- Develops criteria that determine the type of monitoring to be conducted
- Clearly defines the measures employed to resolve performance issues
- Consistently implements measures employed to resolve performance issues

Applicable Joint Commission Standards

Standard MS.4.30

The organized medical staff defines the circumstances requiring monitoring and evaluation of a practitioner's professional performance.

Rationale for MS.4.30

The focused evaluation process is defined by the organized medical staff. The time period of the evaluation can be extended, and/or a different type of evaluation process assigned. Information for focused professional practice evaluation may include direct observation, chart review, monitoring clinical practice patterns, simulation, proctoring, external peer review, and discussion with other individuals involved in the care of each patient (for example, consulting physicians, assistants at surgery, nursing, or administrative personnel).

Elements of Performance for MS.4.30

1. A period of focused professional practice evaluation is implemented for all initially requested privileges.*
2. The organized medical staff develops criteria to be used for evaluating the performance of practitioners when issues affecting the provision of safe, high quality patient care are identified.
3. The performance monitoring process is clearly defined and includes each of the following elements:
   - Criteria for conducting performance monitoring
   - Method for establishing a monitoring plan specific to the requested privilege
   - Method for determining the duration of performance monitoring
   - Circumstances under which monitoring by an external source is required
4. Focused professional practice evaluation is consistently implemented in accordance with the criteria and requirements defined by the organized medical staff.
5. The triggers† that indicate the need for performance monitoring to further assess current competence is based on the evaluation of a practitioner's current clinical competence, practice behavior, and ability to perform the requested privilege.‡
6. The decision to assign a period of performance monitoring to further assess current competence is based on the evaluation of a practitioner's current clinical competence, practice behavior, and ability to perform the requested privileges.
7. Criteria are developed that determine the type of monitoring to be conducted.
8. The measures employed to resolve performance issues are clearly defined.
9. The measures employed to resolve performance issues are consistently implemented.

Standard MS.4.45

The organized medical staff, pursuant to the medical staff bylaws, evaluates and acts upon reported concerns regarding a privileged practitioner's clinical practice and/or competence.

Rationale for MS.4.45

A well-structured internal reporting process supports the ongoing professional practice evaluation and enhances the quality of care and patient safety.

Elements of Performance for MS.4.45

1. The organization, based on recommendations by the organized medical staff and approval by the governing body, has a clearly defined process for collecting, investigating, and addressing clinical practice concerns.
2. Reported concerns regarding a privileged practitioner's professional practice are uniformly investigated and addressed, as defined by the organization and applicable law.

Compliance Strategies

"Organizations should have clear policies regarding how performance issues can be reported and how they are processed," said Sagin. "Depending on the nature of the report, it can either be tracked and trended or investigated."

* *Effective January 1, 2008.*

† *Triggers can be single incidents or evidence of a clinical practice trend.*

‡ *Other existing privileges in good standing should not be affected by this decision.*

When a performance issue is identified, an organization may initially have the department chair engage in an informal discussion with the provider, which can lead to self-correction. If self-correction is not effective, a recommendation may be made to send the provider for continuing education.[2] "Where appropriate, it's best to have a planned collegial intervention. After all, the goal of this process is to improve performance," Sagin noted.

In some cases, steps may need to be taken to remove the provider from the medical staff. Failure to remove a subpar provider from a system could endanger hundreds of patients per year, and a flaw in the entire system could affect the quality of care thousands of patients receive when being treated by multiple physicians.[5]

IS THE SYSTEM BEING ABUSED?

Many physicians believe that the current process for focused evaluation is flawed, and is sometimes even abused.[8] Ralph Bard, M.D., J.D., vice president of the Semmelweis Society, a Tullahoma, Tennessee–based organization designed to help physicians counter unwarranted accusations, says that some physicians use the system to eliminate competition. Others use it to retaliate because they either feel they have been wronged or because they have previously been reported by another physician. "There was a case in 1998 where a surgeon was considered competition by some of the other surgeons on staff. They felt he was cutting into their bonuses, so they concocted a story to get him thrown off the staff. He sued the other surgeons for antitrust and won." Even though that surgeon was vindicated, Bard describes the difficulties a physician faces when he or she has been falsely accused of being incompetent. "They give you a hearing, but you're not allowed to work until after you've been cleared. It can take up to a year and a half for the hearing to even be scheduled. In the meantime, you need to hire an attorney, yet you have no money and you can't get a job anywhere else. At the hearing, you have to explain why you did nothing wrong, yet the person who is determining your fate is the one who initially reported you."

