MINNESOTA'S PEER REVIEW LAW

MAY 2023

What does it mean for physician practices?

Minnesota's peer review law provides legal protections for peer review committees established by clinics or professionals from a particular medical institution. Many physician practices, however, don't appreciate the benefits of instituting peer review within their organizations.

Frequently Asked Questions

WHY IS PEER REVIEW IMPORTANT?

Peer review is ultimately a way to protect patients and improve the quality of patient care. Under Minnesota's peer review law, a "review organization" includes a committee of professionals and administrative staff established by a clinic or an organization of professionals from a particular medical institution. The role of a peer review committee is defined broadly under Minnesota's law. A review organization committee gathers and reviews information relating to the care and treatment of patients for the purposes of:

- Evaluating and improving the quality of health care
- Reducing morbidity and mortality
- Obtaining and disseminating statistics and information relative to the treatment and prevention of diseases, illness, and injuries
- Developing and publishing guidelines showing the norms of health care in the area or medical institution
- Developing and publishing guidelines designed to improve the safety of care provided to individuals
- Determining whether a professional shall be granted staff privileges in a medical institution, or whether a professional's staff privileges, membership, or participation status should be limited, suspended or revoked
- Providing information to other, affiliated or nonaffiliated, review organizations, when that information was originally generated within the review organization for a purpose specified by the law, and as long as that information will further the purposes of a review organization.[1]

While most of us are familiar with peer review in the hospital setting, a clinic or physician practice may establish a peer review committee under the law. But many practices don't take advantage of the legal protections under the peer review law. When practices are asked if they discuss cases regularly, have M&M, receive patient complaints, or have experience with a physician who may be impaired, often the answer is yes. But when asked whether a practice has a formal peer review process with policies in place to address these activities, often the answer is no.

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[1] Minn. Stat. § 145.61, subd. 5.

PEER REVIEW FAQs (FROM PAGE 1)

Without the legal protections afforded by having these policies and procedures in place, conversations, emails, and text messages about a patient's care, a patient complaint, or a provider's professional conduct are not protected under the peer review privilege. They may need to be disclosed in a subsequent lawsuit involving a patient's care.

WHAT DOES PROFESSIONAL REVIEW INVOLVE?

To conduct peer review pursuant to federal and state law, a physician practice or clinic must adopt and adhere to written policies and procedures governing its peer review committee.[2] COPIC has developed a **peer review checklist** of what is required under Minnesota law as well as **template peer review policies and procedures** to assist practices in establishing their peer review programs (see page 4 for more details). *These template policies should be reviewed by an attorney who can add information specific to the practice.*

The federal HCQIA law applies to both hospitals and group medical practices that provide health care services and follow a formal peer review process for the purpose of furthering quality health care.[3]

Federal HCQIA grants immunity from damages with respect to actions taken by professional review bodies, to the review body, any member or staff to the body, contractors, and participants, provided they:

- Made a reasonable effort to obtain the facts of the matter,
- Took the action warranted by the facts,
- Took the action in furtherance of quality health care, and
- Followed appropriate notice and hearing procedures that were fair to the physician involved.[4]

Under Minnesota's peer review law, committee members and governing boards aren't liable for damages in any action brought by a person who is the subject of a review unless the peer review committee or board members were motivated by malice.[5] Any person who provides information to professional review committees is also immune from damages, as long as that person does not knowingly provide false information.[6]

Ideally, medical practices will address any issues through peer review *before* it reaches the stage where they determine that a physician is unsafe to practice. In Minnesota, a licensed health care professional is required to report to the Board of Medical Practice personal knowledge of any conduct which the person reasonably believes constitutes grounds for disciplinary action, including any conduct indicating that the person may be medically incompetent, or may have engaged in unprofessional conduct, or may be medically or physically unable to engage safely in the practice of medicine.[7]

Peer review allows a more full and fair assessment of a provider, and an opportunity for them to address any educational deficiencies or behavioral health issues so they can practice safely and don't need to be reported to the medical board.

While it is very unlikely that a provider's care will rise to the level of reporting an adverse professional review action to the medical board, a practice's policy needs to address the due process requirements under HCQIA. This allows for a fair hearing for the provider if a professional review committee recommends that the practice's governing board take an adverse professional review action.

