

## **The Dispute Process**

The HIPDB is committed to maintaining accurate information and ensuring that health care practitioners, providers, and suppliers are informed when adverse actions are reported. When the HIPDB receives a report, the information is processed by the HIPDB computer system exactly as submitted by the reporting entity. Reporting entities are responsible for the accuracy of the information they report to the HIPDB.

When the HIPDB processes a report, a *Report Verification Document* is provided to the reporting entity, and a *Notification of a Report in the Data Bank(s)* is sent to the subject. The subject should review the report for accuracy, including such information as current address, telephone number, and place of employment. **Subjects may not submit changes to reports.** If any information in a report is inaccurate, the subject must contact the reporting entity to request that it file a Correction to the report. The HIPDB is prohibited by law from modifying information submitted in reports.

If the reporting entity declines to change the report, the subject may initiate a dispute of the report through the HIPDB dispute process, add a statement to the report, or both. The dispute process is not an avenue to protest a judgment or to appeal the underlying reasons of an adverse action affecting the subject's license or inclusion in a Federal or State health care program. Neither the merits of a criminal or civil suit nor the appropriateness of, or basis for an adverse action may be disputed.

Subjects who wish to add a statement to and/or dispute the factual accuracy of a report should follow the instructions on the *Notification of a Report in the Data Bank(s)*. Subjects who do not have the original *Notification of a Report in the Data Bank(s)* may obtain a *Subject Statement and Dispute Initiation* form from the NPDB-HIPDB website.

### **Subject Statements**

The subject of a report may add a statement to a report at any time. When the HIPDB processes a statement, notification of the statement is sent to all queriers who received the report within the past 3 years, and will be included with the report when it is released to future queriers.

Subject Statements are limited to 2,000 characters, including spaces and punctuation. **Subject Statements must not include any patient names.** Drafting a statement in accordance with the character limits ensures that the statement will contain the information a subject deems most important. All characters beyond 2,000 will not be accepted.

A Subject Statement is part of the specific report for which it is filed. If the report is changed by the reporting entity, the statement attached to the report also will be removed. If a statement is needed with

the new report, a new statement will have to be submitted to the HIPDB, referencing the Document Control Number (DCN) of the new report.

### **Subject Disputes**

The subject of an *Adverse Action Report* or *Judgment or Conviction Report* contained in the HIPDB may dispute either the factual accuracy of a report or whether a report was submitted in accordance with the HIPDB's reporting requirements, including the eligibility of the entity to report the information to the HIPDB. A subject may *not* dispute a report in order to appeal the underlying reasons for an adverse action.

If a subject believes that information in a report is factually inaccurate (for instance, an incorrect adverse action code or judgment date) or should not have been reported (for instance, a suspension or criminal conviction not related to health care), the subject must attempt to resolve the disagreement directly with the reporting entity. **Changes to the report may be submitted only by the reporting entity.**

When the HIPDB processes a dispute, notification of the dispute is sent to all queriers who received the report within the past 3 years, and will be included with the report when it is released to future queriers.

A dispute is part of the specific report for which it is filed. If the report is changed by the reporting entity, the dispute notation attached to the report also will be removed. If the subject believes that the new version of the report is factually inaccurate, the subject must initiate a new dispute of the changed report.

### **Secretarial Review**

If the reporting entity declines to change the disputed *Adverse Action Report* or *Judgment or Conviction Report* or takes no action, the subject may request that the Secretary of DHHS review the disputed report. The Secretary will review disputed reports only for accuracy of factual information and to ensure that the information was required to be reported.

The Secretary will not review:

- The merits of a civil judgment or criminal conviction.
- The appropriateness of, or basis for a health plan's adjudicated action or a Government agency's or State Licensing Board's adverse action.

To request the review of a disputed report by the Secretary, the subject must sign and return to the HIPDB the Secretarial Review request page attached to the *Report Revised, Voided, or Status Changed*

document related to the disputed report. Please note that the dispute and any accompanying documentation must be sent to the HIPDB, not directly to the Secretary.

