



**A Coalition of 14 Medical Societies Representing
more than 200,000 Specialty Physicians in the United States**

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October 5, 2004

The Honorable Joe Barton
Chairman
House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable John D. Dingell
Ranking Member
House Energy and Commerce Committee
2322 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Barton and Ranking Member Dingell:

The undersigned members of the Alliance of Specialty Medicine are united in strong support of enactment of patient safety legislation this year. Creating a health care environment that encourages and protects the reporting of information regarding quality of care is essential for improving patient safety. To achieve this goal, the Alliance supported both the House and Senate versions of patient safety legislation (H.R. 663). However, on balance, the Senate bill is preferable in its handling of confidentiality protections, privileges against discovery and subpoena of patient safety data, limitations and exceptions affecting these privileges, and the criteria for certification of Patient Safety Organizations (PSOs).

For example, the Senate bill has a specific confidentiality provision stating that patient safety data shall be confidential and shall not be disclosed. The House bill does not have a similar provision. However, both bills do require PSOs to maintain procedures to preserve the confidentiality of patient safety data. Thus, patient safety data will be protected from discovery and subpoena under the House bill, but providers and others who maintain this data are not necessarily required to keep it confidential.

While the privilege against discovery and subpoena is similar in both bills, the Senate bill offers stronger protections in at least two ways. First, the Senate bill prevents disclosures of confidential patient safety data in criminal proceedings, except for wanton criminal acts directly harmful to a patient. Second, the Senate bill prevents disclosures in disciplinary proceedings that would protect the disclosure of confidential patient safety data in a host of settings, including disciplinary actions by state medical boards, managed care organizations, or hospital privileging committees. These are meaningful protections in the current health care environment. By contrast, the House bill has no similar protections nor does it appear to have additional protections that are not in the Senate bill.

The Senate bill also prevents lawsuits from being filed and subpoenas from being issued in the first place *unless* information is specifically identified, is not patient safety data, and cannot be otherwise obtained. This should serve as a real deterrent to frivolous lawsuits.

In addition, the Senate bill's criteria for certifying PSOs do not preclude data registries maintained by medical societies from qualifying as PSOs. This is an important distinction for Alliance members who currently maintain such registries or conduct quality-related activities. It should be noted that although it is not expressly stated in the legislation, our legal review leads us to conclude that the confidentiality protections and privileges in both bills would apply to data collected before the effective date. Any doubt about the applicability of protections and privileges of previously collected data should be clarified with a rule of construction. The collection of such data by medical societies is consistent with the goal of improving the quality of care furnished to patients. Furthermore, data collected before the effective date could be developed after that date for submission to a PSO.

American Academy of Dermatology Association • American Association of Neurological Surgeons/Congress of Neurological Surgeons
American Association of Orthopaedic Surgeons • American College of Cardiology • American College of Emergency Physicians
American College of Obstetricians and Gynecologists • American College of Radiology Association
American Gastroenterological Association • American Society for Clinical Pathology
American Society for Therapeutic Radiology and Oncology • American Society of Cataract & Refractive Surgery
American Urological Association • National Association of Spine Specialists • Society of Thoracic Surgeons

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As specialty physicians, we are committed to safety and quality in the nation's health care system. The House and Senate are very close on patient safety legislation, and we urge you to take action to enact legislation this year that includes the above-mentioned Senate provisions. Please contact Laura Saul Edwards at ledwards@aad.org or (202) 842-3555 if you have questions about the Alliance's position on patient safety. Thank you.

Sincerely,

American Academy of Dermatology Association
American Association of Neurological Surgeons/Congress of Neurological Surgeons
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American College of Obstetricians and Gynecologists
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