

Time To Consider Amending Hospital Medical Staff Bylaws

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Practice Area: Medical Staff and Credentialing

The Department of Health and Family Services (“DHFS”) is steadfastly maintaining its interpretation of Wisconsin’s Caregiver Background Check law which requires hospitals to conduct background checks on medical staff members. The proposed 1999 Budget Act expands the definition of contractors to expressly include a person who has medical staff clinical privileges. If a hospital does not require and perform Caregiver Background Checks, a hospital may unwittingly be exposed to legal liability. The time is ripe to consider including in medical staff bylaws, provisions addressing the requirements of this new law.

Check, Check and Double-Check

The Caregiver Background Check law requires all health care entities regulated by DHFS to conduct background checks on current and prospective employees and contractors. The purpose of the law is to protect patients from abuse, neglect, and misappropriation of their property. Persons subject to the background check are those who will be under a hospital’s control and who are expected to have access to the hospital’s patients. Although hotly debated, DHFS has taken the position that medical staff bylaws are a contract between the member and the hospital; thus, medical staff membership triggers this law’s requirements. Therefore, background checks must be conducted on physicians and other allied health care providers who are granted privileges pursuant to the medical staff bylaws. If the employee, contractor or applicant has been convicted of or has a pending charge for a serious crime as defined by the regulations, a hospital may not employ or contract with the individual. For certain crimes, if an individual can prove that he or she has been rehabilitated, he or she will not be barred from providing services.

Consideration of New Applicants

As of October 1, 1998, the regulations require a hospital to have completed Background Information Disclosure forms on file for prospective employees and contractors. If the applicant’s Background Information Disclosure form does not reveal a bar to medical staff membership and privileges, the individual may be permitted to practice at the hospital for up to 60 days pending the results of the background check. If it takes the hospital more than 60 days to complete the background check, the hospital should take action to restrict the individual from providing further services until the background check is complete. Thus, hospitals will need to determine if they wish to permit applicants to provide services during this period or if granting membership and/or privileges will be contingent upon receiving the background check results.

Existing Medical Staff Members

By October 1, 1999, hospitals must assure that complete Background Information Disclosure forms are available and on file for all medical staff members, even those who were on staff prior to October 1, 1998. Under DHFS's interpretation, any medical staff members with an offense that serves as a bar to performing their duties who have not applied for or received rehabilitation review approval must have their membership terminated. Accordingly, medical staff bylaws should assure that a process exists setting forth how this termination will take place. Hospitals also need to address the rights of individuals who are denied medical staff membership because they are barred from providing services under this law. Because it would arguably be a waste of resources to process the application of an individual who is barred by this law from holding medical staff membership, hospitals may choose to consider an administrative denial process for applicants who are prohibited by the law from providing services. Finally, the regulation requires that hospitals adopt a policy requiring covered employees and contractors to report to the hospital if they are charged with or have committed an offense that bars them from providing services. A bylaw incorporating this reporting responsibility is advisable.

Changes Expected in the New State Budget

Some changes in the law are expected as a result of the Governor's 2000 budget. These changes are likely to include a narrowing of the scope of crimes that would result in a bar to employment and those that are subject to rehabilitation review.

Conclusion

Although the law will likely undergo future revisions, it seems a hospital's obligation to conduct Caregiver Background Checks on medical staff members is here to stay. Hospitals need to have in place written policies and procedures for both employees and nonemployed medical staff members. At the very least, reference to these provisions affecting medical staff should be addressed in the medical staff bylaws even if some of the procedures and details are in medical staff policies.

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