

Health Care Bulletin



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The Joint Commission Approves Revised Medical Staff Standard MS.01.01.01

In the March 17, 2010 edition of [Joint Commission Online](#), The Joint Commission (TJC) announced that it has approved [revised Medical Staff standard MS.01.01.01](#). **TJC-accredited hospitals (including critical access hospitals) have until March 31, 2011 to be in compliance.**¹

TJC has been working to revise MS.01.01.01, formerly known as MS.1.20, since 2004. Background information regarding the issues surrounding MS.01.01.01 is available in our prior publications: [June 2008 E-Mail Alert](#), [January 2008 E-Mail Alert](#), [October 2007 E-Mail Alert](#), [July 2007 Client Bulletin](#), and our [October 2004 Client Bulletin](#). In light of MS.01.01.01's past, as well as the continued disagreement as to whether this standard should be implemented in its present form, we remain uncertain as to whether the standard will, in fact, become effective as of the current effective date.

According to TJC, the newly approved version of MS.01.01.01 provides the framework for constructing, writing, and implementing medical staff bylaws. The standard describes what must be in medical staff bylaws, what can be in other documents such as policies, and the voting and approval requirements for each. TJC has stated that MS.01.01.01 provides more flexibility for governing bodies and medical staffs; however, this is most likely true only in a situation where a medical staff currently votes on all documents and desires to delegate some of this authority to a medical executive committee. In all other situations, medical staff governing documents will

need to be reviewed to determine whether they are compliant.

If you are having trouble deciding what needs to be relocated, you should keep in mind what we believe to be TJC's underlying premise—the medical staff needs to be involved in its “self-governance,” and this can best be achieved by having the medical staff vote on all substantive and/or material issues. You cannot get in trouble for having the medical staff vote on “too much”; you can get in trouble for having the medical staff vote on “too little.”

Organization of Bylaws and Manuals – Element of Performance #3

MS.01.01.01 identifies certain “requirements” (listed in Elements of Performance (EP) 12 through 36) that must be in the medical staff bylaws.² Where the EP requires a process, the “basic steps” (as determined by the medical staff and approved by the governing body) necessary for the implementation of the requirement must be included in the bylaws. Adoption and amendment of the bylaws (and thus all of the requirements and processes required to be in the bylaws) must be voted upon by the entire medical staff and approved by the governing body. Adoption and amendment of these matters cannot be delegated to the medical executive committee (MEC). The majority of this standard is comparable to existing practice *i.e.*, the medical staff must vote on bylaws. The new aspect is trying to determine what constitutes “basic steps.”

The standard provides that “associated details” related to the requirements may be placed in the bylaws or outside of the bylaws in policies or the rules and regulations.³ Under the revised standard, the medical staff (with the approval of the governing body) determines what constitutes “associated details” related to each EP, where the associated detail will be located, and whether adoption of such detail can be delegated to the MEC (provided the detail is located in a document other than the bylaws). The majority of this standard is comparable to existing practice *i.e.*, the medical staff may delegate certain voting functions to the MEC. The new aspect is trying to determine what constitutes “associated details.”

In addition, TJC has advised that EPs 12 (structure), EP 13 (qualifications), EP 14 (privileging process), EP 15 (categories), and EP 16 (history and physical (H&P) must be in the medical staff bylaws in order to comply with CMS Conditions of Participation. The biggest change with respect to these provisions is the location of H&P requirements which, historically (and, to our knowledge, without objection by CMS) has been in rules and regulations. However, EP 16 now requires that the following be in the bylaws: information on who can perform an H&P, the time frame (*e.g.*, not more than 30 days prior to and within 24 hours after admission); requirements for H&P updates; requirements for H&P outpatient procedures; and any countersignature requirements. The “details,” such as what is included in a history, may be placed in a policy, rule, or regulations.

Suggestions

1. If you only have medical staff bylaws, and if your H&P provisions are in your medical staff bylaws, you do not need to do anything. You are in compliance.
2. Because of the subjective nature of what constitutes a “process” versus a “procedural detail,” we believe that additional concerns and/or directives will be forthcoming from TJC over the next six to nine months which may (or may not) result in additional changes to MS.01.01.01 or its implementation date. Accordingly, you may want to retain your current documents and adopt a “wait and see” attitude. If indications by the fall are that the standard is going forward, you should then proceed (recognizing that it may take several months to make required changes and obtain necessary approvals, prior to the March 31, 2011 deadline).
3. Make certain changes now based upon the premise that it is unlikely that TJC will change

its position and/or because you see value in some of the suggestions. For example:

