Improving the Coverage of the National Practitioner Data Bank and Streamlining Department of Defense Participation

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EXECUTIVE SUMMARY

Introduction

This Report summarizes an examination of the Department of Defense's (DOD) participation in the National Practitioner Data Bank (Data Bank) relative to the Health Care Quality Improvement Act (HCQIA) and the procedures used by the Data Bank. With a commitment to improve the quality of care provided and to support the HCQIA, the Division of Quality Assurance undertook this review as a means to identify ways to improve both the information reported to the Data Bank and user participation. A number of recommendations, including some concerning current policies that may impede the compliance process are proposed to improve the quality of the data reported.

In the process of this review, a number of areas within the DOD system were noted as having the potential for becoming more efficient relative to reporting to the Data Bank. Therefore, an additional section of this report was added which identifies areas where we believe that DOD data reporting can be enhanced and streamlined. Administrative recommendations are identified based on a review of policies, forms, and interviews with various DOD personnel involved in the reporting of medical malpractice and adverse actions and in the credentialing of DOD personnel (active duty, contractors and reservists).

Our recommendations are based on the basic belief that the impending health care challenges faced by DOD are similar to those faced by civilian counterparts. Downsizing, in combination with rapid changes in the manner to which health care is delivered, only reinforces the need for

proper stewardship of current credentialing, peer review and quality of care systems. This review revealed an opportunity not only to streamline the process, but also to bring the overall reporting system into conformance with civilian practices. Implementing these steps would ultimately improve the data for use in assessing quality of care. There also is an opportunity to bring the reporting activities of each of the Departments to a consistent framework.

It has been more than five years since the signing of the original Memorandum of Understanding (MOU) between the DOD and Department of Health and Human Services (DHHS) and the subsequent issuance of the DOD Directive. The DOD Directive provides instruction to the Military Departments, each of which then developed specific reporting requirements. Much of the original DOD reluctance to participate in the Data Bank (and therefore limited involvement) and skepticism of the HCQIA have subsided over the past five years and a reassessment of reporting requirements seems to be called for.

Summary Findings

The review of DOD's participation in the Data Bank as articulated in the MOU and various DOD sources shows that there is variance in the way the Military Departments report to the Data Bank. The HCQIA requires that all malpractice payments be reported when made for the benefit of a health care practitioner. *Some* payments in the DOD system are not reported if the Departments decide that the Standard of Care (SOC) is met. In addition, adverse actions reported to the Data Bank by DOD are described in a manner which is not entirely consistent with the descriptions in the law. Relative to the time frame for reporting, the law states that payments and actions should

be reported within 30 days of taking an action. The DOD's review and appeals procedures can result in events to be reported that occur well after the 30 day period (e.g., in situations in which abeyance is initiated prior to final action). Moreover, an extensive examination of the reporting forms used by DOD and those used by the Data Bank showed that while the forms are largely similar, there are differences in the wording of some items, in the codes for some items, and in the response formats for others. This is especially true concerning the narrative descriptions of the factors leading to the report. Relative to who submits the reports to the Data Bank, individual health care entities (e.g. hospitals, HMO's, etc.) report adverse actions. In the DOD environment, cases proceed through the system to the Departments' Offices of the Surgeon General, which have responsibility for deciding which cases to report.

General Recommendations

Based on these findings, several recommendations are made. The full report provides specific recommendations for improving the data on medical malpractice and adverse actions in the following areas: 1) who reports; 2) what payments must be reported; 3) what information must be reported concerning payments and adverse actions; and 4) when information must be reported. For purposes of the Executive Summary, however, recommendations are generalized into three major recommendations.

It is first recommended that **all malpractice payments and adverse actions be reported as defined in the law and that they be reported within the period specified.** This can be done in a manner which is consistent with DOD procedures. The Data Bank is intended to be a

nationwide flagging system. The purpose of this system is to help various health care entities in conducting independent investigations of the practitioners they wish to license, hire or grant privileges. The presence of a Malpractice report in the Data Bank, for example, is not a presumption that medical malpractice actually has occurred. If the peer reviewers find mitigating circumstances (e.g. SOC was met), the report narrative should so state. If such a determination was made after the payment was reported to the Data Bank, its procedures allow for corrections/revisions to the report.

We also recommend that **reporting burden and duplication of effort be reduced through greater efficiency in reporting**. Increased efficiency can be achieved by having DOD adopt the Data Bank forms (as modified to meet special DOD needs) for reporting purposes in their own system as well as to the Data Bank. Efficiency also can be enhanced through a process whereby DOD reports all malpractice payments electronically to the Data Bank.

It may be feasible for the Data Bank to develop reports and/or data bases for the query system for DOD data users as well as for the Armed Forces Institute of Pathology (AFIP) users. Further discussion would be required to determine the feasibility of the Data Bank including additional DOD-specific data fields (e.g. 800 series codes) so the information is readily available when DOD queries on a practitioner. Overall burden will be reduced because different reporting forms and contractors are not used, thus eliminating duplication of efforts. This also will remove the need to convert data and incur unnecessary costs.

The reporting burden also is reduced somewhat since databases are developed by a single organization and multiplicity of effort is eliminated.

A reasonable course of action to take now would involve **rewriting the DOD Health Affairs Directive to provide clearer guidance to the Departments and bring them closer to full compliance with the HCQIA.** This action would allow the participants to more clearly define the dimensions and content of what needs to be reported to the Data Bank to fulfill the spirit of the Act. Revising and clarifying the DOD Directive would be timely in relation to impending changes in the health care system. For example, managed care has an increasing role in both private and public sectors with an anticipated even larger presence in the DOD health care system through TRICARE. The accreditation of managed care systems usually is performed through the National Commission for Quality Assurance (NCQA). The NCQA, in effect, requires use of the Data Bank in the credentialing process. To guard quality of care in this context for both the private and public sectors, it is therefore necessary to ensure that the information available in the Data Bank, including information from DOD, is as comprehensive as possible.

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APPENDIX A:

DOD Participation in the Data Bank in the Context of PL 99-660 as Reflected by the MOU and the Procedures Implemented by DOD and the Data Bank

BACKGROUND

The passage of Title IV of Public Law (P.L.) 99-660, Health Care Quality Improvement Act of 1986 led to the establishment of the National Practitioner Data Bank (Data Bank). The intent of Title IV is to improve the quality of health care by encouraging hospitals, State licensing boards, and other health entities, including professional societies, to identify and discipline those who engage in unprofessional behavior. It is also the intent of the act to restrict the ability of physicians, dentists, and other health care practitioners to move from State to State without disclosure or discovery of previous damaging or incompetent performance.

The Bureau of Health Professions, Health Resources and Services Administration, U. S. Department of Health and Human Services (HHS) is responsible for the operation of the Data Bank. The Data Bank is primarily an alert or flagging system intended to facilitate a comprehensive review of health care practitioners' professional credentials. The Data Bank acts as a clearinghouse of information relating to: 1) medical malpractice payments for the benefit of physicians, dentists and other licensed health care practitioners; 2) and adverse actions taken against the licenses, clinical privileges, and professional society memberships of physicians, and dentists. Hospitals and other health care entities, including professional societies, and State licensing boards should use the information contained in the Data Bank in conjunction with information from other sources when granting clinical privileges or in employment, affiliation, or licensure decisions.

The Health Care Quality Improvement Act directed the Secretary of Health and Human Services to enter into a memorandum of understanding (MOU) with the Secretary of Defense to increase the coverage of reporting. The intent of the MOU was to apply the provisions of Part B of the Act (Reporting of Information) to the hospitals, the health care facilities and the health care providers of the Department of Defense (DOD) . The application of these provisions extends reporting coverage to include health care providers who are in the military, the reserves or National Guard as well as those who are members of the civilian civil service or are contractors or consultants. This extension of coverage is important because it includes the performance of not only health care providers who practice in the military but also that of practitioners who serve both the military and civilian sectors. The application of Part B will become even more essential as the TRICARE program is fully implemented and the number of practitioners who perform in both sectors increases.

THE FOCUS OF THIS REPORT

This report focuses on the implementation of the MOU and the DOD's participation in the Data Bank. To examine this process various sources were consulted. These sources are:

- Public Law 99-660
- 45 CFR Part 60

- Memorandum of Understanding Between the Department of Health and Human Services (HHS) and the Department of Defense (DOD) ensuring the participation of DOD in Data Bank
- Final Rule 32 CFR Part 221-DOD Participation in the Data Bank (DOD Directive 6025.14)
- DOD Directive 6025.15
- Army Regulation 40-68 (with Interim Change No. I03)
- Navy BUMED Instruction 6010.18
- Navy BUMED Instruction 6320.67
- Air Force Instruction 44-119
- Data Bank Guidebook
- Form instructions for HRSA forms 529 (7-93) and 530 (7-93).