Sagin agrees that sometimes medical staffs are too quick to restrict a physician's privileges before extensive efforts are made at collegial intervention, but he does believe that most final actions taken against physician's privileges are the result of legitimate and well-intentioned efforts to protect the welfare of patients. "It's hard to imagine a scenario in which all of the checks and balances in the system fail to a point where a conclusion is drawn about a physician's fate based on abuse rather than quality. In order for a physician to be

Sidebar 3-1: Why Physicians Hesitate to Participate

Physicians are sometimes unwilling to participate in focused/ongoing evaluation for three reasons, according to Alice G. Gosfield, a Philadelphia, Pennsylvania–based attorney specializing in health law. "Physicians know the challenges that their colleagues face on a daily basis. They know that physicians often have to make decisions on the fly, sometimes without adequate information." Physicians also hesitate to speak out against their peers for fear of litigation. "We live in a litigious society," said Gosfield. "As a result, many physicians abhor everything that has anything to do with the legal process. They don't trust the peer review statutes to protect them." Gosfield believes the third reason physicians don't want to take part in Focused Professional Practice Evaluation and Ongoing Professional Practice Evaluation is that they haven't been taught how to do it.

Overcoming Obstacles to Physician Participation

Gosfield offers the following tips to help ensure physician participation in the ongoing evaluation process:

- **Adopt lean processes.** Lean production is a Toyota manufacturing technique that eliminates processes that do not directly contribute to value. Lean processes are more efficient and time saving.[6] Lean thinking begins with driving out waste so all work adds value and serves the customer's needs. Identifying value-added and non–value-added steps in every process is the beginning of the journey toward lean operations. Simply put, lean means using less to do more.[7]
- **Pay physicians for medical staff work.** According to Gosfield, paying physicians for medical staff work is entirely appropriate when done within the framework of the Stark regulation definition of fair market value.[6]
- **Make medical staff work more meaningful to physicians.** Most organized medical staff members spend the majority of their time on administrative aspects of credentialing, privileging, and ongoing professional practice evaluation. Physicians may find the work more rewarding if hospitals focused more on quality issues, such as lowering the number of preventable hospital deaths.[6]

removed from the medical staff, the initial complaint is typically reviewed at the department level; it then moves through a peer [evaluation] or credentials committee, and then to a multidisciplinary medical executive committee (MEC) which does further investigation. If the MEC determines a recommendation should be made to the board restricting the clinician's privileges or membership, a fair hearing is permitted with additional due process that is outlined in federal law. Finally, the board reviews all of the findings and recommendations, and if it renders an adverse opinion the clinician can make a further appeal to the board. In all but the most extraordinary cases, for all of these people on all of these committees to come to a conclusion based on prejudice and malice rather than patient best interests just defies credibility."

Sagin adds that not all complaints result in suspension of privileges. "Privileges should only be suspended before review if there is a reason to believe patients could be in imminent danger if the physician continues to practice. The federal Health Care Quality Improvement Act (HCQIA) also requires that physicians be granted a timely hearing, and that competitors, or those involved in the initial complaint, not be allowed to serve on the fair hearing committee."

Tips for Conducting an Impartial Evaluation

Bard concedes that there is nothing wrong with ongoing evaluation as long as it is done in good faith. Both he and Sagin offer the following tips to help ensure an impartial review.

TIP Do not allow anyone involved in the complaint or anyone who has an economic interest in having the physician removed from the staff to serve on a fair hearing panel. This should include anyone who has a contract with the complainant, or any member of the same group or partnership.

TIP Do not allow the physician's competitors to be involved in the fair hearing process. This includes anyone who will gain economically or in any other way from the outcome of the hearing.

TIP Conduct voir dire (the process by which prospective jurors are questioned about their backgrounds and potential biases) with fair hearing panelists as you would with jurors to eliminate anyone with a bias.

TIP Before making a recommendation for corrective action, the MEC should consider hiring an impartial, outside peer evaluation body to examine cases raising quality concerns.

TIP Have policies in place to make clear what is considered a conflict of interest and how conflicts will be handled.

ONGOING PROFESSIONAL PRACTICE EVALUATION

Ongoing evaluation is essential to protecting patients from practitioners whose quality of care falls below acceptable standards. "It is not appropriate to wait to detect such variances until the two-year appointment period of a practitioner expires," said Sagin. "Therefore, ongoing monitoring is imperative. The question is how to make this effective but not overly burdensome on practitioners." Historically, physicians serving on departmental or medical staff peer [evaluation] committees perform case reviews. "This is an important quality monitoring tool but takes considerable physician time," Sagin noted. "In addition, during the past several decades it has not been done well. Good case review should be a regimented process which is reliable across reviewers. Training of reviewers is important, reviews should be interdisciplinary, and scoring methodologies and other reporting tools should be used."

Applicable Joint Commission Standards

Standard MS.4.40

Ongoing professional practice evaluation information is factored into the decision to maintain existing privilege(s), to revise existing privilege(s), or to revoke an existing privilege before or at the time of renewal.

Elements of Performance for MS.4.40

The process for the ongoing professional practice evaluation includes the following:

1. There is a clearly-defined process in place that facilitates the evaluation of each practitioner's professional practice.
2. The type of data to be collected is determined by individual departments and approved by the organized medical staff.

3. Information resulting from the ongoing professional practice evaluation is used to determine whether to continue, limit, or revoke any existing privileges.

