

**New York State Association
Medical Staff Services (NYSAMSS)
Annual Education Conference**

May 5-7, 2010

***Impact of MS.01.01.01
On Medical Staff Bylaws***
(Revised April 30, 2010)

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MS.01.01.01 Background

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 - The proposed August, 2006, Medical Staff standards, which addressed which substantive provisions could be in the bylaws versus rules, regs and policies, largely deferred to medical staff and hospital.
 - Standard also allowed the organized medical staff (“OMS”) to make direct recommendations to the Board under certain circumstances
 - The Standard was generally found acceptable, at least to the hospital industry, and adoption as final was expected.

MS.01.01.01 Background (Cont'd)

- In June, 2007, TJC took everyone by surprise when it published a substantially different standard as part of MS.1.20.
 - Standard was very prescriptive yet confusing over what provisions must be in bylaws versus “supplemental” documents.
 - Bylaw amendment process and who could amend was not clear.
 - “Organized medical staff”, an undefined term, was given the authority to overturn or reject MEC recommendations, reduce MEC authority, remove MEC members and recommend bylaw changes directly to the Board and bypass the MEC.

MS.01.01.01 Background (Cont'd)

- Changes would require substantial time and expense.
- AMA, on the other hand, was very supportive of the changes and was largely responsible for getting the 2006 proposal pulled.
- Because organizations such as the AHA, FAH, NAMSS and various other state hospital and medical staff professional organizations expressed detailed and vocal opposition to the standards, TJC appointed a multi-disciplinary Task Force to evaluate.
 - Goal of the Task Force was to develop a “Consensus” standard.

MS.01.01.01 Background (Cont'd)

- Met 12 times over 15 months to develop and recommend to TJC the most current version.
- Has been accepted as a compromise standard by all organizations.
- Standard was submitted to TJC Board in November.
- TJC Board sent standard out for a limited field review, which ended in January 2010.
- Standard adopted by TJC Board March 12, 2010, with an implementation date of March 31, 2011.
 - No changes were made between the March 2010 draft and the March 2011 final standard.

TJC Perspective on MS.01.01.01 Task Force

Key Issues Addressed by Task Force

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- ▶ What needs to appear in the medical staff bylaws and how such decisions are made
 - ▶ The relationship between the organized medical staff and the medical executive committee
 - ▶ How to foster a collaborative and positive relationship among the management, medical staff, and governing body
 - ▶ How to manage conflict that may arise between the organized medical staff and the governing body, or between the organized medical staff and the medical executive committee, regarding medical staff bylaws, rules and regulations, and policies
 - ▶ The definitions of terms that appear in the standard

Composition of Medical Staff

Current Standard

- Arguably limited to physicians as defined under State law (M.D.s, D.O.s, dentists and podiatrists in Illinois).

Final Standard

- Has been expanded to include M.D.s, D.O.s and “other practitioners [who] are organized into a self-governing medical staff. . . who are privileged through a medical staff process.” (See state law to determine if there are any limitations on membership).

Self Governing Medical Staff

Current Standard

- Medical Staff is self-governing but subject to ultimate authority of governing body.

Final Standard

- No changes to this important legal principle although, consistent with Leadership Standards, there is a clear emphasis on the collaborative relationship that is expected by and among the Board, Hospital management and Medical Staff leadership.

Organized Medical Staff (“OMS”) and Voting Members

Current Standard

- Current organized medical staff (“OMS”) is the self-governing entity.

Final Standard

- No change, but “only those who are identified in the bylaws as having voting rights can vote to adopt and amend the Medical Staff Bylaws.”

* * *

Comment: Implies that rules, regulations and policies can be adopted or amended differently.

Bylaw Development

Current Standard

EP1

- OMS develops bylaws.

Final Standard

EP1

- OMS develops bylaws, rules and regulations, and policies.

* * *

Comments:

- *OMS must have a role in the adoption and amendment of bylaws, which rights can not be delegated to the MEC.*
- *OMS needs to decide what authority to delegate, or reserve to itself, regarding the adoption and amendment of rules, regulations and policies.*

Bylaw Adoption and Approval

Current Standard

EPs 2, 3 and 4

- Bylaws are adopted and amended by the medical staff.
- Governing body approves bylaws and medical staff and governing body comply.

Final Standard

EP2

- OMS adopts and amends bylaws, which right cannot be delegated.
- Bylaws become effective only upon governing body approval.
- EP cites to requirements regarding governing body authority and conflict management processes, if there is a disagreement between medical staff leadership regarding the bylaws, as well as to EP 17 which states that medical staff determines through its bylaws who can vote.

Conflict Management Standards

- LD.02.04.01 provides that “the hospital manages conflicts between leadership groups to protect the quality and safety of care.”
- Effective January 1, 2009, Leadership Standards required a written conflict management process, can be in bylaws or a policy.
- Process for managing conflict must be ongoing.
- Process is to be approved by the governing body.
- Individuals involved are skilled in conflict management.

