Bylaws Best Practices for Today

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Are your medical staff bylaws a help or a hindrance? If they resemble dusty archaeological documents, you can be sure they are hindering your medical staff's ability to function effectively while staying compliant.

Many medical staff bylaws were written in the distant past and are only occasionally dusted off and modified, either to accommodate a new accreditation requirement or to address a current controversy involving the medical staff. Individuals who participated in crafting bylaws language are often highly invested in the resulting document and sometimes resist attempts to modernize it. Thus, many medical staffs are organized and function as they have for decades, despite dramatic industry changes.

Today, the healthcare industry and society in general demand more of the medical staff than ever before, yet physicians have less time than ever to devote to medical staff activities. The challenge is to create an effective and efficient medical staff structure that minimizes a physician's burden.

To succeed, physician leaders in hospitals nationwide are redesigning the way they tackle self-governance, credentialing, peer review, communication, and medical staff administration. As they do, they must revise their bylaws to reflect the changes they initiate.

> Bylaws serve as a blueprint and a roadmap for the medical staff as it exercises the powers delegated to it by the governing board.

One Size Does Not Fit All

Organizations cannot adopt a generic set of bylaws because each document must mirror the uniqueness of the medical staff for which it is written. However, once a medical staff decides how it wants to function, it can incorporate appropriate changes into its medical staff bylaws.

WHEN WRITTEN WELL, BYLAWS AND ASSOCIATED POLICIES ARE USER-FRIENDLY DOCUMENTS THAT:

- Clearly define the purpose of the medical staff
- Establish effective and efficient medical staff structures and processes
- Recognize and protect physicians' rights to self-governance and due process
- Promote good citizenship by specifying the obligations and duties of the medical staff
- Enhance the quality of care through excellent credentialing and performance improvement processes
- Achieve excellent provider performance by setting unequivocal expectations for clinical care and professional behavior
- Clearly delineate the investigation and fair hearing processes

Don't Let Bylaws Be Synonymous With Bureaucracy

Despite hospitals' best attempts, medical staff bylaws are rarely user-friendly documents. Physicians new to a medical staff are often required to sign a statement that they have read and agree to abide by the bylaws and associated medical staff manuals and policies. However, few physicians have the time or motivation to weed through the numerous pages of cumbersome language that often characterize these documents.

> Hospitals spend significant sums of money, devote countless hours of physicians' time, and employ numerous attorneys and consultants in an attempt to perfect, refine, and improve their bylaws. Still, bylaws are often overrun with complex terms, definitions, and jargon that have little to do with the provision of quality patient care. For many physicians and medical staff leaders, the word "bylaws" is equivalent to "bureaucracy."

Medical staff bylaws also have legal implications for physicians and hospitals. If the medical staff does not follow governing documents meticulously, or if the documents contain ambiguous or sloppy language, disputes can eventually turn into lawsuits. And when bylaws are poorly constructed, they can impede cooperation and disrupt the smooth coexistence of the hospital and medical staff.

One benefit of well-written bylaws—like any good contract or compact—is that they provide clear guidance to all parties that must operate in compliance with them. In addition, carefully thought-out and drafted medical staff bylaws help organizations create an environment in which physician/hospital collaboration can be successfully maintained.

Undertaking a Bylaws Review

The importance of medical staff bylaws should compel every hospital and its medical staff leaders to ensure that bylaws are adequate, accurate, and compliant with applicable requirements. The medical staff should conduct a thorough review of these documents periodically to determine whether they:

- Accurately reflect the medical staff's structures and processes
- Incorporate recognized best practices for medical staff function and structure
- Are organized into a user-friendly and flexible set of documents
- Adequately address potential future conflicts
- Comply with regulatory standards

To ensure compliance, healthcare organizations should review their bylaws annually and whenever a regulatory body introduces a new standard or makes changes to an existing standard.

Some medical staffs automatically conduct a comprehensive bylaws document review every three to five years. Others undertake this task only when they decide it is necessary to take a rigorous look at, and possibly redesign, the medical staff structure and processes to ensure that they perform efficiently and effectively.

