

# ***The Impact of Accountable Care Organizations (ACOs) on Credentialing and Privileging***

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## What is an ACO?

- An organization of healthcare providers that agrees to be accountable for the quality, cost, and overall care of Medicare beneficiaries who are enrolled in the traditional fee-for-service program who are assigned to it.
- For ACO purposes, “assigned” means those beneficiaries for whom the professionals in the ACO provide the bulk of primary care services. Assignment will be invisible to the beneficiary, and will not affect their guaranteed benefits or choice of doctor. A beneficiary may continue to seek services from the physicians and other providers of their choice, whether or not the physician or provider is a part of an ACO.

## **What forms of organization may become an ACO?**

- Physicians and other professionals in group practices
- Physicians and other professionals in networks of practices
- Partnerships or joint venture arrangements between hospitals and physicians/professionals
- Hospitals employing physicians/professionals
- Other forms that the Secretary of Health and Human Services may determine appropriate

## ACO requirements

- Have a formal legal structure to receive and distribute shared savings
- Have a sufficient number of primary care professionals for the number of assigned beneficiaries (to be 5,000 at a minimum)
- Agree to participate in the program for not less than a 3-year period
- Have sufficient information regarding participating ACO healthcare professionals as the Secretary determines necessary to support beneficiary assignment and for the determination of payments for shared savings

## ACO requirements

- Have a leadership and management structure that includes clinical and administrative systems
- Have defined processes to:
  - Promote evidenced-based medicine
  - Report the necessary data to evaluate quality and cost measures; this could incorporate requirements of other programs, such as the Physician Quality Reporting Initiative (PQRI), Electronic Prescribing (eRx), and Electronic Health Records (EHR)
  - Coordinate care
- Demonstrate it meets patient-centeredness criteria, as determined by the Secretary

## How will ACOs qualify for shared savings?

- Calculated on performance over a 12-month period
- Receive a share of savings of per capita expenditures below a benchmark target
- Benchmark based on most recent three-year per-beneficiary expenditures for Parts A and B
- Benchmarks adjusted for beneficiary characteristics and updated by the projected absolute amount of growth in national per capita expenditures for Parts A and B

# What are the quality performance standards?

- Not yet determined
- To be promulgated with the program's regulations
- Will include measures in:
  - Clinical processes
  - Outcomes of care
  - Patient experience
  - Utilization of services

## Value-Based Purchasing Program

- On January 13, 2011, the Centers for Medicare and Medicaid Services (CMS) issued a proposed rule to implement a Hospital Value-Based Purchasing Program (VBP Program) as required by section 3001(a) of the Patient Protection and Affordable Care Act (ACA).
- Under the VBP Program, CMS would pay not just for reporting quality data but for a hospital's performance with respect to the data.
- Under the VBP Program, beginning in FY 2013, CMS will pay acute care inpatient prospective payment system (IPPS) hospitals value-based incentive payments for meeting minimum performance standards for certain quality measures with respect to a performance period designated for each fiscal year.



## **Value-Based Purchasing Program – A Broad Overview (cont'd)**

- Excludes from the definition of “hospital,” with respect to a particular fiscal year:
  - a hospital that is subject to certain payment reductions related to the Hospital Inpatient Quality Reporting or IQR program;
  - a hospital cited for deficiencies characterized as posing “immediate jeopardy” to the health and safety of patients; and
  - A hospital not having a minimum number of applicable performance measures or cases for such applicable measures for the performance period in a given fiscal year.

## Proposed VBP Program Measures

- For the FY 20130 Hospital VBP Program, CMS proposes to use 17 clinical process-of-care measures as well as eight measures from the Hospital Consumer Assessment of Healthcare Providers and Systems, (HCAHPS) survey that document patients' experience of care.