Conflict Management Standards (Cont'd)

- The conflict management process should include the following:
 - The parties should meet as early as possible to identify the conflict.
 - Must gather information regarding the conflict.
 - Hospital implements the process when a conflict arises that, if not managed, could adversely affect the patient's safety or quality of care.

* * *

Comment: Hospital needs to decide what kinds of disputes between OMS and MEC, if any, will trigger conflict management process under the Leadership Standards.

Medical Staff Bylaws in Relation To Governing Body Bylaws

Current Standard

EP 5

- Medical staff bylaws, rules and regs, and policies and hospital bylaws do not conflict.

Final Standard

EP 4

- Medical staff bylaws, rules, regs and policies and governing body bylaws are “compatible” with each other and are compliant with law and regulation.

Process for Amending Bylaws, Rules, Regs and Policies

Current Standard

- No process described, and never has been.

Final Standard

EP 8

- OMS has ability to adopt medical staff bylaws, rules and regulations, and policies, and amendments, and propose them directly to the governing body.

* * *

Comments:

- *Explicit that OMS must vote on bylaws.*
- *Irrespective of what authority, if any, OMS has delegated to the MEC concerning adoption of rules, regulations and policies, OMS still has ability to propose them directly to governing body, without MEC approval.*

Process for Amending Bylaws, Rules, Regs and Policies (cont'd)

Current Standard

- No process described.

Final Standard

EP 9

- Manner of proposing or amending a rule, regulation, or policy, or amendments thereto, by OMS:
 - Must be by voting members of the medical staff.
 - Must first communicate proposal to MEC.
- Manner of proposing rule or regulation, or amendment thereto, by MEC if given this delegated authority:
 - Must be by voting members of the medical staff.
 - Must first communicate proposal to MEC.

Process for Amending Bylaws, Rules, Regs and Policies (cont'd)

Current Standard

- No process described.

Final Standard

EP 9

- Manner of proposing rule or regulation, or amendment thereto, by MEC if given this delegated authority:
 - Must first communicate the proposal to the medical staff.

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Comment: Suggests that OMS can propose amendment to bylaws directly to governing body without first communicating to MEC. We strongly recommend that medical staff bylaws require OMS to communicate to MEC regarding any proposed bylaw or amendment thereto, before proposing to governing body in order to allow for MEC comment or triggering of conflict management process.

Process for Amending Bylaws, Rules, Regs and Policies (Cont'd)

Final Standard

EP 9 (cont'd)

- Method of adopting policy, or amendment thereto by MEC, if given this delegated authority.
 - MEC can adopt a policy, or amendment thereto, simply by communicating this to the medical staff.

* * *

Comments:

- *Consider allowing MEC to also trigger conflict management process if it disagrees with amendment to rules, regulations or policies by OMS.*
- *MEC can only propose rules, regulations or policies if given this authority by OMS and the governing body.*

Medical Staff Conflict With MEC

Current Standard

- No defined process.

Final Standard

EP 10

- OMS has to adopt a process to manage conflict between the medical staff and MEC for all matters.
- Medical staff members, meaning anyone on the medical staff even if they have no voting rights, are free to communicate with the governing body on a rule, regulation or policy adopted by OMS or MEC.
- Governing body determines method of communication.

Medical Staff Conflict With MEC (cont'd)

EP 10

Comments:

- *TJC does not define or prescribe process for “conflict management.”*
- *Is not the same as dispute resolution, i.e., majority vote, mediation or arbitration.*
- *Process can be as simple as a meeting between representatives of the group which triggers the process and the MEC – need not be overly complicated.*
- *Need to determine who or what actions, decisions and group(s) can trigger conflict management process between OMS and the MEC.*

Medical Staff Conflict With MEC (cont'd)

EP 10

Comments (cont'd)

- *Intent is not to allow an individual physician or very small group mandate process. Could impose requirement that a majority of OMS is necessary to initiate process.*
- *Going beyond a majority would probably be viewed as inconsistent with intent of standard.*
- *Consider adopting as the standard for triggering conflict management process, the standard in the bylaws for amending or approving the bylaws by the voting members.*
- *Must also decide whether an unresolved conflict between OMS and MEC does or does not initiate conflict management process under Leadership Standards – Question to ask is whether Board review and proposed decision regarding the OMS/MEC dispute results in a dispute or conflict with Medical Staff Leadership. A disagreement with the OMS is not necessarily the same.*

Urgent Amendment Process

Current Standard

- No defined process.

Final Standard

EP 11

- If delegated to do so by voting members of OMS, MEC may “provisionally adopt” an amendment to rule or regulation necessary to comply with laws or regulations.
- Need for urgent amendment must be documented.
- Governing body may then provisionally approve amendment without prior notice to the medical staff.
- Medical staff will be immediately notified by MEC.

