

# STATE PRIVILEGES AND PSQIA PROTECTIONS



## A COMPARISON

ISSUE	STATE PROTECTIONS	ATTORNEY/ CLIENT PRIVILEGE	PSQIA PROTECTIONS
Who is included in the protected space?	Varies by state; usually members of a specified committee and those who provide information to the committee. Some states require that the committee consist of "healthcare professionals."	Attorneys for an organization and the individuals in a group defined by state law which can implement the attorney's advice.	<b>Anyone within the PSES</b> of a licensed healthcare provider—the self-defined part of the organization assigned to the "Collection, management, or analysis of information for reporting to or by a PSO." <b>Any person involved in the activity is included.</b> Deliberations and analysis in support of the work are protected as they occur.
What healthcare organizations can benefit from the protections?	Varies by state; most states are expanding the definitions from original hospital focus, but there are still limitations.	Any provider.	<b>Any licensed healthcare provider</b> that participates with a PSO.
What is protected?	Varies by state; usually information developed by the committee. May not protect material provided to the committee.	Information shared with an attorney while seeking and obtaining legal advice if the content meets other requirements.	<b>Any information reported to or developed within the PSES</b> as it is defined by organizational policy. All information reported to the PSO is protected in the hands of the PSO.
When and Where can protected material arise?	Varies by state; some states only cover information developed by the protected committee.	Information must be shared in the context of the client seeking legal advice and not elsewhere. The rules don't address specific sources of information.	As long as information is developed for and reported to a PSES, it is protected, e.g. reports developed for a safety committee. <b>Work (deliberations and analysis) that takes place within the PSES is protected.</b>
Preconditions to qualify for protections	Usually a committee that meets the statutory requirements.	Attorney-client relationship.	<b>PSO participation:</b> the work must have a logical relationship to information that is reported to the PSO. Some protected data has to be reported to the PSO, but not most.
Waiver	Varies.	If information is shared outside the protected space, the privilege is waived.	<b>PSWP remains privileged and confidential,</b> even if wrongly disclosed.
In what courts does it apply?	In the state where the statute applies. Generally not in federal court. Some limit protection to actions related to medical malpractice.	Broad recognition.	<b>All state, local, federal, tribal and administrative tribunals.</b> Protections apply with licensing and disciplinary actions.
Can you share within the organization?	Varies by state. Many statutes are mute on the issue, but do limit the privilege in cases related to internal or court action between the organization and the provider. Some allow access for state licensing agencies or disciplinary boards.	Sharing outside the permitted group of attorney and client representatives results in a waiver of the privilege.	<b>PSWP can be used for any reasonable purpose within the organization.</b> Sharing with the "workforce" is not considered a wrongful disclosure.
Is the information confidential: are those holding it prohibited from sharing?	Varies by state. Some provide confidentiality; most only create privilege, which prevents the discovery or use of the information in court.	The common law attorney-client rules protect from forced sharing but do not contain any prohibition against voluntary disclosure by agents of the client. Attorneys cannot share privileged information without permission.	<b>PSWP is confidential in all hands unless it qualifies for a specific disclosure permission;</b> those who hold it cannot share it. Unpermitted sharing can be a federal civil or criminal offense.

All of the options exclude from protection, documents and information that is part of the routine operation of the organization, such as patient records, billing data, purchasing records, etc. Submitting those to any committee or their use in an attorney-client setting cannot confer privilege or confidentiality to those classes of underlying information. Data or conclusions derived from the underlying information may be protected.