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OFFICE OF THE  
SECRETARY

MURIEL BOWSER  
MAYOR

APR 22 2019

The Honorable Phil Mendelson  
Chairman, Council of the District of Columbia  
1350 Pennsylvania Avenue, N.W.  
Suite 504  
Washington, D.C. 20004

Dear Chairman Mendelson:

Enclosed for consideration and enactment by the Council is the “Health Care Reporting Amendment Act of 2019.” If enacted, the proposed legislation will require a health professional to notify, within 10 days, the board, commission, or authority responsible for licensing, registering, or certifying the health professional, after the health professional has received notice of a judgment against him or her arising from a malpractice suit; has been convicted of a crime; or the health professional obtains knowledge that a health care licensing board of another state has taken disciplinary action against him or her.

In addition, a health professional employer will be required to notify, within 10 days, the board, commission, or authority responsible for licensing, registering, or certifying the health professional, after the employer has reduced, suspended, revoked, or not renewed the health professional’s clinical privileges; involuntarily terminated or restricted the health professional’s employment or staff membership; or asked the health professional not to return to employment with the employer because of: unprofessional or illegal or unethical conduct; professional incompetence; or as a result of mental or physical impairment that results in the health professional being unable to perform his or her occupation in a safe and effective manner; or the health professional has voluntarily resigned, or has been asked to resign, while being investigated by the health professional employer for unprofessional, illegal or unethical conduct; has shown signs of professional incompetence; or suffers from a mental or physical impairment that results in the health professional being unable to perform his or her occupation in a safe and effective manner.

DC Health has noted the fact that, at times, employers have terminated health professionals for misconduct without notifying the appropriate health profession board. There have been cases where unsafe health professionals’ employment has been terminated by one employer, the termination not reported to a board, and the health professionals rehired by another employer, thus perpetuating a pattern of unsafe practice.

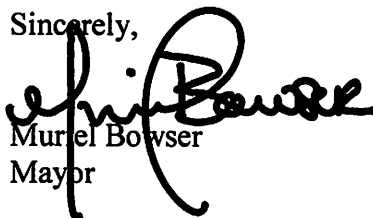
This legislation, if enacted, will amend D.C. Official Code § 44-508 entitled "Reporting to licensing authority." That provision of the Code, as currently written, contains no time period in which a facility or agency is required to report action taken against a health professional to a board, commission, or authority. Nor are there any sanctions contained in the law for failing to report. In addition, it will repeal D.C. Official Code § 3-1205.13a which allows a physician to report sanctions against him or her within 60 days and authorizes a fine by the licensing board for failing to report.

This legislation will establish uniformity in the time period for reporting by health professionals and health professional employers and establish a maximum fine not to exceed \$10,000 that may be imposed by the Mayor for failing to report or not report in a timely manner. This sanction should serve as an incentive for all to comply with the reporting requirement. Once the appropriate board, commission, or authority is notified, health professionals may be removed from practice if necessary, or the health professional may be required to undergo rehabilitation, if practicable. Ultimately, the public is protected.


Currently, at least four other states have reporting requirements and monetary sanctions are imposed for non-compliance: California fines up to \$10,000; Florida imposes fines varying from \$5,000 to \$250,000; Massachusetts imposes a maximum fine of \$10,000; and Virginia imposes a maximum fine of \$25,000.

I urge the Council to take prompt and favorable action on the enclosed legislation.

Sincerely,

A handwritten signature in black ink, appearing to read "Muriel Bowser", written over the typed name and title.

Muriel Bowser  
Mayor

  
Chairman Phil Mendelson  
at the request of the Mayor

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6  
7 A BILL  
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10  
11 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA  
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14  
15 To amend the Health-Care and Community Residence Facility, Hospice and Home Care  
16 License Act of 1983 to require a health professional to submit to a board, commission or  
17 authority responsible for licensing, registering or certifying the health professional within  
18 10 days, notice of a malpractice judgment, confidential settlement, or that he or she has  
19 been convicted of a crime; to require a health professional employer to submit notice to a  
20 board, commission or authority responsible for licensing, registering, or certifying the  
21 health professional information regarding sanctions imposed on an employee, within 10  
22 days after the sanction; and to authorize the Mayor to fine a health professional or health  
23 professional employer up to \$10,000 for failure to comply with the reporting requirement.  
24

25 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

26 That this act may be cited as the “Health Care Reporting Amendment Act of 2019.”

27 Sec. 2. The Health-Care and Community Residence Facility, Hospice and Home Care  
28 Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-  
29 501 *et seq.*), is amended as follows:

30 (a) Section 9 (D.C. Official Code § 44-508) is amended as follows:

31 (1) Subsection (a) is amended to read as follows:

32 “(a)(1) A health professional shall submit a report notifying the board, commission, or  
33 authority responsible for licensing, registering, or certifying the health professional within 10  
34 days after:

35 “(A) The health professional has:

1                   “(i) Been named in a malpractice suit and received notice of a  
2 judgment against him or her in that suit;

3                   “(ii) Received notice of a confidential settlement of a malpractice  
4 claim to be paid by the health professional, an insurer, or other entity on behalf of the health  
5 professional; or

6                   “(iii) Been convicted of a crime; or

7                   “(B) The health professional obtains knowledge that a health-care  
8 licensing authority of another state has taken disciplinary action against him or her.”.

