PUBLICATION

Out of the Ashes: Tennessee Patient Safety and Quality Improvement Act of 2011

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One day in May 2010, with the stroke of a pen, health care providers in Tennessee lost a number of critical protections afforded their quality assurance/quality improvement activities when the Tennessee Supreme Court drastically narrowed the scope of the Tennessee Peer Review Law. In *Lee Medical, Inc. v. Beecher*, 312 S.W.3d 515 (Tenn. 2010), the court held that the Peer Review Law applied strictly to those activities of a health care facility in reviewing the professional conduct of a physician.

Reacting quickly to the dire need of the providers, the Tennessee legislature passed the Patient Safety and Quality Improvement Act of 2011 (the Act). The Act restores the protections needed in order to assure the efficient and honest assessment of operations for the purpose of improving all aspects of the health care system.

Most states' public policies favor a health care provider's ability to candidly review its operations and outcomes for the purpose of improving the safety and quality of health care services delivered to consumers. Crucial to that endeavor is giving the provider certain assurances and protections that the materials they review and generate are confidential, not public record and not available through legal process to any litigant.

Health care providers had long relied on the Peer Review Law for those protections, but with the decision of the court in *Lee Medical*, those protections vanished, leaving providers in the difficult position of having their QA/ QI activities subject to discovery and potentially the basis of liability.

Fortunately, the legislature immediately recognized the potentially devastating consequences for health care providers and drafted the new legislation. First, the Act declares that the public policy in Tennessee is to "encourage the improvement of patient safety, the quality of patient care and the evaluation of the quality, safety, cost, processes and necessity of healthcare services by hospitals, healthcare facilities and healthcare providers."

The Act then describes a "quality improvement committee" (QIC) as

1. A committee formed or retained by a health care organization;
2. An activity of a health care organization; or
3. One or more individuals employed by a health care organization performing certain functions, the purposes of which (or one of the purposes of which) is to "evaluate the safety, quality, processes, costs, appropriateness or necessity of healthcare services."

Then, in strong and clear language, the Act states that

Records of a QIC and testimony or statements by a healthcare organization's officers, directors, trustees, healthcare providers, administrative staff, employees or other committee members or attendees relating to activities of the QIC shall be confidential and privileged and shall be protected from direct or indirect means of discovery, subpoena or admission into evidence in any judicial or administrative proceeding. Any person who supplies information, testifies or makes statements as part of a QIC may not be required to provide information

as to the information, testimony or statements provided to or made before such a committee or opinions formed by such person as a result of committee participation. [1]

The activities of the QIC that are considered protected are nicely broad and include:

- Evaluation and improvement of the quality of health care services rendered;
- Analysis of whether health services were performed in compliance with the applicable standards of care;
- Analyses related to cost;
- Evaluation of the qualifications, credentials, competence and performance of health care providers;
- Discipline of health care providers;
- Reduction of morbidity or mortality;
- Research;
- Utilization review activities; and
- Risk management activities. [2]

Even better for health care providers is the inclusive definition of "healthcare organization." Meeting the definition of "healthcare
organization" is:

- Any health care facility licensed or regulated by the State;
- Any entity used by a health care facility to deliver ancillary or allied health services;
- Any entity owning, owned by or affiliated with a health care facility licensed by the State;
- An entity that contracts with a health care organization to perform any of the functions of a QI committee;
- An entity that maintains a patient safety evaluation system in compliance with state law for reporting to a patient safety organization;
- A professional assistance program providing intervention, counseling, referral or other assistance to any health care provider for drug or alcohol impairment;
- A professional health care foundation;
- An HMO, PPO, ACO or hospital and medical service corporation; or
- University medical school or health science center.

The new act has been codified in two places in the Tennessee Code - in those sections of the statute dealing with Health Related Boards and Health Facilities and Resources. [3]

In order to take advantage of the protections offered, health care organizations should

4. Formalize the method by which operations and outcomes are reviewed;
5. Review and, if necessary, revise the structure of their QA/QI committee;
6. Review/revise procedures for reviewing matters within the committee;
7. Make sure that materials reviewed/generated by the committee are not disseminated outside the committee;
8. Consider marking documents and materials reviewed by the QIC as "QIC documents."
9. Be aware that the law maintains the long-recognized exception to the protections; that is, that information, documents or records which are not produced for use by a QIC or which are not produced by persons acting on behalf of a QIC and are otherwise available from original sources, shall not be immune from discovery.

1. Tenn. Code Ann. § 68-11-272(c)(1) (emphasis added).
2. Tenn. Code Ann. § 68-11-272(b)(4).
3. Tenn. Code Ann. § 63-1-150 and § 68-11-272, respectively.