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Mary K. Wakefield, PhD, RN
Administrator
Health Resources and Services Administration
Department of Health and Human Services
Parklawn Building, Room 14-101
5600 Fishers Lane
Rockville, MD 20857

Re: Elimination of Duplication Between the Healthcare Integrity and Protection Data Bank and the National Practitioner Data Bank [HRSA-0906-AA87]

Dear Administrator Wakefield:

On behalf of the physician and medical student members of the American Medical Association (AMA), I write to you in regard to the Health Resources and Services Administration (HRSA) proposed rule to eliminate duplication between the National Practitioner Data Bank (NPDB) and the Healthcare Integrity and Protection Data Bank (HIPDB). While the AMA firmly believes that the NPDB should be abolished in its entirety, we appreciate the opportunity to offer our comments on how HRSA may effect its statutory obligation to merge the NPDB and the HIPDB.

Reporting of Tax Identification Numbers

We support HRSA's proposal to require reporting entities to include Tax Identification Numbers (TINs) in their reports. The inclusion of TINs will help HRSA avoid erroneous matches of physicians to reports with which they are not affiliated. However, we strongly urge HRSA not to include physician TINs on reports viewable by query, as the release of this information may result in physician identity theft. A recent *Journal of the American Medical Association (JAMA)* article by Shantanu Agrawal, MD and Peter Budetti, MD, JD, Center for Program Integrity, Centers for Medicare and Medicaid Services, noted that:

> "Medical identity theft is the appropriation or misuse of a patient's or physician's unique medical identifying information to obtain or bill public or private payers for fraudulent medical goods or services. For physicians, this information includes the National Provider Identifier (NPI), Tax Identification Number (TIN), and medical licensure information."[1] (emphasis added).

[1] Agrawal S, Budetti P. Physician Medical Identity Theft. JAMA. 2012; 78:459-460. Available at http://jama.ama-assn.org/content/307/5/459.full.

We request that HRSA revise its proposal to clarify that physician TINs will not be viewable on reports accessible by query.

Confidentiality of Information

We urge HRSA to revise its proposed language at §60.2 which states "Nothing in this section will prevent the disclosure of information by a party *from its own files used to create such reports* where disclosure is otherwise authorized under applicable State or Federal law." (emphasis added). We remind HRSA of the NPDB's recent adoption of a data use agreement to prevent the disclosure of confidential information. This language contravenes the intent of the data use agreement by going beyond the current regulatory language to invite researchers and others to seek out the reporting entity and ask for confidential information—which they have located through the NPDB—to be released in its entirety directly from the reporting entity. We note that this language, while clarifying, does not affect the implementation of the NPDB or the HIPDB in any way, and is therefore superfluous. **We strongly urge Center for Medicare & Medicaid Services to strike this language in its entirety from §60.2.**

State Law or Fraud Enforcement Agency

§6403 of the Affordable Care Act defines a state law or fraud enforcement agency as: 1) a state law enforcement agency; and 2) a State Medicaid fraud control unit.[2] HRSA proposes to go beyond the statutory definition of a state law or fraud enforcement agency to also include "a state agency administering (including those providing payment for services) or supervising the administration of a State health care program." Including such agencies in this definition would have the effect of requiring such agencies to report to, and have query access to, the newly integrated NPDB. HRSA notes in the preamble that:

> "We added 'a State agency administering (including those providing payment for services) a State health care program' as an example of an agency that would report exclusions from State health care programs. These State agencies also would take certain other adjudicated actions or decisions defined in the regulations, such as 'personnel-related actions,' when providing health care services through State-owned hospitals and other facilities. Because these agencies have a role in investigating and preventing health care fraud and abuse, they were included in the definition."

By including these agencies in its definition of a "State law or fraud enforcement agency," HRSA is overstepping its statutory authority and broadening the scope of the NPDB. Also troubling, HRSA is inappropriately conflating fraud and improper payments unrelated to fraud in its proposed definition. These are two distinct issues, and should not be confused. As a general rule, State agencies who administer health care programs may undertake initiatives to curb incorrect billing or coding practices, but do not lead health care fraud and abuse investigations. While State agencies who administer health care programs could report exclusions from the State health care programs, exclusions are not always tied to fraudulent activity. We are also concerned about HRSA's inclusion of other undefined actions in the definition, including "personnel-related actions." As written, the definition is confusing and will likely result in inappropriate over-reporting. **We strongly urge**

[2] Social Security Act §1128E, as amended by §6403(a)(1)of the Affordable Care Act (P.L. 111-148).

HRSA to revise its proposed definition to exclude State agencies administering a State health care program.

Definition of Entity

HRSA's table entitled *Data Banks Statutory Requirements before and after Passage of §6403* includes the term "entities" under the heading "Who Can Query" after passage of §6403 (see second to last bullet). However, the term "entities" does not appear in the chart under "Who Can Query" before the passage of §6403. We note that the term entity (or entities) appears throughout both existing regulation and the proposed rule, but is not specifically defined. The inclusion of the term "entities" in the table gives us pause. **Should HRSA mean to expand the scope of who may query the data bank by the use of this term, we would have serious objections. We request clarity on this point prior to the publication of the final rule so that we may inform HRSA of our views in a timely manner.**

Definition of Professional Review Action

Throughout the proposed rule, HRSA refers to "physicians, dentists, and health care practitioners" in sequence to encompass the full range of providers subject to the NPDB regulations. However, in HRSA's proposed definition of actions that are excluded from the term "professional review action," HRSA omits mention of physicians when defining actions that are not reportable in one case. Specifically, at §60.3, Professional Review Action (d)(4), HRSA states: "A physician's, dentist's, or other health care practitioner's association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice with, a member or members of a particular class of health care practitioner or professional." This appears to be a drafting error. **Physician actions within a physician group practice should be similarly excluded from the definition of professional review actions. We ask that HRSA revise this definition by inserting "physician" before the latter term "health care practitioner."**

Conclusion

The AMA is opposed to any expansion of the reportable information, reporting entities, or query privileges of the NPDB. We appreciate the overall effort of HRSA to merge the NPDB and the HIPDB without such expansion, and urge HRSA to modify its proposal pursuant to our comments to ensure that no such expansion results from this rulemaking. Should you have any questions on this letter, please contact Jennifer Meeks, Assistant Director, Division of Federal Affairs, at jennifer.meeks@ama-assn.org.

Sincerely,

James L. Madara, MD