

Patient Safety Organizations

Confidentiality Protections for Hospitals and Providers: Patient Safety Organizations

The major obstacles in identifying patient safety and other quality of care problems associated with the delivery of health care are:

- Fear of legal liability,
- Professional sanctions, and
- Injury to professional reputations.

These obstacles are reduced by the Patient Safety and Quality Improvement Act (Patient Safety Act). The Patient Safety Act was passed to help create a culture of safety by providing peer review protections for information reported on health care errors and events to foster the development of best practices and clinical integration.

Womble Carlyle attorney Peggy Binzer spearheaded the crafting and passage of the Patient Safety Act while serving as Counsel to the Senate HELP Committee and thus understands the nuances that can enhance the liability protections and reduce health care costs. Peggy has assembled a team including Kim Licata who is intimately familiar with peer review across the full spectrum of health care providers and has expertise in HIPAA privacy and security issues.

What is the Scope of the Federal Peer Review Protections?

The Federal legislation extends peer review protections beyond traditional settings to all health care providers and across all provider types. Traditional state-based legal protections for health care quality improvement activities, collectively known as peer review protections, are limited in scope and generally do not allow for the sharing of information about medical errors and near misses across hospitals in a system or among health care providers. If information is shared, the protections are generally considered to be waived. Many states do not have peer review protections at all.

The Patient Safety Act provides a uniform set of Federal protections that will extend to all states and territories and will allow multi-facility health care Patient Safety Organizations (PSOs) to share information within a state and across state lines.

Womble Carlyle can show you how to maximize the protections to create a legally robust patient safety system.

What are the Benefits to Patients, Health Care Providers, Health Care Provider Associations, Hospitals and Hospital Associations?

Because of the fear of liability, improvements in medicine are likely delayed in an ever increasing pay-for-performance environment. Under the Patient Safety Act, information from a group of health care providers can be aggregated to identify patterns and systemic errors. The information can be used to analyze root causes, develop best practices, clinically integrate systems, and enhance clinical literature to significantly advance quality of care and the practice of medicine.

The Patient Safety Act creates the opportunity to transform medicine to a system of continuous quality of care, which will result in reduced health care costs.

How do the Protections Work?

The Patient Safety Act establishes a framework where health care providers contract voluntarily with PSOs – new public or private entities – to help them to:

- Identify and to analyze threats to patient safety and other quality of care problems, and
- Change health care processes to improve health outcomes without fear that data will be disclosed or used in legal or administrative proceedings against them.

The protections of the Act attach to the information that is collected and analyzed, including oral discussions and deliberations, and the information is treated as:

- Confidential: Protecting the identities of providers – both institutions and individuals – patients, and those reporting covered information in good faith, and
- Privileged: Precluding work products' use in civil, administrative and, with certain exceptions, criminal proceedings.

As a result, providers and health care experts can share and analyze information about life-saving treatments, trends, and best practices associated with medical errors or other health incidents with absolute confidentiality and insulated from discovery in litigation. A PSO permits hospitals and other institutional providers as well as all health care providers and associations to supply the highest quality and safest care to people in their community by encouraging, and more importantly, protecting the sharing of quality data.

How do you become a PSO?

Womble Carlyle can assist you in the certification and listing process. Legal services are necessary to create a robust patient safety system that will allow the sharing of information about medical errors and close calls without fear of litigation. The system can be made secure through carefully crafted contracts as well as precisely constructed policies and procedures. The law dovetails with HIPAA and contemplates that PSOs will sign business associate agreements with providers.

Womble Carlyle currently represents PSOs and will work with hospital systems and providers to get the most value out of a patient safety system in terms of liability protection for the information and improved patient safety and quality of care while maximizing economic and marketing benefits.

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