

Patient Safety Act – Key Features

By Richard R. Width

On April 27, 2004, Governor McGreevey signed the Patient Safety Act, which will take effect on October 24, 2004. This landmark legislation, which was supported by the New Jersey Hospital Association, establishes a medical error reporting system. Some of the key features of the new law are as follows:

- All licensed health care facilities and State psychiatric hospitals are required to develop and implement a patient safety plan in accordance with regulations to be developed by the Commissioner of Health and Senior Services. The patient safety plan must provide for the establishment of a patient safety committee for the purpose of improving the health and safety of patients at the facility.

The patient safety plan must include a process for teams of facility staff, comprised of personnel who are representative of the facility's various disciplines and have appropriate competencies, to conduct 1) ongoing analysis and application of evidence-based patient safety practices to reduce the probability of adverse events resulting from exposure to the health care system across a range of diseases and procedures, 2) analyses of near-misses, with particular attention to serious preventable adverse events and adverse events, and 3) ongoing patient safety training for facility personnel.

- All covered facilities are required to report to Department of Health and Senior Services (or the Department of Human Services in the case of State psychiatric hospitals), in a form and manner to be established by the Commissioner of Health and Senior Services, every serious preventable adverse event that occurs in that facility.
- Health care professionals or other employees of a facility are encouraged to make anonymous reports to the applicable department, in a form and manner to be established by the Commissioner of Health and Senior Services, regarding near-misses, preventable events and adverse events that are otherwise not subject to mandatory reporting.
- Covered health care facilities are required to assure that any patient affected by a serious preventable adverse event or an adverse event specifically related to an allergic reaction (or, in the case of a minor or a patient who is incapacitated, the patient's parent or guardian or other family member, as appropriate) is informed of the serious preventable adverse event or adverse event specifically related to the allergic reaction, no later than the end of the episode of care, or if discovery occurs



after the end of the episode of care, in a timely fashion as established by the Commissioner of Health and Senior Services by regulation.

- Any documents, materials or information received by the Department of Health and Senior Services or the Department of Human Services concerning serious preventable adverse events, near-misses, preventable events and adverse events that are otherwise not subject to mandatory reporting, will not be:
 - 1) subject to discovery or admissible as evidence or otherwise disclosed in any civil, criminal or administrative action or proceeding;
 - 2) considered a public record under N.J.S.A.47:1A-1 et seq. or N.J.S.A.47:1A-5 et al. (both dealing with the inspection or copying of public records); or
 - 3) used in an adverse employment action or in the evaluation of decisions made in relation to accreditation, certification, credentialing or licensing of an individual, which is based on the individual's participation in the development, collection, reporting or storage of information. However, this provision will not be construed to limit a health care facility from taking disciplinary action against a health care professional in a case in which the professional has displayed recklessness, gross negligence or willful misconduct, or in which there is evidence, based on other similar cases known to the facility, of a pattern of significant substandard performance that resulted in serious preventable adverse events.

- Any documents, materials or information developed by a health care facility as part of a process of self-critical analysis concerning preventable events, near-misses and adverse events, including serious preventable adverse events, and any document or oral statement that constitutes the disclosure provided to a patient or the patient's family member or guardian pursuant to the new law, will not be:
 - 1) subject to discovery or admissible as evidence or otherwise disclosed in any civil, criminal or administrative action or proceeding; or
 - 2) used in an adverse employment action or in the evaluation of decisions made in relation to accreditation, certification, credentialing or licensing of an individual, which is based on the individual's participation in the development, collection, reporting or storage of information. However, this provision is not to be construed to limit a health care facility from taking disciplinary action against a health care professional in a case in which the professional has displayed recklessness, gross negligence or willful misconduct, or in which there is evidence, based on other similar cases known to the facility, of a pattern of significant substandard performance that resulted in serious preventable adverse events.

- Notwithstanding the fact that documents, materials or information may have been considered in the process of self-critical analysis, or received by the Department of Health and Senior Services or the Department of Human Services, the provisions of the law are not to be construed to increase or decrease, in any way, the availability, discoverability, admissibility or use of any such documents, materials or information if obtained from any source or context other than those specified in the new law.



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- The investigative and disciplinary powers conferred on the boards and commissions established pursuant to Title 45 of the Revised Statutes, the Director of the Division of Consumer Affairs in the Department of Law and Public Safety and the Attorney General under the provisions of N.J.S.A.45:1-14 et seq. (dealing with license revocations, suspensions and the imposition of disciplinary sanctions by professional and occupational boards) or any other law, rule or regulation, as well as the investigative and enforcement powers conferred on the Department, and Commissioner, of Health and Senior Services under the provisions of Title 26 of the Revised Statutes (Health and Vital Statistics) or any other law, rule or regulation, are not to be exercised in such a manner so as to unduly interfere with a health care facility's implementation of its patient safety plan established pursuant to the new law. However, the law is not to be construed to otherwise affect, in any way, the exercise of such investigative, disciplinary and enforcement powers.
- The law provides that nothing in the law is to be construed to increase or decrease the discoverability, in accordance with *Christy v. Salem*, of any documents, materials or information if obtained from any source or context other than those specified in the new law. (*Christy v. Salem* is a New Jersey Superior Court Appellate Division case decided on February 17, 2004, which established certain parameters for the discovery of documents and information in a medical malpractice action.)

For the complete text of the law, please look under Resources on our website (www.lindabury.com). If you would like any additional information concerning this law, please feel free to contact us.

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