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Peer Review & Patient Safety: Can Matter & Anti-Matter Mix?

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Disclaimer

The opinions expressed in this presentation are those of the presenter and do not reflect the official position of the Department of Health and Human Services (HHS), the Agency for Healthcare Research and Quality, or the Office for Civil Rights.

Concerns with Peer Review

- Validity of Peer Review as Tool for **Quality Improvement**
- (Non-Negligent) **Credentialing**
- **Fairness** to Providers
- Potential **Disclosure Violations** of PSQIA?
- **Equitable Actions**

Shield or Shackle?

- **Patient safety work product shall be privileged and shall <u>not</u> be:**
  - **Admitted as evidence in any proceeding, criminal proceeding, administrative rulemaking proceeding, or administrative adjudicatory proceeding.**
  - **Admitted in a professional ***<u>disciplinary</u>*** proceeding of a professional disciplinary body established ***<u>or specifically authorized under</u>*** State law.**
    - **For some states, peer review is "specifically authorized" under State law. In Florida, e.g., credentialing and peer review are under separate statutes.**

An Oxymoron?

Is there such a thing as

***Non*-Disciplinary**

Peer Review?

PSWP - Type 1

- **"Any data, reports, records, memoranda, analysis (such as root cause analysis), or written or oral statements which:**
  - are assembled or developed
  - by a provider
  - for reporting to a patient safety organization and
  - are reported to a patient safety organization,"
  - "… and which could result in improved patient safety, health care quality, or health care outcomes"

PSWP – Type 2

- **"Any data, reports, records, memoranda, analysis (such as root cause analysis), or written or oral statements which:**
  - Are developed
  - by a patient safety organization
  - for the conduct of **patient safety activities**;
  - and which could result in improved patient safety, health care quality, or health care outcomes"

PSWP – Type 2 (activities?)

What does "**developed**" by a PSO "***for the conduct of patient safety activities***" mean?

Can the PSO develop feedback ***for providers*** on "**utilization of qualified staff**"?

PSWP- Type 2 (activities)

- **Patient Safety Rule** may clarify:

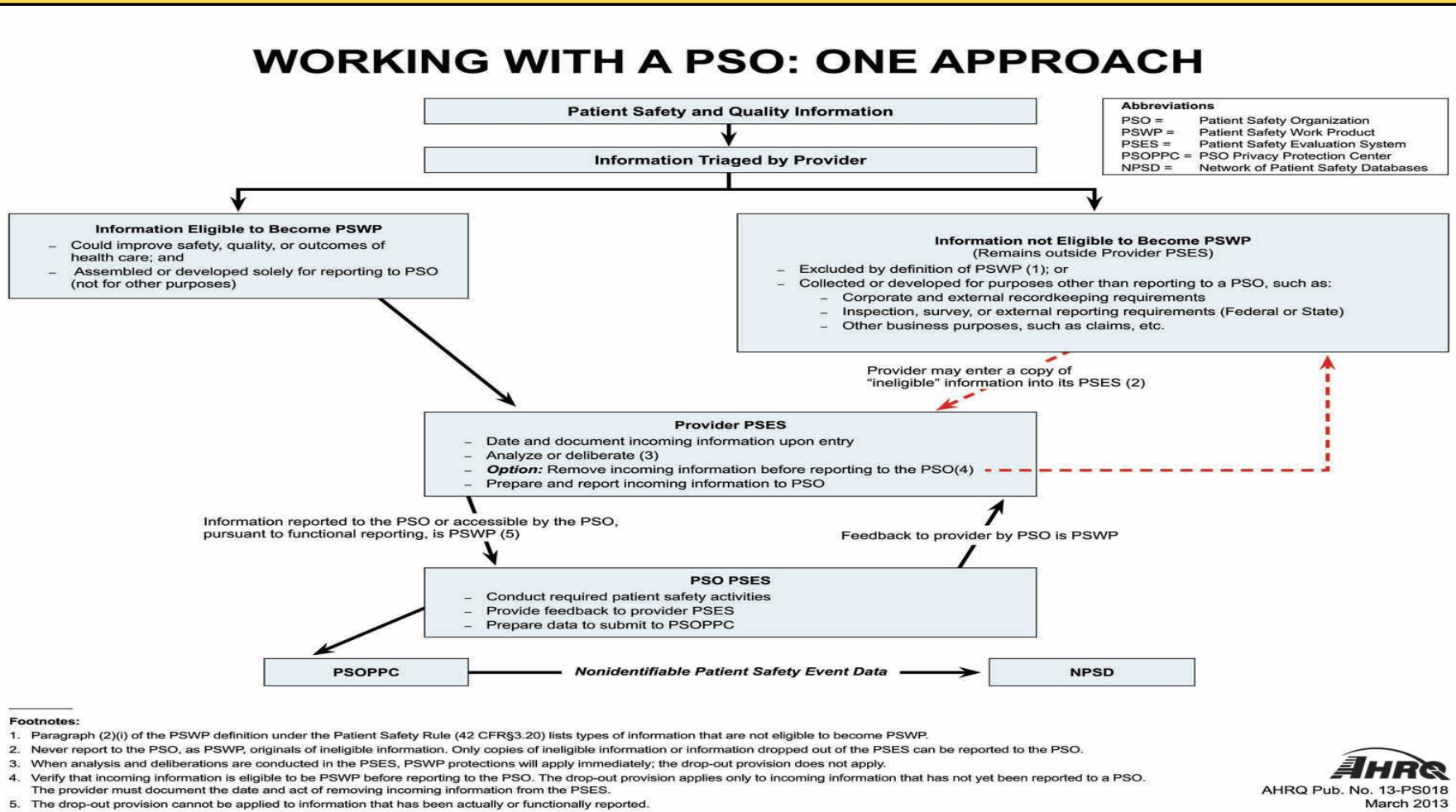
"The term **'patient safety activities'** means the following activities carried out **by** or **on behalf of** a **PSO or a provider**:

