Liability Jitters May Impede Patient Safety System

BY NELLIE BRISTOL
Contributing Writer

WASHINGTON — The patient safety system signed into law this summer by President Bush will likely take many months to implement; but, after operating so long in an environment of liability fear, doctors may take even longer to trust it, said Michael O. Fleming, M.D., board chair of the American Academy of Family Physicians.

"I think physicians are going to have to get comfortable with this and realize that [documenting errors under the plan] is a thing that you can do now, and it's going to improve quality tremendously," said Dr. Fleming. But, he added, it may take physicians some time to lose their reporting inhibitions.

Doctors are concerned about reporting something going wrong, because someone will be at fault and liable for that situation, he said. "In medicine, unfortunately, too many times everybody—from staff to nurses to doctors—has been afraid to report things."

Under the new law, a "patient safety work product" of reported errors and near misses is privileged and cannot be used in legal or disciplinary actions. Data collected can only be used in a criminal trial after the court makes a determination that the evidence is "material to the proceeding" and "not reasonably available from another source," according to text of the Patient Safety and Quality Improvement Act of 2005.

The structure will allow providers to voluntarily submit information to patient safety organizations certified by the Health and Human Services department. Patient confidentiality must be maintained. The purpose of the system is to create a searchable database of medical errors that can be analyzed and used to develop new care systems and best practices that would avoid similar errors in the future.

Dr. Fleming said the arrangement could help reveal weaknesses in medication dispensing and other systems. "This will give us an opportunity, when these errors occur, to report them without having to worry about the consequences of a liability threat," he noted.

The law became effective when the president signed it and authorizes federal funding for fiscal years 2006-2010. Implementation could begin as early as next year, said Gordon Wheeler, associate executive director for public affairs for the American College of Emergency Physicians, noting that for that to happen, the HHS "secretary's got a lot to do to set it up."

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HHS must coordinate databases nationwide into a single aggregated interactive resource for providers and patient safety organizations (PSOs). It also must develop or adopt voluntary national standards to promote the electronic exchange of health care information. HHS will also certify the PSOs.

According to Margaret VanAmringe, vice president for public policy and government relations at the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), there are several possible models for the PSOs including U.S. Pharmacopeia's MEDMARX system. For a subscription fee, hospitals and health care systems can access MEDMARX's database to track adverse drug reactions and medication errors.

AAFP's Dr. Fleming said that while many PSOs likely would be run by systems analysts and industrial engineers, "I'm hoping there are also going to be peers." He added, "I think physicians are going to feel much more comfortable if we have peer evaluation."

Ms. VanAmringe said PSOs will not only need to collect data but also have the ability to aggregate and analyze those data to provide institutions with "feedback on common problems." They will develop solutions and best practices by collating data from different institutions and then monitoring whether proposed interventions work.

"PSOs will play a fairly robust role in using the data that are reported to them," she said. ■