Compliance Strategies

Sagin believes that beyond case/chart reviews, hospitals and medical staffs should be regularly monitoring data on practitioners' compliance with established practice rules (for example, compliance with blood usage protocols or clinical pathways) and compliance with rules on professional behavior. "They also should be selecting conditions to track as rate monitors or indicators. This data should be reviewed regularly by appropriate peer evaluation bodies to discern any need for collegial interventions to improve care." Sagin suggests the following additional techniques for ongoing evaluation:

- Proctoring
- External evaluation
- Precepting
- Collecting performance data from other organizations, such as managed care organizations, other hospitals where a practitioner cares for patients, and third-party insurers

Industry Examples

Saint Francis Hospital, Tulsa, Oklahoma. At Saint Francis Hospital, physician Peer Evaluation and Patient Safety Committees perform ongoing professional practice evaluation. "We have 17 different medical staff departments, and currently each department does its own evaluations," said Charlene Flick, R.N., M.S., director, clinical performance/medical staff services, Saint Francis Hospital. "The smaller departments, like thoracic surgery, take time to do chart reviews following their department meetings, so the entire department serves as their committee. The larger departments appoint between 5 and 10 physicians to serve on their review committees." Each case review includes a list of criteria for evaluation including clinical pertinence, medical record timeliness, and legibility. Indicators for review are determined by each department and include returns to the emergency room within 72 hours, return to the intensive care unit, or length of stay greater than three days following a vaginal delivery.

"If the committee finds any deviations from acceptable care, the physician is contacted for input before the committee's final determination," said Flick. "If trends or patterns are identified, the department chair is notified, and if the deviation is considered to be a significant patient safety issue, the department chair may send the case to the president of the staff and the MEC for evaluation."

The Emory Clinic, Emory Healthcare System, Atlanta, Georgia. The Emory Clinic has developed a physician performance assessment form to evaluate its physicians on an ongoing basis. "This is strictly used for our clinic, which employs more than 900 physicians," said Dorothy Cook-Walter, R.N., M.N., J.D., C.P.H.Q., C.P.H.R.M., director, system credentialing and medical staff services, Emory Healthcare. "The evaluation is completed at reappointment by each physician's direct supervisor." The form covers the following performance elements:

- Medical record keeping
- Outpatient care
- Inpatient care
- Clinical safety
- Support of the organization
- Resource management
- Performance improvement
- Interpersonal skills
- Communication skills
- Abusive behavior

WHAT TO DO IF YOUR HOSPITAL LACKS SUFFICIENT INTERNAL EXPERTISE FOR A PROPER EVALUATION

If a hospital does not have staff members with sufficient subject-matter expertise, the hospital can conduct an external evaluation. Sagin offers the following tips for locating external reviewers:

TIP Contact your state medical society.

TIP Query academic institutions, such as medical schools and residency programs.

TIP Research private companies that are in the business of providing external peer evaluation services.

TIP Contact the appropriate medical specialty society. For example, if you need someone to evaluate an obstetrician, contact the American College of Obstetricians and Gynecologists (ACOG).

TIP Make collaborative arrangements with other hospitals, particularly if your hospital is part of a larger system.

"There are generally costs involved in obtaining external evaluations," Sagin said. "The exception is with collaborative arrangements. Within a single health care system, cooperative peer [evaluation] between hospitals can be seen as a mutual responsibility of the various medical staffs. This is even easier if the medical staffs across a system are combined. For hospitals that are not part of the same system, an exchange of peer [evaluation] services can still be arranged. If one hospital provides neurology evaluations for the other, the second hospital might, in turn, provide evaluations in an area where the first hospital is lacking in expertise. In all such arrangements, care should be taken to assure that all available peer [evaluation] protections are maintained."

HANDLING CONFLICTING RECOMMENDATIONS

When recommendations regarding a clinician's performance conflict, the authority to make a final recommendation on behalf of the medical staff lies with the MEC. "When professional opinions conflict regarding the performance of a medical staff member, all opinions should be reviewed by a peer evaluation committee or credentials committee. In smaller hospitals where these committees don't exist, such a review is done by the MEC," Sagin said. "There are three things these committees will be looking for:

1. Is one evaluation and opinion more compelling than the other?
2. What is the basis of each opinion and are there any potential biases on the part of the evaluator?
3. Is more information needed to make an informed recommendation on steps to address the issue of concern?

"It is generally prudent to make sure the clinician under review has an opportunity to present (in writing or in person) any additional information relevant to the evaluation. This promotes both fairness and completeness," Sagin said. "Once the review committee has gathered enough information, it needs to decide which opinions are more credible, or combine the plausible parts of each report."

Sidebar 3-2: Protecting the Confidentiality of the Evaluation Process

"In the mid-1970s, many states developed statutes designed to protect physicians who were participating in the ongoing evaluation process," Gosfield said. "Some were designed to protect the confidentiality of the process, and others to provide immunity for participants from lawsuits. Some of those statutes have since eroded." Gosfield still believes that if evaluations are done appropriately, those involved are protected by state law. "In most forms of litigation, information around actual conversations is not generally discoverable in any civil actions against a provider."

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