NACHC Issue Brief
Updates to the National Practitioner Data Bank

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Updates to the National Practitioner Data Bank

What is the National Practitioner Data Bank?

Established by the Health Care Quality Improvement Act of 1986,[1] the National Practitioner Data Bank (NPDB) is intended as a means of increasing the quality of care by restricting the ability of incompetent physicians and other practitioners to move from state to state without disclosure or discovery of previous medical malpractice payments or adverse actions involving their licensure, clinical privileges, professional society membership, or exclusions from Federal health care programs. Specifically, the NPDB:

- Collects information on medical malpractice payments resulting from settlements and adverse judgments.
- Collects information on adverse licensure, clinical privileging, and professional society membership actions.
- Contains information regarding practitioners who have been declared ineligible to participate in Medicare, Medicaid, and other federal health care programs.

State licensing boards, hospitals and certain health care entities, professional societies, federal agencies, and certain other entities are eligible to report and access (or "query") information in the NPDB, though the extent of each entity's participation varies.

Health centers generally query the NPDB for information about a practitioner's licensure, professional society membership, medical malpractice payment history, and record of clinical privileges as part of the credentialing process required by the Health Resources and Services Administration's (HRSA's) credentialing Policy Information Notices.[2] This information allows health centers to assess the qualifications of applicants for clinical staff positions, as well as to fulfill deeming requirements for coverage under the Federal Tort Claims Act (FTCA).[3]

Once a practitioner is credentialed, if a serious issue about the qualifications or impairment of an existing practitioner arises, health centers may report information to the NPDB. In certain cases, such reporting is mandatory.

The Bureau of Health Professions within HRSA is the government entity responsible for the administration of the NPDB as well as the Healthcare Integrity and Protection Data Bank (HIPDB). The HIPDB is a sister Data Bank to the NPDB designed primarily to combat fraud and abuse by collecting

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[1] 42 U.S.C. §§ 11101-11152.

[2] PIN #2002-22: Clarification of Bureau of Primary Health Care Credentialing and Privileging Policy outlined in Policy Information Notice 2001-16; #2001-16: Credentialing and Privileging of Health Center Practitioners ("The procedures used for credentialing these practitioners [each licensed or certified health care practitioner]… must include a query of the National Practitioner Data Bank").

[3] 42 U.S.C. § 233(h)(2).

information and allowing queries relating to certain final adverse actions taken against health care practitioners and suppliers. [4]

On January 28, 2010, HRSA published a Final Rule addressing changes to the NPDB, which took effect March 1, 2010.[5] The Final Rule includes a series of revisions to the changes originally proposed in the March 21, 2006 Proposed Rule,[6] and is designed to clarify the functions of the NPDB and to modify several definitions in the regulations. The Federal requirements for disclosure and reporting information to the NPDB are set forth in Part 60 of Title 45 of the Code of Federal Regulations.

What are the Changes to the NPDB and How Do They Impact Health Centers?

Querying

Prior to the Final Rule, the NPDB regulations permitted a health center that engaged in professional review activity through a formal peer review process to query the NPDB when entering an employment or affiliation relationship with a physician, dentist, or other health care practitioner, or in conjunction with professional review activities,.[7] A formal peer review process involved “the conduct of professional review activities through formally adopted written procedures which provide for adequate notice and an opportunity for a hearing.”[8]

Information that a health center was able to obtain by request from the NPDB included:

- Medical malpractice payments;
- Licensure actions taken by Boards of Medical Examiners relating to a physician’s or dentist’s professional competence or professional conduct:
  - Which revoked or suspended (or otherwise restricted) a physician’s or dentist’s license;
  - Which censured, reprimanded, or placed on probation a physician or dentist; or
  - Under which a physician’s or dentist’s license was surrendered;
- Adverse actions on clinical privileges and professional society membership; and

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[4] Under the Patient Protection and Affordable Care Act (known as the Health Reform Bill) **the HIPDB will be phased out and all HIPDB data will be transferred to the NPDB, which will be expanded to include this information**.

[5] 75 Fed. Reg. 4656 (Jan. 28, 2010).

[6] On March 21, 2006, HRSA published a Proposed Rule in the Federal Register, 71 Fed. Reg. 14135, designed to amend the NPDB regulations to implement Section 1921 of the Social Security Act, as amended (herein referred to as Section 1921), which expanded the scope of the NPDB to require each state to adopt a system of reporting certain adverse licensure actions taken against health care practitioners and health care entities by the applicable state licensing authority. It also requires each state to report any negative action or finding that a state licensing authority, a peer review organization, or a private accreditation entity has finalized against a health care practitioner or entity.

