

# Medical Staff Credentialing, Privileging and Peer Review

PRESENTATION FOR THE  
LEGISLATIVE HEALTH &  
HUMAN SERVICES  
COMMITTEE

Farmington, NM

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# The Joint Commission

Medical Staff

# Medical Staff

- MS.01.01.01 Medical Staff Bylaws address self-governance and accountability to the governing body
- MS.06.01.03 The hospital collects information regarding each practitioner's current license status, training, experience, competence, and ability to perform the requested privilege
- MS.06.01.05 The decision to grant or deny a privilege(s) and/or to renew an existing privilege(s), is an objective, evidence-based process.
- MS.06.01.07 The organized medical staff reviews and analyzes all relevant information regarding each requesting practitioner's current licensure status, training, experience, current competence, and ability to perform the requested privilege.
- MS.06.01.11 An expedited governing body approval process may be used for initial appointment and reappointment to the medical staff and for granting privileges when criteria for that process are met.

# Medical Staff

- MS.06.01.13 Under certain circumstances, temporary clinical privileges may be granted for a limited period of time
- MS.07.01.01 The organized medical staff provides oversight for the quality of care, treatment, and services by recommending members for appointment to the medical staff.
- MS.07.01.03 Deliberations by the medical staff in developing recommendations for appointment to or termination from the medical staff for the initial granting, revision, or revocation of clinical privileges include information provided by peer(s) of the applicant.
- MS.08.01.01 The organized medical staff defines the circumstances requiring monitoring and evaluation of a practitioner's professional performance
- MS.08.01.03 Ongoing professional practice evaluation information is factored into the decision to maintain existing privilege(s), to revise an existing privilege(s), or to revoke an existing privilege(s) prior to or at the time of renewal.
- MS.09.09.01 The organized medical staff, pursuant to the medical staff bylaws, evaluates and acts on reported concerns regarding a privileged practitioner's clinical practice and/or competence.

## §482.12 Condition of Participation: Governing Body

The hospital must have an effective governing body legally responsible for the conduct of the hospital as an institution. If a hospital does not have an organized governing body, the person legally responsible for the conduct of the hospital must carry out the functions specified in this part that pertain to the governing body. The governing body (or persons legally responsible for the conduct of the hospital and carrying out the functions specified in this part that pertain to the governing body) must include a member, or members of the hospital's medical staff.

## §482.12 (a) Standard: Medical Staff.

### The governing body must:

- §482.12(a)(1) Determine, in accordance with State law, which categories of practitioners are eligible candidates for appointment to the medical staff;
- §482.12(a)(2) Appoint members of the medical staff after considering the recommendations of the existing members of the medical staff;
- §482.12(a)(3) Assure that the medical staff has bylaws;
- §482.12(a)(4) Approve medical staff bylaws and other medical staff rules and regulations;
- §482.12(a)(5) Ensure that the medical staff is accountable to the governing body for the quality of care provided to patients
- §482.12(a)(6) Ensure the criteria for selection are individual character, competence, training, experience, and judgment; and
- §482.12(a)(7) Ensure that under no circumstances is the accordance of staff membership or professional privileges in the hospital dependent solely upon certification, fellowship, or membership in a specialty body or society.

## §482.22 Condition of Participation: Medical Staff

The hospital must have an organized medical staff that operates under bylaws approved by the governing body and is responsible for the quality of medical care provided to patients by the hospital

## §482.22(a) Standard: Eligibility and process for appointment to medical staff

- §482.22 (a) The medical staff must include doctors of medicine or osteopathy. In accordance with State law, including scope-of-practice laws, the medical staff may also include other categories of non-physician practitioners determined as eligible for appointment by the governing body.



