

What surgeons should know about . . .

The Healthcare Integrity and Protection Data Bank

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The Health Insurance Portability and Accountability Act (HIPAA) of 1996 directed the Secretary of Health and Human Services (HHS) to establish a national health care fraud and abuse data collection program and to maintain a database of final adverse actions taken against providers, suppliers, and practitioners. On October 26, 1999, the Secretary published two notices in the *Federal Register* pertaining to this directive. The first notice was a final rule establishing the Healthcare Integrity and Protection Data Bank (HIPDB); the second was a proposed rule exempting the data bank from certain aspects of the Privacy Act. Following are answers to questions surgeons may have about the new data bank.

Q. We already have the National Practitioner Data Bank—why is there a need for another data bank? What are the differences?

A. The National Practitioner Data Bank (NPDB) began operation in 1990 with the purpose of collecting information on medical malpractice payments made on behalf of physicians and dentists, as well as adverse licensure actions, clinical privilege actions, and professional society membership actions. Its main purpose is to serve as a national clearinghouse to be consulted by health plans and hospitals so that incompetent physicians cannot escape practice restrictions simply by moving to another state. The HIPDB, on the other hand, was created by HIPAA as a new tool for preventing health care fraud and abuse.

The HIPDB will not include information on medical malpractice cases.

Q. What actions can cause a physician to be listed in the HIPDB?

A. Reporting entities including federal and state government agencies and health plans are responsible for reporting final adverse actions that are taken against providers, suppliers, and practitioners. Final adverse actions include:

- Criminal convictions, civil judgments, injunctions, and no-contest pleas related to health care. HIPAA specifically excludes settlements in which no findings or admissions of liability have been made. However, if an action such as exclusion from any health plan results from the settlement, the action would be included in the data bank. This provision also applies to medical malpractice cases that result in a final adverse action. Additionally, injunctions related to the delivery of a health care item or service would be included in the data bank.

- Final adverse licensure actions taken by federal and state licensing and certification agencies against health care practitioners, providers, or suppliers. Examples would include the denial of an initial license or renewal application.

- The exclusion of practitioners, providers, or suppliers from participating in federal or state health care programs. This exclusion could be permanent or only temporary.

- Formal or official final actions (which must include the availability of a due process mecha-

nism) taken against a practitioner, provider, or supplier by federal or state government agencies or health plans. The action must be based on acts or omissions that affect or could affect the payment, provision, or delivery of a health care item or service. To illustrate, the HHS Secretary cites the example of a health plan that has a preferred provider contract allowing a surgeon to be paid at negotiated rates for covered services rendered to plan members, who subsequently complain about the poor quality of the surgeon's services. If after having the opportunity to be heard regarding the allegations, the surgeon's contract is terminated by the plan based upon poor patient care, that action would be reported to the HIPDB.

Q. Who reports information to the data bank, and who has access to the information it contains? Is this information available to the public?

A. Reporting entities are limited to federal or state government agencies and health plans. These are the only groups that are allowed to send reports to the data bank and request information from it. Currently, the HIPDB is not open to the public.

Q. Do I have the right to obtain a copy of my HIPDB file?

A. When the data bank receives a report on a subject, it will immediately be processed and a copy sent to the subject at no charge. In addition, if a report is amended or deleted, the subject will automatically receive notification of the changes at no cost. Individuals who wish to self-query the data bank may receive a copy of their file at a cost of \$10.

Q. Health plans often require physicians to personally obtain a copy of their

NPDB report (at their own expense) before being accepted into the plan. Does the federal government regulate this process as part of the HIPDB?

A. Agreements between providers and health plans with regard to obtaining copies of individual reports are not regulated by the federal government.

Q. When does the new data bank begin operation?

A. The HIPDB became operational in November 1999. Because HIPAA was passed on August 21, 1996, all final adverse actions occurring on or after that date must be reported to the data bank.

Q. When must information be reported to the data bank?

A. Final adverse actions must be reported to the data bank within 30 calendar days of the action or the date when the reporting entity became aware of it.

Q. Is there a mechanism in place to correct information in the data bank?

A. Neither the HIPDB nor the subject of a report can modify the report once it is submitted to the data bank. If the subject believes that information contained in the report is inaccurate, it is his or her responsibility to contact the reporting entity and ask that the information be changed. If the reporting entity refuses to comply with the request, the subject may begin a formal dispute process, in which the HHS Secretary reviews the report for factual accuracy and ensures that the information was required to be reported. Once the formal dispute process begins, a notification of dis-

pute will be sent to all who received the report within the past three years. After reviewing the report and any evidence submitted by the subject, the Secretary can make a ruling on the report's accuracy, or determine that the dispute is outside the scope of Secretarial review. Regardless of the outcome, those who requested this report in the previous three years will receive notification of the Secretary's determination. There is no requirement that the dispute must be resolved within a specific time frame.

Q. Can the subject of a report attach an explanation to it?

A. The subject of a report can add a statement at any time. Each statement is limited to 2,000 characters and must not include any patient names. It will be attached to the report and sent to anyone who has received a copy of the report in the previous three years.

Q. If a business partner is convicted of fraud and is reported to the data bank, will a partner who is not involved in the fraud be included in the report?

A. In a proposed rule issued October 30, 1998, the Office of Inspector General (OIG) stated that information reported to the data bank would include "the name of any affiliated or associated health care entity." The proposal went on to define this term to include "the subject's employer, businesses owned or managed by the subject, partnerships, memberships in health maintenance organizations or health care networks, or institutions granting the subjects clinical privileges." In formal comments submitted to the OIG, the College argued that any entity that does not have an active role in the final adverse action should not be listed in the data bank. Specifically, the College was concerned that naming innocent

individuals or entities could cause them to be targeted for investigation.

The OIG responded in the final rule by stating that affiliated or associated individuals or entities will be limited to those who have a "commercial relationship" with the subject. The OIG went on to state that "involvement or noninvolvement in the underlying action is irrelevant to this reporting requirement." The final rule states that affiliated or associated entities will not be notified when their name appears in a report.

Q. Where can I obtain more information about this new data bank?

A. The HHS Health Resources and Services Administration has published a guidebook on the HIPDB that can be viewed, along with other relevant information (including the forms that are needed in order to self-query both the HIPDB and the NPDB) at <http://www.npdb-hipdb.com>. 