



Medical Society of Virginia Works to Promote Non-Hospital Based Quality Assurance

At its annual meeting in October of 2009, the Medical Society of Virginia (MSV) updated its guidance pertaining to quality assurance processes and peer review for physicians. Specifically, the updated guidance and accompanying forms were created to streamline and encourage the development of interoffice peer review among physicians, thereby improving the delivery of patient care. The updated guidance is available to all Medical Society members and may be found on the MSV website at www.msv.org. Member log-in information is required to access the guidance documents.

Background

In 2004, the Virginia General Assembly amended and reenacted § 8.01-581.17 of the Code of Virginia. The primary purpose of this enactment was to expand the scope of privileged communications to include *non*-hospital based quality assurance or peer review committees. Traditionally, the privilege had only been reserved for hospital-based peer review activities. Specifically, the proceedings, minutes, records, and reports of such "Confidential Committees," as well as all oral and written communications originating within or provided to the Committee, are considered to be privileged if the Confidential Committee has been established pursuant to guidelines approved by certain organizations. Since 2004, MSV has been one such organization.

How to Properly Implement a Non-Hospital Based Quality Assurance Program

To establish a non-hospital based Confidential Committee that meets the mandates of the Code of Virginia, providers should take the following steps:

1. **Download and carefully read** the Medical Society of Virginia's "Quality Assurance, Quality of Care, and Peer Review Guidelines," located on the MSV website.
2. **Download and complete the form** titled "Creation of Committee and Adoption of Quality Assurance, Quality of Care and Peer Review Guidelines." The form can be found on the MSV website. This form, which serves to create a Confidential Committee, should be maintained by the practice administrator.
3. **Conduct ongoing annual reviews** of randomly selected patient charts of each physician with a sample size reasonably determined by the Committee. A qualified reviewer should submit an evaluation form outlining his or her review findings. A sample review form can be found on the MSV website.
4. **Conduct focused or targeted reviews**, including reviews of certain diagnoses or procedural categories, to compare documented treatment to then-current benchmark standards. The same review form utilized in (2) above may be utilized for the focused reviews as well.



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5. When a “**preventable event**” occurs, a provider or employee should report the quality assurance or peer review issue to the Confidential Committee using the “Quality Assurance/Peer Review Report Form,” located on the MSV website, or a modified version thereof. [Note that since factual information in a report may be discoverable, as the form indicates, the reporting provider must document the facts of an underlying event separately from opinions or analysis generated in connection with the Confidential Committee’s review of the event to protect the privileged status of the report.] The Confidential Committee may then gather data, investigate, conduct analysis, coordinate all responses, and/or recommend and initiate corrective action.

What Does This Mean for My Practice?

Privileged communications of a Confidential Committee may not be disclosed or obtained by legal discovery proceedings unless a circuit court rules otherwise based upon a showing of good cause or for extraordinary circumstances. There are however, two important caveats to note.

First, oral communications to a Confidential Committee, *made within the first 24 hours of a medical incident*, are not protected. In these situations, providers who wish to initiate quality or peer review should instead submit a written “Quality Assurance/Peer Review Report Form,” as discussed above.

Second, physicians should also be aware that § 8.01-581.17 does not provide any protection for medical records maintained within the ordinary course of hospitalization of a patient or in a physician practice.

Questions?

Should you or any members of your practice have questions about creating or maintaining a non-hospital based quality assurance or peer review process, please contact W. Scott Johnson or Karah L. Gunther by telephone at (804) 967-9604 or by email at sjohnson@hdjn.com or kgunther@hdjn.com. Additional information about Hancock, Daniel, Johnson & Nagle, P.C. is available on the firm’s website at www.hdjn.com.

<p>Richmond 4701 Cox Road Suite 400 Glen Allen, VA 23060 PO Box 72050 Richmond, VA 23255-2050 ☎ (804) 967-9604</p>	<p>Fairfax 3975 Fair Ridge Road Suite 475 South Fairfax, VA 22033 ☎ (703) 591-3440</p>
<p>Harrisonburg 3210 Peoples Drive Harrisonburg, VA 22801 ☎ (866) 967-9604</p>	<p>Virginia Beach One Columbus Center 283 Constitution Drive Suite 301 Virginia Beach, VA 23462 ☎ (757) 321-6555</p>
<p>Lewisburg, WV 210 West Randolph Street Lewisburg, WV 24901 ☎ (866) 967-9604</p>	<p>Franklin, TN 725 Cool Springs Blvd. Suite 600 Franklin, TN 37067 ☎ (866) 967-9604</p>