



Requirements Imposed on Hospitals, Other Health Care
Institutions and Organizations, and Assisted Living Facilities
to Report Disciplinary Actions Against, Allegations of
Misconduct by, and Impairment of Certain Health Care
Practitioners to
The Virginia Department of Health Professions or
The Office of Licensure and Certification of
The Virginia Department of Health

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Requirements Imposed on Hospitals, Other Health Care Institutions and Organizations, and Assisted Living Facilities to Report Disciplinary Actions Against, Allegations of Misconduct by, and Impairment of Certain Health Care Practitioners to the Virginia Department of Health Professions or the Office of Licensure and Certification of the Virginia Department of Health

I. Requirements of § 54.1-2400.6 (Code of Virginia)

§ 54.1-2400.6. Hospitals, other health care institutions, home health and hospice organizations, and assisted living facilities required to report disciplinary actions against and certain disorders of health professionals; immunity from liability; failure to report.

A. The chief executive officer and the chief of staff of every hospital or other health care institution in the Commonwealth, the director of every licensed home health or hospice organization, the director of every accredited home health organization exempt from licensure, the administrator of every licensed assisted living facility, and the administrator of every provider licensed by the Department of Behavioral Health and Developmental Services in the Commonwealth shall report within 30 days, except as provided in subdivision 1, to the Director of the Department of Health Professions, or in the case of a director of a home health or hospice organization, to the Office of Licensure and Certification at the Department of Health (the Office), the following information regarding any person (i) licensed, certified, or registered by a health regulatory board or (ii) holding a multistate licensure privilege to practice nursing or an applicant for licensure, certification or registration unless exempted under subsection E:

1. Any information of which he may become aware in his official capacity indicating a reasonable belief that such a health professional is in need of treatment or has been voluntarily admitted as a patient, either at his institution or any other health care institution, for treatment of substance abuse or a psychiatric illness that may render the health professional a danger to himself, the public or his patients. If such health care professional has been involuntarily admitted as a patient, either in his own institution or any other health care institution, for treatment of substance abuse or a psychiatric illness, the report required by this section shall be made within five days of the date on which the chief executive officer, chief of staff, director, or administrator learns of the health care professional's involuntary admission.

2. Any information of which he may become aware in his official capacity indicating a reasonable belief, after review and, if necessary, an investigation or consultation with the appropriate internal boards or committees authorized to impose disciplinary action on a health professional, that a health professional may have engaged in unethical, fraudulent or unprofessional conduct as defined by the pertinent licensing statutes and regulations. The report required under this subdivision shall be submitted within 30 days of the date that the chief executive officer, chief of staff, director, or administrator determines that such reasonable belief exists.

3. Any disciplinary proceeding begun by the institution, organization, facility, or provider as a result of conduct involving (i) intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, (ii) professional ethics, (iii) professional incompetence, (iv) moral turpitude, or (v) substance abuse. The report required under this subdivision shall be submitted within 30 days of the date of written communication to the health professional notifying him of the initiation of a disciplinary proceeding.

4. Any disciplinary action taken during or at the conclusion of disciplinary proceedings or while under investigation, including but not limited to denial or termination of employment, denial or termination of privileges or restriction of privileges that results from conduct involving (i) intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, (ii) professional ethics, (iii) professional incompetence, (iv) moral turpitude, or (v) substance abuse. The report required under this subdivision shall be submitted within 30 days of the date of written communication to the health professional notifying him of any disciplinary action.

5. The voluntary resignation from the staff of the health care institution, home health or hospice organization, assisted living facility, or provider, or voluntary restriction or expiration of privileges at the institution, organization, facility, or provider, of any health professional while such health professional is under investigation or is the subject of disciplinary proceedings taken or begun by the institution, organization, facility, or provider or a committee thereof for any reason related to possible intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, medical incompetence, unprofessional conduct, moral turpitude, mental or physical impairment, or substance abuse.

Any report required by this section shall be in writing directed to the Director of the Department of Health Professions or to the Director of the Office of Licensure and Certification at the Department of Health, shall give the name, address, and date of birth of the person who is the subject of the report and shall fully describe the circumstances

surrounding the facts required to be reported. The report shall include the names and contact information of individuals with knowledge about the facts required to be reported and the names and contact information of individuals from whom the hospital or health care institution, organization, facility, or provider sought information to substantiate the facts required to be reported. All relevant medical records shall be attached to the report if patient care or the health professional's health status is at issue. The reporting hospital, health care institution, home health or hospice organization, assisted living facility, or provider shall also provide notice to the Department or the Office that it has submitted a report to the National Practitioner Data Bank under the Health Care Quality Improvement Act (42 U.S.C. § 11101 et seq.). The reporting hospital, health care institution, home health or hospice organization, assisted living facility, or provider shall give the health professional who is the subject of the report an opportunity to review the report. The health professional may submit a separate report if he disagrees with the substance of the report.

