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A BILL  
23-269

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To amend the Health-Care and Community Residence Facility, Hospice and Home Care License Act of 1983 to require a health professional to submit to a board, commission or authority responsible for licensing, registering or certifying the health professional within 10 business days' notice of a malpractice judgment, confidential settlement, or that the health professional has been convicted of a crime, to require a health professional employer to submit notice to a board, commission or authority responsible for licensing, registering, or certifying the health professional information regarding sanctions imposed on an employee, within 10 business days after the sanction, to authorize the Mayor to fine a health professional or health professional employer in a tiered manner up to \$10,000 for failure to comply with the reporting requirement, and to provide immunity to health professional employers from civil liability for good faith reporting; to amend the Prescription Drug Monitoring Program Act of 2013 to require mandatory registration by all physicians, advanced practice nurses, dentists, physician assistants, veterinarians, optometrists, naturopathic physicians and pharmacists within 90 days after becoming licensed under the Act or prior to renewal, and to require the Health Occupations Boards to ensure that a practitioner or dispenser is registered with the prescription drug monitoring program before renewing, reactivating, or reinstating a license; and to amend the Department of Health Functions Clarification Act of 2001 to clarify the regulation of cottage food.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

That this act may be cited as the "Health Care Reporting Amendment Act of 2020."

Sec. 2. The Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501 *et seq.*), is amended as follows:

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35 (a) Section 2(a) (D.C. Official Code § 44-501(a)) is amended as follows:

36 (1) New paragraphs (11), (12), (13), and (14) are added to read as follows:

37 “(11) “Assisted living residence” shall have the same meaning as provided in  
38 section 201(4) of the Assisted Living Residence Act of 2000, effective June 24, 2000 (D.C.  
39 Law13-127; D.C. Official Code§ 44-102.01(4)).

40 “(12) “Health professional” means a person licensed, registered, certified,  
41 or permitted to practice a health occupation regulated by a licensing board in the District of  
42 Columbia.

43 “(13) “Health professional’s employer” means any entity, including a  
44 facility, agency, assisted living residence, private office, health care provider, or group home, in  
45 the District of Columbia, that employs health professionals or utilizes the services of a health  
46 professional who is contracted with a third party or is self-employed, including those engaged in  
47 the practice of pharmacy.

48 “(14) “Professional incompetence” means a health professional's unfitnes to  
49 continue in the person's health profession, or to provide one or more services ordinarily provided  
50 as part of the profession, as demonstrated by:

51 “(A) A lack of knowledge, skill, or judgment; or

52 “(B) Disregard for the welfare of a patient or client.”.

53 (b) Section 9 (D.C. Official Code § 44-508) is amended as follows:

54 (1) Subsection (a) is amended to read as follows:

55           "(a)(1) A health professional shall submit a report notifying the board, commission, or  
56 authority responsible for licensing, registering, or certifying the health professional within 10  
57 business days after:

58                           "(A) The health professional:

59                                   "(i) Has been named in a malpractice suit and received notice of a  
60 judgment against him or her in that suit;

61                                   "(ii) Is party to a confidential settlement stemming from a  
62 malpractice claim to be paid by the health professional, an insurer, or other entity on behalf of  
63 the health professional; provided, that the health professional shall not include in a report any  
64 details required by the settlement to be kept confidential; or

65                                   "(iii) Has been convicted of a crime; or

66                           "(B) The health professional obtains knowledge that a health care  
67 licensing authority of another state has taken disciplinary action against him or her."

68           “(2) Consistent with paragraph (1) of this subsection, nothing in a confidential  
69 settlement agreement between a health professional, the insurer of the health professional, or  
70 other entities acting on behalf of the health professional and another person shall operate to  
71 prevent the parties to that agreement from filing a complaint with the board, commission, or  
72 authority responsible for licensing, registering or certifying the health professional, or from  
73 testifying in any investigation conducted by the board, commission, or authority responsible for  
74 licensing, registering, or certifying the health professional."

