STATE OF NEW YORK

7671

2023-2024 Regular Sessions

IN ASSEMBLY

June 1, 2023

Introduced by M. of A. FAHY -- read once and referred to the Committee on Higher Education

AN ACT to amend the public health 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. Subdivision 18 of section 230 of the public health law is amended by adding a new paragraph (c) to read as follows:

(c) (i) As used in this paragraph:

(A) "licensee" means a physician, physician's assistant, or a specialist's assistant licensed under title eight of the education law who provides direct patient care;

(B) "health care representative" means a health care agent designated by an adult pursuant to article twenty-nine-C of this chapter, a health care surrogate selected to make a health care decision on behalf of a patient pursuant to section twenty-nine hundred ninety-four-d of this chapter, a guardian authorized to decide about health care pursuant to article eighty-one of the mental hygiene law, or a guardian appointed pursuant to section seventeen hundred fifty-B of the surrogate's court procedure act; and

(C) "health care" means any treatment, service, or procedure to diagnose or treat an individual's physical or mental condition.

(ii) Except as provided by subparagraph (v) of this paragraph, the office of professional misconduct shall require a physician, physician's assistant or specialist's assistant who has been found to have committed misconduct by the office of professional misconduct or found guilty or liable of an offense in a court of law pursuant to subparagraph (iii) of this paragraph to disclose the following to current or new patients or the patient's health care representative on a separate written document: his or her status with the office of professional misconduct or from a

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

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court of law; the length and expiration date of any penalties associated with such finding of misconduct; the cause or causes for disciplinary action stated in the order issued by the office of professional misconduct or a court of law; all practice restrictions placed on the licensee by the office of professional misconduct or a court of law; the address of the office of professional misconduct's website; and the office of professional misconduct's telephone number. This notice shall be provided prior to the patient's first visit, or prior to the patient receiving health care from the physician, physician's assistant and specialist's assistant following the finding of misconduct by the office of professional misconduct or of guilt or liability by a court of law of an offense in any of the circumstances listed in clause (A), (B), (C) or (D) of subparagraph (iii) of this paragraph. A licensee required to provide a disclosure pursuant to this paragraph shall obtain from the patient, or their health care representative, a separate, signed copy of that disclosure prior to the patient entering the room where the licensee performs the treatment, service, procedure or other direct health care; or in a hospital, ambulatory care center, or other health care facility prior to the licensee performing any treatment, service, procedure or other direct health care.

(iii) The physician, physician's assistant or specialist's assistant shall provide the disclosure under the following circumstances:

(A) The physician, physician's assistant or specialist's assistant has been found to have committed misconduct by the office of professional misconduct or found liable or guilty by a court of law after a determination or stipulated settlement in of any of the following offenses:

(1) the commission of any act of sexual abuse, misconduct, exploitation, or relations with a patient or client as defined in article one hundred thirty, article two hundred thirty, or article two hundred sixty-three of the penal law;

(2) drug or alcohol abuse directly resulting in harm to patients or the extent that such use impairs the ability of the individual to practice safely;

(3) criminal conviction directly involving harm to patient health; or

(4) inappropriate prescribing resulting in harm to patients and a probationary period of five years or more.

(B) The office of professional misconduct or a court of law ordered any of the following regardless if the individual has been placed on probation:

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

(2) the individual shall submit to drug testing as a result of substance abuse.

(C) The individual has not successfully completed a training program or any associated examinations required by the office of professional misconduct or a court of law as a condition of probation.

(D) The individual has been on probation for any offense more than three times.

(iv) The individual shall obtain from each patient, or their health care representative, a signed copy of the disclosure following the disclosure described in subparagraph (iii) of this paragraph that includes a written explanation of how the patient can find further information on the licensee's actions on the office of professional misconduct enforcement actions' website.

(v) The individual shall not be required to provide the disclosure prior to performing any treatment, service, procedure, or other direct

health 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 health care representative is not reasonably available.

(vi) Should a patient, or their health care representative, elect to cancel the patient's appointment, treatment, service, procedure, or other direct health care with the individual upon being provided with the disclosure required by subparagraph (iii) of this paragraph, neither the patient nor the patient's insurance company shall be charged for the appointment.

(vii) Any physician, physician's assistant or specialist's assistant who violates the provisions of this paragraph shall be subject to a penalty not to exceed two thousand dollars. Any individual who commits subsequent, willful violations of the provisions of this paragraph shall have his or her license suspended for a period of time to be determined by the office of professional misconduct.

(viii) The commissioner shall promulgate regulations to implement the requirements of this paragraph, and shall issue forms set forth that shall be used to satisfy the written requirement specified in this paragraph which shall also include:

(A) provisions that address a health care facility's responsibility to ensure the patient receives care from an appropriate individual or to transfer the patient if the patient refuses care from the individual that has been found to have committed misconduct or has been found to be liable or guilty of an offense by a court of law pursuant to subparagraph (iii) of this paragraph and another individual is not available at the health care facility to provide care; and

(B) provisions related to enforcing of the requirements of this paragraph.

§ 2. This act shall take effect January 1, 2024 and shall apply to all probationary orders issued on or after such effective date. 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.