

## NATIONAL PRACTITIONER DATA BANK (THE DATA BANK)

### What is the Data Bank?

The Data Bank is a national, computerized information source which tracks the following information:<sup>1</sup>

- Payments made as a result of medical malpractice actions or claims.<sup>2</sup>
- Adverse licensure actions taken by state licensing boards.<sup>3</sup>
- Adverse actions on clinical privileges taken by hospitals, other health care entities and professional society membership actions.<sup>4</sup>

The U.S. Department of Health and Human Services announced in April, 2013 that two previously maintained data banks – the Healthcare Integrity and Protections Data Bank (HIPDB) and the National Practitioner Data Bank (NPDB) – would merge together.<sup>5</sup> Now HIPDB and NPDB have been combined into a single entity called “the Data Bank.”<sup>6</sup> Under certain circumstances, various private and public entities are required to report health care related information to this new combined Data Bank.<sup>7</sup>

### What is new now that the NPDB has merged with the HIPDB?

Now that the NPDB and HIPDB are one data bank, users’ query results will be more inclusive than before, but there has been no change to the reporting requirements.<sup>8</sup> The statutes that require reporting have all remained in effect, though slightly modified, and the merger simply combines all the reported information into a single data bank.

Database queriers may notice some differences. The Data Bank’s website lists the changes that each user group may experience (<http://www.npdb-hipdb.hrsa.gov/resources/npdbMerge.jsp>):

### What entities are subject to the reporting requirements for the Data Bank?

The reporting requirements for the Data Bank apply to:<sup>9</sup>

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<sup>1</sup> See 45 CFR §60.2; 78 FR 47322 (Aug. 5, 2013).

<sup>2</sup> 45 U.S.C. § 11131(a).

<sup>3</sup> 45 U.S.C. § 11132(a).

<sup>4</sup> 45 U.S.C. § 11133(a).

<sup>5</sup> 78 FR 20473 (April 5, 2013).

<sup>6</sup> U.S. Dep’t of Health and Human Services website, *The Data Bank – About Us*, accessed Aug. 8, 2013 at: <http://www.npdb-hipdb.hrsa.gov/topNavigation/aboutUs.jsp>.

<sup>7</sup> 78 FR 20476 (April 5, 2013) (45 C.F.R. § 60.2).

<sup>8</sup> U.S. Dep’t of Health and Human Services website, *Resources – Reference Library*, accessed Aug. 8, 2013 at: <http://www.npdb-hipdb.hrsa.gov/resources/npdbMerge.jsp>; 78 FR 47323 (Aug. 5, 2013).

<sup>9</sup> 78 FR 20475-20476 (April 5, 2013), (45 C.F.R. § 60.2).

- Hospitals and other health care entities;
- Entities (including insurance companies) that make payments as a result of medical malpractice actions or claims;
- Professional societies that follow a formal peer review process;
- State Licensing and Certification Authorities (including State Medical and Dental Boards);
- Private accreditation organizations;
- Peer review organizations;
- State law enforcement agencies;<sup>10</sup>
- State Medicaid Fraud Control Units;<sup>11</sup>
- State agencies administering or supervising the administration of a state health care program;<sup>12</sup>
- Federal government agencies (including the Drug Enforcement Administration and the HHS Office of Inspector General); and
- Health plans;

### What actions trigger the need to report to the Data Bank?

The Data Bank website maintained by HHS briefly summarizes the major categories of actions that trigger the need for the appropriate entity to report to the Data Bank and the format for such a report (<http://www.npdb-hipdb.hrsa.gov/hcorg/aboutReporting.jsp>):<sup>13</sup>

Reportable Action	Data Bank Report Format
Medical malpractice payments	Medical Malpractice Payment Report (MMPR) format
Adverse clinical privilege (including but not limited to network participation and panel membership) actions	Clinical Privileges Action category on the Adverse Action Report (AAR) format
Adverse professional society membership actions	Professional Society Action category on the AAR format

<sup>10</sup> 45 C.F.R. § 60.3

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> See 45 C.F.R. § 60.5.

<p>State licensure and certification actions:</p> <ul style="list-style-type: none"> <li>• Actions related to licensure, certification, registration, or other authorization by the state to provide health care services</li> <li>• Actions related to certification agreements or contracts for participation in a government health care program</li> </ul>	<ul style="list-style-type: none"> <li>• State Licensure Action category on the AAR format</li> <li>• Government Administrative Action category on the AAR format</li> </ul>
<p>Federal licensure and certification actions:</p> <ul style="list-style-type: none"> <li>• Actions related to licensure, certification, registration or other authorization to provide health care services</li> <li>• Actions related to certification agreements or contracts for participation in a government health care program</li> </ul>	<ul style="list-style-type: none"> <li>• Federal Licensure Action category on the AAR format</li> <li>• Government Administrative Action category on the AAR format</li> </ul>
Negative actions or findings by a peer review organization	Peer Review Organization Action category on the AAR format
Negative actions or findings by a private accreditation organization	Accreditation Action category on the AAR format
Exclusions from participation in a Federal or state health care program (including Medicare and Medicaid)	Exclusion or Debarment Action category on the AAR format
<p>Other adjudicated actions or decisions:</p> <ul style="list-style-type: none"> <li>• Other adjudicated actions taken by a government agency</li> <li>• Other adjudicated actions taken by a health plan</li> </ul>	<ul style="list-style-type: none"> <li>• Government Administrative Action category on the AAR format</li> <li>• Health Plan Action category on the AAR format</li> </ul>
<p>Health care-related civil judgments and criminal convictions in Federal or state court*</p> <p>(Federal, state, and local prosecutors must report criminal convictions)</p>	<p>Judgment or Conviction Reports (JOCR)</p> <ul style="list-style-type: none"> <li>• Criminal Conviction</li> <li>• Deferred Conviction</li> <li>• Nolo Contendere/No Contest Plea</li> <li>• Injunction</li> <li>• Civil Judgment</li> </ul>

