

Table I
COMPARISON OF THE PROVISIONS OF THE ILLINOIS MEDICAL STUDIES ACT (“MSA”) AND THE PATIENT SAFETY ACT (“PSA”)

Provision	MSA ¹	PSA ²
Legislating body	Illinois legislature	Congress
Purpose	“To encourage candid and voluntary studies and programs used to improve hospital conditions and patient care or to reduce the rates of death and disease.” ³	A system of voluntary, confidential, and nonpunitive sharing of health care errors to facilitate and promote strategies to improve patient safety and the quality of health care.
What is protected	<ol style="list-style-type: none"> 1. All information, interviews, reports, statements, memoranda, recommendations, letters of reference or other third party confidential <i>assessments of a health care practitioner’s professional competence</i>; or 2. Other data of [agencies, allied medical societies, certain insurers] the Illinois Dept. of Public Health, local health depts., Dept. of Human Services (as successor to the Dept. of Mental Health and Developmental Disabilities), the Mental Health and Developmental Disabilities Medical Review Board, Illinois 	<p>“patient safety work product” Defined as:</p> <p>Any data, reports, records, memoranda, analyses (such as root cause analyses), or written or oral statements: which;</p> <ol style="list-style-type: none"> 1. Are assembled or developed by a provider for reporting to a PSO⁴ and are reported to a PSO; or 2. Are developed by a PSO for the conduct of patient safety activities; 3. And which could result in improved patient safety activities; and 4. Which could identify or constitute deliberations or analysis of, or identify the fact of reporting pursuant to, a patient safety evaluation system.

¹ (735 ILCS 5/8-2101, *et seq*)

² 42 U.S. C. §299b-21, *et seq.* See also, <https://www.pso.ahrq.gov/faq>

³ *Niven v. Siqueira*, 109 Ill.2d 357, 366 (1985)

⁴ Patient Safety Organization

	<p>state Medical Society, allied medical societies, health maintenance organizations, medical organizations under contract with insurance or other health care delivery entities or facilities, tissue banks, organ procurement agencies, physician owned insurance companies and their agents,</p> <p>3. Other data of committees of <i>ambulatory surgical treatment centers or post- surgical recovery centers, or their medical staffs,</i></p> <p>4. Other data of <i>committees of licensed or accredited hospitals or their medical staffs,</i> including Patient Care Audit Committees, Medical Care Evaluation Committees, Utilization Review Committees, Credential Committees and Executive Committees, or their designees...</p>	
<p>Protects Processes/ deliberations</p>	<p>Yes</p>	<p>Yes</p>
<p>Scope of Protection (privilege) afforded</p>	<p>Such information shall not be:</p> <ul style="list-style-type: none"> • Admissible as evidence; • Nor discoverable in any action of any kind in any court or before any tribunal, board, agency or person • Disclosure of any such information, whether 	<p>Patient safety work product shall be privileged and shall not be:</p> <ol style="list-style-type: none"> 1. Subject to a federal, state, or local civil, criminal, or administrative subpoena or order, including in a federal, state, or local civil or administrative

	proper or improper shall not waive or have any effect upon the confidentiality, nondiscoverability, or nonadmissibility. §5/8-2102	disciplinary proceeding against a provider; 2. Subject to discovery in connection with a federal, state or local civil or administrative disciplinary proceeding against a provider.
Who or what entities may invoke the privilege	<ul style="list-style-type: none"> • Committees of hospitals, or their medical staff; • Committees of ambulatory surgical treatment centers or post-surgical recovery centers, or their medical staffs, • State agencies, allied medical societies, certain insurers • HMOs • Tissue banks, organ procurement agencies⁵ 	“Provider” includes large health care entities such as hospitals or nursing facilities, individual providers, such as physicians, nurse practitioners, physical therapists, pharmacies.
Other provisions		Must join/utilize the services of a federally certified patient safety organization ⁶
What is NOT Protected	Information generated prior to the commencement of the peer review process, even if later disclosed to a peer review or committee; or information generated after the peer-review process ends. Medical records, policies, procedures, logs, schedules	Medical records, policies, procedures, logs, schedules and documents that are part of the traditional health care operations or record keeping; or information that is collected, maintained, or developed separately, or exists separately, from a patient safety evaluation system.

⁵ Under *Pietro v. Marriott Senior Living Services, Inc.*, 348 Ill.App.3d 541 (2004) nursing homes and similar organizations are not entitled to the protection of the MSA for their internal investigations. But note that the protections of the PSA may include a nursing home, if the home belongs to a PSO.

⁶ Although the MSA protects a hospital’s internal patient safety program, that is NOT the same as a patient safety evaluation system under the PSA. The use of the independent PSO is the distinguishing factor between the protections of the 2 statutes.