The intent of this report is to: (1) determine if there are areas in the reporting process where DOD and the Data Bank diverge in implementation; and (2) to seek consistency and explore possible ways to make the process fully compliant with the intentions of P.L. 99-660. To do this, each process for reporting malpractice payments and adverse actions was examined in relation to four areas:

- Who must report
- What payments and actions must be reported

- The information that must be reported
- The time frame for reporting.

Each of these areas of the process was investigated relative to:

- The provisions in P.L. 99-660
- The MOU between DOD and DHHS
- DOD procedures
- Data Bank procedures
- Recommendations for obtaining consistency (if needed).

A summary of the findings is given in Tables 1a – 1d. A more complete delineation of the findings is given in Appendix A (Table A1).

During our examination, we exposed areas in which DOD's reporting to the Data Bank could be made more efficient and less burdensome. To this end, the examination focused on identifying areas where duplication of effort existed. Additionally, it focused on areas where the process of reporting to the Data Bank was not entirely facile. In these areas, the examination sought to find ways that the Data Bank could help to streamline the process. The results of this effort are presented in the last section of this report.

Table 1a: DOD Participation in the Data Bank in the Context of PL 99-660, the MOU, and the Procedures Implemented by DOD and the Data Bank, with Recommendations for Obtaining Consistency (Malpractice Reports: Who Must Report and What Must Be Reported)

Provisions in Public Law 99-660	MOU Between DOD and DHHS	DOD Procedures	Data Bank Procedures	Recommendations For Obtaining Consistency
Malpractice Reports Who must report. Each entity that makes a medical malpractice payment for the benefit of a health care practitioner must report to the Data Bank.	OTSG of each Department is to send appropriate information to the Data Bank.	OTSG of each Department reports payment to the Data Bank after review.	Each entity (as defined in PL 99-660) that makes a malpractice payment for the benefit of a health care practitioner reports to the Data Bank.	Process cannot be changed because each Department is the entity that makes a payment on behalf of a practitioner
What payments must be reported. All malpractice payments made for the benefit of a health care practitioner must be reported to the Data Bank.	All payments made for a licensed health care practitioner will be reported to the Data Bank in the following categories of responsibility: • Standard of Care (SOC) met, • Minor deviation from SOC • Major deviation from SOC	DOD Instruction states no report to the Data Bank is made when settlement is for circumstances outside control of provider or is based on administrative/ litigation considerations rather than clear evidence of negligence. Departments generally make no report when SOC is met.	Each entity that makes a payment for the benefit of a practitioner must report to the Data Bank. The practitioner may add a statement to the report or dispute the accuracy of information.	We recommend that all payments in name of the practitioner be reported regardless of SOC being met. We also recommend that DOD reports sent only to Data Bank with the Data Bank developing data for both AFIP and DOD.

Table 1b: DOD Participation in the Data Bank in the Context of PL 99-660, the MOU, and the Procedures Implemented by DOD and the Data Bank, with Recommendations for Obtaining Consistency (Malpractice Reports: Information That Must Be Reported and Time Frame for Reporting)

Provisions in Public Law 99-660	MOU Between DOD and DHHS	DOD Procedures	Data Bank Procedures	Recommendations For Obtaining Consistency
Information that must be reported. Information to be reported to the Data Bank includes identifying and professional data, payment data, and description of acts and omissions. Also include information about the judgment or settlement.	DOD reporting to the Data Bank to use HRSA form. MOU suggests that DD Form 2526 used as framework for organizing DOD data.	DD Form 2526 largely same as the Data Bank form. Exceptions: description of acts and omissions allows 300 characters vs. 2,000 for HRSA-429, no guidance in description of acts, different description of settlement, one EMT category, no DEA number. DD2526 also captures fields not an HRSA-529 (See Text and Appendix A).	The Data Bank form allows 2,000 characters for description of acts, has guidance for description of acts, requests DEA number, has 4 EMT categories, single response for description of settlement.	Recommend DOD adopt the Data Bank form to collect data. It will make the overall process more efficient and improve the database. The Data Bank should work to meet DOD's needs.
Time frame for reporting. Health care entities must report payments within 30 days from the payment.	MOU states that reports should be filed with the Data Bank in accord with 45 CFR Part 60; no time frame stated.	Review and appeal process in the Departments can cause reports to be made in a period longer than 30 days.	The Data Bank receives reports within 30 days.	Recommend DOD report within 30 days and use the Data Bank process to amend reports when necessary.

1-b (Continued)

Table 1c: DOD Participation in the Data Bank in the Context of PL 99-660, the MOU, and the Procedures Implemented by DOD and the Data Bank with Recommendations for Obtaining Consistency (Adverse Actions: Who Must Report and What Must Be Reported)

Provisions in Public Law 99-660	MOU Between DOD and DHHS	DOD Procedures	Data Bank Procedures	Recommendations For Obtaining Consistency
Adverse Action Reports Who must report. Health care entities report privileging actions to the Data Bank through State Boards.	OTSG's send appropriate information to the Data Bank and State Boards.	OTSG's follows the directions in the MOU.	The Data Bank receives reports from Boards within 30 days of actions.	DOD should investigate possibility of individual entities (e.g. hospitals) reporting directly to the Data Bank to make burden less for each service unit.
What actions must be reported. Health care entities report certain adverse actions that affect privileges.	MOU directs report of Professional sanction reports and Professional misconduct reports.	Departments direct the report of adverse actions but state it in different ways.	The Data Bank receives adverse action reports in the classifications stipulated in PL 99-660.	We recommend DOD and the Data Bank collaborate to reduce the lack of consistency by an examination of reporting process.

Table 1d: DOD Participation in the Data Bank in the Context of PL 99-660, the MOU, and the Procedures Implemented by DOD and the Data Bank, with Recommendations for Obtaining Consistency (Adverse Actions: Information That Must Be Reported and Time Frame For Reporting)

Provisions in Public Law 99-660	MOU Between DOD and DHHS	DOD Procedures	Data Bank Procedures	Recommendations For Obtaining Consistency
Information that must be reported. Itemized in 45 CFR Part 60: • identifying data • professional data • description of acts or omissions • description of the entities action or other action	MOU does not specify information to be reported.	DOD Form 2499 is framework for reporting to the Data Bank. Differs from the Data Bank form in several ways: extra code in Actions Taken section, additional section on Administrative Actions, Additional code in all sections, different narrative describing acts or omissions. DD 2499 also has fields not on HRSA-420 (See text and Appendix A)	The Data Bank form has item to describe acts or omissions that allows more narrative. It does not have a section for Administrative Actions. Does not have an Action Taken code as on 2499 and one less code in all sections.	We recommend that DOD adopt the Data Bank form for same reasons given earlier. Where DOD requires extra data, the Data Bank should work to accommodate these needs.
Time frame for reporting. Health care entities must report adverse action to Boards in 15 days. Boards forward the report to the Data Bank within 15 days after.	MOU does not specify a required reporting period.	Within the Military Departments, the review and appeal process can lead to a reporting of actions that are longer than 30 days after the action.	The Data Bank requires reporting of adverse actions within the time periods specified in PL 99-660.	We recommend that actions be reported within 30 days. Changes due to review and appeal can be handled as a revised or voided report.

MEDICAL MALPRACTICE REPORTS

Who Must Report

Provisions in P.L. 99-660 state that each entity, including insurance companies, that make a payment under an insurance policy, self-insurance, or otherwise for the benefit of a physician, dentist, or other health care practitioner (HCP) in settlement of or in satisfaction in whole or in part of a claim or a judgment against such practitioner for medical malpractice must report certain information to the Data Bank and to the appropriate State licensing boards in the State in which the act or omission upon which the claim was based. The MOU between DOD and HHS (the Final Rule 32 CFR Part 221) states that the Office of the Surgeon General (OTSG) of each Military Department shall send the appropriate information to the Data Bank. The MOU was translated for implementation in the DOD Instruction (6025.15) which states that, if the Surgeon General determines that payment was made for the benefit of a health care practitioner, a report shall be made to the Data Bank in the practitioner's name. The procedures promulgated by the various military Departments are essentially the same as the DOD Instruction, with the added provision that a report will be made based on the findings of the DOD national review process. The procedures used in the Data Bank are consistent with P.L. 99-660. Entities in the civilian sector are required to report when a malpractice payment is made for the benefit of a physician, dentist or other health care practitioner. Entities must report even if they believe Standard of Care (SOC) was met. If an entity fails to report, it is subject to a civil money penalty of up to $10,000 for each unreported payment. These penalties are imposed under the authority of the Office of the Inspector General (OIG), HHS, in accordance with P.L. 99-660.