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Comment: Implies that MEC can adopt an urgent amendment to a policy without need for OMS approval.

Urgent Amendment Process (cont'd)

Final Standard

EP 11 (cont'd)

- Medical Staff has opportunity for retrospective review of and comment on the provisional amendment.
- If no conflict between the OMS and the MEC, the provisional amendment stands.
- If conflict does arise between OMS and MEC, process for resolving conflict between OMS and MEC must be followed.
- Any revisions to the amendment must be submitted to the governing body for final action.

* * *

Comment: If OMS delegated to MEC the authority to amend rules and regulations, including urgent amendments, MEC need only notify medical staff and approval by OMS is not necessary, unless conflict management process is triggered.

What Provisions Must be in the Bylaws

Current Standard

EP 5

- Bylaws must include EP 6 through 8 which address definition of medical staff structure, criteria and qualifications for appointment, a listing of clinical departments and a definition of the qualification and role and responsibilities of the Department Chair.

EPs 9 – 18

- These EPs generally address the following:
 - The description, function, size and composition of the MEC and methods of removal of members and Medical Staff officers.

What Must be in the Bylaws (Cont'd)

Current Standard

EPs 9 – 18 (cont'd)

- The ability of the MEC to act on behalf of OMS between meetings.
- Description of the indications for and the procedures relating to automatic and summary suspensions and the mechanism for recommending these actions, as well as terminations in reductions of privileges.
- Description of the mechanism for a fair hearing and appeal process.
- Description of the credentialing and privileging process.
- Description of the appointment process.

What Must be in the Bylaws (Cont'd)

Current Standard

EP 19

- When an administrative procedure, associated with processes described in the Medical Staff Bylaws or corrective actions, fair hearing and appeal, credentialing, privileging, and appointment, are described in Medical Staff governance documents that supplement the Bylaws (i.e., rules and regulations and procedures)
 - The mechanism for the approval of the administrative procedures, which may be different from that for adoption and amendment of the Medical Staff Bylaws, is described in the Medical Staff Bylaws.

What Must be in the Bylaws (Cont'd)

Current Standard

- Criteria to identify those administrative procedures that can be in the supplementary documents are described in the Bylaws.
- The administrative procedures are approved by both the Medical Staff and the Governing Body through the Bylaws.

THIS EP IS NOT EFFECTIVE AT THIS TIME

What Must be in the Bylaws (Cont'd)

Current Standard

EP 3

- Every requirement set forth in EPs 12 through 36 is in the medical staff bylaws.
- Requirements may have “associated details” which may reside in the medical staff bylaws, rules and regulations or policies.
- The OMS adopts what constitutes the associated details, where they reside, and whether their adoption can be delegated.

What Must be in the Bylaws (Cont'd)

Final Standard

EP3

- Every requirement set forth in EP12 through EP36 must be in the bylaws.
- These requirements may have associated details, some of which may be extensive, such details may reside in the bylaws, rules, regulations or policies.
- OMS adopts what constitutes the associated details, where they reside and whether they reside, and whether their adoption can be delegated.
- Adoption of associated details that reside in the bylaws cannot be delegated.
- For EP 12 through 36 that require a “process”, bylaws must include, at a minimum, “basic steps” required for implementation of the requirement as approved by OMS and the governing body.

What Must be in the Bylaws (Cont'd)

Final Standard

EP 3 (cont'd)

- OMS submits its proposals to the governing body for action.
- Proposals become effective only upon governing body approval.
- If there is a conflict, the governing body must follow conflict management procedures under Leadership Standards.

The basic steps required for implementation of required processes are to be determined by the medical staff and by the governing body. “The intent of flexibility here is that the hospital and its medical staff determine where the procedural or associated details relate to an element of the bylaws reside resides, whether in the bylaws or in the rules or regulations or policies.”

Comments: *Only affects hospitals and Medical Staffs that have defined certain processes outside bylaws, for example, a separate Fair Hearing Plan or a separate Credentialing Manual.*

What Must be in the Bylaws (Cont'd)

Comments: (Cont'd)

- *If so, OMS, MEC and the governing body must agree as to what basic steps of the required process, under EPs 12-16 must be in the bylaws versus a rule, regulation or policy.*
- *Must re-evaluate whether OMS and MEC will still permit expedited amendment process for separate processes, e.g., Fair Hearing Plan.*
- *If so, maintaining separate documents may still make sense.*
- *If, however, it is determined that amending these documents must follow the same process as a bylaw amendment, keeping them separate makes less sense.*

Examples of Basic Steps in Bylaws

Fair Hearing Plan (Associated Details)

Article II: Hearing

1. Grounds for Hearing

Medical Staff members shall be entitled to a hearing and appeal, if: the MEC recommends any of the following; or if the Governing Board determines that it intends to make or makes any of the following adverse decisions relating to the Physician (the "Affected Physician"):

- (a) Denial of Medical Staff reappointment;
- (b) The reduction, revocation, or termination of Clinical Privileges or Medical Staff status or a suspension of Clinical Privileges for a designated period;
- (c) Imposition of a summary suspension; or
- (d) Any action which is reportable to the National Practitioners Data Bank.

