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Physician group-based peer review: Quality assurance outside of the hospital setting

Peer review has long been a means of determining physician competence and improving quality of care in the hospital setting, and ineffective peer review can have serious ramifications. Although it is most commonly associated with hospitals, entities outside of the hospital or healthcare system can use peer review to evaluate physician performance and protect themselves from potential issues as well.

"In a time when physicians are increasingly being employed by subsidiary affiliates of hospitals, it's important for their employer to be doing peer review, just as it is important for hospitals to be conducting peer review," says **Kimberly Daniel, JD,** a director in the central Virginia office of Hancock, Daniel, Johnson & Nagle, PC.

Daniel focused on peer review for physician groups in her presentation "Peer Review Best Practices for Hospital and Healthcare System Affiliated Medical Groups" at the 2012 NAMSS Conference in September. She refers to the practice as "office-based peer review" and outlines several benefits of developing an office-based peer review program, as well as important considerations for physician groups looking to implement such programs.

Initial considerations

First and foremost, groups should look into state peer review laws to determine what constitutes protected "peer review" and which entities are covered by state law, says Daniel. Although some states have allowed office-based peer review for years, others still do not protect it. Groups should ensure that the program they set up meets the legal requirements.

"In states where there is not protection for this activity, you wouldn't want physician groups to set up these programs and believe that they are protected just because they call it 'peer review,' " Daniel says.

As an example, Daniel cites Virginia law, which requires peer review programs outside of a hospital context to be established pursuant to the guidelines approved or adopted by statutorily listed entities. including, but not limited to, a national or state physician peer review entity, a national or state physician accreditation entity, and a statewide or local association representing healthcare providers licensed in Virginia. Those physician groups with peer review programs that meet the guideline requirements could conduct privileged peer review, while peer review that does not meet the guidelines would not be protected.

After confirming the legal protection available for peer review, physician groups should consider their goals in developing a peer review program. While a group may decide to conduct peer review to further its own internal quality controls, many groups want to create a peer review program in order to share information with the hospital or health system affiliated with the physician groups, according to Daniel.

"Often there is an incident at the hospital or there's an incident in the office, and the physician group and the hospital cannot discuss the incident without waiving peer review privilege," says Daniel. She explains that when both the health system and physician group have privileged peer review committees in place, information can then be shared between representatives of the peer review–protected groups.

Policies and agreements

As a physician group develops and implements a peer review program, there are several important documents that should be in place to protect both the physician group and the affiliated hospital or healthcare system.

Both the hospital and the physician group will likely want to sign an information sharing agreement, which clarifies what type of information both parties will share, when they will share it, and how they will share it. Such agreements help ensure that peer review privilege is not waived when information is exchanged, says Daniel. As mentioned previously, groups should be familiar with their states' laws.

Another consideration related to information sharing is HIPAA compliance. Entities may only share protected health information (PHI) if they are part of an organized healthcare arrangement or if they are designated as affiliated covered entities. The affiliated covered entities designation is allowed for healthcare organizations that are under "common ownership or control," Daniel noted in her NAMSS presentation.

"If the entities are so designated, they are treated as a single covered entity for purposes of HIPAA and may share information, including PHI, with one another," says Daniel. She notes that affiliated hospitals and medical groups can eliminate HIPAA issues when sharing peer review under this designation.

An agreement between a hospital and a medical group to share information also creates a responsibility to act on the information, says Daniel. For example, if a hospital receives information from the medical group that indicates the practitioner is having performance issues related to skills the physician also use when exercising clinical privileges at the hospital, the hospital has an obligation to follow up on the information.

In addition to an information sharing agreement, Daniel also recommends that physician employment agreements clearly outline a physician's obligation to participate in peer review and set forth the group's confidentiality and information sharing policies. Daniel warns that employment agreements with broad confidentiality provisions that prohibit the disclosure of information outside of the employment relationship could lead to breach of contract claims if the group later wants to share peer review information with a hospital. The employment agreement might also include a provision that the outcomes of office-based peer review may result in corrective action or termination if the group determines that a practitioner's skills are below the standard of care, she says.

"That's not a term I've seen in a lot of employment agreements yet," says Daniel. However, groups who generally look at quality issues without any peer review or other legal protection are setting themselves up for potential issues. "The more they investigate and document a quality of care issue, the more evidence they are creating for a potentially injured party to discover."

Groups should periodically assess how well their peer review program is working and whether it is meeting the needs of the practice. For effective peer review, the program does not need to be updated or reevaluated unless state peer review laws change or the requirements of parties with whom a group is sharing information change, says Daniel.

Office-based peer review is not as common a concept as hospital peer review, and many medical groups may not know where to start when implementing a peer review program. However, medical groups and their affiliated health systems or hospitals can benefit enormously from conducting privileged peer review and sharing information. As with hospitals, medical groups may use peer review as a means of boosting the quality of care provided by their practitioners and ensuring adherence to a high standard of care.

"I believe the number of groups who have established formal peer review programs is still on the low side," Daniel says. "It is worth the investment of resources for physician groups to set up and conduct office-based peer review." ■