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United States Senate

COMMITTEE ON THE JUDICIARY
WASHINGTON, DC 20510-6275

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October 7, 2011

VIA ELECTRONIC TRANSMISSION

Mary K. Wakefield, PhD, RN
Administrator
Health Research and Services Administration
U.S. Department of Health and Human Services
5600 Fisher's Lane
Rockville, MD 20857

Dear Administrator Wakefield:

The National Practitioner Data Bank's (NPDB's) Public Use File (PUF) serves as the backbone in providing transparency for bad acting healthcare practitioners. For years the data has been used by researchers and consumer groups to calculate trends in disciplinary actions by state medical boards. In fact, Public Citizen recently released a report comparing disciplinary actions reported to the database with corrective measures taken by state medical boards.

Yet, it is my understanding that HRSA recently removed public access to the database after a reporter from *The Kansas City Star* was able to identify a physician's data bank record by comparing the de-identified information with state court records. HRSA wrote to the reporter, Alan Bavley, on August 26, 2011, threatening civil monetary penalties for "republishing of information obtained from the NPDB." The letter specifically states that

"The information reported to the NPDB is confidential and is not to be disclosed or redisclosed outside of HHS except in furtherance of professional review activities. As specifically required under Federal regulation, any individual who receives information from the NPDB, directly or indirectly, must use NPDB information solely with respect to the purpose for which it was disclosed by HHS."

However, the intent of the legislation that created the PUF, the Healthcare Quality Improvement Act of 1986 (HCQIA, P.L. 99-660), was that the NPDB's data be public as long as it does not identify particular health care entities or practitioners. All the reporter did was use that publicly available data. The goal of the 1986 law is 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.

Furthermore, the Disclosure of NPDB Information section in the NPDB Guidebook posted on HRSA's website states that information is available to "persons or entities requesting information in a form which does not identify any particular entity or practitioner."

Members of my staff have viewed the information Mr. Bavley downloaded from the PUF file and confirmed this information was indeed not identifiable to a particular practitioner.

It was only by comparing the data to other publicly available records that the reporter was able to get the story.

It seems disturbing and bizarre that HRSA would attempt to chill a reporter's First Amendment activity with threats of fines for merely "republishing" public information from one source and connecting it with public information from another. A journalist's shoe-leather reporting is no justification for such threats or for HRSA to shut down public access to information that Congress intended to be public. Shutting down public access to the data bank undermines the critical mission of identifying inefficiencies within our health care system – particularly at the expense of Medicare and Medicaid beneficiaries. More transparency serves the public interest. Generally speaking, except in cases of national security, the public's business ought to be public. Providers receive billions of dollars in state and federal tax dollars to serve Medicare and Medicaid beneficiaries. Accountability requires tracking how the money is spent.

It has been widely reported that HRSA is looking at ways to further de-identify the information contained in the database and that this process could take up to six months. To better understand HRSA's goal behind the removal of the database and its plan for moving forward, please answer the following questions and provide the requested documents by October 21, 2011:

1. How do you reconcile the claim in the letter to Mr. Bavley that "information reported to the NPDB is confidential and is 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?
2. Please provide all records relating to communications between HRSA officials and Dr. Tenny (or his representatives) who is copied on the letter to Mr. Bavley.
3. Please provide all records related to alleged breaches of confidentiality of the NPDB within the last 2 years.
4. Who at HRSA made the decision to remove public access to the PUF?
5. What steps is HRSA taking to further de-identify information within the PUF?

6. How will you ensure that the further de-identified information is in keeping with both the letter of the law and congressional intent to keep the data public?
7. What is your timeline for getting the database up and running again?

In addition to your written response, please have the appropriate HRSA officials contact my staff no later than October 11, 2011, to schedule an in-depth briefing on these issues and an open discussion on a path forward that allows for a timely remedy.

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,



Charles E. Grassley
Ranking Member