

CULLEN ACT Requirements and Protections

The State of New Jersey Health Care Professional Responsibility and Reporting Act (also known as Chapter 83 or more commonly as the Cullen Act) (the “Act”), was enacted in July of 2005 in response to the news accounts of Charles Cullen, a nurse who confessed to killing at least 29, and as many as 40, patients under his care while working at several hospitals in New Jersey and Pennsylvania. Cullen was able to move from hospital to hospital for 16 years in spite of a questionable employment record.

The objective of the Act is to facilitate the sharing of information about health care professionals who may present a risk of harm to patients. The Act protects New Jersey health care entities by allowing them to report the impairment, incompetence, negligence and professional misconduct of health care professionals to the New Jersey Division of Consumer Affairs or other health care entities without the fear of legal reprisal by the health care professional at issue. The Act pertains to both health care entities as well as healthcare professionals employed by said entities.

Home care services agencies, such as Homecare Options, are included in the definition of a health care entity under the Act.

Healthcare professionals are defined as:

“Individuals, whether paid or unpaid, licensed or authorized to practice a healthcare profession regulated by the Division of Consumer Affairs and other professional and occupational licensing boards including physicians, podiatrists, nurses, pharmacists, physical, occupational and respiratory therapists, nurses aides and personal assistants, psychologists, psychoanalysts, social workers, professional counselors, drug and alcohol counselors, speech and language pathologists, optometrists, opticians, dentists, orthotics and prosthetic providers, marriage and family therapists, veterinarians and chiropractors, ophthalmic dispensers and ophthalmic technicians, audiologists, and acupuncturists.”

Summary

1. Health care entities and health care professionals must notify the New Jersey Division of Consumer Affairs in the Department of Law and Public Safety (DCA) when they have information regarding the incompetence or negligence of a health care worker which would endanger patients.
2. Health care entities must report to other health care entities disciplinary actions taken against an employee for professional misconduct, improper

patient care or other actions that negatively affect the health care professional's ability to treat patients.

3. Criminal background checks are required of health care professionals who apply for licensure or license renewal.

Notification and reporting requirements are limited to **professional** deficiencies which directly relate to patient care and safety, such as impairment, incompetence or professional misconduct. They do **not** include personal misconduct and poor performance such as tardiness, insubordination, harassment of co-workers, theft or similar behavior.

Specific Requirements

HomeCareOptions Notification Requirements

1. With respect to a healthcare professional who is either employed by, under contract to render professional services to, has privileges granted by HomeCare Options, or who provides services pursuant to an agreement with a healthcare services firm or staffing registry, HomeCare Options must notify DCA in writing if, for reasons relating to impairment, incompetency or professional misconduct which relates adversely to patient care or safety, one of the following events occur:

The healthcare professional has had full or partial privileges summarily or temporarily revoked or suspended, or permanently reduced, suspended or revoked;

The healthcare professional has been removed from the list of eligible employees of a health services firm or staffing agency;

The healthcare professional has been discharged;

The healthcare professional has had a contract to render professional services terminated or rescinded;

The healthcare professional has had conditions or limitations placed on his/her exercise of clinical privileges or practice including, but not limited to, limitations with respect to second opinion requirements, non-routine concurrent or retrospective review of admissions or care, non-routine supervision by one or more members of the staff, or the completion of remedial education or training;

The healthcare professional has voluntarily resigned or has relinquished any partial privilege or authorization to perform a specific procedure if the healthcare professional's conduct is being reviewed by the healthcare entity or the healthcare entity has expressed an intention to do such a review;

While under, or subsequent to, a review by the healthcare entity of the healthcare professional's patient care or professional conduct, is granted a leave of absence relating to a physical, mental or emotional condition or drug or alcohol use which impairs the healthcare professional's ability to practice with reasonable skill and safety. (No report is required for pregnancy-related leaves of absence or if the healthcare professional has sought assistance from a professional assistance or intervention program approved or designated by the division or a board to provide confidential oversight of the healthcare professional, and is following the treatment regimen or monitoring as that program requires.

2. HomeCare Options shall notify DCA in writing about all malpractice lawsuits resolved by settlement, judgment or arbitration award in which both the healthcare professional and HomeCareOptions are parties.

3. HomeCare Options shall notify DCA in writing if it is in possession of information that indicates that a healthcare professional has failed to comply with a request to seek assistance from a professional assistance or intervention program approved or designated by DCA or a licensing board to provide confidential oversight of the healthcare professional, or has failed to follow the treatment regimen or monitoring program required by that program.

4. HomeCare Options shall notify DCA in writing if any healthcare professional who has been the subject of a report to DCA has had conditions or limitations on the exercise of clinical privileges or practice within the healthcare entity altered, or privileges restored, or has resumed exercising clinical privileges that had been voluntarily relinquished.