## Clinical Process of Care Measures

- Acute myocardial infarction
- Heart Failure
- Pneumonia
- Healthcare-associated infections
- Surgeries

## Survey Measures

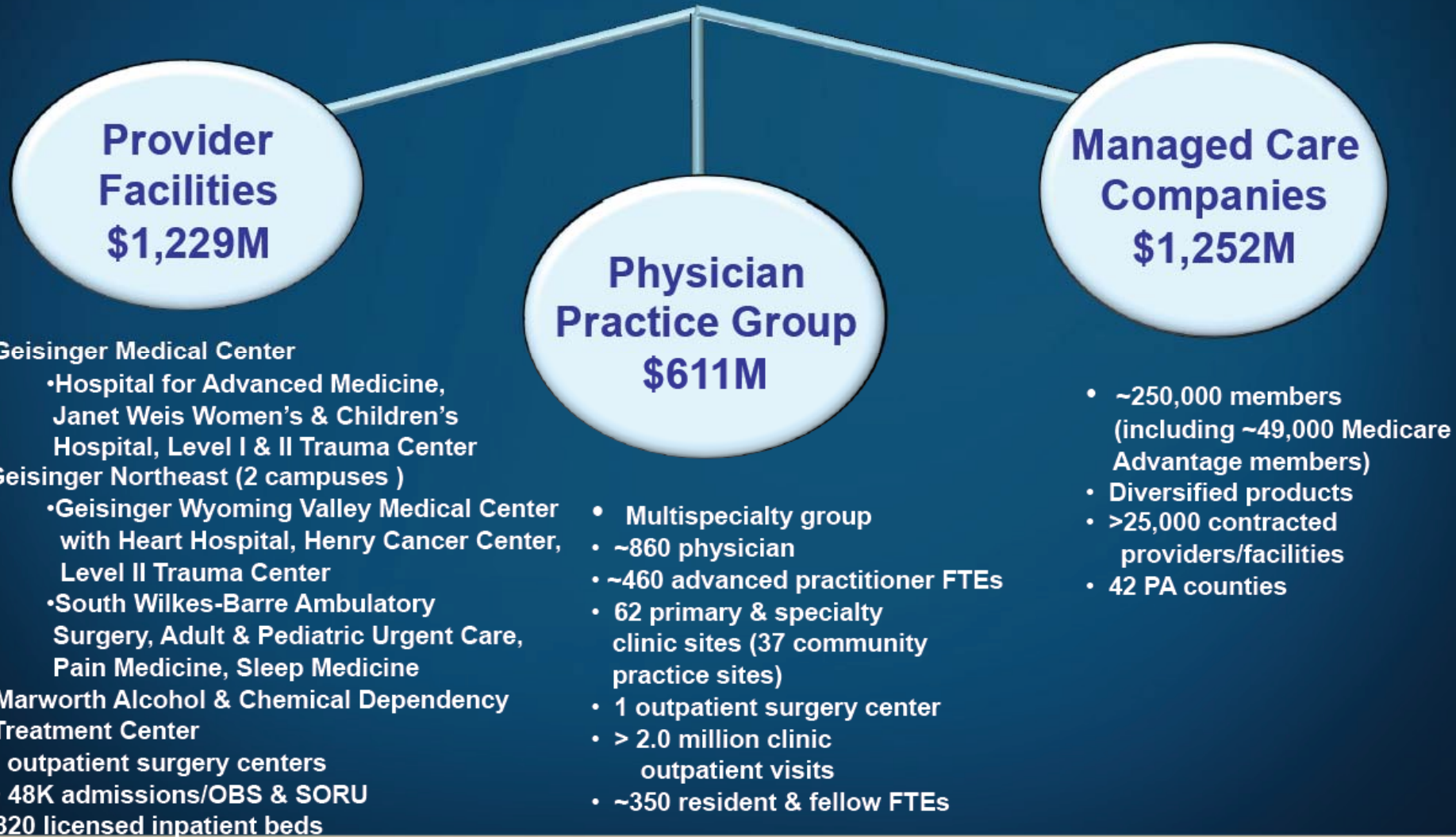
- Communication with Nurses
- Communication with Doctors
- Responsiveness of Hospital Staff
- Pain Management
- Communication About Medicines
- Cleanliness and Quietness of Hospital Environment
- Discharge Information
- Overall Rating of Hospital

## Other Criteria to be Considered

- Eight Hospital Acquired Condition Measures
- Nine-AHRQ Patient Safety Indicators (PSIs), Inpatient Quality Indicators (IQIs), and Composite Measures

