

## **PEER REVIEW, QUALITY IMPROVEMENT, AND IMMUNITY**

### **What is peer review?**

Peer review is the process by which a committee of health care professionals reviews and evaluates the credentials, competence, physical and mental capacity and other qualifications of health care professionals or reviews, evaluates, monitors and assures the quality of patient care.

### **Is a physician who serves on a peer review committee immune from liability?**

Generally, yes. A physician who serves on a peer review committee and performs his or her duties in good faith is immune from liability for damages in any civil action brought by or on behalf of persons who were being evaluated.<sup>1</sup> No member of a peer review committee shall be liable in a civil action as a result of acts or omissions made in good faith on behalf of the committee.<sup>2</sup>

### **Is a physician immune from liability for filing charges or presenting evidence in a peer review proceeding?**

Generally, yes. A physician who, in good faith, files charges or supplies information or testimony to a peer review committee is immune from civil liability for damages arising out of such actions.<sup>3</sup>

### **What is a coordinated quality improvement program (CQIP)?**

Every hospital is required to maintain a coordinated quality improvement program (CQIP).<sup>4</sup> The purpose of a CQIP is to improve the quality of health care services provided to patients by identifying and preventing medical malpractice. A CQIP must include at least:<sup>5</sup>

- Establishment of a quality improvement committee with responsibility to review services rendered in the hospital, both retrospectively and prospectively, to improve quality of patient care and prevent medical malpractice. Such committee should oversee and coordinate the quality improvement and malpractice prevention program and ensure that information gathered is used to review and revise policies and procedures.
- A procedure to periodically review the credentials, physical and mental capacity, and competence in delivering health care services by members of the hospital Medical Staff as part of its evaluation of Medical Staff privileges.

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<sup>1</sup> RCW 4.24.240(2).

<sup>2</sup> RCW 4.24.240(3).

<sup>3</sup> RCW 4.24.250(1).

<sup>4</sup> RCW 70.41.200(1).

<sup>5</sup> RCW 70.41.200(1).

- Periodic review of the credentials, physical and mental capacity, and competence of all persons employed or associated with the hospital.
- A procedure for prompt resolution of patient grievances related to accidents, injuries, treatment, and other events that may result in medical malpractice claims.
- The maintenance and continuous collection of information about the hospital's experience with negative outcomes, incidents injurious to patients including health care-related infections, patient grievances, professional liability premiums, settlements, awards, and costs incurred for patient injury prevention and safety improvement activities.
- The maintenance in physicians' personnel files of relevant and appropriate information gathered concerning individual physicians in the hospital.
- Education programs dealing with quality improvement, patient safety, medication errors, infection control, injury prevention, staff responsibility to report professional misconduct, the legal aspects of patient care, improved patient communications, and causes of malpractice claims.
- Policies to ensure compliance with reporting requirements.

**May physician groups maintain a coordinated quality improvement program (CQIP) which is subject to the same immunities and protection from discovery as hospital-based CQIP's?**

With certain limitations, yes. Physician or other health care provider groups of five or more physicians or providers, health care professional societies or organizations, and health carriers, contractors or HMOs may maintain a coordinated quality improvement program (CQIP) for the improvement of quality of health care services rendered to patients and the identification and prevention of medical malpractice similar to the programs hospitals must maintain.<sup>6</sup> Such programs, as modified to reflect the structural organization of the group, must include the following:<sup>7</sup>

- Establishment of a quality improvement committee with responsibility to review services rendered in the group, both retrospectively and prospectively, to improve quality of patient care and prevent medical malpractice. Such committee should oversee and coordinate the quality improvement and malpractice prevention program and ensure that information gathered is used to review and revise policies and procedures.
- Periodic review of the credentials, physical and mental capacity, and competence of all persons employed or associated with the group.

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<sup>6</sup> RCW 43.70.510(2).

<sup>7</sup> RCW 70.41.200(1).

- A procedure for prompt resolution of patient grievances related to events that may result in medical malpractice claims.
- The maintenance and continuous collection of information about the group's experience with negative outcomes, incidents injurious to patients including health care-related infections, patient grievances, professional liability premiums, settlements, awards, and costs incurred for patient injury prevention and safety improvement activities.
- The maintenance in physicians' personnel files of relevant and appropriate information gathered concerning individual physicians in the group.
- Education programs dealing with quality improvement, patient safety, medication errors, infection control, injury prevention, staff responsibility to report professional misconduct, the legal aspects of patient care, improved patient communications, and causes of malpractice claims.
- Policies to ensure compliance with reporting requirements.

Any such program must be approved by the Department of Health before the immunity and discovery protections will apply.<sup>8</sup> The Department of Health has established eligibility requirements,<sup>9</sup> structural criteria,<sup>10</sup> and the process for approval of a CQIP.<sup>11</sup>

**If such a program is approved by the Department of Health, what immunity protections will apply?**

If the program is approved, any person who, in substantial good faith, provides information, or shares information or documents, to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee shall not be subject to an action for civil damages or other relief as a result of such activity.<sup>12</sup>

**If such a program is approved by the Department of Health, what discovery protections will apply?**

If the program is approved, then, with limited exceptions, information and documents, including complaints and incident reports, created specifically for, and collected, and maintained by the quality improvement committee will not be subject to review or disclosure, discovery, or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil

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<sup>8</sup> RCW 43.70.510(2).

<sup>9</sup> WAC 246-50-005.

<sup>10</sup> WAC 246-50-020.

<sup>11</sup> WAC 246-50-030.

<sup>12</sup> RCW 43.70.510(3).

action as to the content of such proceedings or the documents and information prepared specifically for the committee.<sup>13</sup>

**May the results of a Medicare Peer Review Organization be disclosed?**

Yes, under certain circumstances. Federal law requires that a Medicare Peer Review Organization (PRO) shall inform the individual who has made a complaint regarding a provider for not meeting professionally recognized standards of the organization's final disposition of the complaint.<sup>14</sup> Before that organization concludes that the service in question did not meet professional standards, it must provide the practitioner with reasonable notice and an opportunity to discuss the complaint.<sup>15</sup>

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<sup>13</sup> RCW 43.70.510(4).

<sup>14</sup> 42 U.S.C. § 1320c-3(a)(14), *Public Citizen, Inc. v. HHS*, 332 F.3d 654 (D.C. Cir. 2003).

<sup>15</sup> *Id.*