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United States Senate

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November 3, 2011

The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C., 20201

Dear Secretary Sebelius:

On October 7, 2011, I wrote to the Health Research and Services Administration (HRSA) regarding its decision to remove the publically available National Practitioner Data Bank's (NPDB) Public Use File (PUF) from its website. For years the PUF has served as the backbone in providing transparency for bad acting healthcare practitioners and has been used by researchers and consumer groups to calculate trends in disciplinary actions by state medical boards.

On November 1, 2011, HRSA responded to my letter and provided a set of heavily redacted documents. However, HRSA failed to respond fully, and the information provided raises additional concerns. For example, question 4 asked who was responsible for the decision to remove public access to the PUF and the response merely said it was made by HRSA leadership.

Question 1 asks HRSA how it reconciles the claim in the letter to Mr. Bavley that "information reported to the NPDB is confidential and it's not to be disclosed or redisclosed outside of HHS except in furtherance of professional review activities" with the fact that the statute clearly contemplates that the data will be public in a de-identified form. HRSA responded by stating:

The initial information HRSA received did not indicate Mr. Bavley had used the Public Use File (PUF). . . . HRSA's letters related to use of confidential data from NPDB itself—not from the Public Use File. Mr. Bavley subsequently informed HRSA that he had not used the NPDB, but had instead conducted research using data from the PUF.

HRSA's response makes it apparent that HRSA simply accepted the complaint of the physician involved at face value and jumped to conclusions about how Mr. Bavley obtained the information. Once HRSA learned of its mistake, it then compounded the error by shutting down access to information that Congress intended to be public through the PUF. All Mr. Bavley did was use publicly available data, and HRSA's response to that was to shut down access to that data for everyone. Moreover, HRSA has still failed to restore the PUF to its website.

Perhaps more puzzling is why HRSA was going against its mandate with respect to the NPDB PUF. The intent of the legislation that created the PUF was to enhance the quality of healthcare, encourage greater efforts in professional peer review and restrict the ability of incompetent healthcare practitioners to relocate without discovery of previous substandard performance or unprofessional conduct. However, from the documents provided by HRSA it appears that instead of protecting the interest of public health, its purpose was to protect a single physician who had a malpractice suit and disciplinary action filed against him.

Instead of conducting its own research into the professional conduct of Dr. Tenny, HRSA appears to have over reacted to the complaint of a single physician based on no evidence other than that he received a call from the press. This action, and the subsequent action of removing public access to the PUF, flies in the face of HRSA's mandate to enhance the quality of healthcare.

In light of all these circumstances, full public access to the PUF should be restored to HRSA's website immediately. Additionally, I request that the individual at HRSA responsible for the decision to remove the public access to the PUF come in and brief my staff immediately. As part of this briefing, please bring the unredacted copies of all documents HRSA supplied as part of my initial inquiry.

Should you have any questions regarding this letter, please contact Erika Smith of the Senate Judiciary Committee staff at (202) 224-5225. Thank you for your immediate attention to this important matter.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is written in a cursive, flowing style.

Charles E. Grassley
Ranking Member