9                   “(2) Consistent with paragraph (1) of this subsection, nothing in a confidential  
10 settlement agreement between a health professional, the insurer of the health professional, or  
11 other entities acting on behalf of the health professional and another person shall operate to  
12 prevent the parties to that agreement from filing a complaint with the board, commission, or  
13 authority responsible for licensing, registering or certifying the health professional, or from  
14 testifying in any investigation conducted by the board, commission, or authority responsible for  
15 licensing, registering, or certifying the health professional.”.

16                   (2) A new subsection (a-1) is added to read as follows:

17                   “(a-1) A health professional employer shall submit a report notifying the board,  
18 commission, or authority responsible for licensing, registering, or certifying a health professional  
19 within 10 days after:

20                   “(1) The health professional employer has:

21                   “(A) Reduced, suspended, revoked, or not renewed the health  
22 professional’s clinical privileges;

1                   “(B) Involuntarily terminated or restricted the health professional’s  
2 employment or staff membership; or

3                   “(C) Asked the health professional to resign for reasons of  
4                                   “(i) Unprofessional conduct by the health professional;  
5                                   “(ii) Illegal conduct by the health professional;  
6                                   “(iii) Unethical conduct by the health professional;  
7                                   “(iv) Professional incompetence of the health professional;

8 or

9                                   “(v) A mental or physical impairment that results in the  
10 health professional being unable to perform his or her occupation in a safe and effective manner;

11 or

12                   “(2) The health professional has voluntarily resigned, or has been asked by the  
13 health professional employer to resign, while being investigated by the health professional  
14 employer for:

15                                   “(A) Unprofessional conduct;

16                                   “(B) Illegal conduct;

17                                   “(C) Unethical conduct;

18                                   “(D) Professional incompetence; or

19                                   “(E) A mental or physical impairment that results in the health  
20 professional being unable to perform his or her occupation in a safe and effective manner.”.

21                   (3) Subsection (b) is amended as follows:

22                                   (A) Strike the phrase “subsection (a)” wherever it appears in this  
23 subsection and insert the phrase “subsection (a-1)” in its place.

1 (B) Strike the phrase “facility or agency” and insert the phrase “health  
2 professional employer” in its place.

3 (3) New subsections (c), (d), (e), and (f) are added to read as follows:

4 “(c) The reports required by subsections (a) and (a-1) of this section shall be sent in the  
5 United States mail by registered or certified mail, with return receipt requested, or sent by  
6 courier service, commercial carrier, or personal service.

7 “(d) In computing the 10-day reporting period in subsections (a) and (a-1) of this section,  
8 the day of the act or event that gave rise to the requirement to send the report shall not be  
9 counted. The last day of the 10-day period shall be counted unless it is a Saturday, Sunday, legal  
10 holiday, or day on which the Department of Health is officially closed, in which event the 10-day  
11 period shall continue until the next day that is not a Saturday, Sunday, legal holiday, or day on  
12 which the Department of Health is officially closed.

13 “(e) When used in this section:

14 “(1) The term “health professional” means a person licensed, registered, certified,  
15 or permitted to practice a health occupation regulated by a licensing board in the District of  
16 Columbia.

17 “(2) The term “health professional employer” means any entity, including a  
18 facility, agency, assisted living residence, private office, health care provider, or group home, in  
19 the District of Columbia, that employs health professionals, including those engaged in the  
20 practice of pharmacy.

21 “(3) The terms “facility” and “agency” have the meaning given such terms in  
22 section 2(c) of the Health-Care and Community Residence Facility, Hospice and Home Care

1 Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-  
2 501(c)).

3 “(4) The term “assisted living residence” has the meaning given such term in  
4 section 201(4) of the Assisted Living Residence Act of 2000, effective June 24, 2000 (D.C. Law  
5 13-127; D.C. Official Code § 44-102.01(4)).

6 “(5) The term “professional incompetence” means a health professional’s  
7 unfitness to continue in the person’s health profession, or to provide one or more services  
8 ordinarily provided as part of the profession, as demonstrated by:

9 “(A) A lack of knowledge, skill, or judgment; or

10 “(B) Disregard for the welfare of a patient or client.”.

11 “(f) The reporting required by subsections (a) and (a-1) of this section shall not act as a  
12 waiver of confidentiality of medical records and committee reports. Records reported and  
13 obtained under this section shall remain confidential and shall not be disclosed, except as  
14 otherwise authorized or required by law. The records shall be used by the board, commission, or  
15 authority responsible for licensing, registering or certifying the health professional in the  
16 exercise of their functions and shall be made available to the public only as required by the  
17 Freedom of Information Act of 1976, effective March 25, 1977 (D.C. Law 1-96; D.C. Official  
18 Code § 2-531 *et seq.*).

