

ASSEMBLY HEALTH AND HUMAN SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3533

STATE OF NEW JERSEY

DATED: FEBRUARY 28, 2005

The Assembly Health and Human Services Committee reports favorably Assembly Bill No. 3533.

This bill, which is designated the "Health Care Professional Responsibility and Reporting Enhancement Act," is designed to strengthen patient protections against health care professionals who have demonstrated impairment or incompetence or engaged in professional misconduct.

The bill:

-- revises and strengthens reporting requirements of certain entities that employ health care professionals regarding disciplinary actions taken by the entity against a health care professional for reasons related to that professional's impairment or his incompetency or professional misconduct;

-- requires all licensed health care professionals to undergo a criminal history record background check as a condition of renewal of their professional license, and to report information about an impairment or gross incompetence or unprofessional conduct of another health care professional to State authorities and their employer, when applicable; and

-- requires certain employers of health care professionals, upon the inquiry of another employer, to truthfully disclose certain information concerning the professional's job performance.

Specifically, the bill provides as follows:

C Health care facilities, managed care plans, State and county psychiatric hospitals, State developmental centers and home care services agencies and staffing registries (hereafter referred to as "health care entities") are to report certain disciplinary actions taken against a health care professional to the Director of the Division of Consumer Affairs (DCA) in the Department of Law and Public Safety, which has jurisdiction over State professional and occupational licensing boards.

-- The actions that must be reported relate to a health care professional's impairment, incompetency or professional misconduct that relates adversely to patient care or safety. The actions include, but are not limited to: a revocation or suspension of privileges or discharge from the staff of the health care entity; the placing of conditions or limitations on the exercise of clinical privileges or

practice; voluntary resignation from the staff under certain circumstances; voluntary relinquishment of any partial privilege or authorization to perform a specific procedure under certain circumstances; and the granting of a leave of absence under certain circumstances.

-- The health care entity must report to DCA if the 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 award.

-- The health care entity must notify DCA if the conditions or limitations on the exercise of clinical privileges or practice are altered or restored, and provide a copy of the notice that it sends to DCA to the professional who is a subject of the notice.

C The health care entity is to notify DCA if it is in possession of information that indicates a health care professional has failed to comply with a request to seek assistance from a DCA or board-approved professional assistance program, or has failed to follow the required treatment regimen or monitoring program, to assure that the professional's physical, mental or emotional condition or substance abuse does not impair the professional's ability to practice with reasonable skill and safety.

C A health care entity that notifies DCA or a licensing board, in good faith and without malice, is not liable for civil damages in any cause of action arising out of the provision of the required information. An entity which fails to provide the required notices may be subject to such penalties as the Department of Health and Senior Services determines.

C "Health care professional" is defined to mean: 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 DCA 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 personal care assistant certified by the Department of Health and Senior Services.

C The bill amends:

-- N.J.S.A.26:2H-12.2a (which requires health care facilities and HMOs to maintain records of documented complaints and disciplinary actions taken against a physician) to apply to all health care entities regarding all health care professionals; and

-- N.J.S.A.45:1-28 et seq., which requires health care professionals to undergo criminal history record background checks prior to becoming licensed or otherwise authorized by the State to practice a health care profession, to extend its background check requirement, over a four-year period, to current licensees upon renewal of their license or authorization to practice.

C If a licensee refuses to consent to, or cooperate in, the securing of a criminal history record background check as required in this bill, the board or director, as applicable, is to refuse to renew the license or other authorization of the licensee, without a hearing, and to notify the licensee of that denial.

C A person (including a health care entity and a health care professional) is granted immunity for providing to DCA, a licensing board or the Medical Practitioner Review Panel, in good faith and without malice, any information concerning an act by a health care professional which the person has reasonable cause to believe involves misconduct that may be subject to disciplinary action by DCA, the board or review panel, as applicable, or any information relating to such conduct requested by DCA, the board or review panel in the exercise of its statutory responsibilities or which may be required by statute.

C Any information provided to DCA or a licensing board concerning the conduct of a health care professional as required by law, is to be treated as confidential pending final disposition of the inquiry or investigation by the board or DCA, as applicable, except for information required to be shared with the Attorney General, Department of Health and Senior Services or any other government agency.