Recommendations

There is no need to make a recommendation for this aspect of malpractice payment reporting because of the way that payments are made in the military. Military Departments make malpractice payments on the behalf of health care practitioners. Therefore, they are the entities responsible for reporting payments to the Data Bank.

What Payments Must Be Reported

As evidenced by Table 1A, P.L. 99-660 states that all medical malpractice payments made for the benefit of a physician, dentist or other health care practitioner must be reported to the Data Bank. DOD and DHHS agreed in the MOU that all payments made in the name of the physician, dentist, or other health care practitioner will be reported.

One of the following categories will be reported:

- Standard medical care (SOC) met. Report made in the name of the primary physician.
- Minor deviation from SOC. Separate reports for each practitioner found to have provided substandard care.
- Major deviation from SOC. Separate reports for each practitioner found to have provided substandard care.

The MOU shows that DOD and DHHS are in substantial agreement about which malpractice payments should be reported to the Data Bank. DOD's desire to classify payments relative to responsibility is consistent with Data Bank procedures in that P.L. 99-660 requires the reporting of payments regardless of whether the SOC was met when a payment is made.

When the MOU was translated into the DOD Instruction (6025.15) for the implementation of DOD participation in the Data Bank, a significant divergence of interpretation occurs. The Instruction no longer states that all payments in the name of the practitioner, dentist, or health care practitioner will be reported with a category of responsibility. Instead, the Instruction states that a report will be made only when:

- the Surgeon General determines that there was deviation from SOC; or
- A judicial determination of negligence was found that was clearly based on the act or omission; or
- Payment was based on administrative or litigation considerations, and the record as a whole requires a report to be made for the purpose of the Data Bank.

The Instruction goes on to state that no report to the Data Bank shall be made when:

- The settlement was due to circumstances outside the control of the provider.

- The settlement is based on administrative or litigation considerations, rather than clear evidence of negligence.

The DOD Instruction further states that when a report is made and the Surgeon General has determined that the SOC was met, the report to the Data Bank shall include the statement: "the Surgeon General determined that the practitioner met the Standard of Care in this case."

An examination of the Military Departments' Instructions shows that, in some cases, real differences exist relative to P.L. 99-660. Army regulations state that a practitioner will not be reported if the SOC is met. A description of the Air Force's process in reporting malpractice payments also indicates that practitioners are not reported to the Data Bank when the SOC is met. The Navy Instruction shows that malpractice reports are made to the Data Bank based on the DOD Instruction.

Clearly, some DOD Department is not reporting some malpractice payments to the Data Bank. When malpractice payments made in the name of the practitioner are not reported because of a determination that the SOC is met, divergence occurs from what is normally reported to the Data Bank receives reports from civilian entities for all payments made for the benefit of a physician, dentist, or other health care practitioner whether or not the SOC was met. If the SOC was met, then the reporter has an opportunity to state this in the report. As stated in the regulations (45 CFR

Part 60), "A payment in settlement of a medical malpractice action or claim shall not be construed as creating the presumption that medical malpractice has occurred."

Recommendations

To ensure consistency with civilian practice, we recommend that DOD reports all malpractice payments made for the benefit of physician, dentist or other health care practitioners to the Data Bank regardless of whether or not the SOC was met and since Data Bank malpractice payments reports are not meant to be a presumption of malpractice. We recognize that this recommendation will be most sensitive and highly controversial given the inconsistencies among military medical facilities overseas. Nonetheless, we recommend this policy because the Data Bank is intended to serve as *a nationwide flagging system,* providing a resource to assist State Licensing Boards, hospitals, and other health care entities in conducting extensive, independent investigations of the qualifications of practitioners they seek to license, hire or to whom they wish to grant clinical privileges.

The information in the Data Bank serves to alert licensing authorities and health care entities that there may be a problem with a practitioner's professional competence or conduct, not that a problem actually exists. We understand that there may be reluctance to report practitioners who are also professional military personnel. However, there are civilian doctors (e.g., reservists, contract, etc.) who serve both sectors and have exposure to military and civilian populations. When this situation occurs and a payment is made for the benefit of such a practitioner, we

recommend that individual be reported regardless of SOC determination. DOD's reporting procedures should be compatible with those of their civilian counterparts.

As a nationwide flagging system, the Data Bank should take on increasing value with the implementation of TRICARE. Under TRICARE, a large number of practitioners will have both military and military dependents and civilian clients. This indicates that the professional competence of a number of individual practitioners will affect both sectors. In this circumstance, it is essential to quality care that the Data Bank have the widest possible coverage. To effect this, it is necessary that both the DOD health care system and civilian entities consistently provide complete information to the Data Bank on the practitioners that treat their clients.

Information that Must Be Reported

Malpractice payment information that must be reported to the Data Bank is specified in P.L. 99-660. It includes identifying professional information about the practitioner, payment information, and a description of the acts or omissions that led to the payment. In addition, information is required which describes the judgment or settlement that resulted in the payment. The MOU states that reporting to the Data Bank is to be done by use of the HRSA form, HRSA-529 (7-93), for reporting malpractice payments. The MOU suggested that DD Form 2526 may be the framework for organizing DOD malpractice payment information. Data in the DD Form 2526 would then be converted to fit into the format of the HRSA-529 form.

Since the malpractice payment data to be reported to the Data Bank would be translated from the DOD form to that used by HRSA, the Data Bank made an extensive analysis of the two forms. This analysis determined that the information collected by the two forms was largely the same in content if not in format. We did, however, find some notable differences.

As mentioned in Table 1b under DOD procedures, the most significant difference between the two forms involves the item on DD Form 2526 which asks for a "description of the acts or omissions and injuries upon which the action or claim was based" with a limit of 300 characters for the response. The parallel item on the HRSA-529 form adds "illnesses" to "injuries" in the stem and allows up to 2000 characters for the response. Moreover, the Data Bank form provides guidance as to the type of information required in the response to ensure that all facets of the act or omission are covered. This type of instruction for the response is not available in the DOD process.

There are also differences in the manner in which the two forms request information about the judgment or settlement that resulted in the malpractice payment. The Data Bank form asks for a "description and total amount of judgment or settlement and any conditions, including terms of payment". The DOD form asks for a "description of findings on which the action or claim was paid". The DOD form also provides space for "remarks".

We found other differences in relation to items with more quantitative responses. The Data Bank form asks for the practitioner's Federal DEA number (optional) whereas the DOD form does not request this information. The DOD form has a single response for Emergency Medical Technician (EMT) as a field of licensure designation. The Data Bank form has responses for four different types of EMT.

There are other differences between DD 2526 and HRSA-529. Consideration for including some of these items in the HRSA-529 memo field are being discussed at DQA. These fields are not mentioned in the summary tables because the focus of the report was to examine DOD procedures in relation to compliance with P.L. 99-660 has it is translated in the Data Bank procedures. These fields, however, are considered clinically significant to health care providers. The DOD fields not found on HRSA-529 are:

1. Three ICD9 clinical modification fields for diagnosis.
2. Three ICD9 clinical modification fields for procedures. (A Diagnostic Group Field

is also collected which reflects the main chapter heading in the ICD-9 book under which a given diagnosis falls.)

3. Attribution of Fault.
4. Location of Care
5. Injury Severity
6. Injury Duration
7. Provider Specialty
8. Clinical Service
9. Evalution of Care (Standards of care determination)
10. Patient Gender
11. Patient Age
12. Total Amount Paid

These fields are used by AFIP in their report on medical malpractice.

Recommendations

We recommend that DOD adopt the format of the Data Bank form to collect data describing malpractice payments. This could easily be accomplished; the two forms are largely the same and several benefits would be derived from the conversion. The most obvious benefit in the adoption of the Data Bank form would be a more efficient process in the reporting of payments to the Data Bank. There would be no need to convert the data from the DD Form 2526 to the Data Bank format.This would make the process seamless and promote the use of electronic means as

suggested in the MOU. Moreover, making the process more efficient should require fewer resources than are presently needed.

An adoption of the Data Bank form may also lead to the acquisition of more comprehensive data describing the acts or omissions and injuries or illnesses upon which a malpractice payment was based. The larger number of characters permitted (up to 2000) on the Data Bank form and the guidance provided for the structure of the content should not only generate more comprehensive data, but should also ensure a standardized set of responses. This is of great significance given DOD's mission concerning the use of the malpractice data. The DOD Instruction regarding participation in the Data Bank states that the Armed Forces Institute of Pathology (AFIP) conducts analyses and research on the data to assist the Office of the Assistant Secretary of Defense (Health Affairs), OASD (HA), in implementing policy changes designed to improve the quality of health care in the DOD system.