75 (2) A new subsection (a-1) is added to read as follows:

76 "(a-1) A health professional's employer shall submit a report notifying the board,  
77 commission, or authority responsible for licensing, registering, or certifying a health professional  
78 within 10 business days after:

79 "(1) The health professional's employer has:

80 "(A) Reduced, suspended, revoked, or not renewed the health  
81 professional's clinical privileges;

82 "(B) Involuntarily terminated or restricted the health professional's  
83 employment or staff membership; or

84 "(C) Asked the health professional to resign because the health  
85 professional's conduct has been determined to be in violation of section 514 of the District of  
86 Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99;  
87 D.C. Official Code § 3-1205.14); or

88 "(2) The health professional has voluntarily resigned, or has been asked by the  
89 health professional employer to resign, while being investigated by the health professional  
90 employer for conduct in violation of section 514 of the District of Columbia Health Occupations  
91 Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-  
92 1205.14)."

93 (3) Subsection (b) is amended by striking the phrase "subsection (a) of this  
94 section shall not apply to a temporary suspension or relinquishment of privileges or

95 responsibilities if a health professional enters and successfully completes a prescribed program  
96 of education or rehabilitation. As soon as there exists no reasonable expectation that he or she  
97 will enter and successfully complete such a prescribed program, the facility or agency shall  
98 submit a report forthwith pursuant to subsection (a)” and inserting the phrase “subsection (a-1) of  
99 this section shall not apply to a temporary suspension or relinquishment of privileges or  
100 responsibilities if a health professional enters and successfully completes a prescribed program  
101 of education or rehabilitation. As soon as there exists no reasonable expectation that he or she  
102 will enter and successfully complete such a prescribed program, the health professional’s  
103 employer shall submit a report forthwith pursuant to subsection (a-1)” in its place.

104 (4) New subsections (c), (d), (e), and (f) are added to read as follows:

105 "(c) The reports required by subsections (a) and (a-1) of this section shall be sent by  
106 registered or certified mail, with return receipt requested, or sent by a courier service,  
107 commercial carrier, personal service, or to a secure email address created by the Department.

108 "(d) In computing the 10 business-day reporting period in subsections (a) and (a-1) of this  
109 section, the day of the action or event that gave rise to the requirement to send the report shall  
110 not be counted. The last day of the 10-day period shall be counted unless it is a Saturday,  
111 Sunday, legal holiday, or day on which the Department of Health is officially closed, in which  
112 event the 10-day period shall continue until the next day that is not a Saturday, Sunday, legal  
113 holiday, or day on which the Department of Health is officially closed.

114 "(e) The reporting required by subsections (a) and (a-1) of this section shall not act as a

115 waiver of confidentiality of medical records and committee reports. Records reported and  
116 obtained under this section shall remain confidential and shall not be disclosed, except as  
117 otherwise authorized or required by law. The records shall be used by the board, commission, or  
118 authority responsible for licensing, registering or certifying the health professional in the  
119 exercise of their functions and shall be made available to the public only as required by the  
120 Freedom of Information Act of 1976, effective March 25, 1977 (D.C. Law 1-96; D.C. Official  
121 Code § 2-531 *et seq.*).

122 “(f) Any health professional employer, or employee of such employer, participating in  
123 good faith in the making of a report pursuant to this act shall have immunity from liability,  
124 administrative, civil, and criminal, that might otherwise be incurred or imposed with respect to  
125 the making of the report. The same immunity shall extend to participation in any judicial  
126 proceeding involving the report. In all administrative, civil, or criminal proceedings concerning  
127 the employee resulting from the report, there shall be a rebuttable presumption that the maker of  
128 the report acted in good faith.”.

