

HEALTH

HEALTH SYSTEMS BRANCH

DIVISION OF CERTIFICATE OF NEED AND LICENSING

OFFICE OF CERTIFICATE OF NEED AND HEALTHCARE FACILITY LICENSURE

Rules Implementing the Health Care Professional Responsibility and Reporting Enhancement Act

Proposed New Rules: N.J.A.C. 8:30

Authorized By: Cathleen D. Bennett, Acting Commissioner, Department of Health, in consultation with Elizabeth Connolly, Acting Commissioner, Department of Human Services and with the approval of the Health Care Administration Board.

Authority: N.J.S.A. 26:2H-12.2a and 2b; and the Health Care Professional Responsibility and Reporting Enhancement Act, P.L. 2005, c. 83 (approved May 3, 2005), particularly at § 19b (N.J.S.A. 45:1-41).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2016-053.

Submit written comments by June 17, 2015, electronically to <http://www.nj.gov/health/legal/ecomments.shtml> or by regular mail to:

Joy L. Lindo, Director
Office of Legal and Regulatory Compliance
Office of the Commissioner
NJ Department of Health
PO Box 360

Trenton, NJ 08625-0360

The agency proposal follows:

Summary

The Department of Health (Department) is proposing new rules at N.J.A.C. 8:30, Rules Implementing the Health Care Professional Responsibility and Reporting Enhancement Act, to implement P.L. 2005, c. 83 (approved May 3, 2005), the Health Care Professional Responsibility and Reporting Enhancement Act (Act). The Act directs the Division of Consumer Affairs in the Department of Law and Public Safety (Division) and the Department to adopt rules to implement the requirements of the Act. N.J.S.A. 45:1-41. Specifically, the Act requires the Department to prescribe the form of notification that health care entities are required to file containing information regarding health care professionals and to prescribe penalties for health care entities that fail to comply with the Act. N.J.S.A. 26:2H-12.2b.e and .f. The proposed new rules would direct health care entities to the Division's applicable requirements and would establish requirements and penalties by which the Department would ensure compliance.

Proposed new N.J.A.C. 8:30-1.1 would provide the purpose and scope of the chapter, which is to implement the Act as it applies to health care entities.

Proposed new N.J.A.C. 8:30-1.2 would establish definitions of terms proposed for use in the chapter. Subsection (a) would establish that the proposed new rules would use the following terms as the Act defines them: "board," "Division," "health care entity," "health care professional," and "licensee." Subsection (b) would establish definitions of the following terms: "Clearing House Coordinator," "facility," and "Medical Practitioner Review Panel." The Act defines the term "entity" to include health care facilities licensed

by the Department pursuant to the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq. and institutions licensed by other State agencies. The Department is proposing to establish a separate definition of the the term, “facility,” to create a distinction between the health care facilities the Department licenses pursuant to the Health Care Facilities Planning Act, and institutions the Department regulates in a limited capacity pursuant to the Act.

Proposed new N.J.A.C. 8:30-1.3 would establish reporting requirements for health care entities. Subsection (a) would require health care entities to comply with the notification requirements at N.J.A.C. 13:45E-3.1. Subsection (b) would require health care entities to use the report required pursuant to N.J.A.C. 13:45E-5.1 when providing notification to the Clearing House Coordinator. Subsection (c) would require health care entities to cooperate with information requests from the Division, a board or the Medical Practitioner Review Panel. Subsection (d) would require health care entities to comply with N.J.A.C. 13:45E-3.3 in executing a joint report with a healthcare professional to the Clearing House Coordinator. Subsection (e) would require health care entities to comply with N.J.A.C. 13:45E-4.1 by providing a copy of a report submitted to the Clearing House Coordinator to a healthcare professional who is the subject of the report. Subsection (f) would require health care entities to provide a copy of the notice submitted to the Clearing House Coordinator to a staffing agency or healthcare services firm when the health care professional who is the subject of the notice is providing services to the health care entity pursuant to a contract with a staffing agency or health care services firm.

