THE ASSISTANT SECRETARY OF DEFENSE

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HEALTH AFFAIRS

OCT 31 2000

MEMORANDUM FOR SECRETARY OF THE ARMY
SECRETARY OF THE NAVY
SECRETARY OF THE AIR FORCE
DIRECTOR, DEFENSE LOGISTICS AGENCY
DIRECTOR, TRICARE MANAGEMENT ACTIVITY

SUBJECT: DoD Participation in the Health Integrity and Protection Data Bank

REFERENCES: (a) Social Security Act, section 1128E, as added by section 221 of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104-191)

(b) 45 CFR Part 61, Health Care Fraud and Abuse Data Collection Program: Reporting of Final Adverse Actions (issued at 64 Federal Register 57740, October 26, 1999)

(c) Section 1102, title 10, United States Code

(d) DoD Directive 6040.37, "Confidentiality of Medical Quality Assurance Records," July 9, 1996

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) (reference (a)) established a new fraud and abuse data collection program for the reporting and disclosure of certain final adverse actions taken against health care providers, suppliers, or practitioners. This data bank, known as the Health Integrity and Protection Data Bank (HIPDB), is governed by regulations of the Department of Health and Human Services (DHHS) (reference (b)) and was instituted effective October 1, 1999. The Department of Defense is required by the statute to report to the HIPDB a broad range of "adverse actions" affecting DoD health care personnel, as well as the civilian provider community involved in TRICARE. It is DoD policy to comply with the statutory and regulatory requirements of the HIPDB (references (a) and (b)). DoD Directive and Instruction changes will be developed to incorporate the HIPDB into our clinical quality management program. This memorandum, effective immediately, establishes interim implementation procedures.

1. Reports by Surgeons General.

1.1. Reporting responsibility. The Surgeons General shall be responsible for reports regarding reportable adverse actions taken against health care providers, suppliers, or practitioners providing health care services to active duty members or any other Military Health System beneficiaries in military treatment facilities or as part of any military unit.

1.2. Reportable adverse actions. The following adverse actions taken against health care providers, suppliers, or practitioners are reportable:

1.2.1. UCMJ actions. Convictions under the Uniform Code of Military Justice (UCMJ), as approved by the Court Martial convening authority, or final non-judicial punishment under the UCMJ, of a health care provider, supplier, or practitioner in a case in which the acts or omissions of the member convicted were related to the delivery of a health care item or service.

1.2.2. Other adjudicated actions or decisions. The followings actions are reportable if they are against a health care provider, supplier, or practitioner based on acts or omissions that affect the payment, provision, or delivery of a health care item or service:

1.2.2.1. Adverse personnel actions affecting military members. Any administrative action resulting in separation, reduction in grade, involuntary military occupational specialty reclassification, or other comparable administrative action.

1.2.2.2. Adverse civilian personnel actions. Any adverse personnel action under chapter 75 of title 5, United States Code.

1.2.2.3. Contract termination for default. A contract termination for default taken by a medical treatment facility or medical command against a personal services or non-personal services contractor.

1.2.3. Actions not included. Clinical privileging actions are excluded from the reporting requirement of section 1.2. (Such actions continue to be reportable to the separate National Practitioner Data Bank.).

1.2.4. Reports to AFIP. Reports to the HIPDB by the Surgeons General shall also be reported to the Department of Legal Medicine of the Armed Forces Institute of Pathology. Reporting procedures and formats will be provided by the Department of Legal Medicine and shall be incorporated, to the extent feasible, into reporting procedures applicable to reports to the National Practitioner Data Bank. Data maintained by the Department of Legal Medicine concerning HIPDB reports are medical quality assurance records under 10 U.S.C. 1102 (reference (c)) and shall be maintained confidential in accordance with DoD Directive 6040.37 (reference (d)).

2. Reports by the Director, TRICARE Management Activity.

2.1. Reporting responsibility. The Director, TRICARE Management Activity (TMA) shall be responsible to report health care providers, suppliers, or practitioners excluded from participating in CHAMPUS/TRICARE.

2.2. Reportable adverse actions.

2.2.1. Exclusions. Exclusion of any health care provider, supplier, or practitioner from CHAMPUS/TRICARE.

2.2.2. Actions not included. Actions taken by TRICARE contractors concerning the establishment and operation of preferred provider networks are not reportable by the Director, TMA. (They may be reportable by the contractor to the HIPDB.)

3. Reports concerning contract debarments and suspensions.

3.1. Reporting responsibility. Designated debarring officials of the Military Departments and the Defense Logistics Agency are requested to report to the HIPDB any contract debarments or suspensions arising from any DoD health care program contracts with any health care provider, supplier, or practitioner.

3.2. Reportable actions. Any contract debarment or suspension taken under Part 209 of the Defense Federal Acquisition Regulation Supplement by a Military Department or the Defense Logistics Agency arising from any DoD health care program contract with any health care provider, supplier, or practitioner.

4. Cooperation regarding HIPDB reports by other agencies. The HIPDB also requires reports from licensing and certification agencies of adverse licensure and certification actions, federal and state prosecutors of criminal convictions, and federal and state attorneys and health plans of certain civil judgments (excluding medical malpractice judgments) against providers, suppliers and practitioners. The submission of such reports, including any such reports relating to the DoD health care program, are the responsibility of officials of the Department of Justice or other agencies or entities. In any such cases, it is the policy of the Department of Defense to cooperate, to the extent allowed by law, in the information collection and other processes involved in complying with the HIPDB reporting obligations.

5. Procedures. The DHHS regulations (reference (b)) include procedures for subjects of HIPDB reports to dispute the accuracy of reports. DoD components will make reports to the HIPDB and review requests from subjects to modify such reports based on the standards contained in the DHHS regulations. Determinations by DoD in regard to making reports or deciding whether to amend reports are made as a function of complying with regulatory requirements applicable to DoD. Such determinations are not due process proceedings for which the subject has any right of notice or participation beyond that (if any) which was provided or available in connection with the underlying adverse action being reported.

6. Effective date for reporting purposes. DHHS regulations became effective October 26, 1999. However, DHHS also requires reporting of all reportable actions occurring on or after the date of enactment of HIPAA, August 21, 1996.

7. Methods and procedures for reports to the HIPDB. In filing reports with the HIPDB, DoD components shall follow the methods and procedures of the HIPDB. These procedures are outlined at the following web site: www.bhpr.hrsa.gov/dqa.

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