(b) Confidentiality of information

(1) In general

Information reported under this subchapter is considered confidential and shall not be disclosed (other than to the physician or practitioner involved) except with respect to professional review activity, as necessary to carry out subsections (b) and (c) of section 11135 of this title (as specified in regulations by the Secretary), or in accordance with regulations of the Secretary promulgated pursuant to subsection (a). Nothing in this subsection shall prevent the disclosure of such information by a party which is otherwise authorized, under applicable State law, to make such disclosure. Information reported under this subchapter that is in a form that does not permit the identification of any particular health care entity, physician, other health care practitioner, or patient shall not be considered confidential. The Secretary (or the agency designated under section 11134(b) of this title), on application by any person, shall prepare such information in such form and shall disclose such information in such form.

(2) Penalty for violations

Any person who violates paragraph (1) shall be subject to a civil money penalty of not more than $10,000 for each such violation involved. Such penalty shall be imposed and collected in the same manner as civil money penalties under subsection (a) of section 1320a–7a of this title are imposed and collected under that section.

(3) Use of information

Subject to paragraph (1), information provided under section 11135 of this title and subsection (a) is intended to be used solely with respect to activities in the furtherance of the quality of health care.

(4) Fees

The Secretary may establish or approve reasonable fees for the disclosure of information under this section or section 11136 of this title. The amount of such a fee may not exceed the costs of processing the requests for disclosure and of providing such information. Such fees shall be available to the Secretary (or, in the Secretary's discretion, to the agency designated under section 11134(b) of this title) to cover such costs.

(c) Relief from liability for reporting

No person or entity (including the agency designated under section 11134(b) of this title) shall be held liable in any civil action with respect to any report made under this subchapter (including information provided under subsection (a)[1] without knowledge of the falsity of the information contained in the report.

(d) Interpretation of information

In interpreting information reported under this subchapter, a payment in settlement of a medical malpractice action or claim shall not be construed as creating a presumption that medical malpractice has occurred.

[1] So in original. Probably should be followed by another closing parenthesis.

(Pub. L. 99–660, title IV, § 427, Nov. 14, 1986, 100 Stat. 3791; Pub. L. 100–177, title IV, § 402(a), (b), Dec. 1, 1987, 101 Stat. 1007.)

Editorial Notes

AMENDMENTS

1987—Subsec. (b)(1). Pub. L. 100–177, § 402(a)(1), substituted ''as necessary to carry out subsections (b) and (c) of section 11135 of this title (as specified in regulations by the Secretary)'' for ''with respect to medical malpractice actions'' and inserted at end ''Information reported under this subchapter that is in a form that does not permit the identification of any particular health care entity, physician, other health care practitioner, or patient shall not be considered confidential. The Secretary (or the agency designated under section 11134(b) of this title), on application by any person, shall prepare such information in such form and shall disclose such information in such form.''

Subsec. (b)(4). Pub. L. 100–177, § 402(b), added par. (4).

Subsec. (c). Pub. L. 100–177, § 402(a)(2), inserted ''(including the agency designated under section 11134(b) of this title)'' after ''entity'' and ''(including information provided under subsection (a)'' after ''subchapter''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1987 AMENDMENT

Pub. L. 100–177, title IV, § 402(d), formerly § 402(c), Dec. 1, 1987, 101 Stat. 1007, as renumbered and amended by Pub. L. 101–239, title VI, § 6103(e)(6), Dec. 19, 1989, 103 Stat. 2208, provided that:

''(1) IN GENERAL.—The amendments made by subsections (a) and (c) [amending this section and sections 1111 and 1115 of this title] shall become effective on November 14, 1986.

''(2) FEES.—The amendment made by subsection (b) [amending this section] shall become effective on the date of enactment of this Act [Dec. 1, 1987].''

SUBCHAPTER III—DEFINITIONS AND REPORTS

§ 11151. Definitions

In this chapter:

(1) The term ''adversely affecting'' includes reducing, restricting, suspending, revoking, denying, or failing to renew clinical privileges or membership in a health care entity.

(2) The term ''Board of Medical Examiners'' includes a body comparable to such a Board (as determined by the State) with responsibility for the licensing of physicians and also includes a subdivision of such a Board or body.

(3) The term ''clinical privileges'' includes privileges, membership on the medical staff, and the other circumstances pertaining to the furnishing of medical care under which a physician or other licensed health care practitioner is permitted to furnish such care by a health care entity.

