Preface

The *National Practitioner Data Bank Guidebook* is meant to serve as a resource for the users of the National Practitioner Data Bank (NPDB). It is one of a number of efforts to inform the United States health care community about the NPDB and what is required to comply with the requirements established by Title IV of Public Law 99-660, the *Health Care Quality Improvement Act of 1986*, as amended. This *Guidebook* contains information that authorized users need to interact with the NPDB. Authorized users include State licensing authorities; medical malpractice payers; hospitals and other health care entities; and physicians, dentists, and other licensed health care practitioners.

Final regulations governing the NPDB were published in the *Federal Register* on October 17, 1989, and are codified at 45 CFR Part 60. The U.S. Department of Health and Human Services (HHS) is responsible for implementing the NPDB.

This *Guidebook* is divided into broad topical sections. This introduction contains general information on the NPDB, which includes its history, the laws and regulations that govern it, and other information for authorized users. Chapter H, Information Sources, provides a variety of sources to facilitate user interaction with the NPDB. The Glossary, included as Appendix A, defines terms helpful in understanding NPDB operations, including querying and reporting requirements.

This edition of the *NPDB Guidebook* reflects the entire range of NPDB policies and operations, including those that have changed or expanded since the NPDB opened in September 1990. This comprehensive *Guidebook* is for both new and experienced entities that are eligible to participate in the NPDB; it supersedes all previous versions.

Background

The legislation that led to the creation of the NPDB was enacted because the U.S. Congress perceived that the increasing occurrence of medical malpractice litigation and the need to improve the quality of medical care had become nationwide problems that warranted greater efforts than those that could be undertaken by any individual State. Effective professional peer review can restrict the ability of incompetent practitioners to move from State to State without disclosure or discovery of previous damaging or incompetent performance. The Congress felt that the threat of private money damage liability under Federal laws, including treble damage liability under Federal antitrust law, unreasonably discouraged physicians and dentists from participating in effective professional peer review. Therefore, Congress sought to provide incentive and protection for physicians and dentists engaging in effective professional peer review.

Hearings were held in the U.S. House of Representatives on the proposed legislation, the *Health Care Quality Improvement Act of 1986*, on March 18 and July 15, 1986, by the Subcommittee on Health and the Environment, Committee on Energy and Commerce, and on October 8 and 9, 1986, by the Subcommittee on Civil and Constitutional Rights, Committee on the Judiciary. At these public hearings, testimony was given by physicians, attorneys, insurance

officials, representatives of health care associations, and others. The *Health Care Quality Improvement Act of 1986* was incorporated as Title IV into legislation requiring States to develop, establish, and implement State comprehensive mental health plans. This legislation became Public Law 99-660 when it was signed by President Ronald Reagan on November 14, 1986.

Title IV of Public Law 99-660

The intent of Title IV of Public Law 99-660 is to improve the quality of health care by encouraging State licensing boards, hospitals and other health care entities, and professional societies to identify and discipline those who engage in unprofessional behavior; and to restrict the ability of incompetent physicians, dentists, and other health care practitioners to move from State to State without disclosure or discovery of previous medical malpractice payment and adverse action history. Adverse actions can involve licensure, clinical privileges, and professional society memberships.

Civil Liability Protection

To encourage and support professional review activity of physicians and dentists, Part A of Title IV provides that the professional review bodies of hospitals and other health care entities, and persons serving on or otherwise assisting such bodies, are offered immunity from private damages in civil suits under Federal or State law. Immunity provisions apply when professional review responsibilities are conducted with the reasonable belief of furthering the quality of health care and with proper regard for due process. There are exceptions under the law for civil rights actions and antitrust actions brought by Federal and State Governments.

In order to receive immunity protection, a professional review action regarding the professional competence or professional conduct of a physician or dentist must be taken:

- In the reasonable belief that the action was in the furtherance of quality health care.
- After a reasonable effort to obtain the facts of the matter.
- After adequate notice and hearing procedures are afforded to the physician or dentist involved or after such other procedures as are fair to the physician or dentist under the circumstances.
- In the reasonable belief that the action was warranted by the facts known, after such reasonable effort to obtain facts and after meeting the notice and hearing requirement.

Because the immunity provided by the *Health Care Quality Improvement Act* is from liability rather than from suit, a disciplined physician or dentist retains the right to sue; however, the court may award attorneys' fees and court costs to the defendants if the suit is determined to be frivolous, unreasonable, without foundation, or in bad faith.

