

## Staff Notes

### NPDB Resolution before Revolving Reference Committee on February 6, 2019

An underlying premise for this resolution is that:

.... reports on mere applicants requesting staff employment and appointment who are not yet providing healthcare services are outside the authority of HCQIA, damage reputations and future employment without offering physicians Due Process. [from the proposed resolution's Whereas clause].

Another premise is that:

Luis Padilla, Associate Administrator HHS, confirmed that the NPDB authority to accept reports is contingent upon an adverse clinical privileges action with the prerequisite that it's a facility "**in which a physician is permitted to furnish medical care by the healthcare entity (hospital)**". The provider must be on staff and providing healthcare services or the hospital and physician have no obligation to one another. [from the proposed resolution's Whereas clause].

However, legal and NPDB Guidebook interpretations state that *professional conduct* or treatment that *may* result in harm may be the basis for denial of privileges. In other words, even professional conduct (not treatment) that occurred before the application was made and did not result in harm to a patient may be the basis for a denial of privileges. It is well-settled that adverse actions may be taken on *applications* for privileges or employment and such denials of privileges/employment are reportable to the NPDB. (There is an exception for administrative reasons.)

One of the primary reasons for NPDB reporting is to ensure that physicians with deficiencies do not move from hospital to hospital. To say that an adverse action can only be taken based on treatment that occurs in the hospital to which the applicant is applying for privileges would undermine one of the primary goals of NPDB reporting. It would also give physicians a clean slate every time that they applied for privileges at a new hospital. (Note that some hospitals have adopted a two-step process to ensure that denials of privileges are based on professional conduct or treatment and not on administrative reasons (e.g., the hospital has a volume criteria). In the case of a denial based on an administrative reason, the denial would not be reportable.)

MSNJ was not successful on the last NPDB resolution taken to the AMA. That resolution sought model medical staff bylaws with specific provisions for each state. The AMA believed that it would be cost prohibitive to develop such a document. Consequently, the resolution proffered by MSNJ was not adopted.

The AMA has indicated that it does not receive complaints about the NPDB. Therefore, NPDB issues are not a priority for the AMA. Other states may be similarly disinterested. If other states considered NPDB issues to be a priority MSNJ's resolution might have received a better reception by the AMA House of Delegates.

**Fiscal note:** The cost to set up the proposed resolution's review process is not easily determined. The AMA department that handles medical staff issues is not staffed by an attorney. The AMA would likely need to hire or reassign an attorney to the department if this resolution were to pass. Alternatively, the AMA would need to contract with a lawyer for the Chicago office or to assist in the state where the review process is triggered.