[7] 45 C.F.R. §§ 60.3; 60.13.

[8] 45 C.F.R. § 60.3. A health center should review its written privileging policy to ensure that it includes adequate notice and opportunity for hearings, a prerequisite to querying the NPDB.

- Medicare/Medicaid exclusions.

Under the Final Rule, health centers that employ a formal peer review process also are able to request certain information now required to be reported by state licensing boards, peer review organizations or private accreditation entities (see the section below on "Reporting" for a full description of that information).

Of particular importance, health centers can now access information regarding adverse licensure actions and negative peer review organization findings and actions against non-physician and non-dentist practitioners, including mid-level providers such as physician assistants, nurse practitioners, and nurse midwives, as well as social workers, clinical psychologists and a host of other types of practitioners who typically comprise health center staffs. Prior to the Final Rule, health centers could only access information on malpractice payments for these providers. Given that checking adverse licensure action history is a key element of the credentialing/employment process, being able to access this additional information for allied health professionals is critical for health centers.

Reporting

The Final Rule does not change the reporting requirements imposed on health centers. Rather, it primarily: (1) imposes additional reporting requirements on state licensing boards, peer review organizations, and private accreditation entities; and (2) makes the information reported by these organizations available to government agencies and entities, including health centers that employ formal peer review processes. These organizations now must report, and health centers with formal peer review processes now may query for information related to, the following:

- State licensing boards must report the following actions against a health care practitioner or entity to the NPDB:
    - Any adverse action taken by the licensing authority as a result of a formal proceeding, including revocation or suspension of a license (and the length of any such suspension), reprimand, censure, or probation;
    - Any dismissal of a formal proceeding by reason of the health care practitioner's surrendering the license or leaving the jurisdiction;
    - Any other loss of the license by operation of law, voluntary surrender or otherwise; and
    - Any negative action or finding by such authority.
- Peer review organizations and private accreditation entities must report to the state, which must report to the NPDB
    - Any negative actions or findings taken by the peer review organization or private accreditation entity against a health care practitioner or entity.

It is important to note that health centers generally **are not** considered peer review organizations, which are defined as an "organization <u>with the primary purpose of</u> evaluating the quality of patient care practices or services ordered or performed by health care practitioners, physicians, or dentists measured against objective criteria which define acceptable and adequate practice through an evaluation by a sufficient number of health practitioners in such an area to ensure adequate peer review."[9] Health centers, for which the primary purpose is the delivery of health care services, do not

[9] 45 C.F.R. § 60.3 (emphasis added).

meet this definition. In fact, the Final Rule explicitly states that "[n]o current NPDB reporting requirements will be changed for hospitals, other health care entities, professional societies, DEA, HHS OIG, or medical malpractice payers."[10] **Thus, health centers are not subject to the new reporting requirements. Notwithstanding, health centers continue to be obligated to report the following types of information:**

Malpractice Payments

Prior to the Final Rule, a health center was required to file a report with the NPDB when it made a medical malpractice payment (either a lump sum or the first of multiple payments) for the benefit of a physician, dentist, or other licensed or authorized health care practitioner in settlement of, or in satisfaction in whole or in part of, a written claim or a judgment against the individual practitioner.[11] A written complaint or claim can include, but is not limited to, the filing of a cause of action based on state tort law in any state or federal court or other adjudicative body, such as a claims arbitration board.[12]

However, a health center was not required to report a medical malpractice payment if the payment was made:

- Directly by an entity other than the health center, such as the federal government under the FTCA;
- As a result of a suit or claim solely against the health center that does not identify an individual practitioner; or
- As a result of something other than a written complaint or claim demanding monetary payment for damages.

The report to the NPDB must be filed within 30 days of the date a payment was made and, simultaneously, the health center must send a copy of the report to the appropriate state licensing board.[13] These reports must contain certain information about the health care practitioner for whom payment was made, as well as information about the health center.[14] **A health center that fails to make a required report on a medical malpractice payment is subject to the imposition of civil money penalties by the Office of Inspector General (OIG) of up to $11,000 for each payment involved.[15]**

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[10] 75 Fed. Reg. at 4657.