19 (b) Section 10 (D.C. Official Code § 44-509) is amended by inserting a new subsection  
20 (e)(1-A) to read as follows:

21 “(1-A)(A) The Mayor may impose a civil fine not to exceed \$10,000 per incident  
22 on a health professional or health professional employer that fails to comply with the reporting  
23 requirements set forth in section 9.

1                   “(B) In a proceeding to determine whether a health professional or health  
2 professional employer has complied with the requirements of section 9, or in a proceeding  
3 challenging the imposition of a fine for failure to comply with the requirements of section 9, the  
4 health professional or health professional employer shall have the burden of proving that the  
5 report was sent to the board, commission, or authority through one of the methods of service  
6 identified in section (9)(c) of this act if the board, commission, or authority states that it has not  
7 received the report.”.

8                   Sec. 3. Section 513a of the District of Columbia Health Occupations Revision Act of  
9 1985, effective March 14, 2007 (D.C. Law 6-99; D.C. Official Code § 3-1205.13a), is repealed.

10                  Sec. 4. Fiscal impact statement.

11                  The Council adopts the fiscal impact statement in the committee report as the fiscal  
12 impact statement required by section 4a of the General Legislative Procedures Act of 1975,  
13 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

14                  Sec. 5. Effective date.

15                  This act shall take effect following approval by the Mayor (or in the event of veto by the  
16 Mayor, action by the Council to override the veto), a 30-day period of congressional review as  
17 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December  
18 24, 1973 (87 Stat. 813;D.C. Official Code § 1-206.02(c)(1)), and publication in the District of  
19 Columbia Register.




Government of the District of Columbia  
Office of the Chief Financial Officer



Jeffrey S. DeWitt  
Chief Financial Officer

**MEMORANDUM**

**TO:** The Honorable Phil Mendelson  
Chairman, Council of the District of Columbia

**FROM:** Jeffrey S. DeWitt  
Chief Financial Officer 

**DATE:** March 22, 2019

**SUBJECT:** Fiscal Impact Statement – Health Care Reporting Amendment Act of 2019

**REFERENCE:** Draft Introduction as shared with the Office of Revenue Analysis on March 20, 2019

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**Conclusion**

Funds are sufficient in the fiscal year 2019 budget and the proposed fiscal year 2020 through fiscal year 2023 budget and financial plan to implement the bill.

**Background**

The bill requires<sup>1</sup> a health professional<sup>2</sup> to submit notice of malpractice judgment, confidential settlement, conviction of a crime, or disciplinary action in another state to the board, commission or authority responsible for licensing, registering or certifying the health professional, within ten days of the notice, settlement, or action. Similarly, the bill also requires health professional employers<sup>3</sup> to submit information regarding a sanction imposed on an employee, within ten days after the sanction<sup>4</sup>. The bill authorizes the Mayor to fine a health professional or health professional employer up to \$10,000 for failure to comply with the reporting deadline.

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<sup>1</sup> By amending the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501 et seq.).

<sup>2</sup> Health professionals are defined in the bill as persons licensed, registered, certified, or permitted to practice a health occupation regulated by a licensing board in the District.

<sup>3</sup> Health professional employers are defined in the bill as entities, including private offices, which employ health professionals. They include any provider, facility, agency, or assisted-living residence.

<sup>4</sup> Employer sanctions include incidents resulting from unprofessional, illegal conduct, unethical conduct, professional incompetence, or a mental or physical impairment that results in the health professional being unable to perform his or her occupation in a safe and effective manner. Sanctions include reduced, suspended, revoked, or not renewed clinical privileges; involuntarily termination or restricted staff membership; and asking a professional not to return to employment.

The Honorable Phil Mendelson  
FIS: "Health Care Reporting Amendment Act of 2019" Proposed Bill as shared with the Office of Revenue  
Analysis on March 20, 2019

### **Financial Plan Impact**

Funds are sufficient in the fiscal year 2019 budget and the proposed fiscal year 2020 through fiscal year 2023 budget and financial plan to implement the bill.

Health professionals and employers are already required to report malpractice judgments, confidential settlements, disciplinary actions, and employer sanctions to the board, commission or authority responsible for licensing, registering or certifying the health professional. The bill goes one step further and establishes a reporting deadline and fines for non-compliance. DOH can absorb the cost of enforcing the ten-day deadline and the cost of issuing fines. While new fines may generate a small amount revenue, we are unable to estimate how much will be collected at this time.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of the Attorney General



ATTORNEY GENERAL  
KARL A. RACINE

Legal Counsel Division

MEMORANDUM

**TO:** Alana Intrieri  
Executive Director  
Office of Policy & Legislative Affairs

**FROM:** Arthur J. Parker  
Acting Deputy Attorney General  
Legal Counsel Division

**DATE:** March 26, 2019

**SUBJECT:** Legal Sufficiency Review of Draft Bill, the "Health Care Reporting  
Amendment Act of 2019"  
(AE-19-167)

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**This is to Certify that** this office has reviewed the above-referenced draft bill and found it to be legally sufficient. If you have any questions in this regard, please do not hesitate to call me at 724-5565.

A handwritten signature in black ink that reads "Arthur J. Parker".

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Arthur J. Parker