The Joint Commission Revises Medical Staff Standard 01.01.01 Impacting Medical Staff Bylaws, Leadership & Conflict Resolution

By Sidney S. Welch, J.D., M.P.H., Arnall Golden Gregory, LLP

In recent months, much buzz has been created by the publication and comment period for a new Joint Commission standard involving the Medical Staff. This article will give the background for the standard, a description of the debate, and some information regarding Medical Staff Bylaws changes that may be necessitated over the next 12 to 18 months as a result of the new standard.

The History and Current Status of MS 01.01.01

The Joint Commission (TJC) is a national organization, which accredits health care organizations. As part of the accreditation process, TJC publishes standards, including those for the accredited organizations’ Medical Staff Bylaws. One of those standards — formerly MS 1.20, which is to be replaced by MS 01.01.01, has been in a state of flux for a number of years, having been proposed, withdrawn, revised, published, and “suspended.” Generally, this standard includes provisions relating to medical staff governance, credentialing and privileging, hearing procedures and related matters; the placement of these provisions in the Medical Staff Bylaws, as opposed to separate rules, regulations and policies of the Medical Staff; and the relationship and respective authority and delegation of authority between the organized Medical Staff and the Medical Executive Committee (MEC).

The current form of MS 1.20 first appeared as a standard in 2004. In 2005, TJC began a field engagement of proposed revisions to MS 1.20 following confusion as to the intent of the standard’s requirements. The revised standard was approved in June 2007 by TJC’s Board of Commissioners to be effective January 1, 2009. Due to the uproar caused by the revised standard, in November 2007, TJC suspended implementation of the revised standard and, in December 2007, it created an 18-member Task Force, specifically for the purpose of reaching consensus as to how the Standard should be modified. Task Force members included representatives from the American College of Physicians, the American College of Surgeons, the American Dental Association, the American Hospital Association, the American Medical Association, the Federation of American Hospitals, and the National Association of Medical Staff Services. The Task Force suspended the revised standard in May 2008. At that time, TJC said that it would not consider further action on MS 1.20 until April 2009, at the earliest, and that any changes promulgated in April 2009 would not be effective until at least 2011. In the interim, the standard published in the 2007 JCAHO Manual with the exception of Element of Performance 19 remained in effect. After fifteen months and 12 separate meetings, in March 2009, TJC released a compromise result — MS.01.01.01, which is scheduled to become effective on or around January 1, 2011. This compromise standard was published for field review, which basically opens up the standard for comment — in this case for a very short six week period from December 17, 2009 through January 28, 2010. If the standard is adopted as is following this field review, implementation is expected to follow in 12 to 18 months.

The Debate

This Medical Staff standard has been the subject of considerable discussion and debate over the last few years because it addresses, among other areas, the question of what substantive medical staff governance provisions must appear in the medical staff bylaws versus a Medical Staff policy, procedure, rule, regulation, manual or plan. In the past, provisions previously found in the Medical Staff Bylaws have been moved to ancillary documents, such policies and procedures, rules and regulations, manuals and/or plans because (a) the process to amend the Medical Staff Bylaws is generally more formal, time consuming, and requires approval of the Medical Staff AND the facility; and (b) in many jurisdictions, failure to follow the Medical Staff Bylaws (as opposed to the policies and procedures or rules and regulations) can give rise to a claim for breach of contract or some similar action if the Medical Staff or facility fails to follow the Medical Staff Bylaws. Some professional trade associations, in particular the American Medical Association, expressed concern over this effort to transfer substantive governance provisions into ancillary documents because it weakened the strength of the Medical Staff Bylaws, allowed for unilateral amendment of important substantive governance provisions, and effectively limited the formal voice of the organized medical staff in certain areas. This concern became particularly acute in those situations where members of the MEC may be employed by, under contract with, or otherwise financially beholden to the hospital.

This concern about the independence of the MEC also spawned a standard reflected in the revised June 2007 Joint Commission standard, which gave the organized Medical Staff the authority to remove MEC members, reduce their authority, allow the organized Medical Staff to bypass the MEC altogether and make bylaws recommendations directly to the Board. These proposed changes were introduced at the same
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time that the Joint Commission was implementing new Leadership Standards which effectively gave Medical Staff leaders co-equal authority with the Board and hospital management on issues affecting patient care and safety.

**Impact of MS 01.01.01**

The practical effect of MS.01.01.01 is that many Joint Commission accredited hospitals will have to work with their Medical Staffs to amend the Medical Staff Bylaws in order to be compliant with MS 01.01.01 by January 1, 2012. Although this time period seems like an eternity, changes always take longer than expected, particularly where the Medical Staff and the hospital will have to agree to the changes.

For hospitals and Medical Staffs that have separate fair hearing plans, credentialing manuals, etc., although MS.01.01.01 allows these facilities to maintain such policies, the required processes of such plans will need to be included in the Medical Staff Bylaws. Other changes that may need to be made include the following:

- Providing a process for the following in the Medical Staff Bylaws (versus ancillary documents): selection and removal of Medical Staff officers and MEC members; adoption and amendment of the Medical Staff Bylaws, rules and regulations; automatic and summary suspensions; recommendations for termination or suspension of Medical Staff membership; and fair hearings and appeals.
- Developing a process for the Medical Staff to directly propose changes to the hospital board related to the Medical Staff Bylaws, rules and regulations
- Developing a process for managing (not necessarily resolving) conflict between the Medical Staff and the MEC
- Deciding whether the MEC will be allowed to adopt “urgent” changes to rules or regulations, subject to subsequent review by the Medical Staff
- Deciding how much authority will be vested in the MEC and how that authority can be modified and its members removed.

As these changes are presented and discussed, Medical Staffs should be alert to any other changes that may be proposed, which could impact their rights and responsibilities under the Medical Staff Bylaws.

**Editor’s Note:** The Medical Association of Georgia developed a comprehensive template with the most up-to-date language to protect physician autonomy in hospitals. The template is in accordance with existing state and federal law. Download MAG’s Model Medical Staff Bylaws at: www.mag.org/generalcounsel/model-medical-bylaws.shtml.

Sidney S. Welch, J.D., M.P.H., is a partner at Arnall Golden Gregory, LLP who concentrates on representing physicians and physician groups in all legal aspects of their practices on a national basis. She can be reached at sidney.welch@agg.com.