



A Strategic Approach to Complying With The Joint Commission's Revised Standard MS.01.01.01

CLIENT ADVISORY

On March 18, 2010, The Joint Commission announced the approval of Medical Staff Standard MS.01.01.01, formerly known as MS.1.20. MS.01.01.01 establishes the necessary components of every accredited hospital's medical staff bylaws. According to The Joint Commission, the new standard is designed "to contribute to patient safety and quality of care by supporting a well-functioning, positive relationship between the medical staff and the hospital's governing body." Considerable debate exists over whether the new standard actually will further The Joint Commission's stated goal.

MS.01.01.01 goes into effect March 31, 2011, leaving hospitals approximately eleven (11) months to come into compliance with the new requirements. The Joint Commission has indicated this deadline will not be extended. As those involved in the process know well, revising medical staff bylaws, rules and regulations, and policies can be a lengthy process. While some hospitals and their medical staffs have begun evaluating their medical staff bylaws, credentialing policies, and rules and regulations, very briefly delaying this project actually may be the best strategy. The Joint Commission and other groups such as the American Health Lawyers Association (AHLA) Work Group on MS 01.01.01 are diligently working to provide guidance on the revised standard. These resources may minimize the personnel and expense required to bring medical staff bylaws and related documents into compliance.

1. Background

Standard MS.1.20 (now MS.01.01.01) initially was created in 2004 and was significantly revised in 2007. After the 2007 revision, the healthcare industry expressed concerns over the cost and burden of the newly revised standard. As a result, The Joint Commission Board established an 18-member Task Force, comprised of representatives from professional associations, physicians, hospital CEOs, trustees and attorneys, to analyze the potential impact of implementing revised Standard MS.1.20. The Task Force met 12 times and focused its discussions on balancing the concerns of hospital executives and medical staff representatives and meeting the Centers for Medicare and Medicaid Services (CMS) Conditions of Participation for hospitals. In March 2009, the Task Force unanimously agreed on the new draft standard MS.01.01.01. The standard was posted for field review ending January 26, 2010 and it was approved by The Joint Commission Board on March 17, 2010.

Revised MS.01.01.01 addresses the self governing nature of the medical staff and the medical staff's relationship to the hospital's governing body. The introduction to the standard recognizes that while the governing body is ultimately responsible for the quality and safety of care at the hospital, the governing body, the medical staff, and hospital administration all must collaborate to provide safe, quality care. Accordingly, MS.01.01.01's requirements for medical staff bylaws purportedly encourage collaboration



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between the governing body and the medical staff.

2. Significant Changes in MS.01.01.01

A. Element of Performance (EP) 3

One of the most significant pieces of MS.01.01.01 is revised EP 3. As before, EP 3 states that every “requirement” set forth in EPs 12 through 36 must be in the medical staff bylaws. Revised EP3 provides, however, that each requirement’s “associated details” may be found in medical staff bylaws, rules and regulations, or policies. In contrast, for every EP that requires a “process,” the medical staff bylaws must include, at a minimum, the “basic steps” to implement the requirement, as determined by the medical staff and approved by the governing body. Notably, a “process” is required by 13 of the 36 EPs in MS.01.01.01.

Practically speaking, EP 3 will allow hospitals to maintain rules and regulations and policies, but it appears to require that more detailed information than previously required (the “basic steps”) will need to be included in the medical staff bylaws. The distinction between a requirement’s “associated details” (which can be in bylaws, policies, or rules and regulations) and “basic steps” (which must be in the bylaws) is not yet clear. The Joint Commission has stated that “each hospital’s medical staff and governing body must decide what degree of detail needs to be in the Medical Staff Bylaws—the critical issue being what must be jointly approved by the governing body and the organized medical staff.” If Joint Commission’s surveyors will be a flexible as this statement implies, and a hospital and its medical staff agree that only minimal detail needs to be in the bylaws, minor revisions may bring medical staff bylaws into compliance with MS 01.01.01. On the other hand, when a hospital or medical staff believe more detail should be included in the bylaws, more extensive revisions will be required.

The Joint Commission’s Frequently Asked Questions, podcasts, conference calls, and other anticipated guidance hopefully will provide information additional guidance about the scope of its flexibility and other important issues.

For nearly every hospital with credentialing policies, fair hearing plans, and other important policies relating to medical staff membership and governance, changes to these documents will be necessary. Hospitals may choose to incorporate the other documents into the Bylaws in their entirety or may prefer to keep them as separate as possible, realizing this will necessitate more work to bring the bylaws into compliance with MS 01.01.01. The best choice can be made after The Joint Commission has received the questions of hospitals/medical staffs and it has published the guidance it is willing to provide.

B. Additional Noteworthy Elements of Performance

Other EPs that likely will require revision to a hospital’s/medical staff’s governing documents include the following:

- Under EP 8, the “organized medical staff” may adopt Medical Staff Bylaws, Rules and Regulations and Policies, and amendments to these, and may propose them directly to the governing body, without acting through a Medical Executive Committee (MEC).
- EP 9 applies where the Medical Staff has delegated authority to the MEC to adopt or amend rules and regulations or policies. If the voting members of the organized medical staff or the MEC proposes to adopt or amend a Rule, Regulation, or Policy, it first must communicate this to the other.
- EP 10 recognizes that conflicts may arise between the Medical Staff and the MEC on a variety of issues



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including but not limited to proposals regarding Medical Staff Bylaws, Rules and Regulations, and Policies. It requires the organized medical staff to adopt a conflict management process and states the governing body will determine the method of communication between the parties in conflict.

- EP 11 requires the Bylaws to include a process for provisionally adopting and approving urgent amendments to rules and regulations prior to review by the medical staff. This EP gives the medical staff an opportunity to retrospectively review and comment on any such provisional amendments to rules and regulations.
- EP 25 requires that the Medical Staff Bylaws contain the process for adopting and amending the Medical Staff rules and regulations and Policies.

3. Conclusion

The practical effect of MS.01.01.01 is that most if not all Joint Commission accredited hospitals must revise and amend their medical staff bylaws to be in compliance with this standard by March 31, 2010. Unless related documents are incorporated into the medical staff bylaws in their entirety, bylaws revisions likely will lead to necessary revisions to rules, regulations and policies.

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