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DATA BANK

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Joan Claybrook, President

April 28, 1994

The Honorable Ron Wyden
The Honorable Scott Klug
United States House of Representatives
Washington, DC 20515

Dear Congressman Wyden and Congressman Klug:

We are writing to inform you of our serious concerns about H.R. 4274, amending the Health Care Quality Improvement Act of 1986, and why we cannot support this bill despite its many good points. While the bill admirably addresses several loopholes in the current law, it seriously undermines the principle of full public disclosure of information that is crucial to the public's safety and health.

The good news is that H.R. 4274 would close many of the loopholes that have weakened the National Practitioner Data Bank (created by the 1986 Act) since it began operation on September 1, 1990. Those provisions -- which we support -- include:

(1) Requiring malpractice payment reports for all practitioners whose "acts or omissions were the basis of the [malpractice] action or claim." If an individual practitioner cannot be identified, "the name of the hospital or other health services organization for whose benefit the payment was made" would be reported to the Data Bank instead. This requirement would help to close a widely-used loophole, by which settlements are made in the name of corporate entities, not individuals, to avoid reporting to the Data Bank at all.

(2) Mandating that "Federal health facilities" submit reports to the Data Bank under the same rules that apply to other facilities and practitioners. This would equalize the treatment of doctors employed by federal agencies -- such as the Department of Defense and the Veterans Administration -- and those who practice in non-federal settings. Currently, these agencies voluntarily participate in the Data Bank according to Memoranda of Understanding, which have allowed them to evade some of the reporting rules.

(3) Mandating State Medical Boards to query the Data Bank at the point of licensure and relicensure of physicians in their state. Such queries are currently voluntary and studies have found that few Boards use the Data Bank, which could point them to practitioners who should be investigated by the Boards to ensure that patients are protected from substandard care.

However, the bad news is that H.R. 4274's key provision is fatally flawed. That provision -- governing the "availability of information to [the] public" -- would bar public access to malpractice payment reports for practitioners with only one such report in the Data Bank. We strongly oppose limiting public disclosure in this way for the following reasons:

(1) It would allow **continued secrecy about the vast majority of practitioners in the Data Bank,** thus making a mockery of the very principle of public disclosure. Consider the following statistics (from data collected as of November 30, 1993):

* 83% of reports in the Data Bank are for malpractice payments, compared to 17% adverse action (disciplinary) reports;

* 85% of practitioners in the Data Bank are reported only for malpractice payments, compared to 13% only for adverse actions and 2% for both malpractice payments and adverse actions;

* Of all practitioners with malpractice payment reports in the Data Bank, 86% have only one such report, compared to 14% with two or more reports.

Based on these statistics, excluding single malpractice payment reports from disclosure would mean that **the names of at least 73% of all practitioners in the Data Bank would still be kept secret from the public.**

(2) Under current procedure or H.R. 4274, practitioners would have the opportunity to:

* Review Data Bank reports before they become disclosable and challenge any inaccuracies;

* Submit a statement regarding the action or claim, to be disclosed along with the report;

* Refuse settlements by insurers without practitioners' consent of claims viewed as frivolous.

These provisions amply protect practitioners against disclosure of inaccurate information and misunderstanding of the incidents involved. **Further protection of proven or allegedly negligent practitioners at the expense of the public is unwarranted.**

(3) H.R. 4274 makes no distinction between single reports based on horrendous acts of negligence -- e.g. death or serious injury of a patient -- versus relatively minor incidents. **It is unconscionable to set a standard that more than one patient must die before the public can be warned about a dangerous practitioner.** It would be impractical to qualitatively assess each report before its public release, and dollar amounts alone do not necessarily reflect the severity of the underlying incidents. Thus, all malpractice payment reports should be disclosed to the public, so that this information can be used -- in combination with other data -- by the very people whom the Data Bank was created to protect.

For these reasons, we are forced to oppose H.R. 4274, despite several improvements it would bring to the National Practitioner Data Bank. We are disappointed that an opportunity to strengthen the Data Bank is being squandered by a compromise that supports continued secrecy over the public's needs.

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