The results of this research are to be used to provide assistance in the development of educational programs, reports, and publications that will help health care providers meet continuing education requirements in risk management and quality improvement. The potentially more comprehensive and standardized data provided by the Data Bank form should improve the support of the AFIP's research. Providing this structure on a larger number of observations in the Data Bank should help mitigate some of the criticism (by the American Medical Association, for example) of malpractice data as a quality improvement research data source.

Since the DD Form 2526 is largely the same framework as the Data Bank instrument, conversion of the former as a data acquisition tool should not be problematic. Aside from the two descriptive areas, the differences are minor. The benefits derived from such a conversion certainly seem useful enough to make the change compelling.

Time Frame For Reporting

Section 424 of P.L. 99-660 states that the information on medical malpractice payments shall be reported within 30 days of the payment (i.e. reporting regularly, but not less often than monthly). The MOU signed by the Assistant Secretaries for Health (PHS) and Defense (HA) stated that a report shall be filed with the Data Bank as established by regulation at 45 CFR 60 (i.e. within 30 days from payment). The Final Rule implementing the MOU (32 CFR Part 221) does not make mention of a time frame for reporting. The DOD Instruction (DOD Instruction 6025.15) to the Military Departments does not address the time within which a report should be made to Data Bank.

It appears the Departments view the time between the payment of a claim and reporting to the Data Bank differently. As seen in Table 1b, the apparent discrepancy seems to revolve around how Departments integrate the SOC case review and appeal processes with the payment of a claim. In particular, regulations and instructions seem to indicate that the Air Force does not make payment for a claim until after the SOC review and appeal processes are largely completed. The period

between payment and reporting to the Data Bank is then the prerogative of the OTSG for the Air Force. The Army and Navy, on the other hand, seem to begin much of the review and appeal process after the payment is made. At the end of this process, the case is sent to the OTSG's for their determination in reporting to the Data Bank. In the Army and Navy framework, it is conceivable that a report would not be made to Data Bank for several months. This set of procedures does potentially place the time framework of reporting in these Departments at some variance with P.L. 99-660.

Recommendations

Using current Data Bank reporting procedures, it is not necessary to wait until review and appeal processes are complete to report a malpractice payment in the name of a practitioner. Data Bank procedures allow corrections to be submitted after a report has been received. Therefore, if the review and appeal process found, for example, that SOC was met after a report was made, that information could be sent to the Data Bank as a correction to the report. Based on this, we recommend that DOD comply with the Law and report all medical malpractice payments within 30 days. Corrections can be filed following determination of theSOC. It is important to adhere as much to the 30 day reporting requirement for two reasons: 1) to be consistent with civilian sector and 2) ensure that information on a practitioner is available to queriers.

ADVERSE ACTIONS REPORTS

Who Must Report

Public Law 99-660 states that health care entities must report actions regarding clinical privileges to the relevant State Board within 15 days of the action. The State Board, in turn, must submit the information to the Data Bank within 15 days of the receipt of the information. As seen in Table 1c,

Final Rule for implementation of the MOU states that the OTSGs of the Military Departments shall send the appropriate information to the Data Bank and the State Boards. Translating the MOU, the DOD Instruction states that the OTSGs shall follow the MOU. The Data Bank receives reports on adverse licensing actions and clinical privileging action from State Medical and Dental Boards. Again, as with malpractice payment reports, OTSGs' report for entities in the military sector and entities report for themselves in the civilian sector.

Recommendations

We recommend that individual entities (e.g. hospitals) in the DOD system report adverse actions. Although the DOD Instruction states that the Surgeon General's responsibility (in reporting) may not be delegated to a subordinate official, that sentiment is not reflected in the MOU. Allowing individual entities to report adverse actions has two practical advantages. First, it would reduce the level of resources used by DOD to effect the reporting process. The second aspect of this possible form of reporting concerns the impending full implementation of TRICARE. Under this model of health care delivery, a large number of civilian practitioners will be providing services through a

variety of civilian entities that are contractors to DOD. Undoubtedly, these practitioners will be treating both military personnel (and dependents), and civilians. The quality of their performance will subsequently affect both the public and private sectors. If an adverse action is taken relative to circumstances in one sector, risk managers and decision makers in the other sector would want to know of this event in a timely fashion as prescribed in P.L. 99-660. Therefore, to meet the quality assurance goals of the enabling legislation, it would be most efficient to have all sectors consistently reporting at the entity level where the actions occur.

What Must Be Reported

Health care entities must report to the State Boards any action in which a professional review adversely affects clinical privileges for longer than 30 days. Health care entity's must also report the surrender of clinical privileges or restriction of privileges when a doctor or dentist is under investigation for possible incompetence or improper professional conduct or surrendering privileges in return for not conducting such an investigation. P.L. 99-660 requires the reporting of a variety of actions. The diversity in the interpretation of what must be reported is found in the range of DOD Reports. Based on individual Departmental Directives, certain actions taken may be taken which may be reported by one service but not by another.

The MOU statement on what is to be reported (Table 1c) appears to be somewhat reduced in scope. It presents two areas (professional sanction and misconduct) in which actions will be reported. One speaks to the denial, revocation or limiting of clinical privileges while the other addresses

being found guilty, pleading guilt or being discharged for unprofessional conduct. The Final Rule on the MOU states only that information on adverse privileging actions and other professional review actions will be reported to the Data Bank. The DOD Instruction on this issue is similar to the MOU. The Military Departments, on the other hand, have much to say about reportable adverse actions in their regulations (see Table A1 in Appendix A). The Data Bank implementation of P.L. 99-660 describes the adverse actions to be reported in the same manner that they are presented in the law and collects data within that framework from Boards (see Table A1 in Appendix A).

Recommendations

Uniformity does not exist in the definition of reportable adverse actions across the DOD organizations that implement P.L. 99-660. The Law is clear on the itemize actions to be reported by health care entities. The MOU between DOD and DHHS articulates the reportable actions in two general classes (sanctions and misconduct). When the MOU was executed (1990), this generalized statement of reportable action undoubtedly reflected an uncertainty associated with an impending implementation of P.L. 99-660 in the military environment. The process is for disciplining health care practitioners who are either in the military or are civilians who practice in that environment. The translation of the MOU by the Departments reflects variation with both the civilian sector and within DOD. An example of possible variation in the military environment is reflected in the Army's statement that automatic suspension for substance abuse while the practitioner is in rehabilitation treatment will not be reported unless the practitioner fails to

successfully complete the regimen. The Army also states that adverse actions that are longer than 30 days will be reported. This requirement is, of course, also included in the law. Given these conflicting reporting directions, we are unsure of what would happen if the automatic suspension for rehabilitation lasted more than 30 days.

It has been more than five years since the MOU was negotiated. Certainly, much experience has been gained with implementation in the ensuing period. However, it is not clear what degree of consistency exists in reporting. Due to this, we recommend that the OASD (HA) and the Data Bank collaborate on an examination of the adverse action reporting requirements of the military and civilian sectors with a view to developing as much consistency in reporting as is feasible. Where there are requirements that are unique to DOD, we recommend the Data Bank work to accommodate these differences in the acquisition of the data, database development and in the query process. The aim of this collaboration should be, of course, to develop full compliance with the spirit of the law.

Information That Must Be Reported

P.L. 99-660 and CFR Part 60 specify the information that must be reported concerning Adverse Actions. However this information is defined, described, or absent from various DOD documents interpreting the Law, the information that is actually acquired through reporting is described in DD Form 2499 for DOD and HRSA 530 (7/93) for the Data Bank. While these two reporting forms are quite similar, there are several differences that need to be addressed since the actions reported

to the Data Bank by DOD are, in effect, filtered through the DD Form 2499.The differences between the two forms are summarized in Table 1d. These are based on an analysis of the two forms performed by the Data Bank. The primary difference between the DOD and the Data Bank forms concerns is item (8b) of the DOD form 2499 "Actions Other Than Privileging (administrative)/ Reason Codes" (The codes for this item are basically the same as the codes for the other Action Taken items on both the DOD and Data Bank forms). It is not clear what this item intends to measure. The content does not seem to have an equivalent reference in P.L. 99-660.

We also found differences in the wording or presence of codes used in the two forms. In each of the categories of "Privileging Actions Taken" on DD Form 2499 (e.g. revocation, suspension, etc.), where the Data Bank form lacks a corresponding code (i.e. ###.70 Violated Previous Action). Additionally, in the codes section, the Data Bank lacks a corresponding code for Denial of Privileges (i.e., two "other" codes – 650.90 and 660.90 are found without an explanation of what should be contained in those fields and why they are different). We noted a difference in the wording for code 690.00. On the DOD form, this is defined as "Partial Reinstatement of Privileges – Reduction of Previous Action." The Data Bank form describes this code as "Reduction of Previous Action."

