

# Sharing Credentialing, Privileging, and Peer Review Information Within Systems

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Recent high-profile cases highlight the need for quality credentialing, privileging, and peer review processes. In a time when multi-hospital systems are the norm, consistency in these processes across each hospital in a system is essential for quality care and patient safety. Further, the public views a hospital within a system as part of the larger whole and holds the system accountable for actions of physicians performed at each individual hospital in the system. This accountability at the system level assumes that each affiliate hospital in a system is aware of what is going on in the medical staffs of the other hospitals in a system; however, this is not necessarily the case. This article discusses the process that can be implemented in a health care system to ensure consistency and uniformity among each hospital in a system.

Health care systems should establish and implement processes to share designated Peer Review Information (PRI) across system hospital medical staffs by incorporating language into each hospital's policies and procedures and medical staff bylaws. Among other benefits, sharing PRI will prevent a physician from being able to move from one hospital in a system to the next, making the same mistakes, and flying under the radar. For example, if one hospital in a system initiates a corrective action based on clinical competency concerns regarding a provider, the other hospitals in the system should share PRI in their possession, if any, limited to the provider in question and her clinical competency. The peer review committee will conduct its own review and make its own peer review decisions but will be able to use the information from the other hospitals in the system when making its assessment.

If done correctly, providers can effectively share designated PRI while, at the same time, maintaining the confidentiality of such PRI consistent with applicable law, ethical principles, and good judgment. In other words, it is important to have processes in place to guide PRI sharing and to protect applicable privileges and confidentiality.

How exactly the arrangement for sharing information is structured, and the type of information that is protected, will depend on the peer review privilege laws of the state where the system is located. The information and recommendations related to sharing PRI contained herein are generally applicable, regardless of which state's laws apply.

Depending on state law, health care systems also can take sharing a step further by including consistency of action provisions in each system hospital's medical staff bylaws. These provisions

allow a corrective action or decision on the status of medical staff appointment and privileges at one hospital to apply automatically at another hospital in the system. Building on the previous example, if the provider agrees not to exercise privileges while undergoing an investigation at one hospital, the voluntary agreement not to exercise privileges would automatically and equally apply to the provider's privileges at the other hospitals in the system. This is an added efficiency for health care systems that choose to share PRI and is addressed after laying out the basics for PRI sharing within systems.

## Provision for Sharing PRI in the Medical Staff Bylaws and System Policy

Before sharing PRI across hospital medical staffs in a system, the medical staff bylaws of each hospital should include, at a minimum, a provision that allows the sharing of PRI across system affiliates. The provision in the bylaws should refer to a system-wide policy for parameters. Best practice suggests keeping the PRI sharing provisions in each hospital's medical staff bylaws basic while incorporating by reference an external system-wide policy that serves as the master policy that can be supplemented by each hospital's own policy. If there is inconsistency between the system-wide policy and the individual hospital policy, the individual hospital policy governs. This will permit the PRI sharing process to evolve and improve without having to amend each medical staff's bylaws with each change to the system-wide PRI sharing process.

Having a system-wide policy on sharing PRI is imperative to creating an effective process. The system should develop its policy with input from each of the involved affiliates, and each participating medical staff should expressly approve the system-wide policy. The system-wide policy on sharing PRI across hospitals should include, at a minimum:

- A list of all affiliates among which information will be shared;
- A clear definition of PRI and what information is to be shared among the affiliates in the system;
- A list of events that trigger sharing between the affiliates in a system;
- Clear restrictions and procedural steps for sharing PRI among affiliates, including but not limited to, the responsibility of each hospital in a system to designate an agent who shall be responsible to receive PRI on behalf of its hospital; and
- Sanctions for improper disclosure or other misuse of PRI.

In addition to the medical staff bylaws and system-wide policy that defines the PRI sharing process, each hospital should include provisions in physician applications for appointment and reappointment that put the physician on notice of the PRI sharing arrangement between the hospitals in a system. Physician applications for appointment and reappointment should include a provision that as a condition of appointment and/or grant of privileges,



the applicant accepts that the medical staff will share information relative to the physician's appointment and/or exercise of privileges between system affiliates, and that information may form the basis for corrective action.

## Defining PRI to Share and Events That Trigger Sharing

PRI includes documents generated by or for a peer review committee with respect to professional review activities. PRI is that information that falls under the applicable federal and state statutes governing the confidentiality and privileges that flow to professional review documents. PRI includes information developed in the course of credentialing, medical staff appointment, privileging, and evaluating provider professional conduct and clinical competency. PRI includes, for example, the credentials file, quality file, committee minutes, and other documents.

