

Mandated Reporting Requirements Frequently Asked Questions

Introduction

On November 7, 2016, the Board promulgated regulations concerning the mandatory reporting by certain entities of occurrences regarding health care providers. On April 18, 2017, a new statute went into effect which modified those requirements somewhat. The frequently asked questions and answers set out here are based on the cumulative effect of those changes.

Note: For brevity's sake, the Board will use here the term "hospital" to indicate the entity that is required to report. The mandatory reporting law, however, is also applicable to nursing homes and to any of the alternative health systems defined in §1-401 of the Health-General Article.

1. Are the six-month reports still required?

No. As of April 18, 2017, hospitals no longer are required to give the Board every six months a list of those who are employed by, have been granted privileges by or who have applied for privileges at the hospital.

2. Do any reporting requirements apply to individuals in postgraduate training programs?

No. These requirements are no longer in effect.

3. Do hospitals still have to report changes made in the employment, contractual relations or privileges of health care professionals?

Yes. The new regulations explicitly define changes that must be reported to the Board within ten days of their occurrence and provide penalties for failing to do so.

4. Do we have to determine if someone may have violated the Maryland Medical Practice Act (the Act) before we can determine whether to report?

No. Hospitals have to report only if they made a "change" and if that change was based in whole or in part of any of the 14 specific reasons listed in Code of Maryland Regulations (COMAR) 10.32.22.03B. These 14 reasons are stated in plain language in that section.

5. But isn't there a 15th reason?

Yes. COMAR 10.32.22.03B(15) covers other actions that "may constitute a violation" of the Act or other applicable laws. This wording is sometimes difficult to interpret. Thus, if the reason is not one of the 14 listed in COMAR 10.32.22.03B (1) to (14), reporting entities should contact Board staff to determine if the underlying reason for the change falls into this 15th category.

6. Is there a step-by-step process by which we can determine when we have to report an action to the Board in a ten-day report?

Yes. First determine if what the hospital did was a "change" according to the regulations. Second, determine if the change was made, in whole or in part, for any of the reasons set out in the regulations. Third, determine if any of the specific exceptions to those reasons apply. If the hospital made a "change" for a reason listed in the regulations, and if none of the exceptions apply, the change must be reported to the Board within ten days.

7. The Board's definition of "change" does not match our hospital's terminology. Which do we apply, our terminology or the definitions in the regulations?

Apply the definitions in the regulations. In developing these regulations, the Board learned that different hospitals use vastly different terminology to describe similar actions. The Board concluded that reliance on any one institution's terminology would result in uneven reporting.

8. How are we to determine if what happened was a leave of absence?

The regulations provide an objective test that does not depend on the terminology used by either the health care provider or the hospital. Any hiatus during which the health care provider does not exercise staff privileges or fulfill the duties of employment or a contract is a leave of absence.

9. How are we to determine if a leave of absence was voluntary or involuntary?

The regulations provide an objective test for determining if leaves of absence are involuntary. It is not necessary to determine anyone's subjective intent. These actions are involuntary if they occur after any of four specified events. These events are listed in the regulations in COMAR 10.32.22.02B(19).

10. How are we to determine if a resignation or an alteration in practice was involuntary?

Again, there are objective tests to determine this. See COMAR 10.32.22.02B(18) for alterations in practice and COMAR 10.32.22.02B(20) for resignations.

11. Do we have to determine if a health care practitioner was “guilty” of malpractice, negligence or any other offense before deciding whether to report?

No. The requirement is to tell the Board what the hospital did, not to characterize the underlying conduct.

12. May we wait until our own investigation is concluded before reporting?

No. The event must be reported within ten days of any change made by the hospital.

13. What if the health care provider has appealed the change made by the hospital? Shouldn't we wait until the outcome of the appeal?

No. Within ten days after the change is made, it must be reported.

14. Is there a list of changes that are automatically non-reportable?

Yes. In COMAR 10.32.22.03C, there is a list of common occurrences that do not have to be reported.

15. If a physician fails to be vaccinated in time and is suspended for 15 days for that reason, must a hospital report this?

No. As long as the cumulative days of suspension imposed solely for the five reasons listed in COMAR 10.32.22.03C(7) do not exceed 30 in a calendar year, that suspension need not be reported.

16. If a physician fails to be vaccinated in time and is suspended for 15 days for that reason, is it permissible for the hospital report this?

Yes. The regulations deal only with what must be reported. They should not be read to imply that any other reporting is prohibited. Hospitals and others are encouraged to report any conduct or condition that may possibly pose a danger to patients.

17. If a medical committee, not the governing body of a hospital, makes a change as defined in these regulations, is this reportable?

Yes. A medical committee, or any other entity within a hospital that makes such decisions, is considered part of the hospital.

18. If there is an adverse incident (such as wrong-site surgery) but the root cause analysis committee of the hospital does not find the health care provider at fault, is that reportable?

Yes, if the hospital made any “change” in the health care provider’s employment, that change is reportable, irrespective of any root cause analysis.

19. Should a hospital report if a new applicant for privileges withdraws the application before the credentials committee considers it?

Yes and no. If the applicant was advised to withdraw the application by anyone in the hospital, this should be reported. If the applicant simply withdrew of his or her own accord and without any suggestion or recommendation by anyone associated with the hospital, this need not be reported. In addition, any withdrawal or denial of an application made for any of the three reasons listed in COMAR 10.32.22.03C(6) need not be reported.

20. Do these same answers apply to naturopathic doctors?

No. With respect to naturopathic doctors, different parties are required to make reports in different circumstances and within different time frames. In the case of naturopathic doctors, please consult the regulations at COMAR 10.32.22.04.

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