

## **MEDICAL SOCIETY OF VIRGINIA QUALITY ASSURANCE, QUALITY OF CARE, AND PEER REVIEW GUIDELINES**

The General Assembly of Virginia amended and reenacted § 8.01-581.17 of the Code of Virginia during the 2004 session based on the passage of Senate Bill 385, which was introduced at the request of the Medical Society of Virginia. The primary purpose of this enactment was to expand the scope of privileged communications from the traditional hospital-based peer review committees to non-hospital based quality assurance or peer review committees. This action was taken in order to encourage quality patient care.

Pursuant to this legislative enactment, the Board of Directors of the Medical Society of Virginia adopted and promulgated the following guidelines and accompanying templates. The guidelines apply to quality assurance, quality of care, or peer review committees established by any (A) entity that is owned, in whole or in part, by physicians through whom professional medical services are provided, (B) entity, or an affiliated group of entities, that employs or contracts with physicians for the provision of professional medical services, or any affiliate of such an entity(ies), or (C) physician hospital organization, independent practice association, management service organization, preferred provider organization, health maintenance organization, accountable care organization, clinically integrated network or similar organization that, on an ongoing basis, monitors and evaluates the performance of the physicians participating within such organization, association or network in order to promote quality patient care. For purposes of these guidelines, the entities, associations, organizations and networks described in (A), (B) and (C) of the previous sentence are referred to individually as an "Organization" and together as "Organizations". The guidelines set forth below are intended for use by Organizations (i) when an issue involving quality of care occurs during the provision of health care to a patient, or (ii) as part of routinely conducted quality review and/or peer review of healthcare delivered to patients.

In the 2011 Session of the Virginia General Assembly, significant changes were made to the quality and peer review statute. The changes clarify that medical records and factual statements about an incident (incident report) are discoverable and are not privileged. All remaining documents provided to or originating in the quality or peer review process are privileged and not discoverable. For example, a root cause analysis, an expert witness report, and reports of interviews by risk managers will be privileged and not discoverable. The 2011 statutory changes compliment a peer review process established by adopting a program consistent with these guidelines.

### **I. LEGISLATIVE OVERVIEW OF § 8.01-581.17**

1. **Guidelines**: Quality assurance, quality of care, or peer review committees ("Confidential Committees") are entitled to limited confidentiality by means of a statutory privilege granted in Virginia Code § 8.01-581.17(iii). The proceedings, minutes, records, and reports of a Confidential Committee, together with all communications, both oral and written, originating in or provided to such committee, will be considered privileged, if the Confidential Committee has been established pursuant to guidelines approved by:
  - i. a national or state peer review entity;

- ii. a national or state physician accreditation entity;
- iii. a national professional association of healthcare providers or Virginia chapter of a national professional association of healthcare providers;
- iv. a MCHIP (managed care health insurance plan) licensee;
- v. the Office of Emergency Medical Services or any regional emergency medical services council; or
- vi. a local or statewide association representing healthcare providers in Virginia.

Healthcare providers and organization may elect to use the guidelines of any entity, organization, or association that satisfies the above criteria to establish a quality assurance, quality of care or peer review committee.

2. **Privileged Communications:** Despite the general statutory protection described above, oral communications to a non-hospital based Confidential Committee, made within the first 24 hours of the medical incident will **NOT** be protected. Physicians and their staff who wish to initiate quality or peer review of a specific issue involving quality of care should instead submit a written quality assurance and peer review report. The templates attached as Exhibit A may be used with regards to a specific medical issue involving quality of care. These templates may also be utilized by physicians periodically to analyze and assure the quality of patient care within their respective facilities.

Note: All oral communications to a hospital based quality assurance or peer review committee are privileged at all times and the 24 hour rule does not apply to hospital based peer review.

3. **Discoverability:** Privileged communications described above may not be disclosed or obtained by legal discovery proceedings unless a circuit court rules otherwise based upon a showing of good cause and for extraordinary circumstances.
4. **Medical Records:** Physicians should be aware that § 8.01-581.17 does not provide any protection to medical records maintained within the ordinary course of hospitalization of a patient or in a physician practice.
5. **Incident Reports:** Factual information regarding healthcare delivered to a specific patient, whether in oral, written, or electronic form, is discoverable. This would include such information contained in incident reports, regardless of how the report may be named or titled.

