

OIG Clarifies HIPDB Reporting Requirements

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The Department of Health and Human Services (“HHS”) Office of Inspector General (“OIG”) proposed on June 24, 2005, that administrative penalties unrelated to the delivery of health care services do not need to be reported to the federal Healthcare Integrity and Protection Data Bank (“HIPDB”). Health care providers who have received administrative fines for failing to update their physical addresses and other minor infractions should welcome the proposal.

The history of the HIPDB dates back to 1996 when Congress in the Health Insurance Portability and Accountability Act (“HIPAA”) directed HHS to: (1) establish a health care fraud and abuse data collection program for the reporting and disclosure of certain final adverse actions against health care providers, suppliers, and practitioners;¹ and (2) maintain an adverse action data base,² which later became known as the HIPDB.³ HIPAA also required government agencies and health plans to report the following final adverse actions to the HIPDB: (1) civil judgments against a health care provider, supplier, or practitioner in federal or state court related to the delivery of a health care item or service; (2) federal or state criminal convictions related to the delivery of a health care item or service; (3) actions by federal or state agencies responsible for the licensing and certification of health care providers, suppliers, and licensed health care practitioners; (4) exclusions from participation in federal or state health care programs; and (5) other adjudicated actions or decisions established by HHS regulations.⁴

On October 26, 1999, HHS responded to Congress’ directive by adopting final regulations implementing the HIPDB.⁵ Among other things, the regulations required federal and state licensing and certification agencies to report to the HIPDB certain final adverse actions, defined to include “[a]ny other negative action or finding by such Federal or State agency that is publicly available information.”⁶ In the preamble to the regulations, HHS agreed with members of the public that the phrase “any other negative action or finding” was very broad and could be interpreted to include insignificant administrative fines and citations:

Comment: We received several comments regarding the manner in which the term “any other negative action or finding” was defined. Most of the commenters stated the proposed definition was too broad in nature and would create a tremendous burden on the reporters, especially if actions or findings pertaining to administrative fines and citations were to be

¹ Pub. L. No. 104-191, § 221 (codified at 42 U.S.C. § 1320a-7e(a) (2005)).

² *Id.*

³ 64 Fed. Reg. 57740, 57740 (Oct. 26, 1999).

⁴ 42 U.S.C. § 1320a-7e(g)(1)(A) (2005).

⁵ 64 Fed. Reg. 57740 (Oct. 26, 1999) (codified at 45 C.F.R. Part 61 (2005)).

⁶ 45 C.F.R. § 61.7(a)(3) (2005).

included in the HIPDB. Several commenters expressed concern that there is a range of actions or findings taken that may or may not be the same from State to State and do not relate to health care *per se* (such as a practitioner fined for failure to provide a new address). The commenters requested that the OIG clarify and limit the definition of this term to actions that are directly connected to health care violations.

Response: We agree [W]e acknowledge that there are certain kinds of actions or findings that would not meet the intent of the legislation and should not be reportable. For instance, administrative actions, such as limited training permits, limited licenses for telemedicine, fines or citations that do not restrict a practitioner's practice, or personnel actions for tardiness, are not within the range of actions intended by the statute. As a result of these comments, we are modifying the final regulations to exclude administrative fines or citations, corrective action plans and other personnel actions unless they are (1) connected to the billing, provision or delivery of health care services, and (2) taken in conjunction with other licensure or certification actions such as revocation, suspension, censure, reprimand, probation, or surrender. . . .⁷

As codified, the final regulations provided that the "definition [of "any other negative action or finding"] excludes citations, corrective action plans and personnel actions."⁸ However, other than this exclusion language, the regulations did not specifically reflect the HHS position taken in the preamble that reporting of administrative penalties unrelated to the billing, provision, or delivery of health care was not required. As a result, some state agencies reportedly notified the HIPDB of physicians' insignificant administrative fines and other penalties.⁹

On June 24, 2005 (more than five years after adoption of the final regulations), HHS formally recognized its "inadvertent omission" of "clarifying language."¹⁰ Accordingly, HHS proposed to amend the regulatory definition of "any other action or finding" to include the following statement:

This definition excludes administrative fines or citations and corrective action plans and other personnel actions, unless they are: (1) Connected to the delivery of health care services; and (2) taken in conjunction with other licensure or certification actions such as revocation, suspension, censure, reprimand, probation, or surrender.¹¹

⁷ 64 Fed. Reg. at 57743-44.

⁸ 45 C.F.R. § 61.3 (2005).

⁹ Nancy LeGros, *OIG Clarifies Scope of Reporting to HIPDB*, HEALTH HEADLINES, July 5, 2005, available at http://www.vinson-elkins.com/resources/resource_detail.asp?rid=322626001&rtype=pub ("Accordingly, to the dismay of licensed providers and facilities, some state agencies have reported routine administrative fines that had no effect upon licensure.").

¹⁰ 70 Fed. Reg. 36554 (June 24, 2005).

¹¹ *Id.* at 36555.

Comments on the proposal were due July 25, 2005.¹² Adoption of the proposal would further the stated purpose of the HIPDB, which is to “combat fraud and abuse in health insurance and health care delivery and to promote quality care.”¹³

¹² *Id.*

¹³ HEALTH RESOURCES AND SERVICES ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES, FACT SHEET ON THE HEALTHCARE INTEGRITY AND PROTECTION DATA BANK 1 (Nov. 3, 2003), *available at* http://www.npdb-hipdb.com/pubs/fs/Fact_Sheet-Healthcare_Integrity_and_Protection_Data_Bank.pdf.