## **What information regarding malpractice payments for physicians must be reported to the Data Bank?**

Medical malpractice payers must report to the Data Bank any payment made on behalf of a physician in full or partial settlement or satisfaction of a written medical malpractice claim or judgment against a physician.<sup>14</sup> The report must be made by the payer within 30 days of the payment and the report must include, among other things:<sup>15</sup>

- The name, address (work, and home if known), social security number, date of birth, each professional school attended (and year of graduation), and license number of the physician for whose benefit the payment was made (including the field of licensure and state of issue);
- DEA number;
- The name of any hospital with which the physician is associated;
- The name of the entity making the payment and the name and contact information for the individual submitting the report;
- Relationship of the reporting entity to the physician on whose behalf the payment was made;
- Where a legal action or claim has been filed with a court, the identification of the court, and the case number;
- Date(s) on which the action(s) or omission(s) that were the basis of the action or claim occurred;
- The date of judgment or settlement;
- The amount of the payment;
- A description of the acts or omissions and injuries or illnesses upon which the claim was based;
- Classification of the acts or omissions according to codes required by the Data Bank; and
- Any other information that may be required in the future after the requirements have been published and adopted.

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<sup>14</sup> 42 U.S.C. § 11131.

<sup>15</sup> 45 C.F.R. § 60.7(b).

There may be some exceptions to the reporting requirements if a physician's circumstances differ from those described above. In that case physicians are advised to seek legal counsel regarding reporting. Note also that the waiver of an outstanding debt is not considered a "payment" and is not reportable.<sup>16</sup>

### **What information regarding licensure actions against a physician must be reported to the Data Bank?**

The following information must be reported to the Data Bank by the Medical Quality Assurance Commission (MQAC) within 30 days of the action based on reasons related to a physician's professional competence or professional conduct:<sup>17</sup>

- Any surrender of a physician's license.
- Any revocation, suspension, or restriction of a physician's license.
- Any censure, reprimand, or probation of a physician, for reasons relating to the physician's professional competence or conduct as the result of a formal proceeding. Matters resolved by a stipulation to informal disposition (STID), which are not formal disciplinary actions, are nonetheless subject to public disclosure, and must also be reported.<sup>18</sup> **See Medical Discipline.**
- The MQAC must include the physician's name, work address, home address if known, social security number if known, date of birth, each professional school attended, date of graduation, and license number, DEA number, a description of the acts or omissions for which the discipline was imposed, a description of the action taken by the MQAC, and the classification of the action under the Data Bank reporting codes.

In addition, the following licensure actions taken by a state as the result of a formal proceeding must be reported:<sup>19</sup>

- Any dismissal or closure of a formal proceeding by reason of the physician surrendering his/her license, or leaving the state or jurisdiction.
- Any other loss of the physician's license whether by operation of law, voluntary surrender (excluding those due to non-payment of licensure renewal fees, retirement, or change to inactive status), or otherwise.
- Any negative action or finding by such authority, organization, or entity regarding the physician.

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<sup>16</sup> 45 C.F.R. § 60.7(a).

<sup>17</sup> 42 U.S.C. § 11132, 45 C.F.R. § 60.8(a).

<sup>18</sup> 45 C.F.R. § 60.9(a)(3).

<sup>19</sup> 45 C.F.R. § 60.9(a).

## **What information regarding adverse professional review actions on clinical privileges taken against a physician must be reported to the Data Bank?**

Each health care entity must report information concerning an adverse professional review action whenever:<sup>20</sup>

- The entity takes a professional review action that adversely affects a physician's clinical privileges for more than 30 days.
- The entity accepts the surrender of clinical privileges of a physician in either of the following circumstances:
  - While the physician is under an investigation relating to possible incompetence or improper professional conduct.
  - In return for not conducting such an investigation or proceeding.
- A professional society takes a professional review action, based on reasons relating to professional competence or conduct, which adversely affects the membership of a physician in the society.

The entity must report such adverse professional review actions to the MQAC within 15 days of reviewing the entity's report. The MQAC must then report the action to the Data Bank.

## **Can a physician dispute a Data Bank report?**

Yes.<sup>21</sup> A physician may dispute either of the following, within 60 days of the date the report is mailed:

- The factual accuracy of a report.
- Whether a report was submitted in accordance with the Data Bank requirements, including the eligibility of the entity to make the report.