A general rule of thumb is to not allow more than three to five years to pass between rigorous assessments. Unfortunately, too many medical staffs don't commit to this time frame. Every year, the number of pages in the document grows as new additions are layered on top of old, and often unnecessary, provisions.

During a casual read-through of the bylaws, one may identify medical staff "fixes" that were added to address problems that surfaced ages ago. The result is an unwieldy and ossified document that hinders the effectiveness of a modern medical staff in a rapidly evolving healthcare environment.

If "unwieldy" or "ossified" describes your bylaws, it may be time to consider a comprehensive review and potentially a redesign.

Who's Responsible for the Bylaws Review?

A designated medical staff professional should keep the medical executive committee (MEC) updated on changes to regulations and standards that might affect the bylaws. Some medical staffs have a standing bylaws committee, and this group can vet suggestions for appropriate bylaws revisions. Medical staff leadership (with the endorsement of the MEC) can and should make the decision to undertake a thorough review of the medical staff's governing documents. But be prepared for this activity to be tinged with organizational politics.

Also, keep in mind that bylaws committee members may have a vested interest in the old documents. In some organizations, the chair of the bylaws committee has held that position for many years and may have an ownership mentality regarding the current bylaws and resist significant changes. At the same time, this individual likely has vast institutional knowledge and understands the reasoning behind why the medical staff chose to make certain additions to the bylaws.

> Finding the right balance between keeping what is valuable from the past and incorporating new best practices is one of the greatest challenges in any bylaws rewrite. To avoid some of these issues, the MEC may want to consider appointing a special task force to undertake the bylaws review. Appointees can be chosen for their knowledge of medical staff affairs, ability to craft good bylaws language, and to achieve medical staff buy-in, statesmanship, and other critical qualities.

A Focus on Succession Planning

Traditionally, medical staffs have appointed a nominating committee that only convenes to develop a ballot prior to electing medical staff officers and other leaders. Because the task of finding, educating, training, and retaining excellent medical staff leaders is becoming increasingly important, some medical staffs are now establishing an ongoing leadership and succession committee.

The leadership and succession committee develops selection criteria, outlines a leadership training process, and works to create a pool of future leaders. This committee also periodically assesses the performance of medical staff leaders, provides feedback, recognizes good performance, and identifies opportunities for improvement, when appropriate.

Sample bylaws language to govern a leadership and succession committee:

Composition

The leadership and succession committee shall consist of five members of the medical staff, including the president and immediate past president of the medical staff and three others appointed by the president of the medical staff. The chair shall be the immediate past president of the medical staff. Except for the president and immediate past president, members will serve three-year terms, and one of the appointed members will rotate off the committee each year. All members should be active members of the medical staff for at least three years and be in leadership positions, such as a department or committee chair, medical staff officer, or MEC member, during at least part of their term on the committee.

Responsibilities

The leadership and succession committee shall:

- Develop criteria for leadership positions that include tenure, leadership training, previous experience in leadership positions, and character
- Provide an annual slate of nominees for the elected medical staff positions
- Provide an annual list of potential leaders
- Define a process for evaluating current leaders (e.g., department chairs, committee chairs, medical staff officers, and MEC members) and potential leadership candidates
- Outline a plan and process for developing potential leaders
- Submit recommendations for medical staff committee chairs based on the potential leaders' needs for development and readiness to serve (the president of the medical staff will consider these recommendations for committee chairs but will not be bound by them)
- Develop position descriptions for the officers
- Report twice per year to the MEC

Should Every Committee Be a Medical Staff Committee?

Many committees that historically have been organized by the medical staff function just as well (or better) as multidisciplinary hospital committees with designated physician leadership or participation. Physician leaders are appointed by the president of the medical staff to fulfill the medical staff functions of the hospital-based committees. This seems to work well for committees that address blood usage, utilization review, medical records, ethics, pharmacy/therapeutics, and infection control.

For example, a medical staff ethics committee could become a hospital committee with physician representation. Under this structure, the MEC would no longer be directly accountable for that committee's functions, but physician representatives on the committee would keep the MEC abreast of important issues.

