

Preface

This *Guidebook* is meant to serve as a resource for users of the Healthcare Integrity and Protection Data Bank (HIPDB). It is one of a number of efforts to inform the health care community about the HIPDB and what is required to comply with the requirements established by Section 1128E of the *Social Security Act*, the legislation governing the HIPDB. This *Guidebook* contains information on the HIPDB that governmental agencies (including law enforcement), health plans, and health care practitioners, providers, and suppliers will need to interact with the HIPDB.

Final regulations governing the HIPDB will be published in the *Federal Register* and will be codified at 45 CFR Part 61. Responsibility for HIPDB implementation resides in the U.S. Department of Health and Human Services (DHHS).

The *Guidebook* is divided into broad topical sections. This Introduction contains general information on the HIPDB, which includes its history, the laws and regulations that govern it, and other information for authorized users. The Eligible Entities section describes the organizations that are eligible reporters and queriers. The HIPDB Practitioners, Providers, and Suppliers section defines the subjects of reports submitted to the HIPDB, and provides basic explanations about HIPDB self-queries and report information. The HIPDB Reports section identifies the types of actions that must be reported to the HIPDB, and the Disputes section provides information on the HIPDB dispute process.

Background

Health care fraud burdens the Nation with enormous financial costs and threatens health care quality and patient safety. Estimates of annual losses due to health care fraud range from 3 to 10 percent of all health care expenditures--between \$30 billion and \$100 billion, based on estimated 1997 expenditures of more than \$1 trillion.

The *Health Insurance Portability and Accountability Act of 1996* (HIPAA), Public Law 104-191, enacted August 21, 1996, requires the Secretary of DHHS (Secretary), acting through the Office of Inspector General (OIG) of DHHS and the United States Attorney General, to create a national health care fraud and abuse control program. Among the major components of this program is the establishment of a national data bank to receive and disclose certain final adverse actions against health care practitioners, providers, and suppliers. This data bank is known as the Healthcare Integrity and Protection Data Bank (HIPDB); the legislation which brought it into being also is referred to as Section 1128E of the *Social Security Act* (Section 1128E).

The legislation for the HIPDB stipulates that there be:

- Protection of privacy.
- Civil liability protection.
- Coordination with the National Practitioner Data Bank (NPDB).
- User fees for disclosure of information.
- Regular reports (not less than monthly).
- Dispute procedures.

Elaboration of these provisions are found throughout this *Guidebook*. Explanation of the protection of privacy, civil liability protection, and NPDB coordination are included in the following sections.

Interpretation of HIPDB Information

The purpose of the HIPDB is to combat fraud and abuse in health insurance and health care delivery and to promote quality care. The HIPDB is primarily a flagging system that may serve to alert users that a more comprehensive review of a practitioner's, provider's, or supplier's past actions may be prudent. HIPDB information is intended to be used in combination with information from other sources (e.g., evidence of current competence through continuous quality improvement studies, peer recommendations, verification of training and experience, and relationships with organizations) in making determinations on employment, affiliation, certification, or licensure decisions.

The information in the HIPDB should serve only to alert Government agencies and health plans that there *may* be a problem with a particular practitioner's, provider's, or supplier's performance. HIPDB information should *not* be used as the sole source of verification of a practitioner's, provider's, or supplier's professional credentials.

Confidentiality of HIPDB Information

Information reported to the HIPDB is considered confidential and shall not be disclosed except as specified in the HIPDB regulations at 45 CFR Part 61. The confidential receipt, storage, and disclosure of information is an essential ingredient of HIPDB operations. A comprehensive security system has been designed to prevent manipulation of, and access to the data by unauthorized staff or external sources via the Internet. The facility in which the HIPDB is housed meets DHHS security specifications, and the HIPDB's staff has undergone an in-depth background security investigation.

Persons or entities who receive information from the HIPDB either directly or indirectly are subject to the confidentiality provisions. When an Authorized Agent is designated to handle HIPDB queries or reports, both the entity and the agent are required to maintain confidentiality in accordance with HIPDB requirements.

The *Privacy Act*, 5 USC §552a, protects the contents of Federal systems of records on individuals, like those contained in the HIPDB, 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 HIPDB information do not allow disclosure to the general public. The limited access provision of Section 1128E of the *Social Security Act* supersedes the disclosure requirements of the *Freedom of Information Act* (FOIA), 5 USC §552, as amended.

The confidentiality provisions of Section 1128E do not prohibit an eligible entity receiving information from the HIPDB from disclosing information to others who are part of the investigation or peer review process, as long as the information is used for the purpose for which it was provided.

One example of the appropriate use of HIPDB information is a health plan that discloses the information it received from the HIPDB to health plan officials responsible for reviewing a chiropractor's application for affiliation. In this case, both the health plan personnel who received the information and the health plan officials who subsequently reviewed it during the employment process are subject to the confidentiality provisions of HIPDB.

The confidentiality provisions do not apply to the original documents or records from which the reported information is obtained. The HIPDB'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. For example, if a health plan that reported an adverse action against a chiropractor pursuant to the provisions of the HIPDB receives a subpoena for the underlying records, it may not refuse to provide the requested documents on the grounds that HIPDB bars the release of the records or information.

Individual health care practitioners, providers, and suppliers who obtain information about themselves from the HIPDB are permitted to share that information with whomever they choose.

The statute requires the Secretary to assure that HIPDB information is provided and used in a manner that appropriately protects the confidentiality of the information and the privacy of individuals receiving health care services. **Patient names are not to be submitted in HIPDB reports.**

Persons or entities who receive information from the HIPDB either directly or indirectly are subject to the above confidentiality provisions. The statute does not specify a penalty for violating the

confidentiality provisions of the HIPDB. However, other Federal statutes may subject individuals and entities to criminal penalties, including fines and imprisonment, for the inappropriate use or disclosure of HIPDB information.

Official Language

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

Disclosure of the HIPDB Information

Section 1128E limits the disclosure of information in the HIPDB. HIPDB information is available, upon request, to:

- Federal and State Government agencies.
- Health plans.
- Health care practitioners, providers, and suppliers requesting information concerning themselves.
- Persons or organizations requesting information in a form which does not permit the identification of any particular patient or health care practitioner, provider, or supplier.

The limited access provision of Section 1128E does not allow the disclosure of HIPDB information to the general public.

Civil Liability Protection

The immunity provisions in Section 1128E protect individuals, entities, and their authorized agents from being held liable in civil actions for reports made to the HIPDB unless they have actual knowledge of falsity of the information. The statute provides similar immunity to DHHS in maintaining the HIPDB.

Coordination Between the HIPDB and the NPDB

The NPDB is a national data bank that was established through Title IV of Public Law 99-660, the *Health Care Quality Improvement Act of 1986*, as amended. It is primarily an alert or flagging system intended to facilitate a comprehensive review of health care practitioners' professional credentials. The NPDB acts as a clearinghouse of information relating to medical malpractice payments

and adverse actions taken against the licenses, clinical privileges, and professional society memberships of physicians, dentists, and other licensed health care practitioners.

To alleviate the burden on those entities that must report to both the HIPDB and NPDB, 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 System (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.

All final adverse actions taken on or after August 21, 1996 (the date Section 1128E was passed), must be reported to the HIPDB. The HIPDB cannot accept any report with a date of action taken prior to August 21, 1996.

User Fees

User fees will be charged for all queries for HIPDB information submitted by non-Federal agencies and health plans and for self-queries submitted by health care practitioners, providers, or suppliers. Section 1128E exempts Federal entities from paying these fees. Refer to the NPDB-HIPDB website for details regarding the payment of HIPDB user fees.