The subject also must:

- State clearly and briefly in writing which facts are in dispute and what the subject believes are the facts.
- Submit documentation substantiating that the reporting entity's information is inaccurate. Documentation must directly relate to the facts in dispute and must substantially contribute to a determination of the factual accuracy of the report. Documentation may not exceed 10 pages, including attachments and exhibits.
- Submit proof that the subject attempted to resolve the disagreement with the reporting entity, but was unsuccessful. Proof may be a copy of the subject's correspondence to the reporting entity and the entity's response, if any.

The subject of the report should wait for 30 days from the date of initiating discussions with the reporting entity before requesting Secretarial Review of the disputed report, to allow the reporting entity time to respond to a dispute.

### **Pertinent Documentation**

If the dispute relates to an *Adverse Action Report*, pertinent documentation might include a copy of:

- The findings of fact and recommendations of the health plan or State Licensing Board.
- The final report of the hearing panel or other appellate body upon which the description of the acts or omissions was based.

If the dispute relates to a *Judgment or Conviction Report*, pertinent documentation might include a copy of:

- The court judgment.
- The injunction document.

If necessary, the Secretary will ask the reporting entity to supply additional information confirming that the report was submitted in accordance with HIPDB regulations. Entities must respond to a request for more information from the Secretary within 15 days. After reviewing all documentation related to the dispute,

the Secretary will determine whether the information in the disputed report is accurate and should have been reported to the HIPDB.

### **Secretarial Review Results**

When the HIPDB receives proper notice of a request for Secretarial Review, the materials will be forwarded to the Secretary of DHHS for review. There are three possible outcomes for Secretarial Review of a dispute:

- The Secretary concludes that the report is accurate.
- The Secretary concludes that the report is inaccurate.
- The Secretary concludes that the issues in dispute are outside the scope of Secretarial Review.

#### **Report Accurate as Submitted**

If the Secretary concludes that the information in the report is accurate, the Secretary will send an explanation of the decision to the subject practitioner, provider, or supplier. The subject may then submit, within 30 days, a statement that will be added to the report. The statement is limited to 2,000 characters, including spaces and punctuation, and will be entered into the HIPDB computer system exactly as submitted. The new Subject Statement will replace any statement the subject submitted previously.

The subject of the report, the reporting entity, and all queriers who received notice of the disputed report within the past 3 years will receive a *Report Revised, Voided, or Status Changed* document containing the Secretary's explanation and the subject's statement. Future queriers will receive the subject's statement with the report.

#### **Report Inaccurate as Submitted**

If the Secretary concludes that the report is inaccurate, the Secretary will direct the HIPDB to correct the information in the report. The subject of the report, the reporting entity, and all queriers who received notice of the disputed report within the past 3 years will receive a *Report Revised, Voided, or Status Changed* document informing them of the correction.

If the Secretary concludes that the report was submitted in error, the Secretary will direct that the report be voided from the HIPDB. The subject of the report, the reporting entity, and all queriers who received notice of the disputed report within the past 3 years will receive a *Report Revised, Voided, or Status Changed* document informing them that the report has been voided.

### **Dispute Outside the Scope of Secretarial Review**

If the Secretary concludes that the issue in dispute is outside the scope of review, the Secretary will direct the HIPDB to add an entry to that effect to the report and to remove the dispute notation from the report. The subject may then submit, within 30 days, a statement that will be added to the report. The statement is limited to 2,000 characters, including spaces and punctuation, and will be entered into the HIPDB computer system exactly as submitted.

The subject of the report, the reporting entity, and all queriers who received notice of the disputed report within the past 3 years will receive a *Report Revised, Voided, or Status Changed* document informing them of the Secretary's decision.

### **Reconsideration of the Secretary's Decisions on Disputes**

Although DHHS does not have a formal appeals process for reconsideration of the Secretary's decisions on disputes, DHHS will review such requests. The subject practitioner, provider, or supplier must submit a written request for reconsideration to the office that issued the Secretary's determination. The subject should be specific about any new information that was unavailable at the time of Secretarial Review and/or which issues the subject believes were not appropriately considered during the review process. The Secretary will either affirm the prior determination or issue a revised finding. DHHS will, however, give priority to initial requests for Secretarial Review.