This section shall not be construed to require the hospital, health care institution, home health or hospice organization, assisted living facility, or provider to submit any proceedings, minutes, records, or reports that are privileged under § 8.01-581.17, except that the provisions of § 8.01-581.17 shall not bar (i) any report required by this section or (ii) any requested medical records that are necessary to investigate unprofessional conduct reported pursuant to this subtitle or unprofessional conduct that should have been reported pursuant to this subtitle. Under no circumstances shall compliance with this section be construed to waive or limit the privilege provided in § 8.01-581.17. No person or entity shall be obligated to report any matter to the Department or the Office if the person or entity has actual notice that the same matter has already been reported to the Department or the Office.

B. The State Health Commissioner, Commissioner of Social Services, and Commissioner of Behavioral Health and Developmental Services shall report to the Department any information of which their agencies may become aware in the course of their duties that a health professional may be guilty of fraudulent, unethical, or unprofessional conduct as defined by the pertinent licensing statutes and regulations. However, the State Health Commissioner shall not be required to report information reported to the Director of the Office of Licensure and Certification pursuant to this section to the Department of Health Professions.

C. Any person making a report by this section, providing information pursuant to an investigation or testifying in a judicial or administrative proceeding as a result of such report

shall be immune from any civil liability alleged to have resulted therefrom unless such person acted in bad faith or with malicious intent.

D. Medical records or information learned or maintained in connection with an alcohol or drug prevention function that is conducted, regulated, or directly or indirectly assisted by any department or agency of the United States shall be exempt from the reporting requirements of this section to the extent that such reporting is in violation of 42 U.S.C. § 290dd-2 or regulations adopted thereunder.

E. Any person who fails to make a report to the Department as required by this section shall be subject to a civil penalty not to exceed \$25,000 assessed by the Director. The Director shall report the assessment of such civil penalty to the Commissioner of Health, Commissioner of Social Services, or Commissioner of Behavioral Health and Developmental Services, as appropriate. Any person assessed a civil penalty pursuant to this section shall not receive a license or certification or renewal of such unless such penalty has been paid pursuant to § 32.1-125.01. The Medical College of Virginia Hospitals and the University of Virginia Hospitals shall not receive certification pursuant to § 32.1-137 or Article 1.1 (§ 32.1-102.1 et seq.) of Chapter 4 of Title 32.1 unless such penalty has been paid.

II. Persons subject to being reported under § 54.1-2400.6

Subject to being reported are (i) those licensed, certified or registered by a health regulatory board, (ii) any applicant for such licensure, certification or registration, and (iii) those holding a multistate license privilege to practice nursing. Those practitioners include:

Board of Audiology/Speech Language Pathology: audiologists; speech-language pathologists

Board of Counseling: marriage and family therapists; professional counselors; licensed substance abuse treatment practitioners; certified rehabilitation providers; certified substance abuse counselors; certified substance abuse counseling assistants; registered qualified mental health provider; registered peer recovery specialists; residents in counseling, marriage and family therapy or substance abuse treatment

Board of Dentistry: dentists; oral and maxillofacial surgeons; dental hygienists; dental assistants II

Board of Funeral Directors and Embalmers: funeral service licensees; funeral directors; funeral embalmers; funeral trainees

Board of Medicine: doctors of medicine, including interns and residents; doctors of osteopathic medicine; chiropractors; podiatrists; physician assistants; radiologic technologists; radiologic technologists, limited; radiologist assistants; respiratory therapists; occupational therapists; occupational therapy assistants; acupuncturists; licensed athletic trainers; licensed midwives; polysomnographers; licensed behavioral analysts; licensed assistant behavioral analysts; genetic counselors; surgical assistants; surgical technologists

Board of Nursing: registered nurses; licensed practical nurses; nurse practitioners; licensed massage therapists; certified nurse aides; advanced certified nurse aides; registered medication aides

Board of Long Term Care Administrators: nursing home administrators; assisted living facility administrators; administrators-in-training

Board of Optometry: optometrists

Board of Pharmacy: pharmacists; pharmacist interns; pharmacy technicians

Board of Physical Therapy: physical therapists; physical therapist assistants

Board of Psychology: applied psychologists; clinical psychologists; school psychologists; school psychologist-limited; certified sex offender treatment providers

Board of Social Work: clinical social workers; master's social workers; baccalaureate social workers

Board of Veterinary Medicine: veterinarians; veterinary technicians; equine dental technicians

III. Specific Guidance Concerning Required Reports

A. What is meant by “hospital, other health care institution, or assisted living facility”?

For the purpose of reporting requirements, “hospital, other health care institutions or assisted living facilities” should be taken to mean:

1. General hospitals;
2. Outpatient surgical hospitals;
3. Mental or psychiatric hospitals, including, for the purposes of Va. Code § 54.1-2400.6, every facility and training center operated by the Virginia Department of Behavioral Health and Developmental Services;
4. Hospitals operated by the University of Virginia and Virginia Commonwealth University;
5. Hospitals known by varying nomenclature or designation such as sanatoriums, sanitariums, acute, rehabilitation, chronic disease, short-term, long-term, and inpatient or outpatient maternity hospitals;

6. Nursing homes and certified nursing facilities; and
7. Assisted living facilities licensed by the Department of Social Services.

