

## GUIDELINES FOR ESTABLISHING HOSPITAL AND HMO PHYSICIAN HEALTH COMMITTEES

Physician Health Services (PHS) encourages hospitals and HMOs to establish physician health committees to aid in the prevention of physician impairment and to identify physicians in need of assistance. The model that PHS recommends is that of a medical peer review committee that exclusively addresses physician health issues. These guidelines are offered as suggestions and PHS is available to work with individual hospitals and HMOs in establishing a committee that suits the specific needs of the entity.

## REASONS TO ESTABLISH A HOSPITAL OR HMO PHYSICIAN HEALTH COMMITTEE

Effective January 1, 2001, JCAHO is requiring that hospital organizations have their medical staff implement a process to identify and manage matters of individual physician health, which is separate from the medical staff disciplinary function.

- Hospital and HMO personnel will be encouraged to deal with issues of actual or potential impairment if there is a group of identified physicians who will provide the necessary assistance and support in a confidential manner.
- A physician health committee provides health care entities with knowledgeable physicians who can ensure that the medical staff has access to PHS and readily available resources.
- Under the state's peer review statutes, a physician health committee provides confidential assistance for physicians who need help and protections from liability for committee members and those who report their concerns regarding a colleague.
- A physician health committee provides an organized and responsible manner for dealing with matters of physician impairment.
- A physician health committee can fulfill the hospital's or HMO's mandate under BRM regulation 243 CMR 3.09 to address issues of impairment.
- A physician health committee can provide critical services through education, early detection of potential impairments, assisting physicians in need of treatment, and providing recommendations to avoid precursors to impairment.
- A physician health committee provides physicians with the authority, accountability, and the responsibility for helping to ensure the safe practice of medicine.

## ESTABLISHING A HOSPITAL OR HMO PHYSICIAN HEALTH COMMITTEE

The medical staff by-laws should be reviewed to ascertain if there is a provision for a committee to address physician health matters. Such a by-law may determine the composition, policies, and procedures of the committee. If there is no existing by-law, PHS suggests the following guidelines in developing a committee. Legal counsel should be consulted to determine if an amendment to hospital medical staff by-laws is appropriate and, if so, to draft language for a new by-law.

### Composition

It is generally recommended that three to seven physicians serve on the committee. All members must be members of the medical staff to be sure that the committee constitutes a medical peer review committee under Massachusetts law. Members should have an interest and expertise in chemical dependency, mental illness, and aging/cognitive problems. It is often helpful to include both men and women with a mix of ages and specialties. Members with a history of chemical dependency should be in recovery for at least two years prior to membership on such a committee.

### Conflict of Interest

Members of the physician health committee should avoid membership on other hospital or HMO committees that may conflict with their responsibilities as committee members. Executive or credentials committees are examples of committees that may pose such conflicts. Inclusion of physicians in positions of authority such as the CEO or president of the medical staff may have the effect of discouraging referrals to the committee. It is important that the physician health committee be regarded as a resource for assistance and not as a disciplinary entity.

### Outreach

The committee should publicize its existence to the hospital medical staff. Specific contact people should be identified so that referrals can be facilitated. All members of the medical staff and hospital employees should feel encouraged to contact the committee directly with their concerns.

The committee should sponsor educational programs to acquaint the medical staff with the nature of physician health issues and the purpose of the committee. Physician Health Services is available to provide speakers for such programs.

### Peer Review Protections

The committee should be identified and function as a medical peer review committee. A hospital or HMO medical peer review committee is a committee of the medical staff of the hospital or HMO in which the medical staff operates under the by-laws approved by the hospital's or HMO's governing board. Massachusetts General Law chapter 111, section 1 includes a definition of medical peer review committees. It specifically identifies the "evaluation and assistance of health care providers impaired or allegedly impaired by reason of alcohol, drugs, physical disability, mental instability, or otherwise."

The status of the medical peer review committee provides confidentiality and immunity protections under Massachusetts law. The reports, records, and proceedings of the committee are confidential with the following exceptions:

- proceedings held by the boards of registration in medicine, social work, psychology,
- documents, incident reports and records otherwise available from original sources,
- in an action against a committee member for bad faith or unreasonable action, and
- testimony where information is known to an individual independently of committee proceedings.

Immunity protections from civil liability are available for committee members for actions that are reasonable and taken in good faith. The same immunity protections are also available to individuals and entities who provide information or services to the committee as long as the information or services are provided in good faith and are reasonable. Thus, colleagues will be encouraged to come forward with their concerns if they feel that the matter will be handled with discretion and with minimal risk of liability to themselves.

### Liaison with Physician Health Services

Ideally, one committee member should be designated to be a liaison with Physician Health Services. It is essential that the committee be familiar with the operations and resources available from PHS. This will help the committee avoid duplicating resources that PHS can provide. It will also ensure that the committee benefits from the experience and expertise of PHS in handling physician health matters.