Title IV of Public Law 99-660, the *Health Care Quality Improvement Act of 1986*, led to the establishment of the NPDB, an information clearinghouse, to collect and release certain information related to the professional competence and conduct of physicians, dentists, and, in some cases,

other health care practitioners. The establishment of the NPDB represents an important step by the U.S. Government to enhance professional review efforts by making certain information concerning medical malpractice payments and adverse actions available to eligible entities and individuals.

A web link to the NPDB Regulations codified at 45 CFR Part 60 is referenced in Appendix B of this *Guidebook*.

Interpretation of NPDB Information

The NPDB is primarily an alert or flagging system. The information contained in it is intended to direct discrete inquiry into and scrutiny of specific areas of a practitioner's licensure, professional society memberships, medical malpractice payment history, and record of clinical privileges. NPDB information is an important supplement to a comprehensive and careful review of a practitioner's professional credentials. The NPDB is intended to augment, not replace, traditional forms of credentials review. As a nationwide flagging system, it provides another resource to assist State licensing boards, hospitals, and other health care entities in conducting extensive, independent investigations of the qualifications of the health care practitioners they seek to license or hire, or to whom they wish to grant clinical privileges.

Settlement of a medical malpractice claim may occur for a variety of reasons that do not necessarily reflect negatively on the professional competence or conduct of the physician, dentist, or other health care practitioner. **Thus, a payment made in settlement of a medical malpractice action or claim shall not be construed as a presumption that medical malpractice has occurred.**

The information in the NPDB should serve only to alert State licensing authorities and health care entities that there may be a problem with a particular practitioner's professional competence or conduct. NPDB information should be considered together with other relevant data in evaluating a practitioner's credentials (e.g., evidence of current competence through continuous quality improvement studies, peer recommendations, health status, verification of training and experience, and relationships with patients and colleagues).

Confidentiality of NPDB Information

Information reported to the NPDB is considered confidential and shall not be disclosed except as specified in the NPDB regulations at 45 CFR Part 60. The confidential receipt, storage, and disclosure of information is an essential ingredient of NPDB operations. A comprehensive security system has been designed to prevent manipulation of and access to the data by unauthorized staff or external sources. The facility in which the NPDB is housed meets HHS security specifications, and NPDB staff have undergone in-depth background security investigations.

The Office of Inspector General (OIG), HHS, has been delegated the authority to impose civil money penalties on those who violate the confidentiality provisions of Title IV. The civil money penalties for violating the confidentiality provisions of

Title IV are to be imposed in the same manner as other civil money penalties pursuant to §1128A of the *Social Security Act*, 42 U.S.C. 1320a-7a. Regulations governing civil money penalties under §1128A are set forth at 42 CFR Part 1003.

For each violation of confidentiality, a civil money penalty of up to $11,000 can be levied. In any case in which it is determined that more than one party was responsible for improperly disclosing confidential information, a penalty of up to the maximum $11,000 limit can be imposed against each responsible individual, entity, or organization.

Persons or entities who receive information from the NPDB either directly or indirectly are subject to the confidentiality provisions and the imposition of a civil money penalty if they violate those provisions. When an authorized agent is designated to handle NPDB queries, both the entity and the agent are required to maintain confidentiality in accordance with Title IV requirements.

The *Privacy Act*, 5 USC §552a, protects the contents of Federal systems of records on individuals, like those contained in the NPDB, from disclosure without the individual's consent, unless the disclosure is for a routine use of the system of records as published annually in the *Federal Register*. The published routine uses of NPDB information, which are based on the laws and the regulations under which the NPDB operates, do not allow disclosure to the general public. The limited access provision of the *Health Care Quality Improvement Act of 1986*, as amended, supersedes the disclosure requirements of the *Freedom of Information Act* (FOIA), 5 USC §552, as amended.

The confidentiality provisions of Title IV do not prohibit an eligible entity receiving information from the NPDB to disclose the information to others who are part of the peer review process, as long as the information is used for the purpose for which it was provided. Examples of appropriate uses of NPDB information include:

- A hospital may disclose the information it receives from the NPDB to hospital officials responsible for reviewing a practitioner's application for a medical staff appointment or clinical privileges. In this case, both the hospital officials who receive the information and the hospital officials who subsequently review it during the employment process are subject to the confidentiality provisions of Title IV.