Proposed new N.J.A.C. 8:30-1.4 would establish procedures applicable to facilities that address inquiries about health care professionals and responses thereto. Subsection

(a) would require facilities making inquiries pursuant to N.J.S.A. 26:2H-12.2.c and N.J.A.C. 13:45E-6.1 to use the Health Care Facility Inquiry Regarding Health Care Professional form, to be incorporated by reference into the rule as N.J.A.C. 8:30 Appendix. Subsection (b) would allow a health care entity to use the Health Care Facility Inquiry Regarding Health Care Professional form in making inquiries to facilities and health care entities. Subsection (c) would require facilities responding to validly executed inquiries made pursuant to N.J.S.A. 26:2H-12.2.c and N.J.A.C. 13:45E-6.1 to respond thereto within eight days of receipt of a validly executed request. Subsection (d) would require facilities to respond to requests made pursuant to N.J.S.A. 26:2H-12.2.c and N.J.A.C. 13:45E-6.1 by health care entities other than facilities by means of a validly executed writing other than the form at Chapter 30 Appendix in accordance with the section, to use the form to respond, and to attach the writing or a copy thereof to the form.

Proposed new N.J.A.C. 8:30-1.5 would address the maintenance of records and disciplinary actions and would track the requirements of the Act. Subsection (a) would require the maintenance, for seven years after an occurrence, of all documented complaints of events related to patient care provided by, and records of disciplinary proceedings or actions against, a health care professional whom an entity has employed and/or with whom the entity has had an affiliation. Subsection (b) would identify the State entities to which the entity must provide access to these records. Subsection (c) would require an entity to maintain all records and source data relating to the entity's mortality, morbidity, complication, infection, and readmission for the preceding four years and would identify the State entities to which the entity must provide access to these records. Paragraph (c)¹ would make records subject to subsection (c) subject to the seven-year

retention requirement in subsection (a) if the records relate to a specific health care professional.

Proposed new N.J.A.C. 8:30-1.6 would establish penalties for violations of N.J.A.C. 8:30.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed new rules would have a beneficial social impact on health care entities and the public. Health care entities, like other employers, may shed problem employees without disclosing to prospective new employers that the employee was a problem employee. The proposed new rules would require health care entities, including health care facilities that the Department licenses, to comply with the standards at N.J.A.C. 13:45E for reporting health care professionals and disclosing information requested from an inquiring entity.

The proposed new rules, implementing the Act, in conjunction with the rules at N.J.A.C. 13:45E, would protect the public through a system designed to identify health care professionals whose conduct may adversely affect patient care.

Economic Impact

The Department expects that the proposed new rules would have minimal economic impact on the public because they would not impose any additional direct costs on the State budget. The proposed new rules would not have an economic impact on patients. The proposed new rules would have an economic impact on the Department,

which would incur staffing and administrative expenses to address violations of the rules. The proposed new rules would have an economic impact on health care entities, which would incur staffing, administrative, and recordkeeping expenses in order to comply, and penalties in the event of noncompliance. The Department is without sufficient information and experience in the implementation of this new law to estimate the costs of staffing, administrative, and recordkeeping expenses. The incurrence of penalties would depend on the nature of the offense as it relates to the penalty scale and amounts at proposed new N.J.A.C. 8:30-1.6.

Federal Standards Statement

There are no Federal standards applicable to the proposed new rules. Therefore, no Federal standards analysis is required.

Jobs Impact

The Department does not anticipate that the proposed new rules would result in an increase or decrease in the number of jobs available in the State.

Agriculture Industry Impact

The proposed new rules would not have an impact on the agriculture industry.

Regulatory Flexibility Analysis

The proposed new rules would impose reporting, recordkeeping, and compliance requirements on health care entities. Some of these health care entities are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The Summary above describes the reporting, recordkeeping, and compliance requirements that the proposed new rules would impose on health care entities. The Economic Impact above describes the potential costs associated with compliance.

The Department does not anticipate that the proposed new rules would require small businesses that would be subject thereto to retain the services of professionals to comply.

The proposed new rules would not impose lesser or differing standards based on business size. The proposed new rules would establish standards that would be consistent, and the minimum standards necessary to comply, with the Act. The Act does not grant the Department discretion to impose lesser or differing standards based on business size, but rather requires uniform application of the Act, and the rules promulgated pursuant thereto, to all health care entities, regardless of business size.

Housing Affordability Impact Analysis

The proposed new rules would have an insignificant impact on the affordability of housing in New Jersey and there is an extreme unlikelihood that the proposed new rules would evoke a change in the average costs associated with housing because the rules only affect health care entities.

