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August 3, 2017

Dave Loewenstein
Director
Division of Practitioner Data Bank
Health Resources & Services Administration
U.S. Department of Health and Human Services
5600 Fishers Lane
Rockville, MD 20857

Dear Mr. Loewenstein:

On behalf of our physician and medical student members, the American Medical Association (AMA) urges the Health Resources & Services Administration (HRSA) to clarify when certain events are reportable to the National Practitioner Data Bank (NPDB). Clarification will help prevent unnecessary and erroneous reporting that diminishes the usefulness and reliability of NPDB data. The AMA requests clarification on the reporting of medical malpractice payments, adverse clinical privileges actions, and the surrendering of clinical privileges while a provider is unaware of an ongoing investigation.

The NPDB requires medical malpractice payers to report medical malpractice payments. The written complaint or claim must be based on a provider's provision of or failure to provide health care services. However, the NPDB statute, regulation, guidebook, and FAQs do not further define "provision of or failure to provide health care services." Without any further clarification from HRSA, malpractice payers are reporting instances to the NPDB where the physician serves in an administrative-only capacity and has no direct contact or relationship with the plaintiff that is demanding payment. In these instances, physicians are not providing health care services or failing to provide health care services. Therefore, these payments should not be reported to the NPDB because NPDB's statutes and regulations limit the filing of medical malpractice reports based on whether a physician provided or failed to provide health care services. Accordingly, the AMA recommends that **HRSA provide clarification that health care providers acting in an administrative-only capacity are not providing or failing to provide health care services and is not a reportable event to the NPDB.**

The NPDB also requires hospitals and other health care entities to report adverse clinical privileges actions. Administrative actions that do not involve a professional review action should not be reported to the NPDB. Even so, physicians are still being reported based on

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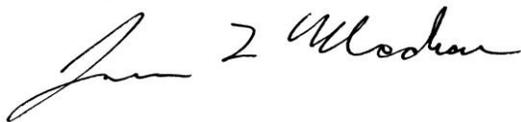
administrative and eligibility reviews. We strongly urge **HRSA to provide further clarification as to what constitutes a professional review action and what constitutes an administrative or eligibility-based action.** In addition, although HRSA states that it is the opinion of the reporting entity as to whether an action affects or could affect patient health or welfare, it would be beneficial to both reporting entities and health care providers to state factors that a hospital should consider in making this determination.

The current reporting methodology stipulates that the surrendering of privileges while under investigation is a reportable event. However, no exception exists when a physician—who is unaware that an investigation is underway—surrenders privileges for a non-reportable reason, such as maternity leave, health problems, and long-term volunteer commitments (e.g., Doctors Without Borders). This policy is unfair and unduly penalizes physicians who were unaware of an investigation when they decided to take a leave of absence for reasons entirely unrelated to the investigation. To remedy this problem, **the AMA urges HRSA to require investigating bodies to notify physicians when they are under investigation. Notification will ensure that decisions to surrender privileges are informed by all the relevant information.**

Alternatively, HRSA should issue guidance instructing hospitals and other health care entities to not report the surrendering of privileges while under investigation when the health care provider is unaware of the investigation and the decision to take a leave of absence is unrelated to the investigation.

We welcome the opportunity to meet and discuss these issues in greater detail. Please contact Jason Scull, Assistant Director, Federal Affairs, at jason.scull@ama-assn.org or 202-789-4580 should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "James L. Madara". The signature is fluid and cursive, with a large initial "J" and "M".

James L. Madara, MD