## II. **PEER REVIEW GUIDELINES**

- **Adoption:** Physicians, together with their Organizations, are encouraged to create a Confidential Committee and to adopt and implement a written quality assurance, quality of care and peer review process in accordance with the guidelines adopted by the Board of Directors of the Medical Society of Virginia. Physicians should print this page from our Web site and execute the same.

CREATION OF COMMITTEE AND ADOPTION OF  
QUALITY ASSURANCE, QUALITY OF CARE AND  
PEER REVIEW GUIDELINES

I/We \_\_\_\_\_, hereby establish a quality assurance, quality of care, and/or peer review committee. I/We also adopt the quality assurance, quality of care and peer review guidelines set forth by the Medical Society of Virginia pursuant to Virginia Code § 8.01-581.17.

Signature \_\_\_\_\_ Date of Adoption \_\_\_\_\_

- **Scope of Review:** The Confidential Committee should perform the following functions for each calendar year: i) a review of selected patient charts or coded billing and/or quality data for each physician, with a sample size reasonably determined by the Committee, and ii) a review of the quality of healthcare delivered to patients. The scope of each potential review is discussed below.
- **Ongoing Reviews:** At least annually, a qualified reviewer should undertake the review and evaluation of selected patient charts. In the alternative or in addition, the Confidential Committee may, on a periodic basis, but no less than annually, undertake the review of coded billing and/or quality data (“Electronic Data”). Prior to a chart or Electronic Data being submitted for ongoing review, efforts should be made to redact patient identifying information and comply with HIPAA. Ongoing reviews should focus on quality and patient safety issues including, but not limited to, trends, complications, morbidity, mortality, and utilization. For patient chart reviews, efforts should be made to select a reviewer who is qualified as described below. The qualified reviewer or Committee, as applicable, should submit an evaluation form outlining the review findings. Ongoing reviews may include gathering data and information from any source in furtherance of review.
- **Focused Reviews:** The performance of annual “ongoing reviews” does not preclude the use of focused or targeted reviews intended for a specific clinical and quality improvement purpose. These more purposeful reviews could include the review of patient charts within a certain disease or procedural category and a comparison of documented treatment to then-current benchmark standards. Reviews could also be focused on assessing the efficacy and efficiency of a newly adopted office procedure or clinical care process. In addition, the analysis of and results from quality assurance peer review reports may prompt the need for focused review of office and clinical practices.
- **Quality Assurance/Peer Reviews:** In the event an issue arises relating to the quality of healthcare provided to a patient, the Confidential Committee may gather data, investigate, conduct analysis, coordinate all responses, and/or recommend and initiate corrective action as necessary. As defined in *Making Health Care Safer: A Critical Analysis of Patient Safety Practices* (Agency for Healthcare Research and Quality Publication No. 01-E058, 2001), quality of care reporting involves the identification of preventable events (i.e., occurrences that could have led, or did lead,

to an undesirable outcome) that are reported by personnel directly involved in the event. Quality assurance peer review reports may target events in any or all of three basic categories: “adverse events,” “near misses,” and “no harm events.” Specifically, adverse events are situations that have resulted in adverse outcomes; a near miss is an error that does not result in an adverse event for a patient because the error was caught; and a no harm event is when the absence of injury due to an error is due solely to chance. The indexing of these events into categories does not imply that one category is more (or less) critical than another. Instead, it is a means by which staff can organize events for reporting and a method by which Confidential Committees can categorize recommendations for process and quality improvements.

- ii. Quality Assurance/Peer Review Reports: The *Quality Assurance Peer Review Report Form*, attached hereto as Exhibit A, is a vehicle designed to report a quality assurance or peer review issue to the Confidential Committee. Whether this form or a modified form is used, Organization professional, administrative and support staff should be educated on the appropriate documentation and reporting of events. In addition, Organization staff should routinely receive education on the importance of quality assurance and peer review policies and procedures.
  - iii. While reports to the Confidential Committee are intended to be and remain privileged and confidential, factual information contained in any report may be sought and argued to be discoverable. Consequently, it is a recommended best practice that the analysis, opinions, and recommendations of the Confidential Committee be documented separate and apart from the factual reports connected to such an event.
- **Qualified Reviewers**: A qualified reviewer for ongoing reviews, focused reviews or quality assurance/peer reviews includes any of the following:
  - ii. A physician who is a member of the Organization and who, in the opinion of the Confidential Committee, is capable of objectively evaluating the quality of care provided and/or the conduct of the physician being reviewed.
  - iii. A physician who is not a member of the Organization of the physician being reviewed and who is deemed by the Confidential Committee to have expertise relevant to the review.
  - iv. A reviewer recommended by the Medical Society of Virginia; or
  - v. a reviewer recommended by a national, state, or local professional organization or association comprised of healthcare providers. Experienced and licensed nurse reviewers (i.e., RN, NP, CRNA) constitute qualified reviewers when working under appropriate medical direction.
- **Quality Assurance Data Reviews**: In addition to ongoing reviews, focused reviews and quality assurance/peer reviews, the Confidential Committee may conduct Quality Assurance Data Reviews, at a frequency deemed necessary by the Confidential Committee. Quality Assurance Data Reviews may focus on quality and patient