(4)(A) The term ''health care entity'' means—

(i) a hospital that is licensed to provide health care services by the State in which it is located,

(ii) an entity (including a health maintenance organization or group medical practice) that provides health care services and that follows a formal peer review process for the purpose of furthering quality health care (as determined under regulations of the Secretary), and

(iii) subject to subparagraph (B), a professional society (or committee thereof) of physicians or other licensed health care practitioners that follows a formal peer review process for the purpose of furthering quality health care (as determined under regulations of the Secretary).

(B) The term ''health care entity'' does not include a professional society (or committee thereof) if, within the previous 5 years, the society has been found by the Federal Trade Commission or any court to have engaged in any anti-competitive practice which had the effect of restricting the practice of licensed health care practitioners.

(5) The term ''hospital'' means an entity described in paragraphs (1) and (7) of section 1395x(e) of this title.

(6) The terms ''licensed health care practitioner'' and ''practitioner'' mean, with respect to a State, an individual (other than a physician) who is licensed or otherwise authorized by the State to provide health care services.

(7) The term ''medical malpractice action or claim'' means a written claim or demand for payment based on a health care provider's furnishing (or failure to furnish) health care services, and includes the filing of a cause of action, based on the law of tort, brought in any court of any State or the United States seeking monetary damages.

(8) The term ''physician'' means a doctor of medicine or osteopathy or a doctor of dental surgery or medical dentistry legally authorized to practice medicine and surgery or dentistry by a State (or any individual who, without authority holds himself or herself out to be so authorized).

(9) The term ''professional review action'' means an action or recommendation of a professional review body which is taken or made in the conduct of professional review activity, which is based on the competence or professional conduct of an individual physician (which conduct affects or could affect adversely the health or welfare of a patient or patients), and which affects (or may affect) adversely the clinical privileges, or membership in a professional society, of the physician. Such term includes a formal decision of a professional review body not to take an action or make a recommendation described in the previous sentence and also includes professional review activities relating to a professional review action. In this chapter, an action is not considered to be based on the competence or professional conduct of a physician if the action is primarily based on—

(A) the physician's association, or lack of association, with a professional society or association,

(B) the physician's fees or the physician's advertising or engaging in other competitive acts intended to solicit or retain business,

(C) the physician's participation in prepaid group health plans, salaried employment, or any other manner of delivering health services whether on a fee-for-service or other basis,

(D) a physician's association with, supervision of, delegation of authority to, support for, training of, or participation in a private group practice with, a member or members of a particular class of health care practitioner or professional, or

(E) any other matter that does not relate to the competence or professional conduct of a physician.

(10) The term ''professional review activity'' means an activity of a health care entity with respect to an individual physician—

(A) to determine whether the physician may have clinical privileges with respect to, or membership in, the entity,

(B) to determine the scope or conditions of such privileges or membership, or

(C) to change or modify such privileges or membership.

(11) The term ''professional review body'' means a health care entity and the governing body or any committee of a health care entity which conducts professional review activity, and includes any committee of the medical staff of such an entity when assisting the governing body in a professional review activity.

(12) The term ''Secretary'' means the Secretary of Health and Human Services.

(13) The term ''State'' means the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

(14) The term ''State licensing board'' means, with respect to a physician or health care provider in a State, the agency of the State which is primarily responsible for the licensing of the physician or provider to furnish health care services.

(Pub. L. 99–660, title IV, § 431, Nov. 14, 1986, 100 Stat. 3792.)

§ 11152. Reports and memoranda of understanding

(a) Annual reports to Congress

The Secretary shall report to Congress, annually during the three years after November 14, 1986, on the implementation of this chapter.

(b) Memoranda of understanding

The Secretary of Health and Human Services shall seek to enter into memoranda of understanding with the Secretary of Defense and the Administrator of Veterans' Affairs to apply the provisions of subchapter II of this chapter to hospitals and other facilities and health care providers under the jurisdiction of the Secretary or Administrator, respectively. The Secretary shall report to Congress, not later than two years after November 14, 1986, on any such memoranda and on the cooperation among such officials in establishing such memoranda.

(c) Memorandum of understanding with Drug Enforcement Administration

The Secretary of Health and Human Services shall seek to enter into a memorandum of understanding with the Administrator of Drug Enforcement relating to providing for the reporting by the Administrator to the Secretary of information respecting physicians and other practitioners whose registration to dispense controlled substances has been suspended or re-