The National Practitioner Data Bank

The National Practitioner Data Bank (Data Bank) was created by the Health Care Quality Improvement Act of 1986 and began operation Sept. 1, 1990. Congress intended to encourage professional peer review activities while at the same time creating a national clearinghouse of information about malpractice payments and adverse or disciplinary actions taken against healthcare providers. The law requires reporting to the Data Bank of medical malpractice payments and adverse actions on clinical privileges or licensure. The law also requires hospitals and other health entities to request information from the Data Bank on practitioners before granting clinical privileges.

UC Professional Risk Management and the University of Colorado Hospital Medical Staff Office hope the following questions and answers, many of which are adapted from the American Dental Association’s booklet, National Practitioner Data Bank: Questions & Answers, as a resource to Residents. We gratefully acknowledge the ADA’s work in this area.

This information is intended to give general guidance, but it should not be construed as legal advice. The laws and regulations discussed here have not been interpreted by the courts. Specific circumstances should be discussed with Risk Management, the Medical Staff Office and, in the case of legal questions, legal counsel.

Twenty Questions Regarding the Data Bank

1. How is information in the Data Bank to be used?

The information contained in the Data Bank is to be used to inquire into specific areas of a practitioner’s licensure, professional society memberships, malpractice payment history and record of clinical privileges. The Data Bank was intended to augment, not replace, traditional forms or credentials review. It is a nationwide flagging system that provides another resource to assist state licensing boards, hospitals and other healthcare entities in conducting extensive independent investigations of the qualifications of the healthcare practitioners they seek to license or hire, or to whom they wish to grant clinical privileges.

2. Who is going to maintain this information in the Data Bank?

UNISYS Corporation is under contract with the U.S. Department of Health and Human Services (HHS) for the operation of the computer system which is used to store the information.

3. What is a “medical malpractice payment?”

A “medical malpractice payment,” as interpreted by HHS, is “any exchange of Money resulting from a written claim or demand for payment, based on the provision of or failure to provide healthcare services.” The fact that a practitioner makes payment that qualifies as a “medical malpractice payment,” as the term is interpreted by HHS, does not of itself mean that malpractice has occurred in a legal sense.
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4. Who is responsible to report medical malpractice payments?

According to current HHS interpretation of the law, Residents must report all payments of money that they make on their own behalf in satisfaction (in whole or in part) of a written claim or demand for payment relating to the provision of or failure to provide healthcare services.

Professional liability insurers who make any payment on the Resident’s behalf in response to a written claim, lawsuit, or demand for payment must report the payment. Anyone else (for example, the professional corporation) who makes a medical malpractice payment on the Resident’s behalf also has a duty to report to the Data Bank. Thus, more than one person may have an obligation to report settlement of the same case.

5. What if I simply waive an outstanding fee and I don’t collect it?

Waiver of an outstanding fee does not include an exchange of money. Therefore, a fee waiver is not reportable.

6. Is retreatment considered to be a refund and, if so, is it reportable?

For the purpose of reporting to the Data Bank, medical malpractice payments are limited to exchanges of money. Only monetary payments made in response to a written request for a refund are reportable. Therefore, if the initial treating practitioner retreats the patient, that is not reportable.

7. What if I pay another practitioner to do the retreatment?

This is potentially reportable because it involves an exchange of money. However, the regulations implementing the Act do not provide a definite answer to this question. Also, remember that to be reportable, any exchange of money must have resulted from a written complaint or claim demanding monetary payment.

8. What can happen if I (or my professional liability insurance carrier) fail to report information that is required to be reported?

An insurance company, self-insurer, or other person or entity that fails to report information on a medical malpractice payment it makes on behalf of a practitioner will be subject to a civil money penalty for each such payment involved. Residents also can be fined for each medical malpractice payment that they make and fail to report.

9. Do I have a right of appeal if penalties are assessed against me?

Yes. Regulations provide for notice of proposed penalties, the right to an administrative hearing and review of the decision in a court of law.
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10. Why did Congress fail to enact a threshold below which malpractice payments would not be reportable?

Congress decided to postpone enactment of a minimum threshold or floor below which malpractice payments would not be reportable until such time as data on reported payments can be collected and analyzed to determine if an appropriate threshold should be established.

11. What types of adverse licensure actions must be reported to the Data Bank, and who must be responsible for reporting?

State medical and dental boards must report to the Data Bank certain disciplinary actions related to professional competence or conduct which they take against the license of a practitioner. Such actions include revocation, suspension, censure, reprimand, probation or surrender. State medical dental boards also must report revisions to adverse licensure actions, such as reinstatement of a medical or dental license.

Licensure matters not related to the professional competence or professional conduct of a practitioner are not to be reported to the Data Bank. For example, adverse actions against a practitioner based primarily on his or her advertising practices, fee structure, salary arrangement, affiliation with other associations or healthcare professionals, or other competitive acts intended to solicit or retain business are excluded from Data Bank reporting requirements.

12. What types of adverse actions on clinical privileges must be reported to the Data Bank, and who is responsible for reporting?

Hospitals and other eligible healthcare entities must report certain adverse actions that they have taken against the clinical privileges of a practitioner. The following actions must be reported:

a. A professional review action based on the physician’s or dentist’s professional competence or professional conduct that adversely affects his or her clinical privileges for a period of more than 30 days; and,

b. Acceptance of the surrender or restriction of clinical privileges while the physician or dentist is under investigation or in return for not conducting an investigation by the healthcare entity relating to possible professional competence or improper professional conduct.