For these purposes, physician offices and group medical practices are not intended to be included in the terms, “hospital and other health care institution.” This list, however, is not exclusive and other entities not included may be subject to the reporting requirement contained in Virginia Code § 54.1-2400.6.

B. What is meant by “home health organization”?

For the purpose of reporting requirements, “home care organization” is defined as any public or private organization, whether operated for profit or not for profit, that provides, at the residence of a patient or individual in the Commonwealth of Virginia, one or more of the following services. *See Va. Code § 32.1-162.7:*

1. Home health services, including services provided by or under the direct supervision of any health care professional under a medical plan of care in a patient’s residence on a visit or hourly basis; to patients who have or are at risk of injury, illness, or a disabling condition and require short-term or long-term interventions. *See Va. Code § 32.1-162.7;*
2. Personal care services, including assistance in personal care to include activities of daily living provided in an individual’s residence on a visit or hourly basis to individuals who have or are at risk of an illness, injury or disabling condition. *See Va. Code § 32.1-162.7* or
3. Pharmaceutical services, including services provided in a patient’s residence, which include the dispensing and administration of a drug or drugs, and parenteral nutritional support, associated patient instruction, and such other services as identified by the Board of Health by regulation. *See Va. Code § 32.1-162.7.*

“Residence” may be, in addition to a person’s own home or the home of a relative, an assisted living facility, but does not include a hospital, nursing facility or nursing home, or other extended care facility. *See Va. Code § 32.1-162.7.*

C. What is meant by “hospice organization”?

For the purpose of reporting requirements, “hospice organization” should be taken to mean an administrative group, individual or legal entity that has a distinct organizational structure, accountable to the governing authority directly or through a chief executive officer, that administers a coordinated program of home and inpatient care providing palliative and supportive medical and other health services to terminally ill patients and their families. *See Va. Code § 32.1-162.1.*

D. Who must be reported?

Under Virginia Code § 54.1-2400.6, reports are to be made regarding practitioners subject to regulation by any of the health regulatory boards. Those practitioners include:

1. Any person licensed, certified, or registered by a health regulatory board,
2. Any applicant for licensure, certification, or registration, and
3. Any person holding a multistate licensure privilege to practice nursing under the interstate Nurse Licensure Compact.

E. What must be reported?

Reporting is required any time that a CEO, COS, ALF administrator, or home health or hospice director becomes aware in their official capacity that:

1. Any information indicating a reasonable belief that such a health professional is in need of treatment or has been voluntarily admitted as a patient, either at his institution or any other health care institution, for treatment of substance abuse or a psychiatric illness that may render the health professional a danger to himself, the public or his patients. In addition, reporting is required if a health professional has been involuntarily admitted as a patient, either in his own institution or any other health care institution, for treatment of substance abuse or a psychiatric illness. *See Va. Code § 54.1-2400.6(A)(1).*
2. Any information indicating a reasonable belief, after review and, if necessary, an investigation or consultation with the appropriate internal boards or committees authorized to impose disciplinary action on a health professional, that a health professional may have engaged in unethical, fraudulent or unprofessional conduct as defined by the pertinent licensing statutes and regulations. *See Va. Code § 54.1-2400.6(A)(2).*
3. Any disciplinary proceeding begun by the institution, organization, facility, or provider as a result of conduct involving (i) intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, (ii) professional ethics, (iii) professional incompetence, (iv) moral turpitude, or (v) substance abuse. *See Va. Code § 54.1-2400.6(A)(3).*
4. Any disciplinary action taken during or at the conclusion of disciplinary proceedings or while under investigation, including but not limited to denial or termination of employment, denial or termination of privileges or restriction of privileges that results from conduct involving (i) intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, (ii) professional ethics, (iii) professional incompetence, (iv) moral turpitude, or (v) substance abuse. *See Va. Code § 54.1-2400.6(A)(4).*
5. The voluntary resignation from the staff of the health care institution, home health or hospice organization, assisted living facility, or provider, or voluntary restriction or expiration of privileges at the institution, organization, facility, or provider, of any health professional while such health professional is under investigation or is the subject of disciplinary proceedings taken or begun by the institution, organization, facility, or provider or a committee thereof for any reason related to possible intentional or negligent conduct that causes or is likely to cause injury to a patient or patients, medical incompetence, unprofessional conduct, moral turpitude, mental or physical impairment, or substance abuse. *See Va. Code § 54.1-2400.6(A)(5).*

