Rural hospitals

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moderator. A staff member documents the discussion, and, at the conclusion of the review, the institute sends a report to the facility where the case originated discussing the group's analysis of the physician and the facility's care.

This program has been operating for five years and boasts the participation of 43 facilities throughout rural Texas, Mechler says. "We provide independent feedback that identifies deficiencies in systems or processes that might not be recognized internally," she explains. This model is particularly useful because it enables physicians to discuss cases with other physicians who are practicing in similarly staffed and equipped practice environments. Thus, the feedback they receive is relevant and appropriate to their circumstances. To make the program more attractive to physicians, participants receive continuing medical education (CME) credits for taking part in the teleconferences. When a case involves ethics issues, CME ethics credits also may be available, Mechler says.

Just as physicians benefit from the opportunity to discuss clinical issues with colleagues, the facilities and their patients receive direction that improves the quality of their care. Program staff members have noticed improvement over time in hospitals that participate, and the number of hospitals joining similar programs nationwide continues to grow. ■

Address telemedicine, contracted physicians, and advanced practice professionals in medical staff bylaws

Medical staff bylaws are the blueprint by which your organization delivers the highest-quality patient care. As your facility reviews and amends its bylaws to reflect upcoming changes to The Joint Commission's leadership and medical staff standards, experts recommend focusing on three critical areas improperly addressed in most facilities' bylaws. Reviewing these areas at the same time your organization updates bylaws to new regulations will be more efficient than revisiting bylaw revisions on a case-by-case basis.

Telemedicine

Telemedicine is playing an ever-increasing role in U.S. hospitals, and it is essential that your medical staff bylaws address the challenge of credentialing telemedicine providers appropriately, says **Joseph Cooper, MD, CMSL,** a practicing ophthalmologist and senior consultant at The Greeley Company, a division of HCPro, Inc., in Marblehead, MA.

CMS' *Conditions of Participation* require all physicians who provide telemedicine services to be licensed practitioners in the patient's state. CMS requires facilities that use telemedicine services to credential and privilege those practitioners who provide the service, even though the telemedicine provider need not be a member of the facility's medical staff.

The Joint Commission's standard MS.4.120 permits facilities to credential and privilege telemedicine providers in one of three ways:

- The facility may credential telemedicine physicians in the same way that it credentials and privileges other physicians. The facility must choose this method if the telemedicine provider with which it is contracting is not a Joint Commission–accredited entity.
- If the telemedicine provider with which the facility contracts is a Joint Commission–accredited entity, the facility may credential and privilege the telemedicine physicians in one of two ways:
  - Accept the credentialing information about the physician that the entity has on file, without further primary source verification, and present that information to the credentialing committee for a privileging decision

- Accept the credentialing and privileging decision the entity has made regarding the telemedicine physician, as long as the entity has privileged the physician to provide the same services the physician intends to provide the facility via telemedicine

"Many of my clients who have [considered] relying on the telemedicine company's credentialing and privileging processes are not entirely comfortable with this," says **Michael R. Callahan, Esq.,** a healthcare attorney at Katten Muchin Rosenman, LLP, in Chicago. Instead, many of his clients analyze the qualifications of the physicians who will provide the telemedicine services through the contracted company.

The degree of this analysis may differ depending on the circumstances, Callahan says. If the contracting facility has high credentialing and privileging standards, it may want to ensure that its teleradiologists meet them. Otherwise, in the event of a bad outcome, a plaintiff's attorney might note that the hospital relied on a teleradiology physician not up to its standards for medical staff membership—despite the fact that the facility may have fully complied with Joint Commission (formerly JCAHO) standards.

Similarly, the degree of scrutiny the facility applies to a telemedicine physician's credentials may partially depend on what the facility wants the telemedicine physician to do, Callahan says.

If the facility is using teleradiology only for first reads on cases presenting when staff radiologists are not available, then significant additional effort to credential and privilege the teleradiologists who work under contract with a Joint Commission–accredited facility may not be necessary or worthwhile.

But what if the facility requires telemedicine providers to do more than initial reads? These are the reasons a facility might employ a sliding scale of scrutiny, says Callahan.

For example, if there are 50 procedures in the facility's radiology core privileges, the facility may offer all appropriately trained and licensed telemedicine physicians privileges in 30 of the procedures.

In this example, if the telemedicine provider wants access to the other 20 core radiology procedures, the telemedicine physicians must demonstrate that they meet the facility's standards for those additional procedures, Callahan explains.

Contracted physicians

Medical staff bylaws must also address the issue of physicians who provide services at the facility under contract, says Cooper.

Callahan says it is critical that these provisions distinguish among the following types of physicians:

➤ **Exclusive providers.** Many facilities contract with a single group to provide hospital-based services

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Confront problem contracted physicians

If a physician employed by a captive group has performance issues, consider his or her obligations carefully, thanks in part to recent legal developments, says **Michael R. Callahan, Esq.,** a healthcare attorney at Katten Muchin Rosenman, LLP, in Chicago.

