

Draft of guidebook helps break down physician reporting requirements

By Robert S. Iwrey

Whether or not an action involving a physician constitutes an event that must be reported to the National Practitioner Data Bank is often not an easy question to answer.

Such questions often arise in the context of a hospital reducing the clinical privileges of a staff physician, a health plan terminating a physician's participation with the plan, and payment made in a medical malpractice case.

In order to assist those involved in answering questions of NPDB reportability, the U.S. Department of Health and Human Services Health Resources & Services Administration has issued guidance over the years in the form of the NPDB Guidebook to help clarify the requirements established by the laws governing the Data Bank, primarily set forth in Title IV of the Health Care Quality Improvement Act of 1986.

In November 2013, HRSA issued its long-awaited proposed revisions to the NPDB Guidebook in the form of a draft version.

This new draft NPDB Guidebook incorporates significant legislative and regulatory changes that have been adopted since its last edition published back in September 2001, including the merger of the NPDB with the Healthcare Integrity and Protection Data Bank which made additional report information available to some entities that was previously unavailable to them (e.g., hospitals and other health care entities now have access to certain adverse actions

reported by Federal agencies and health plans under Section 1128E).

This new draft Guidebook strives to provide better guidance to answer difficult questions regarding NPDB reports

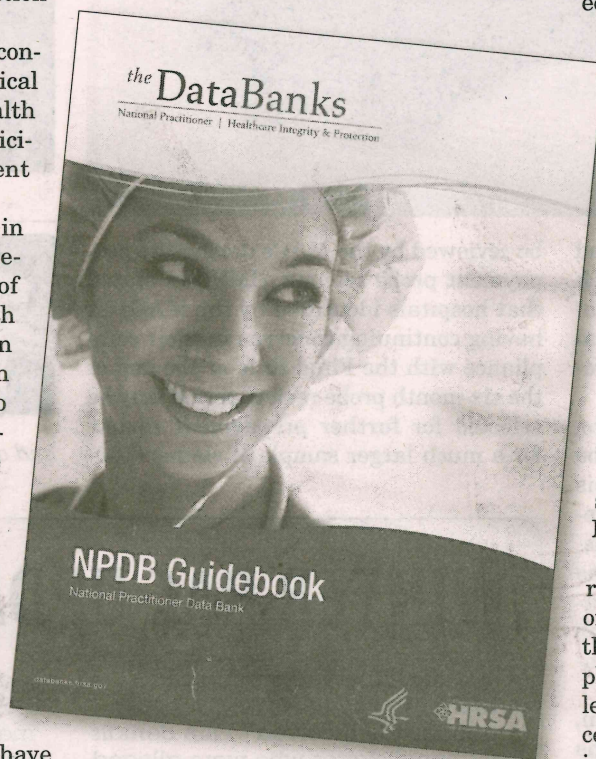
comprehensive review of the qualifications and background of a health care practitioner, entity, provider, or supplier may be prudent."

In addition, its "information is intended to be used in combination with information from other sources in making determinations on employment, affiliation, clinical privileges, certification, licensure, or other decisions."

Moreover, the new draft Guidebook states that "NPDB information should not be used as the sole source of verification of professional credentials" and that "information in the NPDB should serve only to alert eligible entities that there may be a problem with the performance of a particular health care practitioner, entity, provider, or supplier." Nonetheless, physicians should be aware of the serious adverse consequences that can result from an adverse report to the NPDB.

The negative impact of a Data Bank report depends of course on the wording of the report and the underlying events that gave rise to the report. Typically, physicians looking to obtain staff privileges at hospitals or ambulatory surgical centers will have to provide additional information regarding the matters reported in order to convince such entities to allow them to obtain such privileges.

If the report's wording is severe, no explanation or additional information may be enough. Severely worded reports can be the death knell to a physician whose specialty requires him/her to have staff



by including additional and clearer examples of when and how to report and query the Data Bank, more useful tables explaining NPDB policies, and links to statutes, regulations, and the NPDB website.

The new draft Guidebook provides that it is "primarily a flagging system that may serve to alert users that a more

privileges at a hospital (e.g., a neurosurgeon or obstetrician).

Moreover, State licensing boards also routinely query the Data Bank. A severely worded report can trigger a licensing action against the physician's license to practice medicine. As such, physicians should attempt to gain as much input into the process of wording the report as they can in the event that a report cannot be avoided.

In addition to the wording of the report, there are certain classification codes and basis for action codes used in the report that must be used for which there can be negative implications as well. Physicians are well advised to gain input into the process of selecting these codes as well in order to mitigate the adverse impact of a report to the NPDB.

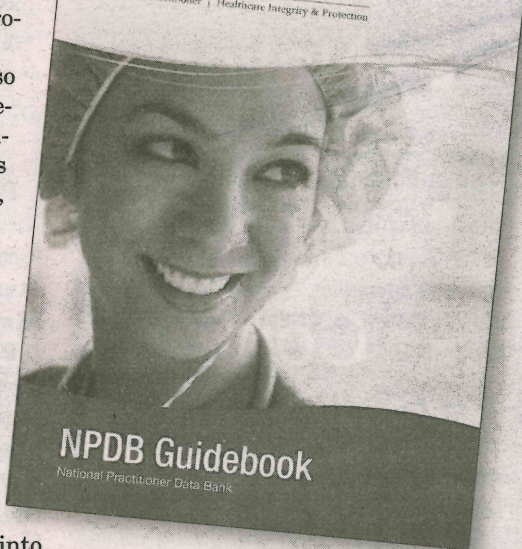
Obtaining learned health care legal counsel early on in the process increases the likelihood that the physician will be able to either avoid a Data Bank report, if possible, and, if not, mitigate the adverse consequences of a report by negotiating the wording of the report with the reporting entity.

Lastly, it is important to note that new Guidebook remains in draft form and has been made available to the public for comment to help ensure the clarity of the revised content. Comments will be collected electronically at NPDBPolicy@hrs.gov through at least Jan. 10, 2014.

The comment period may be extended if needed based upon the comments received and whether any further revisions are deemed necessary as a result of the comments received.

Information on any extensions of the re-

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view period will be posted on the Data Bank website. To ensure that your comments are appropriately considered, the NPDB requests that you:

- Prepare your comments as an email document or a separate word processing attachment;
- Identify yourself by name and organization, if applicable;
- Reference the page number(s) each comment addresses;
- Ensure comments are specific and relate to the clarity of the NPDB Guidebook's content, because regulatory or statutory concerns are beyond the scope of this comment process; and
- Address your remarks

to Ms. Ernia Hughes, Acting Director of the Division of Practitioner Data Banks.

The new draft Guidebook is a welcomed arrival for those individuals who are faced with the difficult question of whether an action is a reportable event and should help navigate the often murky waters of NPDB reportability.