



Association of Health Care Journalists
Center for Excellence in Health Care Journalism
Better coverage. Better health.



Kathleen Sebelius
Secretary of Health and Human Services
200 Independence Ave., S.W.
Washington, D.C. 20201

Nov. 10, 2011

Dear Secretary Sebelius,

As the leaders of seven major journalism organizations, we are writing to protest the administration's new rules governing the republished Public Use File of the National Practitioner Data Bank. We believe these rules are ill-advised, unenforceable and probably unconstitutional. Restricting how reporters use public data is an attempt at prior restraint.

We appreciate the willingness of HHS to work with our organizations, listen to our concerns and try to fashion a remedy that places patient interests above all else. We also applaud your department for taking steps to republish the data bank in some form after it was removed on Sept. 1.

But each of the three restrictions placed on those wishing to access the Public Use File is unworkable.

We are particularly concerned with the first – the prohibition on using the file in conjunction with other data that identifies an individual or facility. This puts journalists in an untenable position. How can reporters who use the file prove that their identification of a troubled doctor was independent of the Public Use File? If reporters identify doctors in their stories and also have had access to the file, would HRSA ask to see their notes, talk to their sources, confirm that their facts came from other records and not the data bank?

The Health Resources and Services Administration says that those who do not comply with the new restrictions can be asked to return the data and be barred from future access to the Public Use File. But no criteria are provided on how HRSA will ascertain that a reporter has broken the rules. Worse, no due process is offered to reporters who are so barred. We see no evidence that this rule can be applied fairly. As we saw with *Kansas City Star* reporter Alan Bavley, the agency has no reservations about threatening a reporter based on an unsubstantiated complaint by one doctor.

HRSA is also requiring that users agree to return the data if requested. That's like trying to unspill milk. Either data are public or they are not. Once

they are made public, how can they become secret again, especially in the Internet era?

In short, these restrictions are nonsensical. They are also unnecessary. As our legal counsel has told HHS' general counsel, the law governing the data bank mandates merely that any data HHS puts online do not allow for identification of physicians or other providers. The Public Use File does not do that.

Freely available, the file has helped reporters and researchers serve the public interest. As you know from our previous letters, we are proud that our colleagues' work has exposed serious gaps in the oversight of physicians by state medical boards and resulted in legislation that improves transparency and accountability. We want to ensure that such work can continue in the future.

Our recommendation is that HHS remove the recently imposed restrictions on use of the data. We further encourage HRSA to return to its prior policy of declining to confirm or deny the identities of physicians or entities in the data bank. That puts the complete legal burden on reporters and their news organizations for ensuring their information is correct and that it comes from a source that they can verify.

We would like to arrange a meeting with you personally as soon as possible to discuss our concerns and plan a way forward.

Thank you for your attention to this important issue.

Sincerely,

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