Reportable adverse decisions include reducing, restricting, suspending, revoking, denying or failing to renew clinical privileges. Reportable actions must be based on reasons relating to professional competence or professional conduct which affect or could adversely affect the health or welfare of a patient. Adverse actions involving censures, reprimands or admonishments will not be reported. Hospitals and other healthcare entities must also report revisions to an adverse action, such as reinstatement of clinical privileges.

13. Is a hospital required to report to the Data Bank on its medical and dental Residents?
Yes. Although Residents are trainees, they come within the regulatory definition of physician and dentist. Medical malpractice payments made on behalf of Residents also are reportable under the Resident’s name.

14. If I am terminated from a preferred provider organization (PPO) because of “over utilization,” is that considered an adverse action on clinical privileges?

Probably not. Adverse actions on clinical privileges must be reported by any healthcare entity that (a) provides healthcare services, and (b) engages in professional review activity through a formal peer review process. Generally, a PPO does not provide healthcare services and does not engage in formal peer review. A licensed health maintenance organization (HMO) might fall within this definition, however.

15. Does entrance into a drug, alcohol, or psychiatric rehabilitation program for 30 days or more require reporting to the Data Bank if privileges are suspended?

Suspension of clinical privileges due to entrance into drug, alcohol or psychiatric rehabilitation does not in itself constitute a reportable action unless it is required as a result of a professional review action based upon professional competence or conduct.

16. If an initial application for clinical privileges is denied or the privileges granted are more limited than those requested, must this be reported to the Data Bank?

If the denial of an initial request for clinical privileges or the granting of privileges is more limited than those requested and is based on a professional review action and relates to professional competence or conduct, it would be a reportable action. If, however, hospital policy only allows cardiologists to read EKGs, the denial of that privilege to a family practitioner would not be reportable.

17. What if the hospital or other healthcare entity restricts my privileges and fails to report to the Data Bank?

The law provides hospitals and other healthcare entities certain immunities from lawsuits filed by physicians and dentists so long as the hospital or other healthcare entity complies with the reporting requirements and other provisions of the regulations.

The penalty for not reporting adverse actions is a loss of immunity against lawsuits alleging antitrust, defamation and other similar actions brought by physicians or dentists. The immunity conferred by the law extends to members of professional review committees.

18. Who will have access to the information in the Data Bank?

Only the following entities will have access to the Data Bank:
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a. Hospitals that are screening applicants for medical staff appointments or granting of clinical privileges must request information on those applicants. Hospitals must request information every two years for physicians, dentists, or other healthcare practitioners on the medical staff or those granted clinical privileges. Hospitals may also request such information as they deem necessary.

b. State licensing boards may request information as they deem necessary.

c. Other healthcare entities that are screening applicants for medical staff appointments or granting of clinical privileges, or that have entered into or may be entering into an employment or affiliation relationship with a practitioner, may request information. For the purpose of reporting to and requesting information from the Data Bank, healthcare entities include hospitals, or entities other than hospitals, which provide healthcare services and engage in professional review activity through a formal peer review process for the purpose of furthering quality healthcare. A healthcare entity, such as a health maintenance organization (HMO), or a group or prepaid medical or dental practice that provides some healthcare services and engages in professional review activity through a formal peer review process, would meet the eligibility requirements for reporting to and requesting information from the Data Bank. However, a medical school, physician group practice, or a preferred provider organization (PPO) which either does not provide healthcare services or does not have a formal peer review system would not meet the definition of a healthcare entity and, therefore, would be ineligible to report to or query the Data Bank.

d. Professional societies of dentists, physicians, or other healthcare practitioners which engage in professional review activity through a formal peer review process for the purpose of furthering quality health care may request information from the Data Bank.

e. Dentists, physicians, or other health practitioners may request information regarding their own files.

f. Plaintiff’s attorneys and plaintiffs not represented by counsel who have filed a medical malpractice action or court claim against a hospital may access the Data Bank when evidence is submitted which reveals the hospital failed to make a required query of the Data Bank on the practitioner also named in the action or claim. Such information may be used solely with respect to litigation resulting from the action or claim against the hospital. Professional liability insurers may NOT request information from the Data Bank.

19. Will I be able to find out whether the Data Bank has any information about me?

Yes. Residents will receive a Practitioner Notification Document every time a report is filed with the Data Bank concerning you. If no notification has been received there should be no information on file in the Data Bank about the Resident.

Residents may query the Data Bank by using a Request for Disclosure form. There is no fee to make a self-query. Forms can be obtained by calling the Data Bank Help Line.
20. What can I do if the information reported about me to the Data Bank is inaccurate?

Entities and individuals are responsible for the accuracy of information which they report to the Data Bank. To ensure the accuracy of information in the Data Bank, each submitted report is held for 30 calendar days after receipt. During this period, a Report Verification Document will be sent to the reporting entity to ensure that Data Bank files accurately reflect the information reported. A Practitioner Notification Document simultaneously is sent to the practitioner who is the subject of the report. This document provides the subject practitioner with the contents of the report provided to the Data Bank concerning him or her. It also informs the practitioner how he or she can dispute the accuracy of the information contained in the report.

The practitioner has up to 60 days from the process date shown on the Practitioner Notification Document to initiate a dispute with the Data Bank if the practitioner believes the information is inaccurate. If discussions with the reporting entity fail to resolve the disagreement(s), the practitioner may request the Secretary of the U.S. Department of Health and Human Services to review the accuracy of the disputed report. The Secretary then will make the final decision. While the report is being investigated, it will be carried in a “disputed” status in the Data Bank and inquiries will be so informed. In certain instances, information in a report may be “voided.” Voided information is retracted in its entirety and is treated as though it were never submitted. Generally, information will be voided if it is information that never should have been reported to the Data Bank or is incorrect.