

January 30, 2014

Ernia Hughes
Acting Director
Division of Practitioner Data Banks
Health Resources and Services Administration
5600 Fishers Lane
Rockville, MD 20857

Re: Comments Pertaining to National Practitioner
Data Bank Guidebook

Dear Ms. Hughes:

The National Association Medical Staff Services (“NAMSS”) appreciates the opportunity to provide feedback on the revised National Practitioner Data Bank (“NPDB”) draft Guidebook. NAMSS commends the Health Resources and Services Administration (“HRSA”) on its extraordinary effort in revising the Guidebook to reflect the NPDB’s and the Healthcare Integrity and Protection Data Bank’s merger, as well as policy changes since 1990. Overall, the revisions to the Guidebook are excellent and will provide valuable guidance to the industry.

In revising the NPDB Guidebook, it is critical that the final version is clear and specific to facilitate necessary and accurate reporting practices, in accordance with the NPDB’s mission. As such, NAMSS encourages HRSA to clarify and enhance the following components of its revised Guidebook.

Chapter E: Reports

E4: Terminology Differences: An action must be reported to the NPDB based on whether it satisfies NPDB reporting requirements and not based on the name affixed to the action by a reporting entity.

The above sentence is likely to lead to much confusion and uncertainty with respect to whether an action must be reported to the NPDB. NAMSS recommends that HRSA rephrase this sentence and limit its reference to reporting actions based on NPDB’s reporting requirements. Reference to “name affixed to the action” is confusing because it could be interpreted to mean that an entity could be required to report something even though it is not a professional review action. HRSA should also provide examples of suspensions that are reportable.

E9:

“Examples of when a Revision-to-Action Report should be submitted include...Clinical privileges, professional society membership, accreditation, program participation, or a license has been reinstated.”

This sentence is unclear and misleading. Does accreditation refer to individuals or to groups? NAMSS recommends that HRSA simplify the sentence to make it clearer.

E13:

Q&A: Submitting Reports:

1. How long are reports maintained in the NPDB?

Information reported to the NPDB is maintained permanently unless it is corrected or voided from the system.

NAMSS agrees that the NPDB should permanently maintain reported information, but suggests that HRSA provide a more in-depth explanation and legal reasoning for maintaining reports. The explanation would benefit and would help Medical Service Professionals (MSPs) and other members of the medical staff in providing concrete information to practitioners who often ask this question.

E29:

“Administrative Actions: Administrative actions that do not involve a professional review action should not be reported to the NPDB. For example: A hospital’s bylaws require physicians to be board certified in their specialty. A physician’s board certification is revoked and, as a result, the hospital automatically revokes the physician’s clinical privileges through an administrative action. The revocation of clinical privileges was not a result of a professional review action and should not be reported to the NPDB.”

This is not a practical example. Although it is common for a physician’s board certification status to expire, it would be highly unusual for a physician’s board certification status to be revoked. NAMSS recommends that HRSA replace the above example with the following: “A physician’s board certification expires and, as a result, the physician’s clinical privileges are automatically relinquished through an administrative action....”

E29:

“Multiple Adverse Actions: If a single professional review action produces multiple clinical privileges actions (for example, a 12-month suspension followed by a 5-month probation), only one report should be submitted to the NPDB. The reporting entity may select up to five Adverse Action Classification Codes on the reporting format to describe the actions taken. Reporting entities should use the narrative description to explain any additional adverse actions imposed.”

“A Revision-to-Action Report must be submitted when each of the multiple actions is lifted or otherwise changed. (For the example in the previous paragraph, a Revision-to-Action Report must be submitted when clinical privileges are reinstated with probation after the suspension, and another Revision-to-Action Report must be submitted when the probationary period ends.)”

This comment is in the section of the Guidebook addressing Reporting Adverse Clinical Privileges Action and pertains to hospitals and other healthcare entities with formal peer review processes. While probation is a reportable action when taken by a state board, it is not a reportable action when taken by a hospital or other healthcare entity. Therefore, the end of the probationary period at a hospital should not necessitate a Revision-to-Action Report.

E30:

“Renewals: Nonrenewals of medical staff appointment or clinical privileges generally should not be reported to the NPDB. However, if the practitioner does not apply for renewal of medical staff appointment or clinical privileges while under investigation by the health care entity for possible professional incompetence or improper professional conduct, or in return for not conducting such an investigation or not taking a professional review action, the event is considered a surrender while under investigation and must be reported to the NPDB. These actions must be reported regardless of whether the practitioner was aware of the investigation at the time he or she failed to renew the staff appointment or clinical privileges. A practitioner’s awareness that an investigation is being conducted is not a requirement for filing a report with the NPDB.”