The practice will need to identify what peer review activities fall within the policy. Some examples include the review of:

- ✓ Patient safety incidents, including near-misses
- ✓ Unscheduled patient returns
- ✓ Patient complaints
- ✓ Cases identified through screening by quality indicators
- ✓ Reported unprofessional conduct
- ✓ Concerns regarding a possible impaired provider

[2] 42 U.S.C. § 11112; 45 C.F.R.§ 60.3.
[3] 42 U.S.C. 11151(4).
[4] 42 U.S.C. § 11112(a).
[5] Minn. Stat. § 145.63.
[6] 42 U.S.C. § 11111(a)(2); Minn. Stat. § 145.62.
[7] Minn. Stat. § 147.111, subd. 4.

Implementing Peer Review at Your Medical Practice

Practices that have successfully utilized peer review and had positive experiences share common themes. Foremost, these practices have developed a culture of understanding that the purpose of peer review is not to hinder or punish practitioners. Instead, they believe it allows them to continually improve the quality of care, treatment, and services provided as well as protect the safety of the patients they treat and ensure the best possible outcomes.

When implementing peer review, it can be important to dispel a common misunderstanding among physicians that all reviews of a physician will be reported to the medical board.

The reality is that they are reported only if:

The findings of an investigation indicate that a physician lacks competence or has exhibited inappropriate professional conduct

AND

The professional review committee recommends an action to adversely affect the person's membership or privileges with the practice

AND

After a fair hearing process, the governing board takes a *final professional review action* that adversely affects the clinical privileges of the physician for more than 30 days or accepts the surrender or any restriction of clinical privileges while the physician is under investigation or in return for not conducting such an investigation or proceeding.[8]

Recommendations for additional education or treatment for behavioral health issues where there is no final adverse action would *not* need to be reported. Knowing this enhances the participation of clinicians. The case study that follows on the next page demonstrates how professional review can facilitate the improvement of patient safety protocols within a practice.

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[8] 42 U.S.C. § 11133(a); Minn. Stat. § 147.111, subd. 2.

IMPLEMENTING PEER REVIEW (FROM PAGE 3)

CASE STUDY

A middle-aged patient complaining of a persistent hacking cough a week after recovering from influenza was worked into a busy clinician's schedule during the afternoon. The patient was evaluated and treated with a codeine cough suppressant and told to return if symptoms worsened. Just five hours later, the patient felt much worse and went to the emergency department and was diagnosed with bi-lobar pneumonia and admitted to the ICU due to hypoxia, hypotension, and presumed sepsis.

The peer review committee at the clinic reviewed the medical care and noted that vital signs had not been performed at the time of the clinic visit. Although there is no way to know definitively whether the vital signs would have been abnormal, they presumably would have been and could have provided a clue that the patient was more severely ill than he appeared. The peer committee investigated further and learned that vital signs had not been performed on nearly half of acute visits not just for this doctor, but clinic-wide. They discovered a workflow challenge for acute visits that made it difficult for medical assistants to check vital signs and this system failure was subsequently corrected. Now, nearly 100% of acute visits to the clinic have vital signs checked, which almost certainly has improved patient safety and outcomes.

In this case, and in many other examples, peer review protections have helped physician practices and clinics—with physicians' buy-in and assistance—identify and address problems to prevent adverse patient outcomes. The medical literature is rich with examples where proactive peer review, such as in the case above, and a culture of patient safety has resulted in a reduction in medical liability claims.

Many practices have found that the protections under peer review promote a culture of patient safety and continuous improvement, and when the practices work to educate their practitioners about how and why the peer review process works, they can help facilitate use of this valuable tool.

Peer Review Resources

COPIC promotes professional/peer review as a way to improve medicine in our communities. This process can be used as a tool for improving patient safety as case reviews can provide learning opportunities regarding preventable harm for patients going forward.

In order for physician practices and clinics to use peer review, COPIC's Legal Department has developed state-specific peer review toolkits that contain:

- A **state-specific article** explaining the legal protections for peer review and its practical application for physician practices and clinics
- A **Peer Review Checklist** of what's required (consistent with state and federal peer review laws)
- A sample **Confidentiality Agreement** for peer review participants.
- **Peer Review Policy templates** that a practice can tailor to meet its needs.

Access COPIC's peer review resources on our website at **www.callcopic.com/peerreview**

Please note: COPIC advises practices to have their own attorney review these materials.