### **Improper Requests for Secretarial Review**

A request for Secretarial Review is considered improper when the report in question has not previously been disputed by the subject practitioner, provider, or supplier. Before requesting Secretarial Review, a subject must:

- First, attempt to resolve the disagreement with the reporting entity.
- Second, dispute the report according to the instructions provided on the Notification of a Report in the *Data Bank(s)* document.

If a subject submits an improper request for Secretarial Review, the HIPDB will notify the subject practitioner, provider, or supplier that resolution with the reporting entity must be attempted first.

**Examples of Disputes****Due Process - Alleged Denial**

**Example:** A practitioner alleged that a health plan denied him due process because the health plan ignored the testimony of medical experts or other witnesses called to prove various points the practitioner felt were important to the defense.

**Outcome:** The Secretary determined that the dispute request was outside the scope of review and made an entry to that effect in the report. The dispute notation was removed from the report.

**Narrative Description - Inaccurate**

**Example:** A supplier disputed a report of a licensure disciplinary action taken by a State licensing agency stating that the narrative regarding the act was inaccurate. The supplier requested that the description be changed to reflect the findings of the agency.

**Outcome:** The Secretary reviewed the narrative against the findings reported by the licensing agency and determined that the report would be accurate if the actual language from the agency's findings were used. The Secretary directed the HIPDB to change the narrative. The dispute notation was removed from the report.

**Licensure- Voluntary Surrender**

**Example:** A nurse disputed a report that she had surrendered her license. The nurse disputed the report on the basis that she had surrendered due to personal reasons, unrelated to her practice. The nurse stated that she surrendered her license because she was moving to another State.

**Secretary's Response:** The Secretary requested that the State licensing board submit contemporaneous documentation showing that the reasons for the surrender were not as a result of the nurse simply surrendering her license to move to another State. The State licensing submitted documentation which showed that the nurse was under investigation for patient abuse and had agreed to the surrender in lieu of further disciplinary action. The Secretary determined that the action was reportable and made an entry to that effect in the report. The dispute notation was removed from the report.

### Criminal Conviction

**Example:** A provider disputed a report of a health care-related criminal conviction. The provider argued that he was never convicted of a crime. The provider argued he had pleaded *nolo contendere* to an allegation of submitting false claims to a health plan and this did not constitute a criminal conviction.

**Secretary's Response:** The Secretary ruled this was a reportable event based on the definition of criminal conviction as referenced in the HIPDB regulations. The definition of criminal conviction includes a *nolo contendere* plea as a criminal conviction. The dispute notation was removed from the report

## **Questions and Answers**

**1. I am the executor of my wife's estate. I received notification of a report about her in the HIPDB. Can I dispute the report?**

Yes. To dispute a report on your wife's behalf, you must provide documentation that you have been appointed the executor or legal representative of her estate. Acceptable documentation can be a photocopy of her will or other legal documentation showing you as the executor/legal representative.

**2. When a subject attempts to resolve a disagreement with a reporting entity, must the dispute be resolved within a certain time frame?**

No. A subject must inform the reporting entity, in writing, of the subject's disagreement with the report and the basis for that disagreement, but there is no requirement that the dispute must be resolved within a certain amount of time.

**3. If a subject wishes to dispute a report, does the subject have to submit a statement at the time of dispute?**

No. The subject *may* provide a statement with the initiation of dispute, but is not required to do so. A Subject Statement may be submitted at any time.

**4. Must a subject initiate a dispute in order to add a statement to a report?**

No. The subject of a report may add a statement to a report independently of the dispute process.

**5. If the Secretary rules a dispute to be beyond the scope of review and places a notation to this effect in the HIPDB, can a subject also add a statement?**

Yes. Subjects will be notified of this option by the Secretary. A Subject Statement added to the report after dispute resolution will replace any prior Subject Statement.