

Expanded Reporting Requirements for State Licensing Authorities

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The Department of Health and Human Services Final Rule implementing Section 1921 of the Social Security Act (Section 1921) represents a sweeping expansion of the information collected and disseminated through the National Practitioner Data Bank (NPDB). Among other changes, Section 1921 expanded the current adverse licensure action reporting requirements for state licensing authorities. These new reporting requirements are intended to help the health care community make sound employment, credentialing, and licensing decisions. The resulting increase in the volume and scope of reporting will have significant professional and economic ramifications for many physicians, dentists, and health care practitioners.

The NPDB was established by the Health Care Quality Improvement Act (HCQIA) of 1986 as an alert system designed to collect and disseminate information and assist states in protecting the public from unfit physicians, dentists, and other health care practitioners. A report to the NPDB can have significant professional and economic ramifications. State licensing authorities, hospitals and other health care entities, and professional societies query the NPDB when investigating qualifications. A response that contains an adverse action can result in denial of credentialing, loss or limitation of hospital privileges, loss or limitation of licensure, exclusion from participation in health plans, and increases in premiums or exclusion from professional liability insurance.

On March 1, 2010, the NPDB was expanded by the implementation of Section 1921. Previously, state licensing authorities were only required to report adverse actions taken against physicians and dentists related to their professional conduct or professional competence. These adverse actions included a revocation, suspension, reprimand, probation, surrender, or censure.

State licensing authorities also reported adverse actions to the Healthcare Integrity and Protection Data Bank (HIPDB). The HIPDB was created by the Health Insurance Portability and Accountability Act of 1996 to combat fraud and abuse in health insurance and health care delivery. The HIPDB includes adverse licensure actions taken against health care practitioners other than physicians and dentists, as well as licensure actions taken against physicians and dentists that are not related to professional competence or professional conduct. However, a report to the HIPDB had limited professional and economic ramifications because the HIPDB was only accessible by Federal and State agencies and health plans.

The implementation of Section 1921 expanded the current NPDB adverse licensure action reporting requirements for state licensing authorities in two ways. First, state licensing authorities must report adverse actions taken against all healthcare practitioners, not just physicians and dentists, as well as those actions taken against healthcare entities. As a result, private-sector hospitals and healthcare organizations, which previously did not have access to licensure actions taken against all healthcare practitioners through the HIPDB, now have access through Section 1921. Licensed practitioners that are subject to Section 1921 reporting requirements by the state licensing authorities include, but is not limited to, chiropractors,

podiatrists, pharmacists, physician assistants, optometrists, nurses, physical therapists, and social workers.

Second, state licensing authorities must report any adverse actions, including revocation or suspension of a license, reprimand, censure, or probation resulting from a formal proceeding. Under Section 1921 the NPDB is no longer limited to reports of actions judged by the licensing authority to be based on the quality of the health care services provided. State licensing authorities must also report any publicly available negative action or finding that results from a formal proceeding. The definition of “negative action or finding” excludes administrative fines or citations, and corrective action plans unless they are connected to health care delivery or taken with another reportable action. An example of an administrative fine unrelated to health care delivery would be a fine for failing to notify a licensing authority of an address change in a timely manner.

After implementation of Section 1921, the reporting requirements for state licensing authorities to the NPDB and the HIPDB are similar with the exception of a few key differences. For example, adverse actions do not have to be final to be reportable to the NPDB while the HIPDB only collects final adverse actions. Also, publicly available negative actions or findings reportable to the NPDB include administrative fines or citations related to health care delivery or taken with another reportable action while they are reportable to the HIPDB only if they are both related to health care delivery and taken with another reportable action. Otherwise, the reporting of adverse actions by state licensing authorities is nearly identical for both data banks.

After implementation of Section 1921, actions reportable by a state licensing authority may include the following:

- A revocation, suspension, limitation, restriction, censure, reprimand, probation;
- Voluntary surrender of a license (except for relinquishment for personal reasons such as retirement or change to inactive status).
- Denial of an initial application or renewal;
- Withdrawal of an application;
- A monetary penalty that is a formal disciplinary action imposed by the board;
- Modification to a previously reported action, including reinstatement;
- Summary suspensions;
- Publicly available administrative fines or citations related to health care delivery or taken with another reportable action.

The Final Rule implementing Section 1921 also requires state licensing authorities to retroactively report actions that meet the Section 1921 reporting criteria dating back to January 1, 1992. To ease the resulting administrative burden, the Department of Health and Human Services provides state licensing authorities the option of submitting HIPDB legacy reports. Pursuant to these reports, all adverse licensure actions reported to the HIPDB dating back to August 21, 1996 are placed in the NPDB under Section 1921.

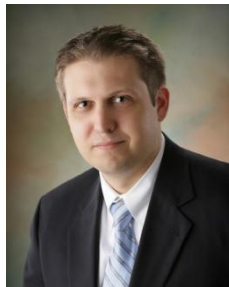
Physicians, dentists, and health care practitioners facing an investigation or administrative action by the State of Michigan or with a previous action made retroactively reportable by

implementation of Section 1921 must become familiar with the expanded adverse licensure action reporting requirements and the professional and economic ramifications of a report to the NPDB. For additional information or assistance, contact a Wachler & Associates attorney at (248) 544-0888.



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