STATE OF NEW YORK

485--A

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sen. KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to requiring certain health care providers to disclose the fact that the provider is on probation to current and new patients

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The education law is amended by adding a new section 6511-a to read as follows:

§ 6511-a. Disclosure of probationary status. (1) The provisions of this section shall apply to any person licensed to practice a health care profession, and who provides direct patient care, under the following articles of this title: one hundred thirty-one (medicine), one hundred thirty-one-B (physician assistants), one hundred thirty-one-C (specialist assistants), one hundred thirty-two (chiropractic), one hundred thirty-three (dentistry, dental hygiene, and registered dental assisting), one hundred thirty-four (licensed perfusionists), one hundred thirty-six (physical therapy and physical therapist assistants), one hundred thirty-seven (pharmacy), one hundred thirty-seven-A (registered pharmacy technicians), one hundred thirty-nine (nursing), one hundred forty (professional midwifery practice), one hundred forty-one (podiatry), one hundred forty-three (optometry), one hundred fifty-three (psychology), one hundred fifty-four (social work), one hundred fifty-five (massage therapy), one hundred fifty-six (occupational therapy), one hundred fifty-seven (dietetics and nutrition), one hundred fifty-nine (speech-language pathologists and audiologists), one hundred sixty (acupuncture), one hundred sixty-two (athletic trainers), one hundred

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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sixty-three (mental health practitioners) and one hundred sixty-four (respiratory therapists and respiratory therapy technicians).

(2) As used in this section:

(a) "licensee" means any person licensed, certified or authorized to practice a health care profession governed by the articles of this title listed in subdivision one of this section and who provides direct patient care;

(b) "health care agent" means a health care agent designated by an adult pursuant to article twenty-nine-C of the public health law;

(c) "health care surrogate" means an individual selected to complete the probation notification form and to decide on behalf of the patient whether or not the patient shall receive care from the licensee on probation; the health care surrogate must be an adult and may be the spouse or domestic partner, a child, a sibling, a parent, or a close friend of the patient; and

(d) "reasonably available" means that a person to be contacted can be contacted with diligent efforts by the licensee, another person acting on behalf of the licensee, or the health care facility.

(3) Except as provided by subdivision five of this section, the board of regents or office of professional misconduct shall require a licensee who has been placed on probation to disclose the following on a separate written document: his or her probationary status; the cause or causes for probation stated in the order issued by the board of regents, the office of professional misconduct, or the court; the length of the probation and the end date; all practice restrictions placed on the licensee by the board of regents, office of professional misconduct, or the court; the address of the office of professional misconduct's or office of the professions enforcement actions' internet website; and the board of regents or office of professional misconduct's telephone number to a current or new patient, or to the patient's guardian, health care surrogate, or health care agent prior to the patient's first visit, or prior to the patient receiving direct care from the licensee following the probationary order and while the licensee is on probation pursuant to a probationary order made on or after January first, two thousand twenty-three, in any of the circumstances listed in paragraph (a), (b), (c) or (d) of this subdivision. Such written disclosure shall be provided to the patient, or to the patient's guardian, health care surrogate, or health care agent in the licensee's office prior to the patient entering the room where the licensee performs the examination, diagnostic testing, procedure, treatment or other direct patient care; or in a hospital, ambulatory care center, or other health care facility prior to the licensee performing any examination, testing, procedure, treatment, or other direct patient care. The licensee shall provide the disclosure under the following circumstances:

(a) The licensee has been placed on probation, as ordered by the board of regents, office of professional misconduct, or the court after being implicated in any of the following:

(i) gross negligence or gross incompetence;

(ii) repeated negligent acts involving a departure from the standard of care with multiple patients;

(iii) drug or alcohol abuse that threatens to impair a licensee's ability to render patient care safely, including practicing under the influence of drugs or alcohol;

(iv) felony or misdemeanor conviction arising from or occurring during patient care or treatment; or

(v) mental illness or other cognitive impairment that impedes a licensee's ability to safely render patient care.

(b) The board of regents, office of professional misconduct, or the court ordered any of the following in conjunction with placing the licensee on probation:

(i) a third-party chaperone shall be present when the licensee examines patients as a result of sexual misconduct;

(ii) the licensee shall submit to drug testing as a result of drug or alcohol abuse; and/or

(iii) the licensee shall have a monitor.

(c) The licensee has not successfully completed a training program or any associated examinations required by the board of regents, office of professional misconduct, or the court as a condition of probation.

(d) The licensee has been on probation more than once.

(4) The licensee shall obtain from each patient, or each patient's guardian, health care surrogate, or health care agent, a signed receipt following the disclosure described in subdivision three of this section that includes a written explanation of how the patient can find further information on the licensee's probation on the applicable office of professional misconduct or office of the professions enforcement actions' internet website.

(5) The licensee shall not be required to provide the disclosure prior to performing an examination, diagnostic testing, procedure, treatment or other direct patient care as required by subdivision three of this section, if in the health care professional's judgment, an emergency exists and the person is in immediate need of medical attention, and an attempt to secure consent would result in delay of treatment which would increase the risk to such person's life or health, or if the patient is incapacitated and the patient's guardian, health care surrogate, or health care agent is not reasonably available.

(6) Should a patient, or the patient's guardian, health care surrogate, or health care agent, elect to cancel the patient's appointment, procedure, diagnostic testing, treatment or other direct patient care with the licensee upon being provided with the disclosure required by subdivision three of this section, neither the patient nor the patient's insurance company shall be charged for the appointment.

(7) Any licensee who violates the provisions of this section shall be subject to a penalty not to exceed two thousand dollars. Any licensee who commits subsequent, willful violations of the provisions of this section shall have his or her license suspended for a period of time to be determined by the board of regents.

(8) The commissioner of health in consultation with the commissioner shall promulgate regulations to implement the requirements of this section, and shall issue forms set forth that shall be used to satisfy the written requirement specified in this section.

§ 2. This act shall take effect January 1, 2023 and shall apply to all probationary orders issued on or after January 1, 2023. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.