Although the medical staff must play a role in a wide variety of hospital functions—such as blood-usage monitoring, participation in ethical decision-making, selecting formulary drugs, and adopting infection-control policies—it need not manage a long list of committees to serve those purposes.

An alternative to medical staff or hospital committees is to enlist the services of designated physician liaisons, advisors, or experts. For example, the medical staff could replace a long-standing medical staff infection control committee with a physician advisor who meets regularly with the hospital's infection control coordinator to address important issues. This individual would report periodically, and as necessary, to the MEC (or medical staff quality committee), eliminating the need for a group of physicians to take the time to attend regular committee meetings.

Consider addressing functions such as blood-usage monitoring or utilization review in this way as well.

A "Less Is More" Approach to Committee Structure

Other medical staff committees need not be standing committees. Instead, they could function on an ad hoc basis.

A bylaws committee might be assembled whenever there is a perceived need to review or modify the medical staff governing documents. A physician advocacy/impaired physician committee could meet only as needed when a matter of physician health, well-being, or impairment arises. A joint conference committee of the medical staff and board might meet on an ad hoc basis only when the board is considering acting in a manner contrary to a recommendation made by the MEC or when a collaborative discussion of controversial topics is needed to reduce potential conflict between the medical staff, senior management, and the governing board.

The MEC is ultimately accountable for ensuring that all medical staff functions are achieved. It can accomplish its work through whatever committee infrastructure it deems most efficient.

> Given the extreme demands on physicians' time and the difficulty many staffs encounter trying to get physicians to attend meetings, less may be more when it comes to establishing a committee infrastructure.

What Should Be in Bylaws?

A battle continues to rage over what should be kept in the bylaws and what can be kept in associated manuals and policies. Some believe that physicians' rights are best protected by placing as much as possible in the bylaws. Many believe that the bylaws function as the contract between physicians and the hospital and, in many states, this is the law. The bylaws are the proper place, they argue, for all things that could affect physicians' practices, especially those items that might restrict their clinical activities or their ability to earn a living.

While this approach is valid, it fails to recognize that the bylaws are difficult to change. They serve as the constitution of the medical staff, and they change infrequently and only when change is desired by a majority of those who are governed by the constitution. It's important to recognize that healthcare is changing rapidly, including regulatory requirements and evolving best practices for credentialing, peer review, and competence.

The goal for individuals drafting bylaws should be to strike the right balance between these two perspectives. Documents describing physicians' rights, including a physicians' bill of rights and the protections of due process, should be embedded in a document that is difficult to change.

At the same time, rapidly evolving processes related to a process such as peer review should be in a document that can be changed with a vote of the MEC, without having to appeal to a majority of voting medical staff members. Let your medical staff leaders lead.

Enable the Creation of New Bylaws

Careful vetting of current bylaws and thoughtful rewriting or reorganizing are only the first steps along the path to developing new medical staff governing documents. The next challenge is overcoming resistance to change.

Remember: resistance to change is typically greatest in volatile times such as those we now face in healthcare. Once a committee or task force recommends change, it should create and fully explain the new draft document to medical staff leadership. Buy-in of medical staff leaders is essential, and every effort should be made to achieve consensus at this level.

The committee or task force should then develop a campaign to educate and win the acceptance of the general medical staff. This campaign can and should include town hall meetings, newsletters, presentations by leaders at department meetings, and one-on-one lobbying of those physicians most likely to resist change.

The ultimate goal is to win the acceptance necessary to ensure that the bylaws can be modified under the amendment procedure in the current bylaws.

Conclusion

The 21st century demands that practitioners change the way they deliver healthcare to patients. Hospitals are likely to continue their rapid pace of change, and the nature of the organized medical staff must change as well. If your medical staff bylaws are outdated and cumbersome, they may impede your institution and its practitioners.

In most cases, revising bylaws is much more of a change management and redesign challenge than a clerical chore. When striving to achieve effective bylaws, organizations are advised to keep in mind the wisdom of Albert Einstein: "Any intelligent fool can make things bigger, more complex... It takes a touch of genius—and a lot of courage—to move in the opposite direction."

These are words to live by for all of us who endeavor to improve medical staff bylaws.

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