Quality Improvement Privileges for Illinois Hospitals
March 11, 2019

In Illinois, two statutes protect hospitals’ quality improvement work: the Illinois Medical Studies Act and the federal Patient Safety and Quality Improvement Act of 2005. The general intent of these laws is similar:

The Medical Studies Act ("MSA") is intended to “ensure the effectiveness of professional self-evaluation, by members of the medical profession, in the interest of improving the quality of health care.” The MSA created a privilege to protect from discovery certain information used “in the course of internal quality control” so as to encourage healthcare providers to “engage in frank evaluations of their colleagues.”

The Patient Safety and Quality Improvement Act of 2005 ("PSQIA") created a privilege to incentivize providers to submit patient safety information to a third party (i.e., patient safety organizations) to be aggregated and analyzed to identify common issues, trends, patterns, and opportunities for change to improve the quality and safety of healthcare delivery.

While both laws are directed towards improving the quality of healthcare, the application and scope of the privileges differ.

Medical Studies Act
The Medical Studies Act protects

a) “[I]nformation, interviews, reports, statements, memoranda, recommendations, letters of reference, or other third party confidential assessments of a health care practitioner’s professional competence, and other data”

b) Of “. . . committees of licensed or accredited hospitals or their medical staffs, including Patient Care Audit Committees, Medical Care Evaluation Committees, Utilization Review Committees, Credential Committees, and Executive Committees, or their designees”

c) “Used in the course of their internal quality control or of medical study for the purpose of reducing morbidity or mortality, or for improving patient care . . .”

Such information is “privileged, strictly confidential,” and consequently “not admissible as evidence . . . in any action of any kind.” This is known as the peer review privilege. The MSA carves out specific instances for which the information may be used, including “the evaluation and improvement of quality care.”

To claim the MSA peer review privilege, the information must be (1) information of a committee of a licensed or accredited hospital or its medical staff and (2) gathered as a result of such committee/medical staff investigation. Information gathered before the committee/medical staff is made aware of an incident or before the committee/medical staff begins its investigation is not privileged. However, individuals may be granted authority via the medical staff bylaws to conduct an investigation prior to the peer review process.

See the endnotes for several cases that upheld and did not uphold the peer review privilege (note that neither are exhaustive lists).
Patient Safety Quality Improvement Act of 2005

Under the Patient Safety Quality Improvement Act of 2005, patient safety work product (“PSWP”) is privileged and confidential. For the privilege and confidentiality to apply, a provider can follow either the reporting pathway or the deliberations and analysis pathway. Under the reporting pathway, a provider:

a) “Assembles or develops” for the purpose of reporting to a patient safety organization (“PSO”),\(^{xix}\)

b) “Any data, reports, records, memoranda, analyses (such as root cause analyses), or written or oral statements (or copies of any of this material)” that “could improve patient safety, health care quality, or health care outcomes”;\(^{xx}\) and

c) In fact reports such information to a PSO or the information is documented as within a patient safety evaluation system for reporting to a PSO and such documentation includes the “date the information was entered into the patient safety evaluation system.”\(^{xxi}\)

If the provider follows these steps, the information qualifies as PSWP and the privilege and confidentiality protections apply to it. Under the deliberations and analysis pathway, the provider may obtain the privilege and confidentiality protections for the data, reports, records, memoranda, analyses, or statements if such information either

a) Identifies or constitutes the deliberations or analysis of a patient safety evaluation system, which is the provider’s overall process of collecting PSWP to report to a PSO;\(^{xxii}\) or

b) Identifies the fact of reporting pursuant to a patient safety evaluation system.\(^{xxiii}\)

Unlike the MSA, the PSQIA applies to a broader category of healthcare providers and entities and permits broader disclosure of PSWP

“Provider” under the PSQIA means an “individual or entity licensed or otherwise authorized under state law to health care services.” See 42 C.F.R. § 3.20 for the list of individuals and entities included within the provider definition.

PSWP may be disclosed, for example, among affiliated providers for “patient safety activities” or by a provider or PSO to a contractor undertaking patient safety activities on its behalf;\(^{xxiv}\) “by a provider or PSO for business operations to attorneys, accountants, and other professionals”\(^{xxv}\) and to individuals “carrying out research.”\(^{xxvi}\)

The Illinois Appellate Court in the *Daley v. Teruel* case affirmed that providers may assert the PSQIA privilege and that state court will recognize and apply such privilege.\(^{xxvii}\) IHA filed an amicus brief in the Daley case on behalf of all Illinois hospitals. See [https://www.team-iha.org/advocacy-policy/legal-issues/supporting-the-patient-safety-and-quality-improvement](https://www.team-iha.org/advocacy-policy/legal-issues/supporting-the-patient-safety-and-quality-improvement) to view the brief and the court opinion.

For information about how to join a patient safety organization, contact The Midwest Alliance for Patient Safety (“MAPS”) at MAPSHelp@team-iha.org or 630-276-5657. MAPS is a federally certified patient safety organization and an IHA company.

This document is intended to be a guide for IHA members and does not constitute legal advice. For questions about this document, please contact the IHA Legal Department at legal@team-iha.org or 630-276-5506.

\(^{i}\) Medical Studies Act, 735 ILCS 5/8-2101 to 8-2105 (2017).

Jenkins v. Wu, 468 N.E.2d 1162, 1168 (Ill. 1984)


Wu, 468 N.E.2d at 1168.

See 73 Fed. Reg. 70,732 (Nov. 21, 2008); see also Frequently Asked Questions, AGENCY FOR HEALTHCARE RESEARCH AND QUALITY, https://pso.ahrq.gov/faq#PurposeofaPSO (last accessed Dec. 31, 2018) (stating “PSOs create a secure environment where clinicians and health care organizations can collect, aggregate, and analyze data, thus identifying and reducing the risks and hazards associated with patient care and improving quality.”).

735 ILCS 5/8-2101.

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