Smart Growth Development Impact Analysis

The proposed new rules would have an insignificant impact on smart growth and there is an extreme unlikelihood that the proposed new rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules only affect health care entities.

Full text of the proposed new rules follows:

CHAPTER 30

RULES IMPLEMENTING THE HEALTH CARE PROFESSIONAL RESPONSIBILITY AND REPORTING ENHANCEMENT ACT

SUBCHAPTER 1. RULES IMPLEMENTING THE HEALTH CARE PROFESSIONAL RESPONSIBILITY AND REPORTING ENHANCEMENT ACT

8:30-1.1 Purpose and scope

(a) This chapter implements the Health Care Professional Responsibility and Reporting Enhancement Act, P.L. 2005, c. 83 (approved May 3, 2005), and is to apply consistent with N.J.A.C. 13:45E.

(b) This chapter applies to all health care entities.

8:30-1.2 Definitions

(a) The following words and terms are defined in the Act at P.L. 2005, c. 83 at §§ 2 and/or 4 (N.J.S.A. 26:2H-12.2b and/or 45:1-28) and are used in this chapter as defined in the

Act:

“Board”;

“Division”;

“Health care entity”;

“Health care professional”; and

“Licensee.”

(b) The following words and terms, as used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Act” means the Health Care Professional Responsibility and Reporting Enhancement Act, P.L. 2005, c. 83 (approved May 3, 2005).

“Clearing House Coordinator” means a “Health Care Professional Information Clearinghouse Coordinator” as N.J.S.A. 45:1-40 uses that term, and a “Clearing House Coordinator” as N.J.A.C. 13:45E defines that term.

“Facility” means a health care facility licensed pursuant to N.J.S.A. 26:2H-1 et seq.

“Medical Practitioner Review Panel” or “review panel” means the Medical Practitioner Review Panel established pursuant to N.J.S.A. 45:9-19.8.

8:30-1.3 Reporting requirements

(a) A health care entity shall comply with the requirements of N.J.A.C. 13:45E-3.1 for notification to the Clearing House Coordinator.

(b) A health care entity shall use the form of report required pursuant to N.J.A.C. 13:45E-5.1 when providing notification to the Clearing House Coordinator.

(c) A health care entity shall cooperate with a request for information by the Division, a board, or the Medical Practitioner Review Panel.

(d) A health care entity shall comply with N.J.A.C. 13:45E-3.3 by executing a joint report to the Clearing House Coordinator with a healthcare professional.

(e) A health care entity shall comply with N.J.A.C. 13:45E-4.1 by providing a copy of a report filed with the Clearing House Coordinator to the health care professional who is the subject of the report.

(f) A health care entity shall provide a copy of the notice submitted to the Clearing House Coordinator in accordance with (a) above to a staffing agency or healthcare services firm

when the health care professional who is the subject of the notice is providing services to the health care entity pursuant to a contract with a staffing agency or health care services firm.

8:30-1.4 Inquiry using, and response to, a Health Care Facility Inquiry Regarding Health Care Professional form; response time; response to non-form written requests

(a) A facility inquiring about a healthcare professional pursuant to N.J.S.A. 26:2H-12.2c and N.J.A.C. 13:45E-6:

1. Shall use the Health Care Facility Inquiry Regarding Health Care Professional form, CN-9, incorporated herein by reference as N.J.A.C. 8:30 Appendix and available from the Department's website at www.nj.gov/health/forms (inquiry form), in making an inquiry to another facility; and

2. May use the inquiry form in making inquiries to health care entities other than facilities.

(b) A health care entity may use the inquiry form in making inquiries to facilities and health care entities.

(c) A facility that receives a validly executed inquiry form from any health care entity shall complete and return the form and any other information required pursuant to N.J.S.A. 26:2H-12.2c and N.J.A.C. 13:45E-6.1 to the inquiring health care entity within eight business days of receipt of the inquiry form.

(d) A facility that receives a validly executed written request for information about a health care professional pursuant to N.J.S.A. 26:2H-12.2c and N.J.A.C. 13:45E-6.1 from a health care entity other than a facility by means of a writing made other than by use of

the inquiry form shall respond to the request using the inquiry form in accordance with this section and attach the written request or a copy thereof to the inquiry form.