Medical Staff Bylaws (Basic Steps)

1. Grounds for Hearing

Medical staff members shall be entitled to a hearing, and to be advised as to what adverse actions trigger the fair hearing process.

Examples of Basic Steps in Bylaws (cont'd)

Fair Hearing Plan (Associated Details)

2. Notice Procedures

In any case in which the Affected Physician is entitled to a hearing, the Affected Physician shall promptly be given written notice by certified mail, return receipt requested, and shall have thirty (30) days after the date of delivery of such notice to request a hearing. Such request for hearing shall be made in writing to the President of the Medical Staff, with a copy to the CEO. The written notice to the Physician shall state: that a professional review action has been proposed to be taken against the Physician, the reasons for the proposed action, that the Physician has the right to request a hearing on the proposed action, a summary of the Physician's rights in the hearing, and that the Physician has thirty (30) days upon receipt of the notice to request a hearing.

Medical Staff Bylaws (Basic Steps)

2. Notice Procedures

Medical staff members shall have a right to receive notice of their right to request a fair hearing in a timely manner.

What Must be in the Bylaws (Cont'd)

Final Standard

- **EP 12** – Structure of the Medical Staff.
- **EP 13** – Qualifications for Appointment.
- **EP 14** – Process for privileging and re-privileging LIPs and other practitioners. (See FAQ - 5)
- **EP 15** – Statement of duties and privileges relating to each category of the Medical Staff -- **added in 2010** to conform to CMS CoPs.
- **EP 16** – Requirements for completing and documenting medical histories and physical exams in accordance with state law and hospital policy -- **added in 2010** to conform to CMS CoPs. (See FAQs - 8 & 9)
- **EP 17** – Description of those members who are eligible to vote - **new**.

What Must be in the Bylaws (Cont'd)

Final Standard

- **EP 18** – The process, as determined by the OMS and approved by the Governing Body by which the OMS elects, selects and removes Medical Staff officers.
- **EP 19** – A list of all officer positions for the Medical Staff - *new*.
- **EP 20** - MEC function, size, composition, the authority delegated to the MEC to act on the Medical Staff's behalf and how such authority is delegated or removed.
- **EP 21** – Process for selecting and/or electing and removing MEC members.

What Must be in the Bylaws (Cont'd)

Final Standard

- **EP 22** – MEC includes physicians as well as other practitioners as determined by the OMS.
- **EP 23** – MEC acts on behalf of Medical Staff between meetings of the OMS within the scope of its responsibilities as defined by the OMS - *new*.
- **EP 24** – Process for adopting and amending Bylaws - *new*.
- **EP 25** – Process for adopting and amending rules, regulations and policies - *new*.
- **EP 26** – Process for credentialing and recredentialing LIPs and other practitioners.

What Must be in the Bylaws (Cont'd)

Final Standard

- **EP 27** – Process for appointment and reappointment.
- **EP 28** – Indications for automatic suspension of a practitioner's Medical Staff membership or clinical privileges.
- **EP 29** – Indications for summary suspension.
- **EP 30** – Indications for recommending termination or suspension of membership or termination or suspension or reduction of clinical privileges.
- **EP 31** – The process or automatic suspension of membership or privileges.

What Must be in the Bylaws (Cont'd)

Final Standard

- **EP 32** – The process for summary suspension of membership or privileges.
- **EP 33** – The process for recommending termination or suspension of membership or privileges.
- **EP 34** – The fair hearing or appeal process which, at a minimum shall include:
 - The process for schedule hearings and appeals;
 - The process for conducting hearings and appeals.
- **EP 35** – The composition of fair hearing committee.
- **EP 36** – If departments exist, the qualification and rules and responsibilities of the department chair.

Summary of Key Changes

- Hospitals that use supplemental documents will need to review and assure that the bylaws adequately address they key elements and the basic steps of the “processes” required to be in the bylaws.

Summary of Key Changes (cont'd)

- Most hospitals will need to affirm, add or revise:
 - Authority delegated to MEC regarding proposing, adopting and amending rules/policy, including “urgent amendments.”
 - Process for OMS to propose amendments.
 - Standards for triggering conflict management process.
 - What kinds of disputes between OMS and MEC will trigger conflict management under Leadership Standards.
 - Conflict management processes (OMS/MEC and OMS/GB).
- Effective date of March 31, 2011 is “non-negotiable.”