

July 21, 1999

/s/

June Gibbs Brown
Inspector General

Legislative Recommendation to Improve Hospital Reporting to the National Practitioner Data Bank, OEI-12-99-00250

Claude Earl Fox, M.D., M.P.H.
Administrator
Health Resources and Services Administration

ISSUE

There are indications that hospitals may not be complying with the reporting requirements of the National Practitioner Data Bank (Data Bank). We are therefore recommending that the Health Resources and Services Administration (HRSA) initiate a legislative proposal (A-19) to provide for a civil money penalty of up to \$10,000 for each instance of a hospital's failure to report an applicable adverse action to the Data Bank.

CURRENT LAW

Section 423 of the Health Care Quality Improvement Act (42 U.S.C. 11133) requires that each hospital or health care entity which takes a professional review action that adversely affects the clinical privileges of a physician or dentist for a period of longer than 30 days report to the appropriate State board of medical examiners the name of the physician or dentist involved and a description of the acts or omissions or other reasons for the action. Each board of medical examiners is required to report this information to the Data Bank.

Section 411(b) provides that in the case of a hospital or health care entity that is found to have committed a pattern of non-reporting be given notice of noncompliance, an opportunity to correct the noncompliance, and a hearing before the Secretary. Subsequently, if the Secretary determines that the entity has failed to comply, its name will be published in the *Federal Register* and it will lose its immunity protections for a period of 3 years; such immunity provides liability protections for professional review activities.

EVIDENCE OF THE PROBLEM

Hospitals Reporting to the Data Bank

In February 1995, we issued a report entitled "Hospital Reporting to the National Practitioner Data Bank," OEI-O1-94-00050. This study, which was done at the request of HRSA, found

that for the period September 1, 1990, when the Data Bank became operational, to December
Page 2 - Claude Earl Fox, M.D., M.P.H.

1993 about 75 percent of all hospitals in the United States had never reported an adverse action. More current data indicates that for the period September 1990 through September 30, 1998 about 67 percent of hospitals have never reported an adverse action.

Prior to the opening of the Data Bank, in a planning document submitted to the Office of Management and Budget, the Public Health Service estimated there would be 5,000 hospital adverse action reports a year. In a separate analysis, the American Medical Association estimated that there would be 10,000 such reports annually. In actual fact, a total of only 7,453 reports have been received over the 8-year operational history of the Data Bank, i.e. less than 1,000 per year.

A national conference of major medical and health organizations sponsored by HRSA in October 1996 reached a consensus that the number of reports in the Data Bank is unreasonably low compared with what would be expected if hospitals pursued disciplinary actions aggressively and reported all such actions. The attendees included representatives from the American Medical Association, American Hospital Association, Joint Commission on Accreditation of Healthcare Organizations, Health Care Financing Administration, patient advocacy organizations, Federation of State Medical Boards, Office of Inspector General, and a major university teaching hospital.

An October 1994 study of 144 rural hospitals in the Pacific Northwest funded by HRSA and performed by the University of Washington School of Medicine, found that 20 percent of hospitals reported an increase in activities that could obviate the need to submit an adverse report to the Data Bank. For example, imposing disciplinary periods of shorter than 31 days had increased in 5 percent of the hospitals. Other hospitals (12 percent) reported an increase in requiring continued medical education instead of restricting clinical privileges.

Hospitals Reporting to States

According to the Federation of State Medical Boards, almost all States have mandatory reporting laws relating to the reporting of adverse actions to State medical boards. California for example, requires a health care facility to report to the State medical board any denial, termination or relocation of privileges for a cumulative period of 30 days or more for any 12-month period. Colorado and a number of other States have no time threshold for reporting, that is, all adverse actions must be reported. Fourteen States have a civil or money penalty associated with failure to report to State medical boards. California, for example, can impose a fine of up to \$10,000 against the facility and a fine of up to \$5,000 against an individual for failure to report.

The Citizen Advocacy Center (CAC), which is a national association of public members of State licensing boards, released a HRSA funded study in March 1997 that found indications of non-compliance with State mandatory reporting laws. The Center quotes the President of the

California Medical Board as stating the following in the January 1995 issue of the board's newsletter:

The issue of 805 (peer review) reporting is one of the most important and most misunderstood Medical Practice Act requirements. Over the past year, we have noted a deterioration in the cooperation required between hospitals and the Board in protecting consumer/patient safety. We have experienced incomplete reports and, on some occasions, excuses for not reporting at all.