(7) **Utilization of Qualified Staff**

PSWP – Type 2

- Can PSWP set the **Standards of Care**?
- **Benchmarks**?
- **Policies**?
- **Formularies**?
  - No less value if the PSWP cannot be used as evidence in peer review proceedings.
- **Can't delegate credentialing** to the PSO.

Working with a PSO: One Approach



Footnotes:

1. Paragraph (2)(i) of the PSWP definition under the Patient Safety Rule (42 CFR§3.20) lists types of information that are not eligible to become PSWP.
2. Never report to the PSO, as PSWP, originals of ineligible information. Only copies of ineligible information or information dropped out of the PSES can be reported to the PSO.
3. When analysis and deliberations are conducted in the PSES, PSWP protections will apply immediately; the drop-out provision does not apply.
4. Verify that incoming information is eligible to be PSWP before reporting to the PSO. The drop-out provision applies only to incoming information that has not yet been reported to a PSO. The provider must document the date and act of removing incoming information from the PSES.
5. The drop-out provision cannot be applied to information that has been actually or functionally reported.

AHRQ Pub. No. 13-PS018
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PSWP – Type 3

- **Any data, reports, records, memoranda, analysis (such as root cause analysis), or written or oral statements which:**
  - "Which identify [the deliberations or analysis of] or
  - constitute the deliberations or analysis of, or identify the fact of reporting pursuant to
  - a *patient safety evaluation system*."

Disclosure Definition

Disclosure means

- Entity or natural person holding PSWP
- Divulges PSWP
- To another ***legally separate*** entity or natural person,
- **other than**
  - a ***workforce member*** of the entity **or**
  - a health care ***provider*** holding ***privileges*** with the entity holding the PSWP

Can credentialed providers also be "workforce" ?

Non-PSWP

- **Patient's medical record.**
- **Billing and discharge information.**
- **Any other original patient or provider information.**
- **Information that is collected, maintained, or developed separately, or exists separately, from a *patient safety evaluation system*.**

Additional (Separate) Analysis ?

- **299b-22(h) CLARIFICATION**

- **Nothing** in this part **prohibits *any* person** from conducting **additional analysis for *any* purpose** regardless of whether such additional analysis involves issues identical to or similar to those for which information was reported to or assessed by a PSO or a PSES.

Recommendations (1)

- **Return to First Principles**
  - What is REAL goal of peer review?
  - Is it being met?
  - Is a "no-fault" alternative better?
- **Split** the Processes?
  - Use PSWP for trigger only?
  - Develop separate evidence and analysis?
  - Give up immunity of discovery and use?

Recommendations (2)

- **Separate** PSWP data
- **Control** Release and Use of Data
- **Train** Leaders in Hospital & in Medical Staff
- **Educate** Providers
- **Redraft** Bylaws?

Options If Disciplinary Peer Review Proceeding 'Needs' PSWP

- **Hospital** can:
  - Remove incoming data from the PSES if it has not been sent to the PSO
  - Conduct a separate analysis
  - Rely on non-PSWP only
- **Credentialed Provider** can:
  - Conduct a separate analysis (if feasible)
  - Rely on non-PSWP only
  - Challenge legitimacy of decision if based on PSWP

Be Wary of Plato's Cave

- There is no **perfect** form of health care.
  - ***To err is human.***
- **Patients** and their **caregivers** are **human beings**, ***not*** *commodities*, ***not*** *ciphers*, and ***not*** *machines*.
- So the patient safety systems you design, must also be ***human*** – and ***humane*** – to deal with those it affects.

Questions