8:30-1.5 Maintenance of records of complaints and disciplinary actions

(a) Unless another applicable law requires retention for a longer period, in which case (d) below shall apply, a health care entity shall maintain and retain, for seven years from the date of the occurrence that triggered the creation of the record, all records of all documented complaints of events related to patient care provided by, and disciplinary proceedings or actions against, a health care professional:

1. Whom the health care entity employs and/or has employed; and/or
2. With whom the health care entity has and/or has had an affiliation.

(b) A health care entity shall make available to the Department, the Division, the board that licenses or otherwise authorizes the health care professional to practice, and the Medical Practitioner Review Panel, as applicable, upon request, records maintained and retained pursuant to (a) above, including records the entity has pertaining a health care professional created prior to January 12, 1990 (the effective date of the Professional Medical Conduct Reform Act of 1989, P.L. 1989, c. 300).

(c) Unless another applicable law requires retention for a longer period, in which case (d) below shall apply, a health care entity shall maintain and retain, for four years from the date of the occurrence that triggered the creation of the record, all records and source data relating to the entity's mortality, morbidity, complication, infection, and readmission rates and shall make the records available to the Department, the Division, the board that

licenses or otherwise authorizes the health care professional to practice, and the Medical Practitioner Review Panel, as applicable, upon request, provided:

1. A health care entity shall retain, in accordance with (a) above, records of the nature described in (c) above that relate to a specific health care professional.

(d) If another applicable law requires retention for a longer period than as provided in this section, that law shall control.

8:30-1.6 Civil monetary penalties

(a) Pursuant to N.J.S.A. 26:2H-12.2b, health care entities are subject to the following penalties for failing to comply with this chapter:

1. \$500.00 per violation, which the Department may assess for each day of noncompliance it finds, for failing to notify the Clearing House Coordinator or failing to comply with a request for information from the Division or the Medical Practitioner Review Panel, as required by N.J.A.C. 8:30-1.3(b);

2. \$250.00 per violation for failing to comply with N.J.A.C. 8:30-1.3(c);

3. \$1,000 per violation for failing to comply with N.J.A.C. 8:30-1.3(d);

4. \$250.00 per violation, which the Department may assess for each day of noncompliance it finds, for failing to respond in a timely and/or truthful manner to an inquiry submitted pursuant to N.J.A.C. 8:30-1.4;

5. \$500.00 per violation, which the Department may assess for each day of noncompliance it finds, for failing to comply with a request for records submitted pursuant to N.J.A.C. 8:30-1.5; and

6. Up to \$1,000 per violation for failing to maintain the records as required by N.J.A.C. 8:30-1.5.

APPENDIX

**HEALTH CARE FACILITY INQUIRY
REGARDING HEALTH CARE PROFESSIONAL**

**SECTION I. INQUIRY
(To be completed by inquiring health care facility)**

Date of Inquiry: _____

Inquiring Health Care Facility:

Facility Name: _____

Address: _____

Contact: _____ Phone: _____

Email Address: _____ Fax Number: _____

Receiving Health Care Facility:

Name: _____

Address: _____

Contact (if known): _____ Phone (if known): _____

Email Address (if known): _____ Fax Number: _____

Name of Health Care Professional: _____

Maiden Name/Other Name(s) Used: _____

Professional License or Certification Number: _____

Certification pursuant to N.J.A.C. 13:45E-6.1(a):

I certify that I am making this inquiry for the purpose of evaluating a health care professional for *(check all that apply)*:

Hiring Continued employment Continued privileges

Name *(print)*: _____

Title *(print)*: _____

Signature: _____ Date: _____

**SECTION II. RESPONSE
(To be completed by receiving health care facility)**

Date Inquiry Received: _____ Date Response Sent: _____

Name of Health Care Professional *(if different from name provided above in Section I. Inquiry)*: _____

Title(s) of Position(s) Held: _____

Dates Employed: From: _____ To: _____

Did the health care professional receive a performance evaluation from the receiving facility?

No: If "No," do not complete the rest of this form. Sign and date the form at Section II.

Yes: If "Yes," complete the rest of this form.