safety trends as evidenced in aggregated coded billing data and/or other quality data.

- **Patient Confidentiality:** Safeguards should be established to ensure the Confidential Committee's processes comply with state and federal laws on patient confidentiality. Organizations using an external review organization or individual external reviewer should execute a business associate agreement that complies with HIPAA.
- **Evaluation & Feedback:** Quality assurance, quality of care and peer review evaluations should be based on factors determine to be appropriate by the Organization's medical leadership and/or the Confidential Committee such as appropriateness of care, medical necessity, adequacy of documentation, and efficiency of services. Furthermore, since Confidential Committees are designed to assist with educating physicians, reviewers should promptly notify the persons being reviewed of their findings and other healthcare providers. Attached as Exhibit B is an evaluation form that may be used to document the Committee's analysis and help educate providers.

Furthermore, it is important that the Quality Assurance/Quality Improvement loop is appropriately closed. This requires the Committee: i) documenting and recording any changes that have been made as the result of a review; ii) documenting revisions made to policies, procedures, or clinical processes; iii) assigning responsibility for implementing these changes; and iv) following up to ensure that assigned tasks have been accomplished.

- **Recordkeeping Requirements:** All records relating to a Confidential Committee, including reports, evaluations and feedback, must be maintained in a confidential location and separate from the patient record at all times. Such records can be stored in electronic format or by printed copy. Quality assurance/peer review reports and forms may be destroyed after being retained for a minimum of one year.
- **Modifications:** The guidelines for Confidential Committees may be expanded by physicians to allow the physicians to best meet the goal of improving the quality of healthcare services provided to patients. Such expansions are deemed ratified as part of these guidelines.
- **Resources:** The Medical Society of Virginia is committed to improving quality of care and patient safety and welcomes requests for assistance or information. Such requests can be forwarded to the Director of Health Policy for the Medical Society of Virginia at (804) 377-1029.

Date received by  
Confidential Committee:  
/ /

**Exhibit A**

QUALITY ASSURANCE/PEER REVIEW REPORT FORM  
VIRGINIA CODE § 8.01-581.17  
CONFIDENTIAL

Name of healthcare provider(s) involved \_\_\_\_\_  
Person submitting report \_\_\_\_\_

- Personnel Record
- Patient Medical Record
- Patient Complaint
- Other: \_\_\_\_\_

Is there a protocol or policy in place relevant to the quality of care event?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Was the applicable protocol or policy followed? If not, what aspect of the protocol or policy was not followed?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Was there direct harm to the patient or other individual(s) involved in the quality of care/peer review event? If so, please describe.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If no harm resulted from the event, was there the potential for harm to the patient or other individual(s) involved in the quality of care/peer review event?

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Who was notified of or witnessed the quality of care/peer review event?

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To your knowledge, has there been a previous quality of care event similar to the event currently being reviewed? If so, please describe.

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How preventable was the quality of care event?

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What factors contributed to the event?

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Signature \_\_\_\_\_

Date \_\_\_\_\_

**Exhibit B**

QUALITY ASSURANCE AND PEER REVIEW EVALUATION  
VIRGINIA CODE § 8.01-581.17  
PRIVILEGED AND CONFIDENTIAL

Name of Provider \_\_\_\_\_ Anonymous Patient ID \_\_\_\_\_

	Non-Compliant	Needs Improvement	Compliant
1. Accuracy of Diagnosis	1	2	3
2. Appropriateness of Care	1	2	3
3. Medical Necessity	1	2	3
4. Effectiveness of Care	1	3	3
5. Appropriate Documentation	1	2	3

Reviewer Comments:

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Printed Name of Reviewer \_\_\_\_\_ Date \_\_\_\_\_

Signature \_\_\_\_\_

Date of Feedback from Confidential Committee to Provider: \_\_\_\_\_