Variation also exists between the two forms in the instructions for completing the narrative for the action taken. The Data Bank form contains a request for a "description of the acts or omissions or other reasons for the action taken, and if known and applicable, the reason for the surrender of

clinical privileges." The DOD form contains two questions that appear to be designed to obtain this information: (1) "List how and why what privileges are affected by the action" and (2) "Remarks." The DOD and the Data Bank approaches seem to be quite incompatible.

In addition, there are several fields which are collected on the DD 2499 but not on the HRSA-430. As was stated previously in relation to the DD 2526 form, these fields are not mentioned explicitly in the summary tables under DOD procedures because the focus was on DOD compliance with P.L. 99-660. These fields collect information on provider specialty, training level and accession.

Recommendations

As with the malpractice form, we recommend that DOD adopt the Data Bank Adverse Action form for collecting and reporting data for streamlining and resource savings with noted exceptions. There are, however, some differences that cannot be entirely resolved through this type of action. The uniqueness of DOD's environment apparently requires some information to be reported which is not germane in the civilian sector. "Administrative actions taken" is seemingly an example of this type of circumstance. We recommend that the Data Bank work to accommodate DOD's informational needs. Here, the development of databases can be performed by the Data Bank (as was recommended earlier) with the additional data added to the core set of information (resource expenditure for this type of activity can be negotiated). The Data Bank should also work to be accommodating in relation to the query system. Information that is DOD-oriented is obviously of value in the military environment and should be available when queries are made. DOD queriers

have made requests that the data be conveyed as a part of their query responses. A separate report regarding these DOD-specific actions can be collected and generated by the Data Bank for each matched query. This additional report would require further discussion in terms of interest to DOD and the attendant cost.

Time Frame For Reporting Adverse Actions

As stated in P.L. 99-660, health care entities must report adverse actions to the appropriate Board within 15 days of the action, and the Board must report the action to the Data Bank within 15 days of receiving the information. Thus, the Data Bank receives reports within 30 days of the adverse actions. The MOU and the DOD Instructions do not comment on a time frame in which adverse actions should be reported. There is also no statement in the military Departments' regulations concerning the period in which adverse actions are to be reported. A review of the procedures used in the military Departments to dispose of potential adverse actions show that the reporting of an action can easily take more than 30 days. The processes in the Departments permit review and appeal of a potential action before the action is reported. The period before reporting can easily be as long as two to three months and more.

Recommendations

We recommend that for the period in which an adverse action is reported should be the same as that provided for the reporting of malpractice payments. Data Bank policies permit corrections or

revisions to an action. An adverse action should, therefore, be reported within 30 days with the results of review process corrected later.

In closing, the previous sections provide recommendations for areas which we believe the DOD's participation in the Data Bank can be enhanced. Based on this review, we believe that some opportunities are present to make the overall process of reporting efficient and cost effective. The next section presents our recommendations in relation to these possibilities.

STREAMLINING THE PROCESS OF REPORTING

In the process of reviewing DOD's participation in the Data Bank, we identified some areas where it seemed possible that the process could be made more efficient by reduction of duplication of effort. Duplication occurs, as would be expected, because the process of reporting evolved separately in the two sectors. The information to be reported is essentially the same although there are some discrepancies (as discussed in the previous section entitled "Information that Must be Reported") found in both the Medical Malpractice Reports and Adverse Actions Reports. These discrepancies are slight and are based mostly on different interpretations of the information to be reported. In a few cases, the differences reflect actual system differences. Since there is such uniformity in the data to be reported, it seems an excellent opportunity to capitalize on this essential feature to make the process more efficient. In doing so, we will reduce duplicate activities.

The first duplication of effort is the result of DOD and the Data Bank's having slightly different forms for reporting data to be entered into different database systems. DOD analysts must enter the data into TORT2 and CLINT2 and then enter the data, with some interpreting transformation, into the Data Bank via paper forms or QPRAC 3.0. While the reporting forms are very similar, as was discussed earlier, there is sufficient disparity so that separate system data entry occurs.

A clear solution to this duplication problem would be to have both organizations use the same reporting format. In the earlier analysis of the reporting forms, we noted that DOD forms had a

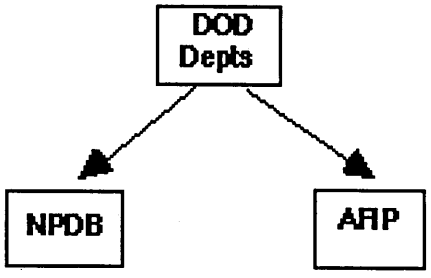
few more codes and the Data Bank forms had a few more data fields with a difference in the degree to which "acts and omissions" are reported. The Data Bank form allows a larger number of characters in the narrative describing these events. This would suggest that a reasonable solution is to have DOD adopt the Data Bank format. The additional codes (and field) required by DOD could be accommodated in the Data Bank as will be discussed later.

The other facet of this duplication involves DOD reporting to two different systems. If the reporting formats were the same, electronic copies of the data entered once could be sent to both systems. While this seems reasonable under a uniform format, with the present disparities, it could have unwanted side effects. This type of solution is being considered at present through the development of Version 2 of CCQAS. An electronic link with the Data Bank is presently being explored by DOD. Data would be entered into CCQAS and, with sufficient data transformation, an electronic bridge to the Data Bank could be developed. One facet of this discussion involved bypassing QPRAC to enter the data to the Data Bank.

This has, unfortunately, some negative consequences. It is important to note that the Data Bank is presently designing a standard format for transferring reports electronically without using QPRAC 3.0. If QPRAC is bypassed, then the Data Bank's technical support related to that entry and query system would not be available. According to feedback from those who enter DOD data via QPRAC, this support is seen as quite useful. As a result, this electronic solution would have unwanted effects that could lead to inaccuracies in the reported data and may require additional

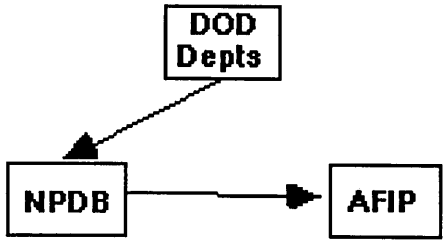
resources. Complicating factors presently associated with this type of solution involve the uncertainty of joining several systems and performance periods. Converting and joining the present departmental systems involve different contractors and there is a time limit on the contract designed to perform the overall task.

A straightforward approach would involve single reporting of the required data to another system. To develop increased efficiency in the reporting of payments and the development of full informational coverage, it is also recommended that the DOD Departments report all payments only to the Data Bank (in addition to reporting them to the appropriate State Board). The present model of reporting is given as:



where reports are sent to both the Data Bank and to the Armed Forces Institute of Pathology (AFIP).

In this model, both the Data Bank and AFIP develop databases to fulfill their missions of responding to queries or performing research. A more efficient model would have all reports going directly to the Data Bank with this organization performing the database development tasks and sending the completed databases to the AFIP:



It is understood that AFIP receives medical malpractice claims as well as payments. Further examination can be made concerning the feasibility of this model or some variation of it in light of the AFIP need for both claims and payment data. It is feasible for this model to be switched, where DOD Departments report to AFIP and AFIP submits these reports to the Data Bank. However, the capabilities of AFIP to take on such would require careful consideration of the resources needed.

It should be mentioned that there is a possible change in the manner in which malpractice information is reported to AFIP. It has been stated that the CCQAS of the DOD will allow the AFIP to have access to Tort 2 and Clin 2 information. Under this possibility, the information will

probably be downloaded to AFIP from CCQAS. This will, of course, eliminate the previous form of reporting. It is believed however, that this process will be dependent upon a CCQAS database system that is integrated across the DOD Departments. At present, the Air Force is taking the lead in developing what could be that integrated system; the Version 2 of CCQAS as mentioned earlier. However, the existing individual Department systems are based on different computer programs. A developed set of overall specifications for an interdepartmental system is missing. This and some other constraints do not suggest that a system will be available in short run. Therefore, until that system is developed and provides more efficiency for AFIP, the reporting paradigm recommended in this section is still offered. If DOD desires, the databases that are developed in the foregoing model could also be provided to the DOD Departments and the Office of the Assistant Secretary of Defense (Health Affairs). The particular form of the databases and the sharing of resources can be negotiated. Reporting malpractice payments to the Data Bank, and possibly adding a separate report for DOD information, would greatly streamline the process and save resources in a time when it is particularly prudent to do so.