When disputing the accuracy of a report, the physician must:

- Inform the Secretary of the Department of Health and Human Services and the reporting entity, in writing, of the disagreement, and the basis for it.
- Request that the disputed information be entered into a "disputed" status, and be so related to inquirers.

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<sup>20</sup> 42 U.S.C. § 11133, 45 C.F.R. § 60.11(a), 45 C.F.R. § 60.12(a).

<sup>21</sup> See: 45 C.F.R. § 60.21; See also: U.S. Dep't of Health and Human Services website, *Practitioners – Responding to Reports*, accessed Aug. 8, 2013 at: <http://www.npdb-hipdb.hrsa.gov/pract/howToDisputeAReport.jsp>.

- Attempt to enter into a discussion with the reporting entity to resolve the dispute.

The physician may not, however, dispute a report in order to do any of the following:

- Protest an insurer's decision to settle a claim.
- Appeal the underlying reasons for an adverse action.

### **How does a physician dispute a report to the Data Bank?**

When the Data Bank processes a report, the Data Bank sends a *Notification of a Report in the Data Bank(s)* to the physician who has been reported. The physician should review the report for accuracy and, if any information in the report is inaccurate, contact the reporting entity to correct the information.

A physician who disagrees with the factual accuracy of a report has three options if the reporting entity will not correct the information:

- Add a statement to the report.
- Initiate a dispute of the report (must be done within 60 days from the date the report was mailed).
- Add a statement and initiate a dispute.

To add a statement or to dispute the report, the physician should follow the applicable instructions on the *Notification of a Report in the Data Bank(s)*. If the physician does not have the original *Notification of a Report in the Data Bank(s)*, the physician may follow the steps outlined on the Databank's website and use the Report Response Service offered online to submit a statement or dispute a report. More information about how dispute a report and/or file a statement can be found at: <http://www.npdb-hipdb.hrsa.gov/pract/howToDisputeAReport.jsp>.

### **Who must query the Data Bank for information concerning a physician?**

A hospital must request information from the Data Bank whenever a physician applies to the hospital for admission to the medical staff or for clinical privileges, and at least every two years for all physicians who are on the medical staff or have clinical privileges.<sup>22</sup>

### **Who else may query the Data Bank for information concerning a physician?**

The following persons or entities may query the Data Bank for information concerning medical malpractice payments, adverse licensure actions by Boards of Medical Examiners, and adverse actions against clinical privileges:<sup>23</sup>

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<sup>22</sup> 42 U.S.C. § 11135(a); 45 C.F.R. § 60.17(a).

- A hospital that requests information concerning a physician who is on its Medical Staff (courtesy or otherwise) or has clinical privileges at the hospital.
- Health care entities when entering an employment relationship or other affiliation with a physician or in conjunction with professional review activities.
- State licensing boards.
- Physicians, but only for information about themselves.
- Plaintiff attorneys, or individuals representing themselves, who have filed a medical malpractice action or claim against a hospital, who have named the physician on whom information requested in the action or claim, and who have demonstrated that the hospital failed to make a mandatory query to the Data Bank regarding the physician. Plaintiff attorneys or individuals representing themselves may only use the information with respect to litigation resulting from the action or claim against the hospital.<sup>24</sup>
- A health care entity with respect to professional peer review activities.
- A person requesting statistical information, in a form which does not permit the identification of the affected individual or entity.

The following persons or entities may query the Data Bank for adverse state licensure actions, adverse Federal licensure actions, negative actions or findings by peer review organizations or private accreditation entities, state or Federal convictions related to delivery of health care services or items, exclusion from participation in state or Federal health care programs, or other reported adjudicated actions or decisions:<sup>25</sup>

- Agencies administering Federal health care programs, including private entities administering such programs under contract.
- State or Federal agencies responsible for licensing or certification of health care practitioners, providers, or suppliers.
- State agencies administering or supervising administration of state health care programs.
- State law or fraud enforcement agencies such as:
  - United States Attorney General.

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<sup>23</sup> 45 C.F.R. § 60.18(a).

<sup>24</sup> U.S. Dep't of Health and Human Services website, *Practitioners – Information for Attorneys*, accessed Aug. 8, 2013 at: <http://www.npdb-hipdb.hrsa.gov/pract/informationForAttorneys.jsp>

<sup>25</sup> 45 C.F.R. § 60.18(b).



- United States Inspector General.
- United States Attorneys.
- United States Comptroller General.
- United States Drug Enforcement Administration.
- United States Nuclear Regulatory Commission.
- Federal Bureau of Investigation.
- Federally contracted utilization and peer review organizations.
- Health care entities when entering an employment relationship or other affiliation with a physician, including physicians who have applied for clinical privileges or appointment to the Medical Staff.
- Health plans.
- A physician, health care entity, provider, or supplier who is requesting information concerning himself, herself, or itself.
- A person or entity requesting statistical information which does not permit identification of any individual or entity.

Medical malpractice payors may not query the Data Bank at any time.<sup>26</sup>

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<sup>26</sup> See 45 C.F.R. § 60.18.