- A private accreditation entity can review confidential information that a health care entity has obtained regarding its practitioners only if the purpose of the disclosure is to carry out peer review activity for that health care entity (i.e., the private accreditation entity maintains a role in the decision-making process for practitioner membership in the health care entity, which would make its activities part of the peer review process). If the private accreditation entity's activities are not considered part of the peer review process, the private accreditation entity **cannot** view any documents that the health care entity has obtained from the NPDB that show the results of an NPDB query (e.g., match or no match), such as an NPDB report or the

query response document entitled, *Response to Information Disclosure Request*. However, the health care entity would not be in violation of the confidentiality requirements if it discloses a copy of the *Response to Information Disclosure Request* to the private accreditation entity, as long as information that discloses the query result is removed from the copy, (i.e., so the document shows only the names on which queries were submitted). Additionally, if the health care entity obtains a release from a physician authorizing it to specifically release confidential information it obtains from the NPDB to the private accreditation entity, the health care entity may do so without violating the NPDB's confidentiality restrictions.

The confidentiality provisions do not apply to the original documents or records from which the reported information is obtained. The NPDB's confidentiality provisions do not impose any new confidentiality requirements or restrictions on those documents or records. Thus, these confidentiality provisions do not bar or restrict the release of the underlying documents, or the information itself, by the entity taking the adverse action or making the payment in settlement of a written medical malpractice complaint or claim. For example, if a hospital that reported an adverse action against a physician pursuant to the provisions of Title IV receives a subpoena for the underlying records, it may not refuse to provide the requested documents on the grounds that Title IV bars the release of the records or information.

Individual health care practitioners who obtain information about themselves from the NPDB are permitted to share that information with whomever they choose.

Disclosure of NPDB Information

The *Health Care Quality Improvement Act of 1986*, as amended, and its governing regulations limit the disclosure of information in the NPDB. Information is available to:

- Hospitals requesting information concerning a practitioner on their medical staff or to whom they have granted clinical privileges, or with respect to professional review activity.
- Health care entities (including hospitals) that have entered or may be entering employment or affiliation relationships with a practitioner or to which the practitioner has applied for clinical privileges or appointment to the medical staff, or with respect to professional review activity.
- Practitioners requesting information about themselves.
- Boards of medical examiners or other State licensing boards.
- Attorneys or individuals representing themselves upon submission of proof that a hospital failed to submit a mandatory query.
- Persons or entities requesting information in a form which does not identify any particular entity or practitioner.

The *Privacy Act* protects the contents of Federal systems of records on individuals, like those in the NPDB, from disclosure

without the individual's consent unless the disclosure is for a routine use of the system of records as published annually in the *Federal Register*. The published routine uses of NPDB information, which are consistent with the law and the regulations under which it operates, do not include disclosure to the general public.

- The general public may not request information that identifies any particular entity or practitioner from the NPDB.
- Medical malpractice payers may not request information even though they are required to report.

See §60.11 of the NPDB Regulations. A link to the NPDB Regulations is included in Appendix B of this *Guidebook*.

Coordination Between the NPDB and the HIPDB

The Healthcare Integrity and Protection Data Bank (HIPDB) was established through the *Health Insurance Portability and Accountability Act of 1996* (HIPAA), Public Law 104-191. This law directed the Secretary of HHS and the U.S. Attorney General to create the HIPDB to combat fraud and abuse in health insurance and health care delivery. The HIPDB is a national data collection program for reporting and disclosing certain final adverse actions taken against health care practitioners, providers, and suppliers.

To alleviate the burden on those entities that must report to both the NPDB and the HIPDB, a system has been created to allow an entity that must report the same adverse action to both Data Banks to submit the report only once. This Integrated Querying and Reporting Service (IQRS) is able to sort the appropriate actions into the HIPDB, the NPDB, or both. Similarly, entities authorized to query both Data Banks have the option of querying both the NPDB and the HIPDB with a single query submission.

Official Language

The official language of the NPDB is English, and all documents submitted to the NPDB must be written in English. Documents submitted in any other language are not accepted.

User Fees

User fees are assessed to cover the processing costs for all queries for NPDB information. Refer to the NPDB-HIPDB web site at *www.npdb-hipdb.com* for details regarding the payment of NPDB user fees.