In *Kadlec v. Lakeview Anesthesia Assoc.*, a hospital suspected that a physician was impaired but demanded that the physician's employer—its captive anesthesia group—terminate him rather than investigating the suspected impairment. Because the hospital never launched an investigation and had maintained no documentation of the suspected problem, it had no obligation to report its suspicions to other facilities that inquired about the physician. The physician's negligence while impaired caused fatal injuries to a patient at another facility, and a jury held the original hospital liable for failing to sound the alarm.

Although an appeals court overturned the jury's initial decision holding the hospital liable, Callahan advises facilities to learn from that case. "Facilities should take their patient safety responsibilities seriously and investigate a physician whose performance raises concerns—even when the physician is working under an exclusive agreement and the simpler option is to demand the termination of the physician's employment," he says.

Bylaws

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such as anesthesia, radiology, and emergency medicine. That contract for services—and the facility's medical staff bylaws—must require contracted physicians who work in the hospital to have privileges to provide the enumerated services, Callahan says.

Many facilities also attempt to insert a provision into the contract and bylaws requiring that upon termination of the physician's employment and/or the group's contract, medical staff membership and clinical privileges of the physicians providing contracted services end as well—often without recourse to a hearing.

These requirements, called clean-sweep provisions, are often unpopular with the medical staff, says Cooper.

However, in the interest of controlling costs, enhancing continuity of care, ensuring adequate coverage, and offering the best possible quality care, facilities should make every effort to convince the medical staff of the benefits of exclusive contracts and include appropriate recognition of them in the medical staff bylaws, says Callahan.

➤ **Employed clinicians.** Facilities also may choose to directly employ or contract with certain physicians (e.g., hospitalists, intensivists, or OB/GYNs). All such clinicians must meet the requirements for hospital medical staff membership and must be awarded clinical privileges for the services contracted. Medical staff bylaws should explicitly recognize these situations, Cooper says.

Some facilities include a provision in provider contracts terminating clinical privileges when the contract or employment also terminates. If so, the medical staff bylaws should reflect it. Otherwise, an employed hospitalist fired for incompetence, for example, may attempt to demand a hearing or other relief under the medical staff bylaws.

On the other hand, if a facility's contract does not explicitly call for this provision, a physician who is terminated or not renewed should be granted the full process accorded any other member of the medical staff, says Cooper.

➤ **Contract for nonclinical services.** Hospitals often hire physicians to provide administrative services, such as overseeing a department or developing a new service line. Medical staff bylaws should allow for the termination of these contracts for nonclinical services without affecting the physician's privileges or medical staff membership, Callahan says.

Advanced practice professionals

The Joint Commission requires advanced practice professionals (APP)—individuals other than licensed physicians who provide direct patient care services in the hospital under supervision—to be credentialed and privileged identically to physicians, Cooper says. Examples of APPs are physician assistants, certified RN anesthetists, nurse practitioners, and certified nurse midwives. Thus, your facility must subject APPs to the same process that it uses for physician applicants for medical staff membership.

Your medical staff bylaws may address this process, but the specifics need not be included, says Cooper. They are medical staff bylaws after all, and APPs are not usually eligible for medical staff membership. The credentialing and privileging specifics for APPs can be delineated in a separate manual or separate policy and procedure documents.

Cooper emphasizes that policies governing APPs must comply with your state's laws regarding the scope of practice of these professionals or the form and degree of supervision they require.

State laws vary considerably, so it is crucial to obtain current information from your state and ensure that your bylaws and policies comply. ■

Sample bylaws language: Telemedicine privileges

Practitioners providing only telemedicine services to the hospital from a distant site will not be appointed to the medical staff but must be granted privileges at this hospital only if these services include prescribing care or otherwise treating patients. Practitioners providing telemedicine services limited to interpretation and second opinions do not require privileges at this hospital. Practitioners providing official readings of images, tracings, or specimens through a telemedicine mechanisms must:

- Be granted clinical privileges that include these services at the hospital and the distant site, where the "hospital" is the site the patient is receiving care and the "distant site" is the site from which the services are provided; or
- Contract with the hospital to provide these services. If the hospital contracts with the practitioner to provide theses services, they must be provided consistent with the terms described in Section [X] of these procedures addressing contracted services.

Requests for telemedicine privileges at the site where the patient is being treated will be processed through that site's established procedure for reviewing and granting privileges. Information included in the completed practitioner application for telemedicine privileges at the site where the patient is being treated may be collected in the usual manner, or may be collected from the distant site hospital or organization, if this organization is approved by The Joint Commission.

Source: The Greeley Guide to Medical Staff Bylaws, *Second Edition. 2008, HCPro, Inc.*