[11] 45 C.F.R. § 60.7.

[12] 45 C.F.R. § 60.3.

[13] 45 C.F.R. § 60.5.

[14] *Id*. The NPDB website (www.npdb-hipdb.hrsa.gov/sample) provides a form for reporting medical malpractice payments, which health centers can use to gather the required information.

[15] *See* 42 C.F.R. § 1003.103(c).

The Final Rule does not change or affect a health center's obligation to report malpractice payments.

<u>Adverse Clinical Privileging Actions</u>

An adverse clinical privileging action occurs when an individual practitioner's clinical privileges are reduced, restricted, suspended, revoked or denied.[16] Health centers **must** report:

- Actions that adversely affect a physician's or dentist's privileges for a period of more than 30 days; and
- When the health center accepts a physician's or dentist's surrender or restriction of clinical privileges either:
    - While under investigation for possible professional incompetence or improper professional conduct; or
    - In return for not conducting an investigation or professional review action.[17]

Health centers **may** voluntarily report adverse actions that affect the privileges of licensed health care practitioners other than physicians and dentists, such as mid-level providers, social workers, clinical psychologists, *etc*.[18]

When required to report actions involving physicians or dentists to the NPDB, health centers must file the report within 15 days from the date the adverse action was taken or privileges were voluntarily surrendered.[19]

Generally, a health center is protected from financial and legal liability resulting from actions taken as part of peer review activity, other than for liability under state and Federal civil rights laws (i.e., non-discrimination and harassment laws).[20] For example, a health center generally cannot be liable for antitrust violations or defamation caused by its peer review activities. It is important to recognize that a health center that fails to make a required report to the NPDB can lose this significant protection. If HRSA determines that a health center has substantially failed to report information to the NPDB, the health center will lose all of its peer review liability protections for a period of three years starting on the date of HRSA's determination. While the loss of immunity could impact the health center legally and financially, it does not result in the health center's loss of deeming under FTCA. Thus, the loss of liability protections for peer review actions does not affect a health center's FTCA coverage for medical malpractice.

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[16] 45 C.F.R. § 60.3.

[17] 45 C.F.R. § 60.11(a)(1).

[18] 45 C.F.R. § 60.11(a)(2).

[19] 45 C.F.R. § 60.5.

[20] 42 U.S.C. § 11111.

The Final Rule does not change or affect a health center's obligation to report adverse privilege actions.

Definitions

The Final Rule includes a series of revisions designed to clarify the functions of the NPDB, including modifying several definitions to ensure that private accreditation entities and peer review organizations subject to NPDB reporting requirements have due process mechanisms in place. Private accreditation entities and peer review organizations are among the groups that report negative actions or findings against health care practitioners and entities. Having due process mechanisms means that these types of entities would have a system in place to notify a health care practitioner or entity of a pending negative action or finding and to provide that practitioner or entity with a fair hearing during which the practitioner or entity may present an argument against the negative action or finding. Under the Final Rule, in order to meet the regulatory definitions, and thus be subject to NPDB requirements, private accreditation entities and peer review organizations need to provide due process mechanisms for all health care practitioners and entities.

Adding requirements regarding the establishment of due process mechanisms by private accreditation entities and peer review organizations before these entities are subject to NPDB reporting requirements is intended to provide some measure of protection for health care practitioners and entities. However, because the "NPDB is concerned only with the presence of due process mechanisms, i.e., defined rules, policies or procedures and not whether the rules, policies and procedures have been strictly adhered to,"[21] the extent of this protection is limited.

Fees

Other changes under the Final Rule include a clarification of the methodology for calculating fees imposed for requests for information from the NPDB. This methodology clarifies that all the costs of operating the NPDB are to be recovered through fee collection.

Conclusion

The Final Rule does not change the requirements already imposed on health centers. However, by requiring state licensing authorities, private accreditation entities, and peer review organizations to report adverse licensure actions and negative peer review organization findings and actions against non-physician and non-dentist practitioners, the Final Rule makes additional information that is essential for the credentialing/employment process available to health centers.

Further, health centers should be aware that additional changes to the NPDB will be forthcoming as the regulations phasing out the HIPDB, required by the Health Reform Bill, are promulgated.

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[21] 75 Fed. Reg. at 4663.

For more information or questions on this issue brief please contact Roger Schwartz at 202.296.3800 or rschwartz@nachc.org.