



white paper

**NEW JERSEY'S
FINAL "CULLEN"
REGULATION
AND UPDATED
"CULLEN FORM"**



Overview

On December 14, 2003, Charles Cullen confessed to intentionally killing as many as 40 patients who were under his care over the span of his 16-year nursing career at several hospitals across Pennsylvania and New Jersey.

Cullen was able to jump from working at one hospital to another, despite a questionable employment record, numerous accounts of suspicious behavior and a history of mental instability.

In response to the Cullen case, then-New Jersey Governor Richard Codey signed the Health Care Professional Responsibility and Reporting Enhancement Act ("Cullen Law") into law, requiring New Jersey healthcare entities to notify the New Jersey Division of Consumer Affairs ("Division") about any employed healthcare professional's

impairment, incompetence or professional misconduct relating to patient safety, as well as to inquire with other healthcare entities about the disciplinary and employment records of current or prospective healthcare professionals within their own organizations.¹

What is an entity's inquiry obligation under the Cullen Law?

All healthcare entities licensed by the New Jersey Department of Health ("Department") are required to use a designated form to make an inquiry to other healthcare entities licensed by the Department (responding facility) about a healthcare professional who is currently or was formerly employed by, and/or who holds or formerly held privileges at the responding entity, prior to employing such an individual.

¹<http://www.njconsumeraffairs.gov/Pages/hcreporting.aspx>

The Cullen Law further requires “a health care entity that receives an inquiry from another health care entity concerning a health care professional to truthfully disclose whether, within the seven years preceding the inquiry, it provided any notice about the individual to the Division under the Cullen Law, or to the Medical Practitioner Review Panel. The health care entity also must provide to the inquiring entity a copy of the form of notification and any supporting documentation that was provided with it. In addition, the health care entity must provide information about a current or former employee’s job performance as it relates to patient care, and in the case of a former employee, the reason for the employee’s separation from the entity.”² Facilities that receive an inquiry from any healthcare entity must respond using the Department’s designated form, even if the inquiry was not made using the form (so long as the inquiry included all the information required by the Cullen Law).

A healthcare entity making an inquiry to another healthcare entity about a healthcare professional must furnish to that entity a written certification that the inquiry is made for the purpose of evaluating a healthcare professional for hiring, continued employment or continued privileges (see N.J.A.C. 13:45E-6.1). This is part of the revisions made to the updated inquiry form as further discussed below.

² Gregory M. Fliszar, ‘Nurse Cullen’ Legislation Requires NJ Health Care Entities to Report Incompetence and Negligence, Pepper Hamilton LLP 2 (July 2005), available at <http://www.pepperlaw.com/uploads/files/hc0705.pdf>.

Who does the “Cullen” law affect?

The Cullen Law affects any New Jersey healthcare entity hiring a healthcare professional in New Jersey. Under the law, “healthcare entity” includes, but is not limited to, hospitals, ambulatory care facilities, long term care facilities, and health maintenance organizations.

What is the impact of the new form released in May 2017?

On May 15, 2017, the Department adopted [a new regulation](#) implementing the Cullen Law. The new regulation includes an [updated CN-9 Form](#), titled “Health Care Facility Inquiry Regarding Health Care Professional” (“Cullen Form”), that now requires facilities to make a signed certification pursuant to N.J.A.C. 13:45E-6.1(a), stating the purpose for the inquiry (e.g. hiring, granting privileges, continuing employment, continuing privileges).

In response to a question on whether the Department contemplates that the inquiring facility may utilize an outside entity to make inquiries (such as reference checks) to other healthcare facilities, the [Department’s Summary of Public Comments and Agency Responses](#) stated the following: “The Department does not contemplate [this delegation]. The Health Care Professional Responsibility and Reporting Enhancement Act does not authorize health care entities to delegate their responsibilities to report to the Clearinghouse Coordinator or to make or respond to inquiries to health care entities.”

Additionally, during a [webinar the Department held on June 28, 2017](#), through the New Jersey Hospital Association (NJHA), the Department responded to several questions on whether a third party can assist



facilities with processing the Cullen Form by stating that the statute requires the inquiry to be sent by a healthcare entity to another healthcare entity, and the Cullen Form can never be used or processed by a third party (including a background check company). The Department further clarified that the background check company is permitted to conduct the rest of the background check, but cannot assist facilities with the Cullen Form.

What are the penalties for non-compliance by a requesting or responding health care facility?

As previously noted, N.J.A.C. 8:30-1.4 requires a facility that receives, from another healthcare entity, a duly executed Cullen Form to complete and return the form and any other documentation required pursuant to N.J.A.C. 13:45E-6.1 to the inquiring healthcare entity within eight business days of receipt.

Healthcare entities and their employees who provide information in good faith and without malice to another healthcare entity concerning a healthcare professional are not liable for civil damages in any cause of action arising out of the provision or reporting of the information.

However, a healthcare entity that fails to truthfully disclose information to an inquiring entity, or fails to return the completed form and any other required documentation to the inquiring healthcare entity within eight business days of receipt of the form is subject to penalties of \$250 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. The responding entity may also face fines of \$500 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, as well as up to \$1,000 per violation for failing to maintain the records as required by N.J.A.C. 8:30-1.5 (see N.J.A.C. 8:30-1.6).

Conclusion

All New Jersey healthcare entities would be well-advised to review the Cullen Law, as well as the Department's recently promulgated regulations, to ensure full compliance. Entities should also ensure that they are using the newly released version of the Cullen Form and that this form is being sent directly from one healthcare entity to another. ■