Based on its survey, the center offered four possible reasons for under-reporting to State boards: (1) a cultural aversion to reporting a colleague ("snitching"); (2) deficiencies in reporting laws ; (3) lax enforcement; and (4) lack of knowledge on the part of hospitals about their duty to report.

Because of concerns involving under-reporting, the CAC, in cooperation with the Administrators of Medicine (directors of State medical boards), drafted a model State reporting law. The model law calls for a financial penalty of \$1,000 per day for the period of non-compliance, up to a maximum fine of \$250,000 for each incident of failure to report.

A recently completed HRSA-funded study by the University of Washington Medical School concerning hospital reporting and State peer review protections statutes found that "...Data also revealed that more adverse actions are reported to the Data Bank in States which impose significant penalties upon hospitals for failure to report certain peer review actions to State licensing board (sic). This raises significant concern that hospitals are not fully reporting adverse peer review actions to appropriate governmental agencies and stronger laws are needed..."

According to this study, after adjusting for differences in hospital characteristics, hospitals in States with strong penalties were 40 percent more likely to have reported an adverse action over the 5 years of the study than hospitals in States with no penalties.

OIG RECOMMENDATION

To more fully encourage hospitals to follow the intent of Section 423 of the Health Care Quality Improvement Act (Act), we recommend that HRSA propose legislation that would establish a civil money penalty of up to \$10,000 for each instance of a hospital's failure to report to the Data Bank in accordance with the requirements of Section 423. This penalty is consistent with the current civil money penalty sanction that can be imposed for failure to report a malpractice settlement or judgement. Section 421 of the Act provides that any entity that fails to report a malpractice payment "...shall be subject to a civil money penalty of not more than \$10,000. for each payment involved..."

Page 4 - Claude Earl Fox, M.D., M.P.H.

Under our recommendation, the Department would continue to have the discretion to remove a hospital's peer review immunity protection under the Act.

The HRSA concurred with the recommendation and indicated that their legislative proposal would cover reporting by all health care entities (including managed care organizations). The HRSA also indicated that they are considering increasing the Civil Money Penalty to more than the \$10,000 recommended by the Office of Inspector General. A copy of the full HRSA response is attached.

Could you please submit within 60 days from the date of this memorandum report your plans to implement the recommendation. If you have any questions or comments, please call me or George Grob, Deputy Inspector General for Evaluation and Inspections, or have your staff contact Elise Stein at (202) 619-2686.

Attachment



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

MAY 28 1999

Health Resources and
Services Administration
Rockville MD 20857

TO: Inspector General, OS

FROM: Deputy Administrator

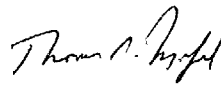
SUBJECT: Legislative Recommendation to Improve Hospital Reporting to the National Practitioner Data Bank

This is in response to your May 5 request for comments to the subject report. We fully support the OIG's recommendation and have developed a proposed A-19 legislative amendment regarding noncompliance with the reporting requirements of the National Practitioner Data Bank (NPDB). This legislative proposal is currently under review.

There are two minor differences between the HRSA proposed A-19 legislative amendment and the OIG's legislative recommendation as follows:

1. The OIG's recommended language would apply only to hospitals that fail to report an adverse action as required by law. HRSA's proposed amendment would apply not only to hospitals, but to other health care entities (primarily managed care organizations) as well. With the public's increasing reliance on managed care organizations (MCOs) for health care delivery, we believe that adverse actions taken by MCOs are an important indicator of professional incompetence or unprofessional conduct. Thus, the reporting of these acts is essential to the success of the NPDB in protecting the public. Therefore, it is important that the proposed Civil Money Penalty (CMP) be applicable to both hospitals and to other health entities.
2. The OIG's recommended language would create a CMP of up to \$10,000 for each failure to report. HRSA is considering whether to recommend an increase in the CMP in order to send a very strong message to all adverse action reporters regarding the potential implications of not submitting a required report.

Staff questions may be directed to Michael S. Herbst at (301) 443-5356 or by FAX at (301) 443-8254.


Thomas G. Morford