



# White Paper

## The Patient Safety Act – What’s in it for Healthcare Providers?

### A Three Part Series on the Patient Safety Act and Patient Safety Organizations

#### Part 1: What are the benefits of working with a PSO?

*Awareness and readiness of providers to engage in patient safety activities with a Patient Safety Organization (PSO) continues to present a tremendous opportunity for healthcare.*

#### Introduction

Awareness and readiness of providers to engage in patient safety activities with a Patient Safety Organization (PSO) continues to present a tremendous opportunity for healthcare. While we are in the third year of implementation of the Final Rule of the Patient Safety and Quality Improvement Act of 2005 (PSQIA), there still remains a delay with regard to wide-spread provider participation. Some of the reasons why this might be include: a lack of understanding of the PSQIA and its implementation, hesitation due to a lack of case law either supporting or refuting the protections afforded under the PSQIA, and competing processes of healthcare functions in terms of reporting and quality/safety initiatives. Despite these concerns, participating with a federally listed PSO offers significant benefits to healthcare providers. When implemented correctly, providers can utilize PSOs to further support a culture of safety and focus on more speedy processes to create sustainable change that is so needed in today’s healthcare system.

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#### What are the benefits healthcare providers need to consider?

Definition of provider: The PSQIA has made the definition of provider very broad to encompass as many aspects of care and as many settings of care as possible. From home health to tertiary care providers, from ambulance services to long term care facilities, from dialysis centers to imaging centers ... all can find protection under the PSQIA<sub>1</sub>.

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## **1. Protected environment with a federal preemption**

The PSQIA allows for the creation of a voluntary program whereby providers are encouraged to participate in patient safety activities through working with a PSO and, in turn, are afforded a federal preemption from legal discovery for certain types of information collected and analysis performed. A caption from the Final Rule states that “These protections will enable all health care systems, including multi-facility health care systems, to share data within a protected legal environments, both within and across states, without the threat that the information will be used against the subject providers”<sup>2</sup>.

The Final Rule cited above offers the implementation guidelines for working with a PSO, and identifies the process of weaving PSO work into the healthcare organization’s operations so that information provided to the PSO is classified as Patient Safety Work Product (PSWP). It is this PSWP classification of data and analysis that carry the protection under the PSQIA. PSWP takes many forms, and providers who work with and engage their PSO can harness a greater potential for identifying and more quickly acting on the situations and events that may compromise patient safety.

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## **2. Create and build a Learning Lab**

As evidenced by the literature such as the 1999 IOM report ‘To Err is Human’, there is still much work to do to improve the overall health care delivery system in the United States<sup>3</sup>. To further illustrate this, consider the World Health Organization’s 2000 report of country health system ranking. The U.S. ranked 37 out of 190 countries<sup>4</sup>. Armed with this information it is apparent that the need to create programs to accomplish significant healthcare improvements must be at the forefront.

However, the risk of liability often hampers a provider’s willingness to move forward because of the fear that any safety issues uncovered may be discoverable or portend to allegations of medical malpractice. Now, with the PSQIA and PSOs, a learning environment can be developed in a more free manner such that providers are encouraged to

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look differently and deeper into matters of patient safety without fear of being penalized for the findings. It would not take long for organizations to realize that the value of creating this type of 'learning lab' will speed the pace of change since some of these historical hesitations would be removed. Additionally, PSO work encourages providers to analyze aspects of care delivery that may not have otherwise been identified or considered.

### **3. Demonstration of strong commitment to safety and quality**

Working with a PSO requires a commitment to the quality and safety of patient care. This seems a rather intuitive decision since the real motivation for providers to participate in healthcare delivery is just that – the dedication and passion to improve the lives of the patients we serve. That is not to say that in today's healthcare arena it is an easy process or even possible to create an error-free system. But, the Department of Health and Human Services (HHS), Agency for Healthcare Research and Quality (AHRQ), and Office of Civil Rights (OCR) have developed guidelines for initiating patient safety activities by working with a PSO, which is one very important way to demonstrate this commitment.

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To pose a question: If there is a program identified that may improve patient safety and quality within your organization and is relatively inexpensive compared to healthcare costs and is not exhaustively laborious to implement, and offers federal protection from discovery then why would you *not* participate? This is an opportunity for providers to evoke a confidential and privacy privilege that focuses solely on the safety and quality of the care rendered in their respective organizations. It is a commitment that most boards of directors and senior leaders would gladly like to demonstrate.

### **4. Adding formality to process – defining a Patient Safety Evaluation System**

As noted above, there is no shortage of providers' desire to improve the health and lives of our patients and residents, and in a variety of ways providers are continuing this journey every time we step foot in

our healthcare organizations. Fundamentally, there is a commonality between the traditional pre-PSO patient safety activities and the new provisions introduced under the Final Rule. However, the missing piece has been the formality and new structure that is created through specific processes such as the Patient Safety Evaluation System (PSES).

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Creating a PSES is a requirement under the guidance published by AHRQ, and is the essential means by which organizations that choose to work with a PSO can collect and manage PSWP. In reviewing the patient safety activities as identified in the PSQIA, one can see that these elements are not unique to the work that providers have engaged in prior to the PSQIA. Deciding to contract with a PSO or create a component PSO in which these patient safety activities may be conducted is the new concept. Providers are encouraged and enabled to ask questions and seek understanding of patient safety concerns with this new process and in an environment that removes certain fears and apprehensions as described above.

### **Conclusion**

There are a wide variety of healthcare providers that can benefit from working with a PSO, which is primarily why the term 'provider' remains as broad as possible under the PSQIA definitions. Many factors affect the extent to which providers become involved in the implementations of this aspect of the PSQIA, and the immediate functions of effective PSOs will be to educate and create awareness so that providers can visualize how to apply these privileges in their respective organizations. Part 2 of this series will focus on how to prepare healthcare providers to gain the benefits of the PSO relationship.

Tom Piotrowski, RN, MSN, NE-BC, CSSGB  
Executive Director  
Clarity PSO, A Division of Clarity Group, Inc.

For more information, please visit our website at [www.claritygrp.com](http://www.claritygrp.com)

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