care facility has
42 taken or is the subject of an action, or meets a condition, as described
43 in the bill, and the facility is required to report to the appropriate State
44 professional licensing board or DHSS, the facility and any employee
45 thereof, and any individual who otherwise has an affiliation with the
46 facility, is immune from liability for disclosing the action or condition

1 in good faith to another health care facility or other entity that seeks
2 to employ that person as a health care professional; and

3 -- a health care facility and any employee thereof, and any
4 individual who otherwise has an affiliation with the facility, that
5 discloses this information to another health care facility or other entity
6 is presumed to be acting in good faith unless it is shown by clear and
7 convincing evidence that the facility or person disclosing the
8 information acted with actual malice toward the person who is the
9 subject of the information.

10 The bill takes effect on the 180th day after enactment, but
11 authorizes the Commissioner of Health and Senior Services to take
12 anticipatory administrative action in advance as necessary for its
13 implementation.