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New National Practitioner Guidebook Released

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Health Care Alert

In April of 2015, the Department of Health and Human Services (HHS) released a final revised National Practitioner Data Bank Guidebook (NPDB). This is the first updated release of the NPDB Guidebook since September 2001. Prior to the new Guidebook being released, in November of 2013, HHS released a draft version of a revised NPDB Guidebook. HHS asked for public comments on the draft revisions, then released the revised NPDB Guidebook. It incorporates regulatory and legislative changes adopted since the September 2001 edition. Additionally, it clarifies certain areas where there has been significant confusion with respect to whether an action must be reported to the NPDB.

Section 1921 of SSA. Section 1921 of the Social Security Act, which broadened the scope of information collected and disseminated through the NPDB, was changed significantly by the new Guidebook. Final regulations for Section 1921 were published in the Federal Register in January of 2010. They required each state to adopt a system for reporting certain adverse licensure actions taken against all healthcare practitioners and entities. They also require reporting of any negative action or finding that a state licensing authority, peer review organization, or private accreditation entity has taken against a healthcare practitioner or healthcare entity.

NPDB and HIPDB Merger. A second major change is the merger of the NPDB with the Healthcare Integrity and Protection Databank (HIPDB). Originally, the NPDP and HIPDB were established for different purposes. However, overlap existed in some reporting and querying requirements, and in order to eliminate any duplicative data reporting and access requirements, Congress passed Section 6403 of the Patient Protection and Affordable Care Act of 2010. This legislation established the NPDB as the single data bank to receive and disclose information. Final regulations implementing the merger were published in the Federal Register in April of 2013. As a result, all information is now collected and disclosed by the NPDB.

Investigation Reporting Requirements. The new NPDB Guidebook provides additional clarity regarding uncertainty with certain reporting requirements, including when an "investigation" by a healthcare entity has commenced. The new NPDB Guidebook takes a more expansive interpretation of the word "investigation." Specifically, it indicates that an investigation is not limited to a health care entity's gathering of facts. An investigation begins as soon as the health care entity begins an inquiry and does not end until the health care entity's decision making authority takes a final action or makes a decision to not further pursue the matter. However, the new Guidebook fails to provide a definition of the term "inquiry" or other sufficient guidance to clear up the ambiguity concerning the trigger event for an investigation.

The 2001 NPDB Guidebook was also unclear as to whether routine peer review activities, such as Focused Professional Practice Evaluation (FPPE), constituted an investigation for purposes of reporting. The draft Guidebook attempted to define an investigation based upon the existence of FPPE, but determined that the concept would be difficult. In response, the new NPDB Guidebook does not contain any references to FPPE and instead specifies that routine, formal peer review processes under which a healthcare entity "evaluates, against clearly defined measures, the privilege-specific competence of all practitioners" do not constitute "investigations" for purposes of reporting to the NPDB.

Proctorship Reporting Obligations. Finally, the new NPDB Guidebook departs from previous guidance regarding the reporting obligations for proctorships. The new Guidebook includes express language that makes proctorships reportable. When a proctor is assigned to a physician for a period of longer than 30 days as a result of a professional review action, "whether the action must be reported to the NPDB depends on the role of the proctor. If, for a period lasting more than 30

days, the physician or dentist cannot perform certain procedures without proctor approval or without the proctor being present and watching the physician or dentist, the action constitutes a restriction of clinical privileges and must be reported."

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