5. HomeCare Options, pursuant to an agreement with a healthcare services firm or staffing agency regarding a healthcare professional, shall provide a copy of the notice to the healthcare services firm or staffing agency, when the notice is submitted to DCA.

6. HomeCare Options shall provide the healthcare professional who is the subject of a notice to DCA a copy of the notice provided to DCA, when the notice is submitted to the DCA.

7. HomeCare Options shall notify DCA within seven days of the date of the reportable action, settlement, judgment or arbitration award, including such information as may be required by DCA.

Healthcare Professionals *Notification Requirements*

1. HomeCare Options' healthcare professionals shall promptly notify DCA if they have information that another professional has demonstrated impairment, gross incompetence or unprofessional conduct, which would present an imminent danger to an individual patient, the public health, safety or welfare. (No notification is required if knowledge of the other healthcare professional's impairment or incompetence was obtained from treating the professional.)

2. HomeCare Options' healthcare professionals shall inform HomeCare Options, if they have information that another professional has demonstrated impairment, gross incompetence or unprofessional conduct which would present an imminent danger to an individual patient, the public health, safety or welfare. The obligation to report this information to HomeCare Options is in addition to the requirement to report this information to DCA.

Exchange of Information between HomeCareOptions and Other Healthcare Entities

1. Upon inquiry, HomeCare Options shall inform other healthcare entities if it has submitted any notices to DCA, Medical Practitioner Review Panel, or professional or occupational licensing board within the prior seven years preceding the inquiry about a healthcare professional. HomeCare Options will provide the other entity with a copy of the notification and any supporting documentation that was submitted to DCA, Medical Practitioner Review Panel, or professional or occupational licensing board.

2. Upon inquiry, HomeCare Options shall provide information about a current or former employee's job performance as it relates to patient care and the reasons for the former employee's separation. The job performance information shared shall relate to the suitability of the employee for re-employment at a healthcare entity, and the employee's skills and abilities as they relate to suitability for future employment at a healthcare entity. The job performance information will be based on the employee's performance evaluation and provided to another healthcare entity only under the following conditions:

- a. The evaluation has been signed by the evaluator and shared with the employee;
- b. The employee has had the opportunity to respond; and

c. The employee's response has been taken into consideration when providing information to another healthcare entity.

Maintenance of Records

1. HomeCare Options shall maintain all records of all disciplinary proceedings or actions involving affiliated or employed healthcare professionals as well as all documented complaints of patient care-related incidents for a seven (7) years.

2. HomeCare Options shall maintain for a period of four (4) years all records and source data relating to mortality, morbidity, complication, infection and readmission.

3. Upon request, HomeCare Options shall make such information available to DCA, the professional's licensing board, the Medical Practitioner Review Panel and the Department of Health and Senior Services (DHSS).

Criminal History Background Checks

Professional boards require criminal history background checks as a condition of initial licensure and prior to renewal of licenses. All such professionals must have submitted to a background check no later than four (4) years from the effective date of the Act, or by October 2009 in accordance with the process mandated by the New Jersey Division of Consumer Affairs. If a licensed professional fails to affect the background check, his/her license shall not be renewed. (Refer to the Division of Consumer Affairs at <http://www.njconsumeraffairs.gov/chbcfaq.htm> for information on the background checks.)

Sanctions

Failure to comply with the provisions of the Act may subject HomeCare Options and its healthcare professionals to possible disciplinary action and civil penalties and cause HomeCareOptions to be subject to penalties as determined by the DHSS or DCA

Any individual who violates any provision of this policy may be subject to discipline up to and including termination.

Suggests and Observation

1. HomeCare Options should designate a single individual responsible for notifying DCA or licensing boards as required by this policy and the Act and to receive reports from HomeCare Options healthcare professionals.

2. A procedure should be set up governing the exchange of information between healthcare entities (reference checks) designating an individual to be responsible for responding to reference checks.

3. The Event Reporting Form can be found online and should be used by all HomeCare Options designees and healthcare professionals responsible for notifying DCA and/or licensing boards in order to be in compliance with this policy and the Act and by the Department of Human Resources in responding to reference checks. To access the Event Reporting Form: go to www.njconsumeraffairs.gov, click on the reference to the Act on the left. The form can be obtained by clicking on the fifth item on the page.

4. The best source of practical information on meeting the requirements of the Act is other health care entities or associations.

5. There has been criticism of the Cullen Act, principally with respect to (1) the 7 day notification requirement as too short a period of time; (2) the lack of clear guidelines; and (3) the fact that the requirements persist even if the healthcare professional has been investigated and cleared of any wrongdoing.