

Made to Measure: Informal Remediation, Corrective Action, and Fair Hearings

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Avery Schumacher and **Jeremy R. Morris**, attorneys in the Health Care & Life Sciences practice, in the firm's Columbus office, co-authored an article in the National Association Medical Staff Services (NAMSS) *Gateway* blog, titled "Made to Measure: Informal Remediation, Corrective Action, and Fair Hearings."

Following is an excerpt:

Hospitals have a responsibility to provide appropriate medical care. To that end, the regulatory framework applicable to hospitals attempts to foster an environment that supports the provision of high-quality medical care. For instance, the Medicare conditions of participation require hospitals to have an organized medical staff, which is responsible for the quality of medical care provided to hospital patients, and that operates pursuant to its medical staff bylaws. (42 CFR 482.22). However, the mere existence of an organized medical staff and a compliant set of medical staff bylaws will not lead to advancements in the quality of care. So what tools are at your disposal when quality problems are identified?

Informal Remediation

Informal remediation seeks to resolve identified competency or conduct issues (i.e., quality of care or professional behavior concerns) in a way that adequately protects patients while affecting the practitioner at issue in the least restrictive manner possible. Informal remediation is also voluntary in nature. In other words, action is not being mandated against the practitioner. Instead, the practitioner is being asked to cooperate in remediation activities

People



Jeremy R. Morris
Member of the Firm
Antitrust
Columbus
614-872-2417
JMorris@ebglaw.com



Avery Schumacher
Member of the Firm
Health Care
Columbus
614-872-2455
ASchumacher@ebglaw.com

proposed by the medical staff to voluntarily improve the identified quality issue. In addition, informal remediation efforts are regularly conducted pursuant to the hospital's peer review policy, without resorting to the formal process that is found in the hospital's medical staff bylaws.

When used effectively, informal remediation can address the majority of identified quality issues. Informal remediation has the advantage of being flexible — informal remedies can take many varied forms, and efficient informal remedies do not implicate the strict due process procedures set forth in the medical staff bylaws.

Corrective Action

While informal remediation is typically the preferred option when attempting to address identified quality issues, there are times when corrective action must be considered.

Corrective action is the process, described in the medical staff bylaws, where limitations and other restrictions may be placed on a practitioner's clinical privileges. In contrast with informal remediation, corrective action is mandatory in nature, meaning a practitioner's participation can be compelled. It does not matter whether the practitioner agrees with the remedy ultimately imposed by the hospital's governing body. Corrective action is typically pursued when attempts at informal remediation have already failed, or when the identified quality issues are significant and informal remedial efforts would likely be insufficient to address those concerns.

Procedural Due Process

Procedural due process is crucial for all peer review activities. Practitioners should be treated fairly and appropriately at all stages of the peer review process. Relevant due process considerations include providing notice of the identified quality issues to the practitioner involved and giving the practitioner an opportunity to provide relevant information to potentially address the

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However, due process is especially important during the corrective action process. A hospital's medical staff bylaws will contain explicit procedures setting forth the rights of practitioners that are involved in the corrective action process and the manner in which a practitioner will be able to challenge an adverse recommendation issued by the hospital's medical executive committee by requesting a fair hearing. Compliance with those processes is vital given the stakes involved. For instance, an action that adversely impacts a practitioner's clinical privileges for a period that exceeds 30 days is reportable to the National Practitioner Data Bank, and those reports should not be made haphazardly.

Support High-Quality Care

Medical staffs have multiple ways to identify and address quality issues within the hospital. Informal remediation and corrective action are two tools it can use. Understanding these options and utilizing them consistently and in compliance with your medical staff governing documents will help your hospital properly and efficiently address competency and conduct issues with the result of supporting high-quality care.