F. What specific information is required in reports?

Pursuant to Virginia Code § 54.1-2400.6(A), reports shall be in writing and shall include:

1. The name, address, and date of birth of the person who is the subject of the report;
2. A full description of the circumstances surrounding the facts required to be reported;
3. Names and contact information of individuals with knowledge about the facts required to be reported;
4. Names and contact information of individuals from whom the hospital or health care institution sought information to substantiate the facts required to be reported;
5. All relevant medical records if patient care or the health professional's health status is at issue; and
6. If relevant, notice to the Board that it has submitted a report to the National Practitioner Data Bank under the Health Care Quality Improvement Act, 42 U.S.C. § 11101, *et seq.*

G. When must reports be made?

Pursuant to Virginia Code § 54.1-2400.6(A), reports must generally be made **within 30 days** of any of these triggering events:

a. The date a CEO, COS, administrator, or director becomes aware that a practitioner regulated by any health regulatory board is in need of treatment for substance abuse, or a psychiatric illness that may render such health professional a danger to himself, the public or his patients, including voluntary admission of a practitioner for treatment of substance abuse or a psychiatric illness.

b. The date a CEO, COS, administrator, or director determines that there is a reasonable probability that a practitioner regulated by any health regulatory board may have engaged in unethical, fraudulent or unprofessional conduct, as defined in the relevant licensing statutes and regulations.

c. The date of written communication to a practitioner notifying him of a disciplinary proceeding for reportable conduct.

d. The date of written communication to a practitioner notifying him of a disciplinary action for reportable conduct.

e. The date of a practitioner's resignation, restriction or expiration of privileges while under investigation or subject to disciplinary proceedings for reportable conduct.

Reports must be made within 5 calendar days when any practitioner regulated by any health regulatory board has been **involuntarily admitted** as a patient for the treatment of substance abuse or a psychiatric illness. *See Va. Code § 54.1-2400.6(A)(1).*

H. To whom must reports be made?

1. Reports by hospital CEOs and COS and ALF administrators should be made to the Director of the Virginia Department of Health Professions, 9960 Mayland Drive, Suite 300, Henrico, Virginia 23233; FAX (804) 527-4434; email: director@dhp.virginia.gov.

2. Reports by home health and hospice organizations should be made to the Office of Licensure and Certification, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Henrico, Virginia 23233; FAX (804) 527-4502; email: OLC-Complaints@vdh.virginia.gov.

I. What information should not or need not be reported or disclosed?

1. Medical records or information learned or maintained about a practitioner in connection with an alcohol or drug prevention function that is conducted, regulated, or directly or indirectly assisted by any federal department or agency if reporting would violate 42 U.S.C. § 290dd-2 or related regulations. *See Va. Code § 54.1-2400.6(D)*.

2. Privileged information: hospitals, other health care institutions and assisted living facilities are not required to submit any “proceedings, minutes, records, or reports that are privileged under § 8.01-581.17.” *Va. Code § 54.1-2400.6(A)(5)*. The provisions of that section shall not, however, bar the making of a report as required by Virginia Code § 54.1-2400.6, nor the production of any requested medical records necessary to investigate unprofessional conduct by any licensed health practitioner. *See Va. Code § 54.1-2400.6(A)(5)*.

3. When a required reporter has actual notice that the report has already been made, another such report is not required. *Va. Code § 54.1-2400.6(A)(5)*.

NOTE: A report to the National Practitioner Data Bank does not constitute “actual notice” to DHP or OLC.

J. How does the Department of Health Professions investigate complaints of noncompliance of § 54.1-2400.6?

1. Personnel and medical records are reviewed from allegedly reportable incidents. The investigator confirms that the individual was a licensee of the Department at the time of incident and that the facility documented that the individual was a health care provider.

2. The non-reporting facility is notified of the complaint, usually via letter sent to the individual responsible for reporting per the statute (e.g., CEO, Chief of Staff, Director of Home Health or Hospice, etc.).

3. In the letter to the facility, the facility is asked to respond to the failure to report allegation (i.e., rationale for decision not to report; awareness of conduct and related required reporting law). The response may be collected via letter, email, phone call or personal visit.

4. The facility is asked if it has an existing reporting policy, and if the policy was in place at the time of the event, and to produce the policy (or any reporting policies that were produced subsequent to the failure to report).

5. If relevant, witnesses to the failure to report and related circumstances are also interviewed.