# §482.22(a)

- §482.22(a)(1) – The medical staff must periodically conduct appraisals of its members;
- §482.22(a)(2) – The medical staff must examine credentials of candidates for medical staff membership and make recommendations to the governing body on the appointment of candidates in accordance with State law, including scope-of-practice laws, and the medical staff bylaws, rules, and regulations. A candidate who has been recommended by the medical staff and who has been appointed by the governing body is subject to all medical staff bylaws, rules, and regulations, in addition to the requirements contained in this section;
- §482.22(a)(3) – When telemedicine services are furnished to the hospital's patients through an agreement with a distant-site hospital, the governing body of the hospital whose patients are receiving the telemedicine services may choose, in lieu of the requirements in paragraphs (a)(1) and (a)(2) of this section, to have its medical staff rely upon the credentialing and privileging decisions made by the distant-site hospital when making recommendations on privileges for the individual distant-site physicians and practitioners providing such services, if the hospital's governing body ensures, through its written agreement with the distant-site hospital, that all of the following provisions are met:

## §482.22(b) Standard: Medical staff organization and accountability

- The medical staff must be well organized and accountable to the governing body for the quality of the medical care provided to the patients.
  - ◆ (1) The medical staff must be organized in a manner approved by the governing body
  - ◆ (2) If the medical staff has an executive committee, a majority of the members of the committee must be doctors of medicine or osteopathy
  - ◆ (3) The responsibility for organization and conduct of the medical staff must be assigned only to one of the following:
    - An individual doctor of medicine or osteopathy
    - A doctor of dental surgery or dental medicine, when permitted by state law of the State in which the hospital is located.
    - A doctor of podiatric medicine, when permitted by State law of the State in which the hospital is located.

## §482.22(c) Standard: Medical Staff Bylaws

The Medical Staff must adopt and enforce bylaws to carry out its responsibilities. The bylaws must:

- §482.22(c)(1) – Be approved by the governing body
- §482.22(c)(2) – Include a statement of the duties and privileges of each category of medical staff (e.g. active, courtesy, etc.)
- §482.22(c)(3) – Describe the organization of the medical staff
- §482.22(c)(4) – Describe the qualifications to be met by a candidate in order for the medical staff to recommend that the candidate be appointed by the governing body
- §482.22(c)(6) – Include criteria for determining the privileges to be granted to individual practitioners and a procedure for applying the criteria to individuals requesting privileges

# New Mexico Administrative Code

**7.7.2.18 B. Responsibilities. By-laws.** The governing body shall adopt by-laws. The by-laws shall be in writing and shall be available to all members of the governing body as well as the public. The by-laws shall:

## New Mexico Administrative Code 7.7.2.18 B. Governing Body

- 7.7.2.18 B (3) require a physician owner or other provider to disclose to the patient or the patient's representative and document for the patient's medical record a financial interest in the hospital before referring a patient to the hospital
- 7.7.2.18 B (7) provide for the appointment of members of the medical staff; during periods of routine operation, and during disaster and emergency; and
- 7.7.2.18 B (8) provide mechanisms for the formal approval of the organization, by-laws and rules of the medical staff.

# New Mexico Administrative Code

## **7.7.2.18 F. Medical Staff Appointments.**

The governing body shall appoint members of the medical staff in accordance with the approved medical staff by-laws.

# New Mexico Administrative Code

## 7.7.2.18 F. Medical Staff Appointments

- 7.7.2.18 F(1) A formal procedure shall be established, governed by written rules covering application for medical staff membership and the method of processing applications during periods of routine operation, and during disaster and emergency
- 7.7.2.18 F(2) The procedure related to the submission and processing of applications shall involve the chief executive officer/administrator, the credentials committee of the medical staff or its equivalent, and the governing body.
- 7.7.2.18 F(3) Action taken by the governing body on applications for medical staff appointments shall be in writing; and available to the licensing authority during surveys or complaint investigations.

# New Mexico Administrative Code

## F. Medical Staff Appointments

- 7.7.2.18 F(4) Written notification of applicants shall be made by either the governing body or its designated representative.
- 7.7.2.18 F(5) Applicants selected for medical staff appointment shall sign an agreement to abide by the medical staff rules and by-laws.
- 7.7.2.18 F(6) The governing body shall establish a procedure for appeal and hearing by the governing body or a designated committee if the applicant or the medical staff wishes to contest the decision on an application for medical staff appointments.



