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HOSPITAL REPORTING REQUIREMENTS HELP CONSUMERS, LITIGATORS

Health care institutions must reveal surgical errors, medication mistakes

By RUSSELL A. GREEN

The state legislature successfully implemented two important measures for those of us who practice in the area of medical negligence: the requirement of transparency in hospital reporting of adverse events, and the inclusion of mediation as a consistent tool in the medical malpractice process.

It is troubling that critical information on adverse incidents at hospitals and surgical facilities has not been available to the general public, particularly at a time when the Internet has made access to such material both ubiquitous and nearly instantaneous. Fortunately, the legislature has broken down this barrier; following the passage of Public Act 10-122, hospitals are now *required* to annually report accidents and other events that might affect consumer decisions on choosing a health care venue.

As of July 1, 2010, hospitals are required to report "adverse events" as defined in the National Quality Forum's List of Serious Reportable Events. These incidents include surgical errors as well as injuries from contamination, defective products, or medication mistakes. The list of incidents also includes injuries associated with low-risk pregnancies and harm from incompatible blood products. Conditions such as hypoglycemia and kernicterus – dangerous disorders that if not promptly recognized and treated can cause serious injury or death – are noted.

Other reportable events include fertility and maternity issues, such as artificial insemination with the wrong donor sperm or egg, and instances where infants were discharged to the wrong person. Finally, and perhaps most significantly, "adverse events" includes sexual assaults, physical assaults, and injuries from slips or falls.

The annual reports must also include "contextual information" about each hospital, including patient caseload and statistics concerning the patient population. This data is critical to allow for relevant comparisons as larger hospitals, obviously, would be expected to experience more negative events and it would seem unfair to compare adverse events at a rural hospital with those of a larger inner city facility.

The new information will be an invaluable tool for the health care consumer, particularly when he or she is facing endless choices about where to receive health care, especially for elective or non-emergent procedures. Health care consumers are bombarded by medical marketing in television and print commercials, and even highway billboards. With the index of adverse events as detailed in the new law, the consumer will now have at least one objective means to measure a hospital's performance.

MEDICAL MALPRACTICE

Requiring Mediation

The other significant development from Public Act 10-122 is that it requires mediation of all medical malpractice cases. Prior to the close of the pleadings, the presiding judge shall refer the action to mandatory mediation which is to be conducted by the presiding judge or, if the parties agree, by another alternate dispute resolution program.

While the goal of this aspect of the legislation – requiring early mediation in what is typically very costly and protracted litigation – is laudable, it is unlikely that in reality the practice will be much different. It would appear that the goal of early mediation is to eliminate two types of cases: those cases of relatively little value, and those cases with clear liability and damages. However this assumes the parties and their lawyers agree on which type of case they are in and are authorized to act accordingly.


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From the plaintiff's perspective, given the significant costs in time and money of even commencing a medical malpractice suit, it is rare that low value cases are brought. Thus, while plaintiffs may be clear-eyed (or at least think they are) about the upper range of damages, they are unlikely to settle cases for nuisance value. From the defense perspective, the close of the pleadings is usually far too early to evaluate issues of liability and damages such that the case can be settled. Moreover, because any physician needs to agree to settle any claim, mandatory mediation may be futile in such cases.

The new law is a significant step forward in applying transparency to hospitals – an institution in our society from which we should not tolerate ambiguousness. ■

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