The communications between the hospital or HMO physician health committee and PHS are confidential peer review communications. In addition to confidentiality under Massachusetts law, the PHS records of physicians with chemical dependency are protected under federal regulation, 42 CFR part 2.

## PROCEDURES FOR HOSPITAL AND HMO PHYSICIAN HEALTH COMMITTEES

### Referrals

The committee should accept referrals concerning a physician from anyone. The referral must be regarded as confidential.

A physician, medical staff, or anyone referring a physician should be encouraged to contact the committee directly to ensure confidentiality protections. Communications made between individuals who are not members of the committee are not afforded the confidentiality protections available under the peer review statute and such communications could be subject to a subpoena.

The committee should then work with the referring individual to gather relevant information, determine the individual's willingness to be identified, and, where appropriate, determine the individual's willingness to assist the committee in confronting the physician, if necessary.

referral to hospital committee member ⇒ committee gathers information ⇒ discussion with physician in question ⇒ consult and possible referral to PHS ⇔ resolution or monitoring plan

Referrals should be processed as soon as possible to reduce the possibility of hospital gossip.

If the committee determines that there is reasonable basis to believe that a physician may be abusing substances, or that there is any behavioral health or mental health concern, then the director of PHS should be contacted as soon as possible. The committee can work with Physician Health Services in determining the appropriateness of intervention, assessment, treatment, and/or monitoring.

Committee members should be familiar with the mandatory reporting statute, Massachusetts General Law chapter 112, section 5F:

Section 5F requires health care providers to report physicians in violation of the Board's regulations or licensing statutes directly to the Board. There is, however, an exception to the statute for physicians with alcohol or drug abuse problems who agree to participate in PHS' monitoring program or another BRM approved program and there are no allegations of patient harm.

Referral to the hospital committee does not relieve the reporter of his or her obligation. Confirmation must be received by the reporter that the physician is in compliance with PHS, a Board approved monitoring program, within 30 days. For this reason, it is important that the reporter inform the physician being referred to PHS of this requirement, so that a consent form is obtained which authorizes PHS to communicate to the reporter.

There may be circumstances where an impaired or an uncooperative physician presents a risk to patients and may not qualify for the exception. In such a case, the person reporting the physician may have an obligation to report to the Board of Registration in Medicine. It is important to note that the committee is obligated to maintain confidentiality and while a reporter should be made aware of requirements to report to the Board of Registration in Medicine, the Committee does not assume a reporting responsibility.

### Intervention

Special care must be taken to respect the anonymity of a referral source who declines to be identified. The director of PHS should be notified to provide possible assistance in determining whether intervention is warranted and/or assist the committee in conducting the intervention.

In addition to providing consultation and intervention in situations involving substance abuse or dependence, behavioral health problems and mental health concerns, PHS provides assistance with aging physicians who are experiencing age related symptoms but who are unprepared or resistant to retirement. An older physician who becomes impaired and continues to practice may face disciplinary action by the Board of Registration in Medicine and find that he or she is not subsequently permitted to voluntarily retire under the Board's regulations.

### Assessment

The committee may wish to discuss the possibility of having the physician evaluated. PHS recommends evaluations be conducted in places other than a physician's workplace. PHS has a trained staff experienced in determining whether a physician is suffering from substance abuse, substance dependency, a behavioral health concern or a mental illness. The director of PHS may also recommend that a case be referred to an independent consultant for an evaluation. PHS resources and experience can be of value while assuring a confidential evaluation for the physician.

## Treatment

Physician Health Services will work with a physician in determining an appropriate treatment plan if it is indicated. PHS will assist the physician in locating either in-patient or out-patient care.

## Monitoring

The director of PHS will make a determination as to whether the physician is an appropriate candidate for the PHS monitoring program. PHS recommends that physician health committees rely on the PHS monitoring program as it is the primary monitoring program approved by the Board of Registration in Medicine and one that has been developed over a period of 25 years. If the physician is chemically dependent, PHS may enter into a monitoring agreement designed to guide and document the physician's recovery. The standard monitoring contract requires:

1. documented therapy,
2. random urine drug screens,
3. support groups,
4. regular meetings with a designated PHS physician, and
5. monitoring by an individual who can attest to the physician's abstinence.

The physician is also required to notify his or her chief(s) of service of his or her illness and enlist the chief's (chiefs') support in completing quarterly monitoring reports. The physician's therapist and monitor also complete quarterly reports to document the physician's recovery. A relapse or failure to comply with the monitoring contract will result in a report being made to the Board of Registration in Medicine, chief(s) of service, and the physician's therapist.

Physician Health Services also designs monitoring contracts for physicians with behavioral health concerns which ensures that the physician is complying with his or her treatment plan, and monitors improvement within specified areas of concern.

## Compliance Confirmation

Reports of a physician's progress and contract compliance may be made available from Physician Health Services to the hospital committee upon the written consent of the physician.