Attach a copy of the health care professional's performance evaluation when returning this form to the inquiring facility **only if**:

- (1) the evaluation has been signed by the evaluator and shared with the health care professional;
- (2) the health care professional has had the opportunity to respond; and
- (3) the health care professional's response, if any, is being taken into consideration in completing this inquiry form.

**HEALTH CARE FACILITY INQUIRY REGARDING HEALTH CARE PROFESSIONAL
(Continued)**

If the health care professional is no longer employed or holds privileges at the receiving health care facility, state the reason for the separation of the health care professional from employment and/or the cessation of the health care professional's privileges at the receiving health care facility (*attach additional sheets if necessary*):

Provide information about the health care professional's job performance as it relates to patient care (*see instructions*) (*attach additional sheets if necessary*):

Is the health care professional eligible for re-employment by the receiving health care facility?

- Yes No

During the seven years preceding the date of this inquiry, have you submitted any report about this health care professional to (*check all that apply*):

- the Clearinghouse Coordinator within the division pursuant to N.J.S.A. 26:2H-12.2b;
 the Medical Practitioner Review Panel pursuant to N.J.S.A. 26:2H-12.2a; or
 any Board.

Attach copies of reports and any supporting documentation submitted to these entities when returning this form to the inquiring facility.

Is the report pending acceptance or rejection by the Clearinghouse Coordinator?

- Yes No

I certify that the foregoing statements made by me are truthful and made in good faith and without malice. I am aware that if any of the foregoing statements made by me are untruthful, made in bad faith, and/or with malice, I am subject to punishment and the receiving health care facility is subject to penalties pursuant to N.J.S.A. 26:2H-12.2c and N.J.A.C. 8:30-1.6.

Name (*print*): _____

Title (*print*): _____

Signature: _____ Date: _____

INSTRUCTIONS FOR COMPLETING THE HEALTH CARE FACILITY INQUIRY REGARDING HEALTH CARE PROFESSIONAL FORM

1. Purpose of form

The Health Care Facility Inquiry Regarding Health Care Professional form is to be used by a health care **facility** (inquiring **facility**) licensed by the Department of Health to make an inquiry to another health care **facility** licensed by the Department (receiving **facility**) about a **health care professional** who is currently or was formerly employed by the receiving **facility** pursuant to the Health Care Professional Responsibility and Reporting Enhancement Act, P.L. 2005, c.83 (approved May 3, 2005) ("Act"), particularly § 15, codified at N.J.S.A. 26:2H-12.2c, and the implementing rules at N.J.A.C. 8:30 and N.J.A.C. 13:45E ("rules"). A **health care entity** other than a facility, as defined below, may elect to use this form to inquire of a **facility or a health care entity**. **Facilities** that receive an inquiry from any **health care entity** shall reply using this form. When a word or term used in these instructions appears in **bold**, it refers to a term for which a definition is provided in Section 2 below.

2. Definitions

Following are definitions of words and terms used in the form as defined in the Act and/or the rules.

- "**Board**" means a professional and occupational licensing board within the **Division** of Consumer Affairs in the Department of Law and Public Safety which licenses or otherwise authorizes a health care professional to practice a health care profession.
- "**Clearinghouse Coordinator**" means a "Health Care Professional Information Clearinghouse Coordinator" as N.J.S.A. 45:1-40 uses that term, and a "Clearing House Coordinator" as N.J.A.C. 13:45E defines that term.
- "**Division**" means the Division of Consumer Affairs in the Department of Law and Public Safety.
- "**Facility**" means a health care facility licensed pursuant to P.L.1971, c.136 (N.J.S.A. 26:2H-1 et seq.).
- "**Health care entity**" means a health care **facility** licensed pursuant to P.L.1971, c.136 (C.26:2H-1 et seq.), a health maintenance organization authorized to operate pursuant to P.L.1973, c.337 (C.26:2J-1 et seq.), a carrier which offers a managed care plan regulated pursuant to P.L.1997, c.192 (C.26:2S-1 et seq.), a State or county psychiatric hospital, a State developmental center, a staffing registry, and a home care services agency as defined in section 1 of P.L.1947, c.262 (C.45:11-23).
- "**Health care professional**" means a person licensed or otherwise authorized pursuant to Title 45 or Title 52 of the Revised Statutes to practice a health care profession that is regulated by the Director of the **Division** of Consumer Affairs or by one of the following boards: the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Dentistry, the New Jersey State Board of Optometrists, the New Jersey State Board of Pharmacy, the State Board of Chiropractic Examiners, the Acupuncture Examining Board, the State Board of Physical Therapy, the State Board of Respiratory Care, the Orthotics and Prosthetics Board of Examiners, the State Board of Psychological Examiners, the State Board of Social Work Examiners, the State Board of Veterinary Medical Examiners, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Audiology and Speech-Language Pathology Advisory Committee, the State Board of Marriage and Family Therapy Examiners, the Occupational Therapy Advisory Council and the Certified Psychoanalysts Advisory Committee. "Health care professional" also includes a nurse aide and a personal care assistant certified by the Department of Health[].
- "**Medical Practitioner Review Panel**" or "**review panel**" means the Medical Practitioner Review Panel established pursuant to N.J.S.A. 45:9-19.8.
- "**Report**" means the completed written notification form used by a **health care entity** or a **health care professional** to notify the **Division's Health Care Professional Information Clearing House Coordinator** of the types of reportable conduct set forth in the Act[.]

