

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Health-Care and Community Residence Facility, Hospice and Home Care License Act of 1983 to require a health professional to submit to a board, commission or authority responsible for licensing, registering, or certifying the health professional within 10 business days' notice of a malpractice judgment, confidential settlement, or that the health professional has been convicted of a crime, to require a health professional employer to submit notice to a board, commission, or authority responsible for licensing, registering, or certifying the health professional information regarding sanctions imposed on an employee within 10 business days after the sanction, to authorize the Mayor to fine a health professional or health professional employer in a tiered manner up to \$10,000 for failure to comply with the reporting requirement, and to provide immunity to health professional employers from civil liability for good faith reporting; to amend the Prescription Drug Monitoring Program Act of 2013 to require mandatory registration by all physicians, advanced practice nurses, dentists, physician assistants, veterinarians, optometrists, naturopathic physicians, and pharmacists within 90 days after becoming licensed under the Prescription Drug Monitoring Program Act of 2013 or prior to renewal, and to require the Health Occupations Boards to ensure that a practitioner or dispenser is registered with the prescription drug monitoring program before renewing, reactivating, or reinstating a license; and to amend the Department of Health Functions Clarification Act of 2001 to clarify the regulation of cottage food.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Health Care Reporting Amendment Act of 2020".

Sec. 2. 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.*), is amended as follows:

(a) Section 2(a) (D.C. Official Code § 44-501(a)) is amended to read as follows:

“(1) “Ambulatory surgical facility” means any facility, other than a hospital or maternity center but including an office-based facility, at which there are performed outpatient

surgical and related procedures that have been classified in accordance with § 44-504(h) due to their complexity or the degree of patient risk.

“(2) “Assisted living residence” shall have the same meaning as provided in section 201(4) of the Assisted Living Residence Act of 2000, effective June 24, 2000 (D.C. Law 13-127; D.C. Official Code § 44-102.01(4)).

“(3) “Community residence facility” means a facility that provides a sheltered living environment for individuals who desire or need such an environment because of their physical, mental, familial, social, or other circumstances, and who are not in the custody of the Department of Corrections. All residents of a community residence facility shall be 18 years of age or older, except that, in the case of group homes for persons with intellectual disabilities, no minimum age shall apply, unless this requirement is waived in accordance with § 44-505(e).

“(4) “Group home for persons with intellectual disabilities” means a community residence facility that provides a home-like environment for at least 4 but no more than 8 related or unrelated individuals who on account of intellectual disabilities require specialized living arrangements, and maintains the necessary staff, programs, support services, and equipment for their care and habilitation.

“(5) “Health professional” means a person licensed, registered, certified, or permitted to practice a health occupation regulated by a licensing board in the District of Columbia.

“(6) “Health professional’s employer” means any entity, including a facility, agency, assisted living residence, private office, health care provider, or group home, in the District of Columbia, that employs health professionals or utilizes the services of a health professional who is contracted with a third party or is self-employed, including those engaged in the practice of pharmacy.

“(7) “Home care agency” means an agency, organization, or distinct part thereof, other than a hospice, that directly provides skilled nursing services and at least one other therapeutic service to an individual, in his or her home or in a community residence facility, who is sick or who has a disability.

“(8) “Hospice” means an agency, organization, facility, or distinct part thereof, primarily engaged in providing a program of in-home, outpatient, or inpatient medical, nursing, counseling, bereavement, and other palliative and supportive services to terminally ill individuals and their families.

“(9) “Hospital” means a facility that provides 24-hour inpatient care, including diagnostic, therapeutic, and other health-related services, for a variety of physical or mental conditions, and may in addition provide outpatient services, particularly emergency care.

“(10) “Maternity center” means a facility or other place, other than a hospital or the mother’s home, that provides antepartal, intrapartal, and postpartal care for both mother and child during and after normal, uncomplicated pregnancy.

“(11) “Nursing home” means a 24-hour inpatient facility, or distinct part thereof, primarily engaged in providing professional nursing services, health-related services, and other supportive services needed by the patient/resident.

“(12) “Professional incompetence” means a health professional's unfitness to continue in the health professional's profession, or to provide one or more services ordinarily provided as part of the profession, as demonstrated by:

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

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

“(13) “Renal dialysis facility” means any place, other than a hospital or the patient's home, that provides therapeutic care for persons with acute or chronic renal failure through the use of hemodialysis, peritoneal dialysis, or any other therapy that clears the blood of substances normally excreted by the kidneys.

“(14) “Therapeutic service” includes physical, speech, or occupational therapy; medical social services; or personal care services.”.

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

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

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

“(A) The health professional obtains knowledge that a health care licensing authority of another state has taken disciplinary action against him or her; or

“(B) The health professional:

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

“(ii) Has been convicted of a crime; or

“(iii)(I) Is party to a confidential settlement stemming from a malpractice claim to be paid by the health professional, an insurer, or other entity on behalf of the health professional.

“(II) For a report arising from a confidential settlement pursuant to sub-sub-subparagraph (I) of this sub-subparagraph, the health professional shall not include in a report any details required by the settlement to be kept confidential.”.

