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## National Practitioner Databank: Due Process Requirements

On January 28, 2010, the Department of Health and Human Services released a final rule governing the National Practitioner Data Bank. 75 Fed. Reg. 4656 (January 28, 2010) (to be codified at 45 C.F.R. Part 60). The final rule includes new sections requiring peer review organizations and private accreditation entities to have due process procedures in place in order to qualify as reporting agencies. These new changes became effective on March 1, 2010.

The National Practitioner Data Bank (NPDB) was established by the Health Care Quality Improvement Act (HCQIA) of 1986 and contains: reports of adverse licensure actions against physicians and dentists, including revocations, suspensions, reprimands, censures and probations based on quality of care issues; adverse clinical privilege actions against physicians and dentists; surrenders of privileges by physicians under investigation; adverse professional society membership actions against physicians and dentists; Drug Enforcement Administration (DEA) adverse actions; Department of Health and Human Services (HHS), Office of the Inspector General (OIG) Medicare and Medicaid exclusions; and medical malpractice payments made for the benefit of any health care practitioner. Groups that have access to this information include hospitals, other health care entities that conduct peer review and provide health care services, state medical or dental boards and other health care practitioners' state boards. Individual practitioners may also self-query. The reporting of information under the NPDB is limited to medical malpractice payers, state medical and dental boards, the DEA, HHS and OIG, professional societies with formal peer review processes, and hospitals and other health care entities, such as health maintenance organizations.

On March 21, 2006, the Health Resources and Services Administration published a proposed rule in the Federal Register designed to implement section 1921 of the Social Security Act. Section 1921 expanded the scope of the NPDB and requires each state to adopt a system of

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reporting certain adverse licensure actions taken against health care practitioners and health care entities by any authority of the state responsible for the licensing of such practitioners or entities. It also requires each state to report any negative action or finding that a State licensing authority, a peer review organization, or a private accreditation entity has finalized against a health care practitioner or entity. Groups that have access to this information include all organizations eligible to query the NPDB under the HCQIA, other state licensing authorities, agencies administering federal health care programs, including private entities administering such programs under contract, state agencies administering or supervising the administration of state health care programs, state Medicaid Fraud Control Units, certain law enforcement agencies, and utilization and quality control peer review organizations. The reporting of information under section 1921 is limited to state licensing and certification authorities, peer review organizations, and private accreditation entities.

Several issues arose based on the disparity between due process requirements of the "formal peer review process" conducted pursuant to 42 U.S.C. 11112 and adverse actions reported under Section 1921. Although the Health Resources and Services Administration acknowledged that the professional review provisions under 42 U.S.C. 11111 do not apply to licensing agencies operating under state law, it noted that licensing agencies operating under state law are required to provide due process protections for those they regulate. Therefore, the greatest concern is with respect to proceedings conducted by private accreditation and peer review organizations. To address these concerns, the Health Resources and Services Administration modified the definitions of "peer review organization" and "private accreditation entity" to include provisions requiring the presence of due process mechanisms.

Effective March 1, 2010, such organizations must have due process mechanisms to qualify as a "peer review organization" or a "private accreditation entity." If a peer review organization or private accreditation entity does not have due process mechanisms in place, the entity does not meet the definition of a peer review organization or a private accreditation entity and cannot report to the NPDB. The NPDB is concerned only with the presence of due process mechanisms, i.e., the inclusion of defined rules, policies or procedures as opposed to whether the rules, policies or procedures have been strictly followed by the organization or entity.

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