As DOD faces changes in the manner in which health care is delivered with the introduction of TRICARE, it will be important to have a single comprehensive source of information describing the performance of health care practitioners. Under TRICARE, it is believed that the civilian organizations that will supply care to military personnel and their dependents will also be responsible for credentialing and reporting malpractice payments. While this may at present appear to be the probable form of the process, it is still unclear how the TRICARE relationships

will unfold and impact on how the data reports will be submitted and maintained. Hypothetically, it could be that the individual regional contracts may deem DOD the malpractice underwriter and reports could be sent to that organization/entity to submit to the Data Bank rather than for DOD to submit the Data Bank report.

This streamlining relationship initially may seem unrealistic but it is possible given the way health care is being restructured in DOD and the private sector. No one would have predicted that DOD organize health care services through contracts in managed care. The fact remains that the mechanism for reporting medical malpractice and adverse actions will require simplification and direction as well as coordination (especially with DOD contractors and reservists). During the transition period, there could also be confusion on the part of civilian providers as to who is responsible for reporting and where the reports should be sent. In that context, it would be prudent to have a simple reporting process like the one outlined. This would prevent the possible misdirection of reports on civilian doctors working in DOD facilities/sites and minimize the possibility that the quality of health care is compromised in both sectors.

The issues discussed clearly indicate that the process can be made more efficient. To achieve this, however, will necessitate some changes and accommodations. DOD would need to examine ways to accommodate a single reporting form and methods to reduce its reporting burden. The Data Bank is willing to accommodate the needs of DOD. If streamlining is desired, the Data Bank can propose ways for reporting the additional DOD data not required by the Data Bank. Since DOD

queriers have indicated to us their desire for the "800" coded data elements collected by DOD to be reflected as part of their responses to Data Bank queries, it may be possible to develop a specially tailored report for DOD. These changes are manageable as well as logical, especially in relation to the critical aspect of improving the quality of care.

To improve the quality of care in both the civilian and DOD sectors, it is necessary to have the coverage of the Data Bank be as comprehensive as possible. To ensure this, the coverage must specifically include all malpractice payments and adverse actions on those practitioners who serve in both sectors. For example, DOD would want full information on practitioners in the civilian sector who are reservists called to active duty. Moreover, both DOD and the Data Bank would need the information on practitioners who may serve both sectors through TRICARE. While one can be sure that the protocols for reporting and credentialing will be clearly defined as additional contracts for the provision of care are executed, it could be that a variety of strategies may emerge as TRICARE is implemented. Reporting to the Data Bank will have to be considered. The paying entity is responsible for malpractice reports; the disciplining entity is responsible for disciplinary reports.

In circumstances where all parties involved (DOD and the DOD contractor who are covered by their own insurance or the managed care insurance) in the provision of a care are sued, how will such incidents be reported and monitored by DOD? We are willing to assist the DOD in sorting

out any necessary arrangements. Regardless of the DOD contract arrangements made, DOD will still be responsible ultimately.

We understand the military health care systems' sensitivity to reporting practitioners who are career personnel. DOD has informed us that if practitioners do not feel supported by the system, they will consider leaving the service. Additionally, DOD has said that a large percent of medical malpractice events have been interpreted as system problems. This situation also occurs in the civilian sector when payments are made for a hospital or HMO rather than an individual practitioner. This is usually referred to as the "corporate shield." However, this is not to say that practitioners are actually being shielded. In many instances, there may be system problems within a health care system. If this is the case, the impact on quality of care is just as critical as that associated with practitioners. In this aspect of the problem, DOD and the Data Bank should become partners in finding ways to model systems so that performance at that level can be measured and monitored. The intent of the HCQIA is to improve care; it is important that all aspects of the delivery of that care be considered in working toward clinical quality improvement.

Recommendations

We have identified a number of areas for improving the data reporting process in this section that are intended to assist in the reduction of duplication and improve the quality of care. Key areas where duplication can be eliminated include: consolidation of reporting forms; creation of a reporting mechanism that would enable single data entry; and exploration of DOD and Data Bank

systems for areas where reporting burden and costs can be reduced. Given that the intent of this report was to improve participation of DOD in the Data Bank rather than to explore ways to streamline the DOD data system, specific methods to achieve this have only been dealt with at a surface level. The Division of Quality Assurance is willing to explore with the DOD ways to enhance and streamline our overlapping data requirements and system processes.

APPENDIX A:

DOD Participation in the Data Bank in the Context of P.L. 99-660 as Reflected by the MOU and the Procedures Implemented by DOD and the Data Bank

Table A1. DOD Participation in the Data Bank in the Context of PL 99-660 as Reflected by the MOU and the Procedures Implemented by DOD and the Data Bank with Recommendations for Obtaining Consistency.

Provisions in Public Law 99-660	MOU Between DOD and DHHS	DOD Procedures	Data Bank Procedures	Recommendations For Obtaining Consistency
Malpractice Reports Who must report. Each entity (e.g. hospital, HMO, etc.) including an insurance company, that makes a medical malpractice payment for the benefit of a physician, dentist, or other health care practitioner must report certain payment information to the Data Bank.	The Office of the Surgeon General (OTSG) of each Military Dept. is to send the appropriate information to the Data Bank. The method of reporting information to the Data Bank shall be by use of HRSA forms and, when possible, electronically.	OTSG'S of each department report to Data Bank following a review of each case and a determination that the payment was made for the benefit of a health care practitioner.	Each entity (as defined in PL 99-660, i.e. hospital, HMO, etc.) that makes medical malpractice payment for the benefit of a physician, dentist, or other health care practitioner reports to the Data Bank.	This process cannot be changed because each Military Department is the entity that makes a payment on behalf of a practitioner.

Provisions in Public Law 99-660	MOU Between DOD and DHHS	DOD Procedures	Data Bank Procedures	Recommendations For Obtaining Consistency
<u>What payments must be reported.</u> All malpractice payments must be reported. Each entity which makes a payment under an insurance policy, self-insurance, or otherwise, for the benefit of a physician, dentist, or other health care practitioner in settlement of or in satisfaction in whole or in part of a claim or a judgment against such practitioner for medical malpractice, must report the required information to Data Bank and the appropriate State Boards.	All payments made a provider will be reported to the Data Bank with the following categories of responsibility: • Standard medical care met. Report made in the name of the primary physician. • Minor deviation from SOC. Separate reports for each practitioner found to have provided substandard care. • Major deviation from SOC. Separate reports for each practitioner found to have provided substandard care.	<u>Army.</u> Regulations suggest that no report to Data Bank will be made if it is found that SOC is met (AR40-68, Para 4-13; B(2)(a)) <u>Air Force.</u> A description of the process in this department indicates that no Data Bank report is made when SOC is met. <u>Navy.</u> Reports made to Data Bank according to guidelines specified in the DOD instruction. NOTE: The DOD instruction states that <u>no</u> report to Data Bank will be made in the following: (continued next page)	Each entity that makes a malpractice payment for the benefit of a physician, dentist, or other health care practitioner in settlement of, or in satisfaction in whole or in part of, a written claim or judgment against that practitioner, must report certain information to the Data Bank. Eligible entities must report when a lump sum payment is made and when the first of multiple payments is made. The payment must be the result of a written complaint or claim demanding monetary payment for damages. The written	It is recommended that all malpractice payments made in the name of a practitioner be reported to the Data Bank regardless of whether SOC was met. It is recalled that reports to the Data Bank for a malpractice payment is not to be construed as a presumption that medical malpractice has occurred. The Data Bank is intended as a nationwide flagging system to provide another resource to assist State Licensing Boards, hospitals, and other health care entities in conducting extensive, independent investigation of the

Provisions in Public Law 99-660	MOU Between DOD and DHHS	DOD Procedures	Data Bank Procedures	Recommendations For Obtaining Consistency
		circumstances, when: (1) an administrative (or litigation) settlement is due to circumstances outside the control of the pharmacist (e.g. mislabeled drugs, equipment failure) (2) an administrative or litigation settlement based on administrative or litigation considerations rather than clear evidence on the record as a whole that a particular licensed health care practitioner was negligent. Generally, DOD reports a payment on behalf of a provider only if the SOC is not met.	complaint or claim must be based on a practitioner's provision of or failure to provide health care services. A written complaint or claim can include, but is not limited to, the filing of a cause of action based on law of tort in any State or Federal court or other adjudicative body. A practitioner who is the subject of a Data Bank report may add a statement to the report, dispute either the factual accuracy of the information in a report or whether the report was submitted in accordance with the Data Bank reporting	qualifications of the practitioners they seek to license, hire, or to whom they wish to grant clinical privileges. Reporting all payments to the Data Bank regardless of whether SOC was met will become more critical as TRICARE is implemented. Under that model of health care delivery, large number of practitioners will have both military and civilian clients. Since the Data Bank was designed to be a nationwide flagging system for health entities to examine patterns of behavior for

Provisions in Public Law 99-660	MOU Between DOD and DHHS	DOD Procedures	Data Bank Procedures	Recommendations For Obtaining Consistency
			requirements, or both. A payment in settlement of a medical malpractice action or claim shall not be construed as creating a presumption that medical malpractice has occurred. The information in the Data Bank should serve only to alert State licensing authorities and health care entities that there may be a problem with a practitioner's professional competence or conduct.	potential problems, it is essential that the Data Bank have the widest coverage possible. Therefore, it is necessary for both the DOD health care system and civilian entities to provide complete information on practitioners that serve both systems.

