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PSO Reminder: Hospitals Need to Contract with a PSO in Order to Participate in State Insurance Exchanges

Hospitals with 50 or more beds will not be able to provide services through qualified health plans working with state insurance exchanges under the Affordable Care Act (ACA) unless the hospital has a patient safety evaluation system and reports to a patient safety organization (PSO), certified by the Agency for Healthcare Research and Quality (AHRQ), pursuant to a contractual agreement.

PSO Mandate Under the ACA

The ACA calls for states to create health insurance exchanges that must be operational by January 1, 2014. Health insurance exchanges are charged with expanding coverage for the uninsured, improving health care quality, reducing costs and empowering consumers to choose a health plan that gives them the best value. The state exchanges are expected to cover between 15 to 20 million individuals who currently have no health care insurance.

Under the ACA, hospitals with more than 50 beds will be required to establish a “patient safety evaluation system,” which is defined as “the collection, management, or analysis of information for reporting to or by a **patient safety organization.**” (42 USC 299b-21(6)). It appears that hospitals may be able to contract with health plans without being in a PSO for the first year, but would need to come into compliance by January 1, 2015.

PSO Background

The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act) authorized the creation of PSOs to improve the quality and safety of US health care delivery. The Patient Safety Act encourages hospitals, nursing homes, physicians and other licensed providers to voluntarily collect and report quality and patient safety information to a PSO. In return, all information collected and reported to a PSO is strictly privileged and confidential and not subject to discovery or admissibility into evidence in state or federal proceedings.

Organizations that are eligible to become PSOs include public, private, for-profit and nonprofit entities. Providers licensed in a state also can establish their own “component” PSO.

To implement the Patient Safety Act, the Department of Health and Human Services issued the Patient Safety and Quality Improvement Final Rule (Patient Safety Rule) in January 2009. AHRQ administers the provisions of the Patient Safety Act and the Patient Safety Rule dealing with PSO operations.

In addition to providing both privilege and confidentiality protections, PSOs create a secure environment where clinicians and health care organizations can collect, aggregate and analyze data based on the information received from their participating providers, thereby improving quality by identifying and reducing the risks and hazards associated with patient care.

PSOs can also recommend measures or practices to eliminate or reduce medical errors; educate health care professionals; interact with hospitals and health care professionals and other licensed providers; provide data and information to improve patient safety and reduce errors; help create a “fair and just” culture of openness and commitment to quality and safety; carry out functions that are authorized in federal or state law; and perform other patient safety activities.

Current PSOs and the AHRQ

AHRQ has approved 77 PSOs thus far (click [here](#) for a complete list). A number of these PSOs focus on only one area of medical care, such as pediatrics or breast cancer, or on a certain geographic region. Others are engaged in the full spectrum of patient safety activities along with their members and have contracted with providers from around the country. Also, a number of national health care providers have established a “component PSO” because it affords a unified federal confidentiality standard, thereby avoiding the need to deal with more limited and conflicting state standards.

Recommendations

- Hospitals seeking to participate in health care plans approved by state insurance exchanges under the ACA need to consider contracting with or creating a PSO as soon as possible.
- All other providers, including hospitals with less than 50 beds, should seriously consider a PSO.
- If joining a PSO, a provider is not limited to one that is organized in its particular state. Providers should contact a number of PSOs to determine which one best suits their needs.
- Hospitals should check to see if their state or metropolitan hospital association has or is planning to establish a PSO.

Katten has been representing PSOs and participating providers around the country for a number of years and has been involved in the major appellate court cases in which the protections under the Patient Safety Act were challenged. Based on this extensive experience, we are able to provide the following legal and consulting services:

- PSO formation and certification by AHRQ
- PSO contract review and negotiation
- Development and review of patient safety evaluation systems and policies
- PSO compliance audits
- AHRQ audits
- Representation of PSOs and participating providers in defending against challenges to the PSO confidentiality and privilege protection in state or federal proceedings and investigations

To view a comprehensive PowerPoint presentation on PSOs, click [here](#).

If you have any questions about PSO participation, please contact either of the following attorneys from Katten’s **Health Care practice**:

Michael Callahan
312.902.5634
michael.callahan@kattenlaw.com

Sarah Sager
312.902.5392
sarah.sager@kattenlaw.com

Katten

Katten Muchin Rosenman LLP www.kattenlaw.com

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