The system-wide policy on sharing information should include a list of events that trigger sharing between system hospitals and clearly define what PRI the peer review committee should share when a triggering event occurs. The list of events that trigger sharing between system hospitals does not have to be exhaustive and does not mean the peer review committee cannot share additional information at a later date. Over time, health care systems typically increase the amount of information they share as the process is refined.

Sharing information should begin at credentialing to promote consistency within the system from the start. Note, however, that unless specific requirements are met (i.e., the health care system conducts its credentialing centrally, has a centralized peer review

process, and has one decision-making body), National Practitioner Data Bank (NPDB) queries should not be shared, and each credentialing body should query the NPDB for itself.<sup>1</sup>

Potential events that trigger sharing between system hospitals may include, but are not limited to, the following:

- A peer review committee denying a provider's application for appointment, reappointment, or grant/regrant of privileges in whole or in part;
- A provider becoming the subject of a formal corrective action;
- A provider's appointment and/or privileges being automatically, voluntarily, or summarily restricted at the hospital; and
- A provider resigning the provider's appointment and/or privileges at a hospital while under investigation or to avoid investigation related to professional conduct or clinical competency concerns.

## Confidentiality and Protecting Privilege

Generally, the applicable peer review privilege will continue to protect PRI from discovery if system peer review committees share the information for peer review purposes only. The system policy on sharing PRI should make clear that a peer review committee should not share information that another hospital intends to use for a non-peer review use. For example, Human Resources should not receive any of the information shared between the peer review committees, and shared PRI cannot be used for purposes such as education, risk management, or employment decisions.





The system-wide policy should set forth the process for peer review committees to follow so that the hospital entity can claim privilege. Regardless of what the policy says, though, the actual sharing and use of the PRI itself will determine whether the privilege protects the information. Each committee must agree to maintain confidentiality of the PRI and to restrict the use of such information to the purposes set forth in state statutes.

### Consistency of Action Provisions

Assuming that state law allows it, health care systems that have hospitals with separate medical staffs also should include consistency of action provisions in the medical staff bylaws of each hospital in the system. These provisions allow corrective actions and decisions related to the status of medical staff appointment and privileges at one hospital to apply automatically at other hospitals in a system. Because the restriction at other system hospitals is automatic, the physician would only be entitled to a hearing at the hospital where the initial corrective action occurred. The physician would not get multiple hearings at all hospitals where the automatic restriction applied. This maximizes efficiency and prevents a rogue physician from going from one hospital to another, or receiving multiple hearings within a system, with potentially conflicting results.

The bylaws should include the specific actions that will automatically apply at other hospitals, and a clear message that the actions are immediate and automatic and apply without recourse to the procedural rights set forth in the bylaws or applicable fair hearing policy.

Actions that might automatically apply at all system hospitals could include the following:

- Automatic suspension or termination of privileges;
- Summary suspension of appointment and/or privileges, or a voluntary agreement not to exercise privileges;
- Suspension, limitation, or termination of appointment and/or privileges based on professional conduct or clinical competency concerns;
- Resignation of appointment and/or privileges while under investigation;
- Withdrawal of an application for appointment/reappointment and/or privileges/regrant of privileges while under investigation; and
- Denial or nonrenewal of privileges due to professional conduct or clinical competency concerns.

In short, health care systems should have processes in place for affiliate hospitals to share PRI across medical staffs, to promote consistency and, in turn, quality and patient safety. The health care system should detail the process in a system policy, crafted to protect the peer review privilege of the applicable state. The medical staff bylaws of all hospitals in a system should include provisions that permit sharing PRI among affiliate hospitals and a provision that incorporates by reference the system-wide policy. All committees should expressly agree to maintain the confidentiality of PRI, and physician applications for appointment and reappointment should put physicians on notice of the sharing arrangement and that shared PRI may form the basis for corrective action. To maximize efficiency and consistency between hospitals in a system, where state law does not prohibit it, health care systems also should include consistency of action provisions in the bylaws of each individual hospital in a system.

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1 U.S. DEP'T OF HEALTH & HUMAN SERVS., *When Can Query Responses Be Shared Within a Health Care System?*, NATIONAL PRACTITIONER DATA BANK, <https://www.npdb.hrsa.gov/qa/policy9.jsp> (last visited Mar. 25, 2019).