# New Mexico Administrative Code

**7.7.2.26 MEDICAL STAFF:**

# New Mexico Administrative Code 7.7.2.26 B. Membership

- 7.7.2.26 B(1) Active Staff: A hospital shall have an active medical staff, which performs all the organizational duties pertaining to the medical staff. Active staff membership shall be limited to individuals, as defined in Subsection LL of 7.7.2.7 NMAC of these requirements, who are currently licensed. Individuals may be granted membership in accordance with the medical staff by-laws and rules, and in accordance with the by-laws of the hospital.
- 7.7.2.26 B(2) Other staff: The medical staff may include one or more categories defined in the medical staff by-laws in addition to the active staff including a category to cover appointment during periods of disaster and emergency.

# New Mexico Administrative Code

## 7.7.2.26 C. Appointment

### (1) Governing Body Responsibilities

- 7.7.2.26 C(1) (a) medical staff appointments shall be made by the governing body, taking into account recommendations made by the active medical staff;
- 7.7.2.26 C(1) (b) the governing body shall biennially ensure that members of the medical staff are qualified legally and professionally for the position to which they are appointed;
- 7.7.2.26 C(1) (c) the hospital, through its medical staff, shall require applicants for medical staff membership to provide, in addition to other medical staff requirements, a complete list of all hospital medical staff memberships held within five years prior to application; and
- 7.7.2.26 C(1) (d) hospital medical staff applications shall require reporting any malpractice action, any previously successful and currently pending challenges to licensure in this or another state, and any loss or pending action affecting medical staff membership or privileges at another hospital.

# New Mexico Administrative Code

## 7.7.2.26 C. Appointment

### (2) Medical Staff Responsibilities

- 7.7.2.26 C(2) (a) to select its members and delineate their privileges, the hospital medical staff shall have a system, based on specific standards for evaluation of each applicant by a credentials committee, which makes recommendations to the medical staff and to the governing body; and
- 7.7.2.26 C(2) (b) the medical staff may include one or more categories of medical staff defined in the medical staff by-laws in addition to the active medical staff, including a category to cover appointment during periods of disaster and emergency, but this in no way modifies the duties and responsibilities of the active staff.

# New Mexico Administrative Code

## 7.7.2.26 D. Criteria for Appointment

- 7.7.2.26 D(1) Criteria for selection shall include the individual's current licensure, health status, professional performance, judgment and clinical and technical skills.
- 7.7.2.26 D(2) All qualified candidates shall be considered by the credentials committee or during periods of disaster and emergency by a member of the medical staff or administration who represents the credentials committee.
- 7.7.2.26 D(3) Re-appointments shall be made at least biennially and recorded in the minutes or files of the governing body. Reappointment policies shall provide for a periodic appraisal of each member of the staff, including consideration at the time of reappointment of information concerning the individual's current licensure, health status, professional performance, judgment and clinical and technical skills. Recommendations for re-appointments shall be noted in the minutes of the meetings of the appropriate committee.

# New Mexico Administrative Code

## 7.7.2.26 D. Criteria for Appointment

- 7.7.2.26 D(4) Temporary staff privileges may be granted for a limited period if the individual is qualified for membership on the medical staff.
- 7.7.2.26 D(5) Disaster and emergency privileges may be granted to qualified individuals during disasters and emergencies.
- 7.7.2.26 D(6) A copy of the scope of privileges to be accorded the individual shall be distributed to appropriate hospital staff. The privileges of each staff member shall be specifically stated or the medical staff shall define a classification system. If a system involving classifications is used, the scope of the categories shall be well defined, and the standards that must be met by the applicant, shall be clearly stated for each category.
- 7.7.2.26 D(7) If other categories of staff membership are to be established for allied health personnel, the necessary qualifications, privileges and rights shall be delineated in accordance with the medical staff by-laws.