- a. TJC does not appear to like the term “manual.” You may want to now call these documents “policies” instead.
 - b. We concur that the medical staff should be responsible for deciding the adoption and amendment process of its governing documents; who should be its officers; the composition of its MEC; and the prerogatives and obligations of medical staff categories.
 - c. We concur that the medical staff should have a reasonable process by which to contest actions of the MEC with which the medical staff disagrees and to implement a rule, regulation, or policy with which the MEC disagrees. However, note that the standard does not say an “individual” has the ability to do this; rather, in order for the medical staff to act, there must first be at least a majority vote of the medical staff. Accordingly, discussions should be held with legal counsel as to how this can best be accomplished. [EP #8]
4. If you have bylaws, manuals, policies, procedures, rules, and regulations, review your current documents and move all information believed to constitute “process” into the medical staff bylaws, with such amendment to the bylaws voted upon by the medical staff and approved by the governing body. Limit manuals/policies and rules and regulations to administrative detail only (which may be voted upon by the MEC provided the authority to do so is delegated to it by the medical staff and approved by the governing body). This may be most efficiently accomplished by having the initial critique performed by legal counsel and/or other expert on TJC standards, and the critique then provided to an appropriate medical staff committee for review and recommendation.
 5. Don’t make any changes to your documents. Instead, change the cover page on all your current “manuals” to reflect that the document are now part of the medical staff bylaws (*e.g.*, Bylaws Volume I – General Provisions; Bylaws Volume II – Credentialing; Bylaws Volume III – Organization; Bylaws Volume IV – Fair Hearing, *etc.*). Change the medical staff bylaws article regarding “adoption/amendments” to delete the provision permitting the medical executive

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committee to adopt and/or enact amendments to “manuals.” Have the medical staff and governing body adopt and approve the amended bylaws. Note: This may also require a review of any existing “policies” and “rules and regulations” to determine whether they fall under the purview of MS.01.01.01 and, if so, to include them in this restructuring. If this option is used, the medical staff and governing body will vote on all amendments to the policies and details included in the bylaws in the future. Policies and details that could possibly be delegated to the MEC or other committees would need to remain solely under the authority of the medical staff.

Other Medical Staff Bylaws Issues

The standard also introduces some concepts that you may (or may not) have previously dealt with including:

- **EP #8.** Under this EP the medical staff must have the ability to propose the adoption and amendment of bylaws, rules and regulations, and policies directly to the governing body. Again, keep in mind that this does not mean an individual physician has this ability; rather, action of the medical staff requires at least a majority vote to move forward.
- **EP #9.** Under this EP, the medical staff must notify the MEC when the medical staff proposes to adopt or amend a rule, regulation, or policy directly to the governing body. The MEC also has certain obligations to notify the medical staff when the MEC adopts or proposes to adopt policies, rules or regulations.

- **EP #10.** The medical staff must have a process by which to manage conflict between the medical staff and the MEC, including conflicts related to adoption and amendment of policies, rules or regulations. We do not believe this process needs to be overly complicated; rather, calling a meeting of the MEC and the medical staff to discuss issues of concern and resolution would appear to satisfy this standard.
- **EP #11.** There must be a process by which the MEC (if delegated the authority to adopt amendments to rules and regulations by the medical staff) and governing body may provisionally adopt/approve an urgent amendment to rules and regulations without prior medical staff notification when necessary to comply with law.⁴ The process must include a requirement for retrospective review and comment on the provisional amendment by the medical staff.

This Bulletin is not intended to cover all of the possible interpretations of MS.01.01.01. We strongly encourage you to discuss this matter with your legal counsel to assure that any changes you make (or do not make) are consistent with state law and in the best interest of your hospital while, at the same time, recognizing the importance of abiding by TJC accreditation standards.

This Bulletin was prepared by Catherine Ballard, Kim Parks and Allen Killworth. Please contact any member of the Bricker & Eckler LLP [Health Care Department](#) for more information. This and previous Bulletins may be accessed on our [Publications Webpage](#).

Footnotes

¹Only certain EPs for Standard MS.01.01.01 are applicable to Critical Access Hospitals.

²New requirements for inclusion in the bylaws include: a description of those medical staff members who are eligible to vote; a list of all medical staff officer positions; and, the process for adopting and amending bylaws, policies and rules and regulations.

³MS.01.01.01 does not use the term “manual.” Instead, it uses the terms “policies” and “rules and regulations.”

⁴Note that this EP, as written, appears to limit “urgent amendment” to rules and regulations in cases of documented need necessary to comply with law and regulation.