NPDB’s instruction regarding *nonrenewals* of appointment and clinical privileges being reportable events is problematic. It creates ambiguity regarding a healthcare entity’s reporting obligation. The Guidebook currently implies that Focused Professional Practice Evaluation, for action and/or privilege change, is considered an investigation. Frequently, that is not the case. A review of issues at reappointment does not automatically trigger an investigation. Healthcare entities’ bylaws vary greatly regarding when an investigation commences. The Guidebook should allow a healthcare entity to explicitly define when an “investigation” is commenced. How will an entity know when there is an investigation if it cannot rely on its bylaws?

E32:

“Temporary Clinical Privileges: For the purpose of reporting to the NPDB, no distinction is made between temporary clinical privileges (including but not limited to emergency and disaster clinical privileges) and clinical privileges. If, however, temporary privileges are awarded to a physician or dentist for a specific amount of time, with no opportunity for renewal, and the temporary privileges expire while the practitioner is under investigation, a report should not be submitted with the NPDB. In this scenario, there is no opportunity to renew the temporary clinical privileges, so the expiration of the temporary privileges while under investigation cannot be considered a nonrenewal or surrender of clinical privileges while under investigation.”

NAMSS requests that the Guidebook explicitly address whether the non-renewability of privileges must be expressed in order for there not to be a reporting obligation when temporary privileges expire.

E34:

“Proctors: If, as a result of a professional review action related to professional competence or conduct, a proctor is assigned to a physician or dentist for a period of longer than 30 days, whether the action must be reported to the NPDB depends on the role of the proctor. If the physician or dentist cannot perform certain procedures without the approval of the proctor for a period lasting more than 30 days, the action constitutes a restriction of clinical privileges and must be reported to the NPDB. However, if the proctor is not required to give the physician or dentist permission to perform certain procedures, the action is not considered a restriction of clinical privileges and should not be reported to the NPDB.”

NAMSS requests that the Guidebook confirm that a proctor’s reporting on an individual’s performance (but not giving or withholding permission to practice) is NOT a reportable professional review action.

E38:

Question 6

Q: A PPO terminated a physician’s contract for causes relating to poor patient care, which in turn resulted in loss of the practitioner’s network participation. Should this be reported to the NPDB using one or two reports?

This question does not fit within this section. It would be better placed in the Q&A under Reporting Other Adjudicated Actions or Decisions beginning on Page E-90.

E39:

Question 10:

Q: A hospital’s CEO summarily suspended a physician’s privileges for failure to respond to an emergency department call. Should this action be reported to the NPDB?

A: The action must be reported if the summary suspension is in effect for longer than 30 days and the hospital considers the summary suspension to be a professional review action. Summary suspensions are considered to be final when they become professional review actions through action of the authorized hospital committee or body, according to bylaws or other official documents (e.g., rules and procedures, standard operating procedures).

In order to receive immunity under the HCQIA, a summary (or precautionary) suspension should be imposed only if failure to act may result in imminent danger to others. Unfortunately, summary suspensions are commonly used even if there is no potential for imminent danger, putting the physician leaders and hospital at legal risk. While not responding to emergency department call is a serious offense, it would not, in most instances, rise to the level of imminent danger. Therefore, NAMSS recommends that the Guidebook include a more appropriate example of a summary suspension, such as a suspension imposed because of a concern regarding intoxication or a grave concern regarding a physician’s clinical competence. This would provide further guidance to healthcare entities on what should be the limited use of a summary suspension.

NAMSS appreciates HRSA's initiative to revise the NPDB Guidebook as well as the opportunity to provide feedback to these revisions. Implementing the above recommendations will enhance the Guidebook to make it clearer and more helpful to healthcare entities, medical staffs, and providers. An increased understanding would make the NPDB more user-friendly – and ultimately, more effective. NAMSS appreciates HRSA consideration and looks forward to the final Guidebook. For any questions regarding our comments, please contact Molly Giammarco at mgiammarco@namss.org or at 202-367-2389.

Sincerely,

A handwritten signature in cursive script that reads "John Pastrano".

John Pastrano, BBA, CPCS, CPMSM
NAMSS President