129 (b) Section 10(e) (D.C. Official Code § 44-509(e)) is amended by adding a new paragraph  
130 (1A) to read as follows:

131 "(1A)(A) For health professional or health professional’s employer that fails to  
132 comply with the reporting requirements set forth in section 9, the Mayor may impose a civil fine  
133 not to exceed \$2,500 for the first incident, \$5,000 for the second incident, and \$10,000 for any  
134 violations occurring thereafter.

135                   "(B) In a proceeding to determine whether a health professional or health  
136 professional's employer has complied with the requirements of section 9, or in a proceeding  
137 challenging the imposition of a fine for failure to comply with the requirements of section 9, the  
138 health professional or health professional's employer shall have the burden of proving that the  
139 report was sent to the board, commission, or authority through one of the methods of service  
140 identified in section (9)(c) of this act if the board, commission, or authority states that it has not  
141 received the report."

142           Sec. 3. Section 513a of the District of Columbia Health Occupations Revision Act of  
143 1985, effective March 14, 2007 (D.C. Law 6-99; D.C. Official Code § 3-1205.13a), is repealed.

144           Sec. 4. The Prescription Drug Monitoring Program Act of 2013, effective April 11, 2019  
145 (D.C. Law 22-288; D.C. Official Code § 48-853.01 *et seq.*) is amended as follows:

146           (a) Section 4a (D.C. Official Code § 48-853.03a) is repealed.

147           (b) A new section 4b is added to read as follows:

148           "Sec. 4b. Registration requirement for practitioners and dispensers.

149           “(a) Any practitioner who is licensed, registered, or otherwise permitted to prescribe,  
150 distribute, dispense, conduct research with respect to, or to administer a controlled substance or  
151 other covered substance in the course of his or her professional practice, and any dispenser who  
152 is licensed in the District of Columbia to dispense a controlled substance or other covered  
153 substance to an ultimate user, his or her agent, or owner in the case of animals, shall be  
154 registered with the Program.

155           “(b) Beginning 90 days after enactment of the Prescription Drug Monitoring Program  
156 Amendment Act of 2020, as approved by the Committee on Health on January 29, 2020 (Bill 23-  
157 269), each practitioner or dispenser who is required to be registered with the Program, pursuant  
158 to subsection (a) of this section, shall register with the Program within 90 days of obtaining a  
159 new health professional license or before renewing an existing health professional license,  
160 whichever occurs first.

161           “(c) The Health Occupations Boards shall not approve a practitioner or dispenser, who is  
162 required to be registered with the Program pursuant to subsection (a) of this section, for  
163 reinstatement, reactivation, or renewal of licensure without proof that the practitioner or  
164 dispenser has registered with the Program as required.

165           “(d) Failure to timely register with the Program shall constitute grounds for disciplinary  
166 action by the relevant health occupations board pursuant to section 514(c) of the District of  
167 Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99;  
168 D.C. Official Code § 3-1205.14(c)), and the imposition of civil fines pursuant to section 104 of  
169 the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective  
170 October 5, 1985 (D.C. Law 6-42, D.C. Official Code § 2-1801.01 *et seq.*)”.

171           Sec. 5. Section 4931(3) of the Department of Health Functions Clarification Act of 2001,  
172 effective January 25, 2014 (D.C. Law 20-63; D.C. Official Code § 7-742.01 *et seq.*), is amended  
173 by striking the phrase “direct to consumers within the District of Columbia” and inserting the



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174 phrase “to consumers, including through direct, retail, and online sales, within the District of  
175 Columbia” in its place.

176           Sec. 6. Fiscal impact statement.

177           The Council adopts the fiscal impact statement in the committee report as the fiscal  
178 impact statement required by section 4a of the General Legislative Procedures Act of 1975,  
179 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

180           Sec. 7. Effective date.

181           This act shall take effect following approval by the Mayor (or in the event of veto by the  
182 Mayor, action by the Council to override the veto), a 30-day period of congressional review as  
183 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December  
184 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of  
185 Columbia Register.