Provisions in Public Law 99-660	MOU Between DOD and DHHS	DOD Procedures	Data Bank Procedures	Recommendations For Obtaining Consistency
Information that must be reported. The information to be reported is specified in 45 CFR Subtitle A, Part 60; Subpart B. It includes identifying and professional information, payment information, and description of acts or omissions that gave rise to the claim. In addition, information is required which describes the judgment or settlement that resulted in the payment.	Reporting to Data Bank is to be done by use of Health Resources and Services Administration (HRSA) forms. The MOU suggests that DD Form 2526 may be the framework for organizing DOD information (FR, Vol 55 (253) 50322).	The information collected by DD Form 2526 is largely the same as that obtained by HRSA-529 (7-93) with the following exceptions: • Form 2526 does not include the Federal DEA number. • The Data Bank form asks for a description of the acts or omissions and injuries upon which the claim was based with a description of up to 2000 characters. Form 2526 asks for up to 300 characters for the same information. • Form 2526 does not give the same, detailed guidance for	The Data Bank used HRSA-529 (7/93) as the form to collect data on malpractice payments. It was designed to acquire the formation required in PL 99-660 and itemized in 45 CFR Part 60. In the case of malpractice payment reporting, it is the more comprehensive information collection framework.	It is recommended that DOD adopt the HRSA-529 (7/93) form to collect data describing malpractice payments. Several benefits would be derived from this. Adoption would make the DOD reporting to Data Bank more efficient. There would be no need to convert data from the DD Form 2526 to make it compatible with the Data Bank format. This would make the process more seamless and require less resources. By adopting the HRSA data acquisition format, more comprehensive information will be obtained in the

Provisions in Public Law 99-660	MOU Between DOD and DHHS	DOD Procedures	Data Bank Procedures	Recommendations For Obtaining Consistency
		information to be included in the description of acts and omissions, (e.g. The Data Bank form requests that the acts or omissions and injuries be described in terms of: (1) Age of claimant (2) Sex of claimant (3) Patient type (status) (4) Initial event (Procedure / diagnosis) (5) Subsequent event (6) Damages (Medical and/or Legal)		description of the acts or omissions and injuries or illnesses upon which the action was based. The Data Bank format permits up to 2000 characters in the description. Moreover, the process provides thorough guidance relative to the framework of information that should be reported. As a result, the data obtained through the Data Bank format is not only more comprehensive, but is also standardized by the guidance. The adoption of the more comprehensive framework would be an aid to DOD's mission

Provisions in Public Law 99-660	MOU Between DOD and DHHS	DOD Procedures	Data Bank Procedures	Recommendations For Obtaining Consistency
		• There is a discrepancy in the information describing the settlement and conditions. • Form 2526 has one category for EMT where as the Data Bank has four. There are other differences between DD 2526 and HRSA-529 forms DD 2526 has some fields that are not On the HRSA-529. Some of these fields are captured in the HRSA-529 memo field, and are identified as follows: 1. Three ICD9 clinical modification fields for diagnosis. 2. Three ICD9 clinical modification fields for procedures.		relative to the use of malpractice data. In the DOD Instruction about participation in the Data Bank, it is stated that AFIP shall conduct analyses and research on these data to assist OASD (HA) in implementing policy changes designed to improve the quality of health care . The results of this research is designed to provide assistance in the development of educational programs, reports and publications that will assist Federal health care providers in meeting continuing medical education requirements in risk management and quality improvement.

Provisions in Public Law 99-660	MOU Between DOD and DHHS	DOD Procedures	Data Bank Procedures	Recommendations For Obtaining Consistency
		(A Diagnostic Group Field is also collected which reflects the main chapter heading int he ICD-9 book under which a given diagnosis falls.) 3. Attribution of Fault. 4. Location of care 5. Injury Severity 6. Injury Duration 7. Provider Specialty 8. Clinical Service 9. Evaluation of Care (Stand of care determination) 10. Patient Gender 11. Patient Age 12. Total Amount Paid These fields are used by AFIP in their report on medical malpractice.		The more comprehensive and structured data provided by the Data Bank form would improve the support of AFIP's research. Since the DD Form 2526 is largely the same framework as the Data Bank instrument, conversion to the latter would not be disruptive. Aside from the two descriptive areas (acts or omissions and a description of judgment and settlement) the differences are quite minor. The benefits derived from such a conversion seem to certainly be compelling enough to make the small changes reasonable.

Provisions in Public Law 99-660	MOU Between DOD and DHHS	DOD Procedures	Data Bank Procedures	Recommendations For Obtaining Consistency
Time framework for reporting. Persons or entities must submit information to the Data Bank within 30 days from the payment.	The MOU states that reports should be filed with the Data Bank as established in 45 CFR Part 60. It makes no explicit statement about the time frame for reporting within the context of the analysis of claims in the departments.	Army. Upon notification that a monetary award has been made, a report on DD2526 will be submitted to HQ, USA MEDCOM within 7 days. If review of case has not been conducted at local level, the case file is sent to the Consultation Case Review Branch within 21 days of notification. If determination that SOC was not met, the HCP is reported. The HCP has a period of time to provide comments, not to exceed 30 days.	The Data Bank receives reports within 30 days.	The length of time associated with the review and appeal process in the military departments could seemingly contribute to the reporting of malpractice payments at a point which is longer than the 30 days required in PL 99-660. In most cases, the review and appeal process occurs after a claim is paid (except in the Air Force). Using the procedures inherent in the Data Bank reporting process, it is not necessary to wait until the process is

Provisions in Public Law 99-660	MOU Between DOD and DHHS	DOD Procedures	Data Bank Procedures	Recommendations For Obtaining Consistency
		Air Force. The review and appeal process in this department appears to occur before the claim is paid. The length of time between the payment and the reporting of a practitioner to the Data Bank depends upon the review and approval of the SG. There appears to be no delineation of the time between the notification of a payment and a report to the Data Bank.		complete to report a payment in the name of a practitioner. Data Bank procedures allow revisions or voided reports to be submitted after a report has been received. Therefore, if the review and appeal process found, for example, that SOC was met, that information can be sent to Data Bank. Based on this, it is recommended that DOD examine the reporting process to determine if it is feasible to report a payment while the review and appeal process is being conducted.

Provisions in Public Law 99-660	MOU Between DOD and DHHS	DOD Procedures	Data Bank Procedures	Recommendations For Obtaining Consistency
		Navy. Upon notification of a payment, the Medico-Legal Affairs Division (Med-36) will forward a copy of the case file by certified mail to each practitioner identified as a potential subject of a Data Bank report. Practitioners have 15 days to submit comments. Upon receipt of comments Med-36 prepares a review file for use by a Professional Case Review Panel (PCRP). Following review by PCRP, a report of the recommendations is sent to MED-36. MED-36 will then prepare a file for the Chief, BUMED's review, decision to report the claim o the Data Bank.		

Provisions in Public Law 99-660	MOU Between DOD and DHHS	DOD Procedures	Data Bank Procedures	Recommendations For Obtaining Consistency
<u>Adverse Action Reports</u> <u>Who must report.</u> Health care entities must report an adverse action to the Board within 15 days of the action. The Board must submit the information to the Data Bank within 15 days of the receipt of the information.	The OTSG's of the Military Departments shall send the appropriate information to the Data Bank and State Boards (Final Rule–32 CFR Part 221).	The OTSG's of the Departments follow the MOU.	The Data Bank receives reports from State Medical and Dental Boards within 30 days of actions. If health care entities fail to report, they could lose their immunity provisions with respect to review activities. Boards could have their reporting responsibility removed.	The possibility of individual entities, such as hospitals and HMO's, reporting directly to the Data Bank should be investigated. Under TRICARE, many of these entities in the civilian section will be providing services to military personnel and their dependents. Since they already report to the Data Bank, it would be a part of the normal process and would relieve the OTSG's of some of the reporting burden. The information in these reports would, of course, be integrated with other DOD data and provided to OASD (HA) and the OTSG's.