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

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

"(a-1) A health professional's employer shall submit a report notifying the board, commission, or authority responsible for licensing, registering, or certifying a health professional within 10 business days after:

"(1) The health professional's employer has:

"(A) Reduced, suspended, revoked, or not renewed the health professional's clinical privileges;

"(B) Involuntarily terminated or restricted the health professional's employment or staff membership; or

"(C) Asked the health professional to resign because the health professional's conduct has been determined, pursuant to section 514(c) of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1205.14) ("Occupations Act"), to have committed a violation listed in section 514(a) of the Occupations Act; or

"(2) The health professional has voluntarily resigned, or has been asked by the health professional employer to resign, while being investigated by the health professional employer for conduct in violation listed in section 514(a) of the Occupations Act.".

(3) Subsection (b) is amended by striking the phrase "subsection (a) of this section shall not apply to a temporary suspension or relinquishment of privileges or responsibilities if a health professional enters and successfully completes a prescribed program of education or rehabilitation. As soon as there exists no reasonable expectation that he or she will enter and successfully complete such a prescribed program, the facility or agency shall submit a report forthwith pursuant to subsection (a)" and inserting the phrase "subsection (a-1) of this section shall not apply to a temporary suspension or relinquishment of privileges or responsibilities if a health professional enters and successfully completes a prescribed program of education or rehabilitation. As soon as there exists no reasonable expectation that he or she will enter and successfully complete such a prescribed program, the health professional's employer shall submit a report forthwith pursuant to subsection (a-1)" in its place.

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

"(c) The reports required by subsections (a) and (a-1) of this section shall be sent by registered or certified mail, with return receipt requested, or sent by a courier service, commercial carrier, or personal service, or to a secure email address created by the Department.

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

"(e) The reporting required by subsections (a) and (a-1) of this section shall not act as a

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

“(f) Any health professional employer, or employee of such employer, participating in good faith in the making of a report pursuant to this act shall have immunity from liability, administrative, civil, and criminal, that might otherwise be incurred or imposed with respect to the making of the report. The same immunity shall extend to participation in any judicial proceeding involving the report. In all administrative, civil, or criminal proceedings concerning the employee resulting from the report, there shall be a rebuttable presumption that the maker of the report acted in good faith.”.

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

“(1A)(A) For health professional or health professional’s employer that fails to comply with the reporting requirements set forth in section 9, the Mayor may impose a civil fine not to exceed \$2,500 for the first incident, \$5,000 for the second incident, and \$10,000 for any violations occurring thereafter.

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

Sec. 3. The District of Columbia Health Occupations Revision Act of 1985, effective March 14, 2007 (D.C. Law 6-99; D.C. Official Code § 3-1205.01), is amended as follows:

(a) Section 513a (D.C. Official Code § 3-1205.13a) is repealed.

(b) Section 514(a) is amended as follows:

(1) Paragraph (50) is amended by striking the phrase “; or” and inserting a semicolon in its place.

(2) Paragraph (51) is amended by striking the period and inserting the phrase “; or” in its place.

(3) A new paragraph (52) is added to read as follows:

“(52) Fails to timely register with the Prescription Drug Monitoring Program pursuant to section 4b(d) of the Prescription Drug Monitoring Program Act of 2013, effective April 11, 2019 (D.C. Law 22-288; to be codified).”.

Sec. 4. The Prescription Drug Monitoring Program Act of 2013, effective April 11, 2019 (D.C. Law 22-288; D.C. Official Code § 48-853.01 *et seq.*) is amended as follows:

(a) Section 4a (D.C. Official Code § 48-853.03a) is repealed.

(b) A new section 4b is added to read as follows:

“Sec. 4b. Registration requirement for practitioners and dispensers.

“(a) Any practitioner who is licensed, registered, or otherwise permitted to prescribe, distribute, dispense, conduct research with respect to, or to administer a controlled substance or other covered substance in the course of his or her professional practice, and any dispenser who is licensed in the District of Columbia to dispense a controlled substance or other covered substance to an ultimate user, the user’s agent, or owner in the case of animals, shall be registered with the Program.

“(b) Beginning 90 days after the effective of the Health Care Reporting Amendment Act of 2020, passed on 2nd reading on April 7, 2020 (Enrolled version of Bill 23-269), each practitioner or dispenser who is required to be registered with the Program, pursuant to subsection (a) of this section, shall register with the Program within 90 days of obtaining a new health professional license or before renewing an existing health professional license, whichever occurs first.

“(c) The Health Occupations Boards shall not approve a practitioner or dispenser, who is required to be registered with the Program pursuant to subsection (a) of this section, for reinstatement, reactivation, or renewal of licensure without proof that the practitioner or dispenser has registered with the Program as required.

“(d) Failure to timely register with the Program shall constitute grounds for disciplinary action by the relevant health occupations board pursuant to section 514(c) of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1205.14(c)), and the imposition of civil fines pursuant to section 104 of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42, D.C. Official Code § 2-1801.01 *et seq.*).”.

Sec. 5. Section 4931(3) of the Department of Health Functions Clarification Act of 2001, effective January 25, 2014 (D.C. Law 20-63; D.C. Official Code § 7-742.01), is amended by striking the phrase “direct to consumers within the District of Columbia” and inserting the phrase “to consumers, including through direct, retail, and online sales, within the District of Columbia” in its place.

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Sec. 6. Fiscal impact statement.

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

Sec. 7. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia