Medical Staff Bylaws
Changes You Can’t Ignore!

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Bylaws must comply with the Medicare Conditions of Participation (CoP) requirements.

(42 C.F.R. §482.1, et seq.)

Medicare CoPs are standards that all hospitals must achieve in order to receive reimbursement.

Hospital’s governing body is legally responsible for quality and safety.

The medical staff is accountable to governing body and must “collaborate” with hospital leadership.
The process of accountability must be in the medical staff bylaws, rules and regulations and policies.

Why Revise?
- Changes in legal and regulatory standards

Why Revise?
- Easier to read, understand and use!
- Resolve ambiguities/conflicts/inconsistencies
- Regulatory and accreditation compliance

Medical Staff Bylaws Should:
- Protect leaders from frivolous claims
- Anticipate, and head off, likely arguments by adverse attorneys
- Implement best practices

Goal:
Provide competent, safe and professional patient care.

Goal:
Create a culture that aims to help all staff members be successful — if they so choose!
- Clinical competence
- Professional conduct
CoP-specific requirements:
- Approved by the governing Board
- Description of staff organization
- Description of duties and privileges of each staff category
- Description of qualifications for appointment and privileges
- Requirements concerning history and physical exams
- Criteria for privileging
- Description of monitoring process for quality care determinations
- Approval of rules and regulations and related documents
- Description of due process

Medical staff accountabilities and responsibilities:
- Collecting, verifying and evaluating credentials
- Recommending individuals for appointment and clinical privileges
- Recommending requirements for H&P
- Recommending professional review actions regarding a staff member’s appointment and privileges
- Directing clinical departments or clinical services

Three accrediting bodies with “deemed” status:
- The Joint Commission (“TJC”)
- AOA Healthcare Facilities Accreditation Program (“HFAP”)
- Det Norske Veritas Healthcare, Ind. (“DNV”)

TJC requires:
EPs 12-36 must appear in the bylaws.

Focused Professional Practice Evaluation
MS.4.30
- Medical Staff defines the circumstances requiring monitoring and evaluation of a practitioner’s professional performance.

If the EP involves a process, at a minimum, basic steps of the process must be in the bylaws.
Ongoing Professional Practice Evaluation
MS.4.40
- Ongoing professional practice evaluation information is factored into the decision to
  - maintain existing privilege(s)
  - revise existing privilege(s), or
  - revoke an existing privilege prior to or at the time of renewal

Conflict Resolution and Management

Best Practices:
- Add collegial and informal efforts
- Add investigative procedure
- Add precautionary suspension/restriction
- Add “automatic relinquishment”

Best Practice:
Incorporate HCQIA standards for notice and hearings.
- 30 days
- Statement of Reasons
- Witnesses, documents
- Counsel
- Written decision

Grounds for a hearing:
- Limit to HCQIA “adverse actions”
- For other matters, allow informal meetings, written explanation for file

Best Practice:
Strengthen qualifications for appointment.
“Burden of Proof”
Hearing Committee shall uphold MEC’s recommendation, unless it was arbitrary, capricious, not supported by credible evidence.

Best Practice:
Don’t ignore misrepresentations, misstatements and omissions on the application for appointment and clinical privileges.

Any misstatement or misrepresentation in, or omission from the application should be grounds to stop the processing of the application.

If appointment has been granted prior to the discovery, appointment and privileges may be deemed to be “automatically relinquished.”

In either situation, there should be no entitlement to a hearing or appeal; however, the applicant or staff member should be permitted to submit a written response to the reviewing body before the processing is stopped or automatic relinquishment becomes effective.
Interpretive Guidelines
§482.24(c)(2)(i)(A) and Survey Procedure:
The medical record must include documentation that a medical history and physical examination (H&P) was completed and documented for each patient no more than 30 days prior to hospital admission or registration, or 24 hours after hospital admission or registration, but in all cases prior to surgery or a procedure requiring anesthesia services.

Interpretive Guidelines
§482.24(c)(2)(i)(A) and Survey Procedure:
When the H&P is conducted within 30 days before admission or registration, an update must be completed and documented by a licensed practitioner who is credentialed and privileged by the hospital’s medical staff to perform an H&P.

Verbal Orders

Interpretive Guidelines
§482.24(c)(1)(iii) and Survey Procedure:
If there is no state law designating a specific time frame for authentication of verbal order, then such orders must be authenticated within 48 hours.

Telemedicine Privileges

Now ...
• Information from Medicare participating hospital may be used if it:
  • includes list of privileges; and
  • attestation that information is complete, accurate and up to date
Now ...

- Credentialing and privileging must be the same for all LIPs
- CVO may be used

Now ...

- Practitioners are subject to FPPE and OPPE
- Privileges must be renewed at least every 2 years

Best Practice:
Describe the process for consideration of “waiver” requests.

Best Practice:
Conditional reappointment can be used to impress needed improvements.

Employed Physicians

Physician Employment Agreement

Physician must at all times maintain appointment and clinical privileges at the hospital, and abide by all bylaws, policies, rules and regulations of the medical staff and hospital.
Physician Employment Agreement (Cont'd.)

Reserve the authority to act in accordance with the terms of the Agreement and any applicable employment policies when such action is more appropriate to the circumstances.

What is different if the physician is an employee?

Americans with Disabilities Act (ADA)

Age Discrimination in Employment Act (ADEA)