# Other regulatory requirements

- HCQIA - 42 USC § 11111-11115
- NMROIA - NM Stat § 41-9-1 through 41-9-7

# Health Care Quality Improvement Act of 1986 Basic Elements

- Immunity for good faith peer review
- Framework for peer review process
- Due Process protections for subject
- National Practitioner Data Bank reporting
- Does not provide confidentiality



# Health Care Quality Improvement Act of 1986

- Title IV – Encouraging Good Faith Professional Review Activities
- Part A Promotion of Professional Review Activities
  - ◆ Section .411 Professional Review
    - Limitation on damages for professional review actions
  - ◆ Section.412 Standards for Professional Review Actions
    - Processes for review actions and fair hearing
  - ◆ Section.413 Payment of Reasonable Attorney's Fees and Costs in Defense of Suit
  - ◆ Setion.414 Guidelines of the Secretary
  - ◆ Section.415 Construction
  - ◆ Section.416 Effective Date

# Health Care Quality Improvement Act of 1986

## ■ Part B Reporting Requirements

- ◆ Section .421 Requiring reports on Medical Malpractice Payments
  - Each entity which makes payment under a policy of insurance, self-insurance, or otherwise in settlement (or partial settlement) of, or in satisfaction of a judgment in a medical malpractice action or claim shall report, in accordance with Section 424
- ◆ Section.422 Reporting of sanctions Taken by Board of Medical Examiners
  - Actions subject to reporting
- ◆ Section.423 Reporting of Certain Professional review Actions Taken by Health Care Entities
  - Actions subject to reporting
- ◆ Section.424 Form of Reporting
- ◆ Section.425 Duty of Hospitals to Obtain Information
- ◆ Section.426 Disclosure and Correction of Information
- ◆ Section.427 Miscellaneous Provisions

# Health Care Quality Improvement Act of 1986

## ■ Part C Definitions and Reports

- ◆ Section .431 Definitions
- ◆ Section.432 Reports and Memoranda of Understanding

# NM Review Organization Immunity Act-Elements

- Broad definition of review organization-includes QA efforts
- Limits liability for providing information or serving on committee
- Provides for confidentiality of documents & opinions created in process
  - ◆ Protection has been limited by courts

# New Mexico Review Organization Immunity Act 41-9-1 – 41-9-9

- 41-9-1 Short Title
- 41-9-2 – Definitions
- 41-9-3 – Limitation on liability for persons providing information to review organization
- 41-9-4 – Limitation on liability for members of review organizations
- 41-9-5 – Confidentiality of record of review organization
- 41-9-6 – Penalty for violation
- 41-9-7 – Protection of patient

Completed application submitted

Application process with primary source verification of education, internship, residency, ECFMG, Licensure, Board Status, DEA CSR, and liability insurance, personal and professional references, verifications from past and present affiliates as well as a criminal background check, NPDB, EPLS and OIG reports

Completed application reviewed by Credentials Committee and any other applicable medical staff

### Generic Application Process

Completed application presented to Medical Executive Committee

Recommended Medical Staff membership and requested privileges

Applicant may appeal adverse determination through Fair Hearing Plan

Recommended Medical Staff membership and requested privileges

Completed application presented to the Board of Trustees

Grant Medical Staff membership and requested privileges

Applicant is notified of membership and privileges

Applicant may appeal adverse determination through Fair Hearing Plan

Applicant may appeal adverse determination through Fair Hearing Plan

# Joint Commission

- Requires a period of focused professional practice evaluation (FPPE) for all initially requested privileges
- Requires a process for ongoing professional practice evaluation (OPPE)
- Requires that the OPPE data be collected and evaluated on an ongoing basis – more frequently than the 2 year reappointment cycle
- Requires that OPPE data be used to determine whether to continue, limit, or revoke any existing privileges
- Requires a process whereby OPPE if found to meet triggers, will result in FPPE