**INSTRUCTIONS FOR COMPLETING THE
HEALTH CARE FACILITY INQUIRY REGARDING HEALTH CARE PROFESSIONAL FORM
(Continued)**

3. Obligations of inquiring and receiving facilities pursuant to the Act:

A. N.J.A.C. 8:30-1.4 requires a receiving **facility** to return the completed Health Care Facility Inquiry Regarding Health Care Professional form and any other information required pursuant to N.J.A.C. 13:45E-6.1 to the inquiring **health care entity** within eight business days of receipt of the inquiry form. A **facility** that fails to return the completed form and any other required documentation to the inquiring entity within eight business days of receipt of the inquiry form is subject to penalties pursuant to N.J.A.C. 8:30-1.6.

B. The Act at § 15 (N.J.S.A. 126:2H-12.2c) provides as follows:

26:2H-12.2c Disclosure of information by **health care entity**.

15. a. A **health care entity**, upon the inquiry of another **health care entity**, shall truthfully:

(1) disclose whether, within the seven years preceding the inquiry, it provided any notice to the **division** pursuant to section 2 of P.L.2005, c.83 (C.26:2H-12.2b), or to the **review panel**, as required by section 3 of P.L.1989, c.300 (C.26:2H-12.2a), with respect to the **health care professional** about whom the inquiry has been made, providing a copy of the form of notification and any supporting documentation that was provided to the **division**, a professional or occupational licensing board in the Division of Consumer Affairs in the Department of Law and Public Safety, or the **review panel**; and

(2) provide information about a current or former employee's job performance as it relates to patient care, as provided in this section, and, in the case of a former employee, the reason for the employee's separation.

b. For the purposes of this section, "job performance" shall relate to the suitability of the employee for re-employment at a **health care entity**, and the employee's skills and abilities as they relate to suitability for future employment at a **health care entity**.

Information about a current or former employee's job performance pursuant to this paragraph shall be

- based on the employee's performance evaluation, and
- provided to another health care entity only if:
 - (1) the evaluation has been signed by the evaluator and shared with the employee;
 - (2) the employee has had the opportunity to respond; and
 - (3) the employee's response, if any, has been taken into consideration when providing the information to another health care entity.

Job performance as it relates to patient care shall not include the current or former employee's participation in labor activities pursuant to the "National Labor Relations Act," 29 U.S.C. s.151 et seq.

c. A **health care entity**, or any employee designated by the entity, which, pursuant to this section, provides information in good faith and without malice to another **health care entity** concerning a **health care professional**, including information about a current or former employee's job performance as it relates to patient care, is not liable for civil damages in any cause of action arising out of the provision or reporting of the information.

d. A **health care entity** which fails to truthfully disclose information to another **health care entity** making an inquiry pursuant to this section or fails to cooperate with such request for information by the other **health care entity** shall be subject to such penalties as the Department of Health ... may determine pursuant to sections 13 and 14 of P.L.1971, c.136 (C.26:2H-13 and 26:2H-14) and section 16 of P.L.1997, c.192 (C.26:2S-16), or the director shall determine pursuant to P.L.1989, c.331 (C.34:8-43 et seq.), as applicable.