ospitals and other health care providers in New Jersey soon will have new responsibilities to report information regarding the incompetence or negligence of a health care worker that would endanger patients—and also will have new protections to encourage such reporting.

The state Health Care Professional Responsibility and Reporting Enhancement Act, which was signed by Gov. Codey on May 3, 2005, was enacted in response to news accounts of Charles Cullen, a nurse who confessed to killing as many as 40 patients under his care while working at several hospitals in Pennsylvania and New Jersey. Cullen was able to move from job to job in his 16-year career despite a questionable employment record. This article will briefly review the main requirements of the law, which takes effect on October 30, 2005.

The act requires New Jersey health care professionals and health care entities to notify the New Jersey Division of Consumer Affairs (the Division) in the Department of Law and Public Safety when they have information regarding the incompetence or negligence of a health care worker which would endanger patients. The Act offers some protection to health care entities that report to other health care entities disciplinary actions taken against an employee for professional misconduct, improper patient care or other actions that negatively affect a health care professional’s ability to treat patients. The Act also requires criminal background checks of health care professionals who apply for licensure or license renewal in New Jersey.

Reporting Obligations on Entities

The Act requires “health care entities” to, in certain situations, report to the Division a health care professional who is employed by, under contract to render professional services to, or has privileges granted by that health care entity or who provides such services under an agreement with a health care services firm or staffing registry. Health care entities are defined to include health care facilities (including, but not limited to hospitals, public health centers, diagnostic centers, treatment centers, rehabilitation centers, nursing homes, outpatient clinics and home health agencies) licensed in New Jersey, HMOs authorized to operate in New Jersey, carriers that offer a managed care plan regulated by state law, state or county psychiatric hospitals, state developmental centers, staffing registries and home care services agencies as defined under NJSA § 45:11-23. The Act specifically requires health care entities to notify the Division in writing if an affiliated health care professional:

- for reasons related to impairment, incompetency or professional misconduct that relates adversely to patient care or safety, has (a) had full or partial privileges reduced, revoked or suspended (b) been removed from the list of eligible employees of a health services firm or staffing registry; (c) been discharged from the staff; or (d) had a contract to register professional services terminated or rescinded.
- has conditions or restrictions placed on his or her clinical privileges or right to practice for reasons related to the professional’s impairment, incompetency or professional misconduct. Such restrictions include, without limitation, second opinion requirements, non-routine review of admissions or care, non-routine supervision by one or more members of the staff or required completion of remedial education or training.
- voluntarily resigns from the staff if (a) the health care entity is reviewing the professional’s patient care or whether the professional’s conduct is unprofessional or demonstrates an impairment or incompetence that relates adversely to patient care or safety or (b) the health care agency has expressed an intention to conduct such a review.
• voluntarily relinquishes any privilege or authorization to perform a specific procedure if (a) the health care entity is reviewing the professional’s patient care or whether the professional’s conduct is unprofessional or demonstrates an impairment or incompetence that relates adversely to patient care or safety or (b) the health care agency has expressed an intention to conduct such a review.
• while under or subsequent to a review by the health care entity, is granted a leave of absence for reasons relating to a physical, mental or emotional condition or drug or alcohol abuse, which impairs the health care professional’s ability to practice.
• is a party to a medical malpractice liability suit to which the health care entity is also a party, and to which there is a settlement, judgment or arbitration award.

A health care entity also must notify the Division in writing if it has information indicating that a health care professional has failed to comply with a request to seek help from a professional assistance or intervention program or has failed to follow the treatment regimen or monitoring program required by that program. Notification also is required about any health care professional who has been the subject of a report under Section 2 of the Act, has had conditions or limitations on the exercise of clinical privileges or practice within the health care entity altered, or privileges restored, or has resumed exercising clinical privileges that had been voluntarily relinquished.

Notifications must be made within seven days of the date of the action, settlement, judgment or award, and in most cases, the reporting entity must provide the professional who is the subject of the report with a copy. In the case of a professional who is providing services through an agreement with a health care services firm or staffing agency, the reporting entity must also provide a copy of the notice to the firm or staffing agency.

Disclosure to Other Health Care Entities

The Act requires a health care entity that receives an inquiry from another health care entity concerning a health care professional to truthfully disclose whether, within the seven years preceding the inquiry, it provided any notice about the individual to the Division under the Act, or to the Medical Practitioner Review Panel. The health care entity also must provide to the inquiring entity a copy of the form of notification and any supporting documentation that was provided with it. In addition, the health care entity must 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 from the entity.

