Maryland General Assembly
Department of Legislative Services

Proposed Regulations
Department of Health and Mental Hygiene
(DLS Control No. 16-143)

Overview and Legal and Fiscal Impact

The regulations establish a new chapter to govern mandated reporting to the State Board of Physicians regarding physicians, individuals in postgraduate training programs, certain allied health care professionals, and naturopathic doctors.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Department of Health and Mental Hygiene:
Board of Physicians: Mandated Reporting to the Board: COMAR 10.32.22.01-.09

Legal Analysis

Summary of Regulations

The regulations establish a new chapter to govern mandated reporting to the board. Regulation .01 specifies that the chapter governs reporting requirements to the board concerning health care providers and naturopathic doctors by specific persons, including hospitals, related institutions, health care providers, and alternative health systems.

Regulation .02 defines terms used in the chapter.

Regulation .03 requires a reporting entity to report to the board in writing any change made with respect to a health care provider whom the reporting entity employs, who works with the reporting entity under contract, or to whom the reporting entity has granted privileges. A reporting entity is required to inform the board of any changes that have been made, in whole or in part, because the reporting entity had reason to believe that the health care provider engaged in certain acts. Those acts include abandoning a patient, disrupting the workplace, being habitually intoxicated by alcohol or a controlled dangerous substance, and repeatedly violating hospital bylaws after warning. The regulation also lists changes that do not require reporting by a reporting entity. An example of those changes is a leave of absence that is voluntary, is taken by a health care provider who is in good standing, and is caused by maternity leave. Finally, the regulation, with respect to physicians, requires each reporting entity to file a report that contains the name of

each licensed physician who, during the six months preceding the report, was employed by, had privileges with, or applied for privileges with that entity.

Regulation .04 governs reporting related to naturopathic doctors. A licensed naturopathic doctor, other licensed health care practitioner, health care facility located in the State, or State agency is required to file a written report to the board if there is a reason to believe that a licensed naturopathic doctor is or may be (1) medically or legally incompetent; (2) engaged in the unauthorized practice of naturopathic medicine; (3) guilty of unprofessional conduct; or (4) mentally or physically unable to engage safely in the practice of naturopathic medicine. The report required must be filed with the board within 30 days after the individual or entity becomes aware of the information. A health care facility must report within 10 days to the board if a licensed naturopathic doctor (1) voluntarily resigns from the staff of the health care facility; (2) voluntarily limits staff privileges; or (3) fails to reapply for hospital privileges at the healthcare facility while the naturopathic doctor is under formal or informal investigation for possible medical incompetence, unprofessional conduct, or mental or physical impairment.

Regulation .05 governs the timeframes for the submission of reports. Reports regarding physicians and individuals in postgraduate training programs must be filed within 10 days of any change and twice a year both in a cumulative report and separately in the report required under Regulation .03D. The reporting entity also has to report any modifications made to, or subsequent developments in, a change that was reported. The modification or subsequent development has to be reported within 10 days. The cumulative reports must be filed by February 1 for the period of July 1 through December 31 and by August 1 for the period of January 1 through June 30.

For allied health providers, the report has to be filed within 10 days of any change made. With respect to physician assistants, an employer who terminates the physician assistant because of a quality of care issue has to report the termination within 5 days. Any person who terminates a delegation agreement with a physician assistant has to report the termination within 10 days. A report of a termination of a delegation agreement cannot be substituted for the report regarding the termination of a physician assistant.

For naturopathic doctors the report has to be filed within 30 days after the person other than a health care facility has become aware of the information that must be reported under Regulation .04. A health care facility has to report within 10 days.

Regulation .06 governs the enforcement of the reporting requirements. The board is required to conduct any necessary investigation regarding the failure of a reporting entity to file a required report. The board may issue subpoenas. In addition, the regulation authorizes a reporting entity to request a hearing and attend a settlement conference, specifies how the hearing is to be conducted, and requires the board to conduct an evidentiary hearing under certain circumstances. If the board finds that a reporting entity failed to file a required report, the board may impose a civil penalty. The civil penalty, with respect to reports concerning physicians, is $2,500 for the first occurrence in a calendar year or $5,000 for a subsequent occurrence in a calendar year. With respect the reports concerning allied health providers, the civil penalty is $500 for the first occurrence in a calendar year and $1,000 for any subsequent occurrence in a calendar year. A reporting entity can seek judicial review of the board's decision.

Regulation .07 provides that a report made to the board is not subject to subpoena or discovery in any civil action other than a proceeding arising out of a hearing and the final disposition of the board or a disciplinary panel.

Regulation .08 governs public notice of a failure to file a report and disposition. The regulation specifies that the notice of failure to file a report and any final disposition are public documents. The notice and disposition must redact (1) the name of a patient and any other patient identifying information and (2) records of a health care provider's or a naturopathic doctor's physical, mental, or emotional condition except to the extent necessary to identify the deficient practice or condition that caused an entity to make a change.

Regulation .09 provides immunity under § 5-715(d) of the Courts Article for giving any information required under §§ 14-413, 14-414, 14-5A-18, 14-3B-15, 14-5C-18, 14-5E-18, 14-5F-19, or 15-103.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The Department of Health and Mental Hygiene cites §§ 14-413, 14-414, 14-5A-18, 14-5B-15, 14-5C-18, 14-5E-18, 14-5F-18 and 15-103 of the Health Occupations Article as statutory authority for the regulations. Sections 14-413 and 14-414 require hospitals, related institutions and alternative health systems to file certain reports to the board regarding physicians and individuals in postgraduate training programs and authorize the board to adopt regulations to define changes in employment or privileges that require reporting and actions by licensees that are grounds for discipline and that require reporting under the sections. Sections 14-5A-18, 14-5B-15, 14-5C-18, 14-5E-18, and 15-103 require certain persons to report certain information to the board. The citation to § 14-5F-18 is incorrect. The section that requires certain persons to report certain information regarding naturopathic doctors is § 14-5F-19.

Although not cited by the department § 14-205(a)(2) of the Health Occupations Article also needs to be cited as authority. Section 14-205(a)(2) requires the board to adopt regulations to carry out Titles 14 and 15 of the Health Occupations Article.

With the addition of § 14-205(a)(2) and the reference to § 14-5F-19, this authority is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

In response to suggestions from the Department of Legislative Services, staff for the board agrees to make the following changes to the regulations:

- adding § 14-205(a)(2) of the Health Occupations Article as statutory authority for the regulations;

- substituting the reference to § 14-5F-19 of the Health Occupations Article for the incorrect reference to § 14-5F-18 in the citation of statutory authority for the regulations;

- alter the circumstances under which reporting the entrance into an alcohol or drug treatment program by an allied health provider is not required;

- removing Regulation .09 as unnecessary because the immunity provisions of the Courts Article only apply reports made under §§ 14-413 and 14-414 of the Health Occupations; and

- making several technical corrections to Regulation .02B(5), Regulation .03C, Regulation .04A, Regulation .07.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The department advises that the regulations clarify reporting requirements for hospitals, alternative health systems, and other specified reporting entities under the Maryland Medical Practice Act; therefore, there is no fiscal impact. The Department of Legislative Services concurs.

Additionally, the regulations implement provisions of Chapter 401 of 2013 (House Bill 1096), which aligned civil fine provisions regarding reporting requirements for alternative health systems with those for hospitals. The regulations also implement provisions of Chapters 153 and 399 of 2014 (Senate Bill 314 and House Bill 402), which established reporting requirements for naturopathic doctors. Any fiscal impact has already been assumed under the fiscal and policy notes for that legislation.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The department advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

Contact Information

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