Provisions in Public Law 99-660	MOU Between DOD and DHHS	DOD Procedures	Data Bank Procedures	Recommendations For Obtaining Consistency
<u>What actions must be reported.</u> Health care entities must report to the Board of Medical Examiners in the state in which the entity is located the following actions:	<u>Professional sanction reports.</u> The DOD shall report all instances in which a DOD health care practitioner's clinical privileges are denied, limited or revoked by an Agency of the DOD for reasons of incompetence or negligent performance. <u>Professional misconduct reports.</u> The DOD shall report all instances in which a practitioner is found guilty, pleads guilty or is discharged in lieu of court-martial for unprofessional conduct as defined in DOD directives.	<u>Army.</u> Adverse privileging actions of longer than 30 days are reported to Data Bank. Practitioners who are convicted, plead guilty, plead nolo contendere, receive a less than honorable discharge for unprofessional conduct, a DD Form 2499 will be submitted to HQDA. After due process the Surgeon General will report information to the Boards and the Data Bank. Automatic suspension of privileges for practitioners enrolled in rehabilitation for substance abuse is <u>not</u> reported to Data Bank unless they fail to satisfactorily complete the program.	<u>Adverse Clinical Privileges Actions.</u> Hospitals and other eligible health care entities must report professional review actions that adversely affect a practitioner's clinical privileges for more than 30 days and acceptance of a practitioner's surrender or restriction of clinical privileges while under investigation for possible incompetence or improper conduct. Revisions to such actions must also be reported.	There is some lack of consistency in the reporting processes articulated by the various documents describing the disposition of actions. The law is clear when it states which actions must be reported. The MOU speaks to which actions are to be reported in relation to two categories of reports–profession sanction reports and professional misconduct reports. It could be argued that these two categories of reports broadly classify the reportable actions itemized in the law. When the Department of the Army lists the adverse privileging actions that are to be reported, an exception is made for the automatic

Provisions in Public Law 99-660	MOU Between DOD and DHHS	DOD Procedures	Data Bank Procedures	Recommendations For Obtaining Consistency
(1) Any professional review that adversely affects clinical privileges for a period longer than 30 days. (2) Acceptance of the surrender of clinical privileges or any restriction of such privileges by a physician or dentist - which the practitioner is under investigation by health care entity relating to possible incompetence or improper professional conduct or - in return for not conducting such an investigation or proceeding (3) in the case of a health care entity which is a professional society, when it takes a professional review action concerning a practitioner.	The final rule for the implementation of the MOU (32 CFR Part 221–DOD Directive 6025.14) states only that information on adverse privileging actions and other professional review actions shall be reported to the appropriate State agencies and the Data Bank.	<u>Air Force.</u> Any suspension, denial, limitation, or revocation action taken with a provider's clinical privileges for gross misconduct, professional incompetency, or negligence is reported to HQ AFMOA/SGPC. HQ AFMOA/SGPC has sole responsibility for reporting to regulatory agencies outside of the Air Force and notifies, upon review and discussion, licensing authorities, the Data Bank, and other applicable professional regulatory agencies, as required. In the statement of the report process no mention was made of the reported adverse action being longer than 30 days. .	<u>Adverse Professional Membership Actions.</u> The Data Bank receives specific information from professional societies when any review action, based on reasons related to competence or conduct, adversely affects the membership of the practitioner. Revisions to such actions must also be reported.	suspension of privileges for practitioners enrolled in rehabilitation for substance abuse. This suspension is not reported unless the practitioner fails to satisfactorily complete the program. Not reporting in this case would be consistent with the requirements of PL 99-660 if the suspension were less than 30 days. The Army states that adverse privileging actions of longer than 30 days will be reported. Would this statement hold if the foregoing suspension lasted more than 30 days or would the exemption prevail? A clear statement is not made.

Provisions in Public Law 99-660	MOU Between DOD and DHHS	DOD Procedures	Data Bank Procedures	Recommendations For Obtaining Consistency
		Navy. The BUMED Special Assistant for Medico-Legal Affairs must report the following actions to applicable state and national licensing and certification agencies, applicable professional clearinghouses, the Data Bank, the Assistant Secretary of the Navy for Manpower and the Assistant Secretary of Defense for Health Affairs within 5 working days. (1) Adverse privileging actions resulting, after completion of all appeal procedures, in denial, limitation, or revocation of clinical privileges or termination of professional staff appointment.		The descriptions of processes in the MOU and the Departments' Instructions are constructed in a manner that is not necessarily inconsistent with the legislation. They are, however, articulated differently than the descriptions in the law and differences are sufficient enough that it is unclear if the reporting of actions is consistent. For this reason, it is recommended that the OASD (HA) and the Data Bank examine the actions reportable under the two organizational processes and determine if adjustments are needed to make the reporting consistent.

Provisions in Public Law 99-660	MOU Between DOD and DHHS	DOD Procedures	Data Bank Procedures	Recommendations For Obtaining Consistency
		(2) Health care providers who are released from active duty, retired, or have their employment terminated, due to disability. (3) Health care providers referred for court-martial or indicted by a civilian court for acts of misconduct. A followup report will be sent confirming the disposition of the proceedings. (4) Health care providers found to have committed acts of misconduct. No mention is made of the reporting of actions that are longer than 30 days.		

Provisions in Public Law 99-660	MOU Between DOD and DHHS	DOD Procedures	Data Bank Procedures	Recommendations For Obtaining Consistency
<u>Information that must be reported.</u> Information required to be reported to the Data Bank includes: • identifying data • professional data • description of acts or omissions or other reasons for the action • description of action. Exact information to be reported is itemized in 45 CFR Part 60.	The MOU does not specify the information to be reported.	DD Form 2499 provides the framework for the information to be reported to the Data Bank. The information collected on this form is largely the same as that requested on the Data Bank form for adverse actions. There are, however, several differences, i.e. • The codes used for items 8a in the Actions Taken Section are slightly different (extra "other" code in 650 section-660.90). Item 8b and the codes in item 14b (The 810 codes) not on Data Bank form. • All code sections have a code not on the Data Bank form (i.e.###.70)	The Data Bank uses the HRSA-530 form. The form is basically the same as the DD Form 2499. It includes an item for the description of acts or omissions that were the basis of the adverse action that allows up to 600 characters (vs. 300 for DD Form 2499). The Data Bank form does not include Section 8b nor the codes associated with it. The form does not have a ###.70 code in each adverse action classification section. The 690.00 codes in the Revision to Action–Clinical Privileges Section has different wording than the same code in the DD Form 2499.	It is recommended that DOD adopt the Data Bank form for collecting and reporting data. The reasons for this recommendation are basically the same as those given in the malpractice section. For those items and codes not used on the Data Bank form, the two organizations should work together to determine if the information is reportable to Data Bank but is in a different form. DOD will have some information which is unique to their circumstances and will probably not be reportable to Data Bank. When this is the case, Data Bank should develop procedures to accommodate this data in their database development process so it can be made available to DOD and AFIP.

Provisions in Public Law 99-660	MOU Between DOD and DHHS	DOD Procedures	Data Bank Procedures	Recommendations For Obtaining Consistency
		• In the Revision to Action-Clinical Privileges Section, the 690.00 Code has different wording than that on the Data Bank form. • The DD Form 2499 has two narrative fields to address "how and why what privileges are affected by the action". The stem of this item is different than that in the Data Bank form. In addition, there are several fields (e.g., specialty, training level and accession) which are collected on the DD 2499 but not on the HRSA-430. As was stated previously in relation to the DD 2526 form, these fields are not mentioned explicitly in the summary tables under DOD procedures because of the focus was on DOD.		

Provisions in Public Law 99-660	MOU Between DOD and DHHS	DOD Procedures	Data Bank Procedures	Recommendations For Obtaining Consistency
Time for Reporting. Public Law 99-660 states that a health care entity must report an adverse action to the Board within 15 days from the date of the action and the Board must report the action to the Data Bank within 15 days of receipt of the information.	The MOU makes no statement concerning a time frame for reporting actions.	Due to possible hearing and review processes, it is possible that the period of time between action and reporting to Data Bank could be considerably longer than 30 days. Dept. Army. Reporting could take up to 55 days. Air force. Reporting could take up to 100 days. Dept. Navy. Reporting could take up to 65 days.	The Data Bank receives reports concerning adverse actions are received from Boards 15 days after the Boards receive them from health care entities.	The recommendations offered here are the same as those presented in the section on Malpractice payments in relation to the time from for reporting.