Health care entities and their employees who provide information in good faith and without malice to another health care entity concerning a health care professional are not liable for civil damages in any cause of action arising out of the provision or reporting of the information. However, a health care entity that fails to truthfully disclose information to an inquiring entity, or fails to cooperate with an inquiry, may face penalties to be determined by the Department of Health and Senior Services.

Recordkeeping Requirements

The Act requires health care entities to maintain for seven years records of all documented complaints of events related to patient care about, and disciplinary proceedings or actions against, health care professionals employed by or affiliated with the entity. The health care entity must, upon request, make the records available to the Division, the board which licenses or otherwise authorizes the health care professional to practice, the Medical Practitioner Review Panel and the Department of Health and Senior Services, as applicable.

Health care entities also must maintain for four years all records and source data relating to its mortality, morbidity, complication, infection and readmission experience, and similarly make them available upon request.

Reporting Obligations of Health Care Professionals

The Act requires a health care professional to promptly notify the Division if he or she has information 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 (unless that

Malpractice Premium Subsidy Available for Some NJ Practitioners, But Act Fast

New Jersey health care providers in three specialties are eligible to apply for a subsidy from the state Medical Malpractice Liability Insurance Premium Fund, but applicants should act fast: applications are due by August 5, 2005.

The fund, administered by the state Department of Banking and Insurance, is designed to subsidize medical malpractice liability insurance premiums for certain specialties that may be particularly threatened by high insurance costs.

Providers who primary practice area is in one of the following specialties are eligible to apply:
• Obstetric/gynecology (practices limited to gynecology are excluded)
• Neurosurgery
• Diagnostic radiology (limited to radiologists who read mammograms).

Instructions on how to apply are available online at www.ndobi.org/mmlipafa/mmlipafainstructions.htm
knowledge was gained by the reporting professional’s treatment of the other professional. If the allegedly impaired or incompetent professional works for the same entity as the reporting professional, the reporting professional also must notify the health care entity.

Failure to provide notice as required by the Act is subject to disciplinary action and civil monetary penalties, however, the Act bars a private right of action against a health care professional for failure to comply with these notification requirements. Similarly, the Act prohibits a private right of action against a health care entity if one of its employee or affiliated professionals fails to comply with the requirements.

A health care professional who provides notification under the Act in good faith and without malice about a health care professional who is impaired or grossly incompetent or who has demonstrated unprofessional conduct, is not liable for civil damages to any person in any cause of action arising out of the notification.

Criminal Histories

The Act amends NJSA § 45:1-29 to require all health care professionals in New Jersey to undergo criminal history background checks as a condition of obtaining an initial license or other authorization to practice and as a condition of license or authorization renewal. Regulations will establish a schedule of dates for implementing this requirement, so that all licensees will have been required to submit to a criminal history record background check beginning no later than four years after the effective date of the Act.

Protections Against Civil Liability

Health care entities, professionals or any other person who provides to the Division, 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 disciplin-
On June 2, the Wisconsin Court of Appeals ruled that the Waushara County Department of Human Services is permitted to administer medication and treatment to a committed mental health patient, regardless of the patient’s consent, if qualified medical personnel conclude that the patient is not competent to refuse medical treatment. *Waushara County v. Jean K.D.*, Wis. Ct. App. No. 2005AP436-FT (June 2, 2005).

The patient had been committed following the examination of two psychiatrists who, although differing on diagnosis, both found that her condition was treatable, that she was a proper subject for treatment, and that she was a danger to herself. In addition, each psychiatrist testified that the patient was not competent to make decisions regarding her medications or treatment, including the decision to refuse medications. The circuit court entered a six-month commitment and also ordered involuntary medication and treatment during the period of commitment or until further order of the court.

The patient disagreed with these opinions and claimed that the circuit court erred in entering its orders because the county presented insufficient evidence to support the necessary findings under a Wisconsin statute. The statute at issue provided that, incident to a commitment order, a court may direct that the committed person not retain the right to refuse medication and treatment if the court determines, following a hearing, that the committed individual is not competent to refuse medication or treatment. The appeals court affirmed the circuit court’s orders ruling that, as both examining psychiatrists testified that the patient was not competent to make informed decisions regarding medications, nothing was lacking in the circuit court’s findings or in the sufficiency of the evidence to support them.

Note, however, that each state has its own criteria and procedures regarding commitment and forced medication and treatment, and each commitment and forced medication situation is highly fact-specific.

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