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Alerts

Wisconsin's Health Care Quality Improvement Act Broadens Protections for Health Care Providers

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Health Care Alert

On February 1, 2011, the Wisconsin Health Care Quality Improvement Act (WHCQIA) went into effect. The act effects a number of changes to Wisconsin law which generally broaden protections for health care providers.

Disclosure of Information Learned in Peer Review

Under the revised Wis. Stat. § 146.38, information obtained in a peer review cannot be introduced into evidence in any civil or criminal action against a health care provider. The previous statute prevented the introduction of this evidence only in personal injury actions against health care providers but not in a criminal action. The revised statute also specifically bars any reports created in a peer review from being introduced into evidence in a civil or criminal action against a health care provider. It should be noted that because these evidentiary prohibitions are contained only in Wisconsin statutes, they would presumably apply only to actions brought in state courts and not, for example, to federal civil or criminal actions involving Medicare or Medicaid fraud or abuse.

The revised Section 146.38 also gives providers greater ability to share information learned in peer reviews with related health care entities. Specifically, it allows for information acquired in connection with a peer review to be disclosed to a health care provider's: (1) employer; (2) parent, subsidiary or affiliate organization; or (3) employer's parent, subsidiary or affiliate organization; if consent for this disclosure is given by the person who authorized the peer review. Records from the peer review may also be released to these parties. The revised statute will apply to disclosures and releases made on or after February 1, 2011, even if the peer review sessions took place prior to that date.

Use of Information Given to Regulatory Agencies

The WHCQIA also created Wis. Stat. § 904.16, which prevents certain information obtained by the Wisconsin Department of Regulation and Licensing (DRL) from being used in actions against health care providers. Specifically, the new statute states that the following may not be used as evidence in a civil or criminal action brought against a health care provider:

- reports that a regulatory agency, such as the DRL, requires a health care provider to give or disclose to that agency; and
- statements of, or records of interviews with, employees of a health care provider related to the regulation of the health care provider, obtained by a regulatory agency.

Once again, this statute would apply only in courts bound by Wisconsin's rules of evidence.

Limitation of Damages in Suits Against Long-Term Care Providers

Further, the WHCQIA created Wis. Stat. § 893.555, which limits the noneconomic damages recoverable against nursing homes, hospices, assisted living facilities and other long-term care providers for bodily injury arising from their care or treatment. These damages are now capped at $750,000. The statute also sets forth a three-year statute of limitations

applicable to lawsuits against long-term care providers.

Health Care Providers Made Exempt From Certain Criminal Laws

Finally, the WHCQIA modified several state criminal statutes, preventing health care providers who are acting within the scope of their practice or employment from being charged with homicide by negligent handling of a dangerous weapon or reckless injury. The modifications appear to be intended to prevent providers from being charged with a crime if, for example, a patient dies in surgery as a result of the use of a scalpel or other inherently dangerous medical device, or if a patient is otherwise injured by a provider's care. Health care providers also cannot be charged with abuse or neglect of a patient or resident of a treatment facility, home health agency, community-based residential facility or other similar facility if the health care provider was acting within the scope of his or her practice or employment and committed an act or omission of mere inefficiency, unsatisfactory conduct, or failure in good performance as the result of inability, incapacity, inadvertency, ordinary negligence, or good faith error in judgment or discretion.