C A health care professional is to promptly notify DCA 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.

-- A health care professional will be deemed to have satisfied the reporting requirement by promptly providing notice to DCA, the board or a professional assistance or intervention program approved or designated by DCA or a board to provide confidential oversight of the licensee.

-- A health care professional who fails to so notify DCA is subject to disciplinary action and civil penalties; however, a health care professional is not required to notify DCA about an impaired or incompetent health care professional if the health care professional's

knowledge of the other professional's impairment or incompetence was obtained as a result of rendering treatment to that professional.

-- A health care professional is granted immunity for providing the required notification, in good faith and without malice to DCA, the board or review panel; and there is to be no private right of action against a health care professional for failure to comply with these reporting requirements, or against a health care entity if a health care professional employed by, under contract to, or who has privileges granted by, the health care entity fails to comply with the reporting requirements.

C Upon receipt of notice from a health care entity or health care professional concerning the conduct of a health care professional, DCA is to promptly notify the appropriate licensing board.

-- DCA or the board, as applicable, is to initiate an investigation and obtain any additional information necessary to determine if disciplinary charges should be pursued or if an application to temporarily suspend or otherwise limit the health care professional's license or other authorization to practice should be initiated.

-- If the Attorney General files charges based on information derived from the notice from a health care entity or if the board revokes or permanently or temporarily suspends or otherwise limits the license or other authorization to practice of a health care professional, the board is to notify each health care entity with which the health care professional is affiliated.

C Any health care professional seeking to become employed by, enter into a contract to render professional services to or obtain privileges at a health care entity, or provide professional services pursuant to an agreement with a health care services firm or staffing registry, who engages in fraud, misrepresentation or deception in the application or credentialing process is to be subject to disciplinary proceedings pursuant to N.J.S.A.45:1-21.

C A health care entity, upon the inquiry of another health care entity, is required to truthfully: (1) disclose whether, within the seven years preceding the inquiry, it provided any notice to DCA or the review panel, pursuant to reporting requirements for health care entities established in the bill, with respect to the health care professional about whom the inquiry has been made; and (2) provide information about a current or former employee's job performance as it relates to patient care and, in the case of a former employee, the reason for the employee's separation.

-- The bill specifies that "job performance" relates 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. This information is to be based on the employee's performance evaluation, and is to be 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 is not to 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.

-- A health care entity, or any employee designated by the entity, who provides the required information to another health care entity, in good faith and without malice, is not liable for damages in any cause of action for providing or reporting the information.

-- A health care entity which fails to truthfully disclose information to another health care entity making an inquiry pursuant to this bill or fails to cooperate with the request for information by the other health care entity is to be subject to such penalties as the Department of Health and Senior Services or the Director of DCA determines appropriate.

C A health care professional employed by or practicing at a health care entity is required to promptly notify the person at the entity, designated by that entity, if the health care professional is in possession of information which reasonably indicates that another health care professional who is employed by or practicing at the entity 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, and provides immunity to that health care professional for notifying the entity, in good faith and without malice.

C DCA is to employ a full-time Health Care Professional Information Clearinghouse Coordinator to assist the Director of DCA in compiling and disseminating to the appropriate licensing board or other applicable entity the information reported to DCA by health care entities and professionals pursuant to the bill and such other information as specified by the director; and the director of DCA is to provide the licensing boards with professional and administrative staff as may be needed to carry out the purposes of the bill.

C The bill repeals the following sections of law, the provisions of which are incorporated in the new sections of the bill:

-- N.J.S.A.26:2H-12.2, which requires health care facilities and health maintenance organizations to report certain disciplinary actions taken against physicians and podiatrists to the State Board of Medical Examiners (BME);

-- N.J.S.A.45:9-19.1, which provides immunity to a person who in good faith provides information to the BME concerning the conduct of a physician;

-- N.J.S.A.45:9-19.3, which provides that information concerning the conduct of a physician is confidential pending final disposition by the BME; and

-- N.J.S.A.45:9-19.5, which requires physicians to notify the BME

if they are in possession of information that indicates another physician is impaired, incompetent or demonstrates unprofessional conduct, and provides immunity for the notification.

This bill is identical to Senate Bill No. 1804 (1R) (Vitale/Kavanaugh), which the committee also reported on this date.