# Geisinger Health System

An Integrated Health Service Organization

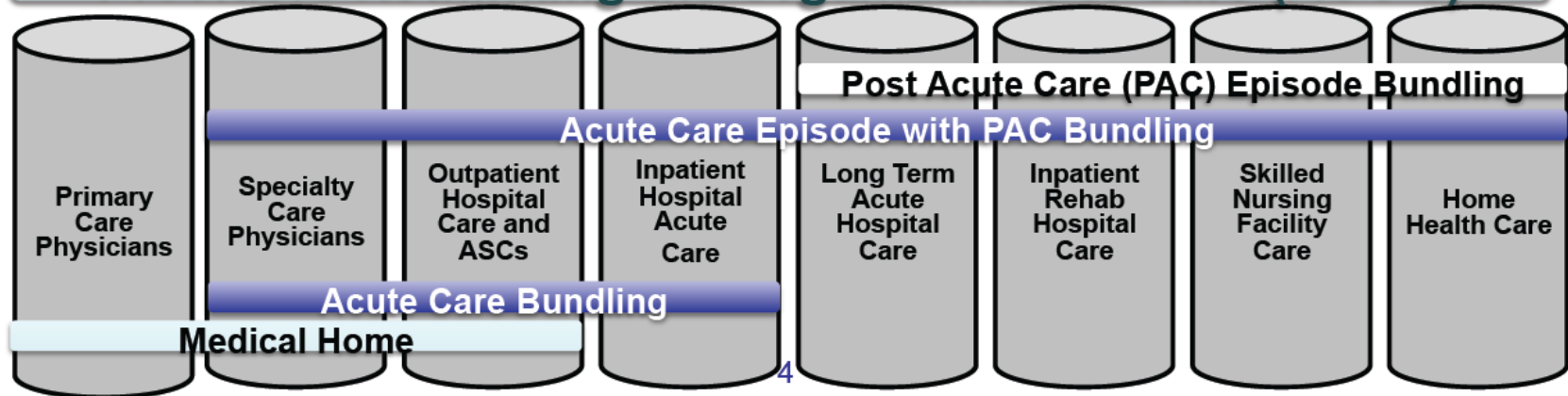


PARTICIPANTS

	2010	2019
Non-Elderly/Elderly Population	267M + 41M = 308M	282M + 52M = 339M
Medicare	13%	15%
Medicaid/CHIP	13%	15%
Employer	49%	47%
Non-Group/Other	9%	7%
Exchange	0	7%
Uninsured	16%	6%

## Health Insurance Companies

### Providers Rethinking the Organization of Care (ACO's)



Total Health/  
Primary Care

Physician  
Leadership

Culture and  
Mission

Aligned  
Incentives

**Teams/  
Coordination**

Information  
Technology

Clinical  
Guidelines

- Focus on primary care and total health
- Physician leadership
- Aligned culture and mission
- Aligned incentives
- Integration, care coordination, and population management
- Integrated information technology, performance improvement, and reporting
- Clinical guidelines and evidence-based medicine



Total Health/  
Primary Care

Culture and  
Mission

Teams/  
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Guidelines

## Coordination among:

- Nursing team
- Cardiac rehabilitation program
- Pharmacy team

**Patients enrolled in CCCS experienced a reduced incidence of all-cause mortality by 89% and cardiac-related mortality by 88%.**

**Estimated that 280 emergency interventions are prevented annually.**

Total Health/  
Primary Care

Culture and  
Mission

Teams/  
Coordination

Information  
Technology

- **Comprehensive outreach campaign to reach and screen all women meeting HEDIS age criteria for mammograms not screened in last 18 months**
- **Key Features:**
  - Information
  - Monitoring
  - Outreach
- **Impact:**
  - **2008: KP Southern CA ranked #1 nationally in breast cancer screening by NCQA**
  - **All KP Regions at or near 90th percentile**
  - **Time between screening result and diagnosis decreased from 19 to 9 days**

Physician  
Leadership

Culture and  
Mission

Aligned  
Incentives

Information  
Technology

Clinical  
Guidelines

- **Healthy Bones – Identification, Screening, Treatment for Osteoporosis**
  - **37% reduction in rate of hip fractures, including a 60% reduction in the best-performing medical center.**
  - **If widely adopted across US with 25% reduction in the rate of hip fractures nationally, would prevent 75,000 hip fractures in the US per year.**
  - **Required data to identify and stratify members at risk; Care Manager to provide “just in time” osteoporosis evaluation; access to diagnostic technology; outreach/in-reach system; performance reporting.**

# The next horizon - accountable care organizations



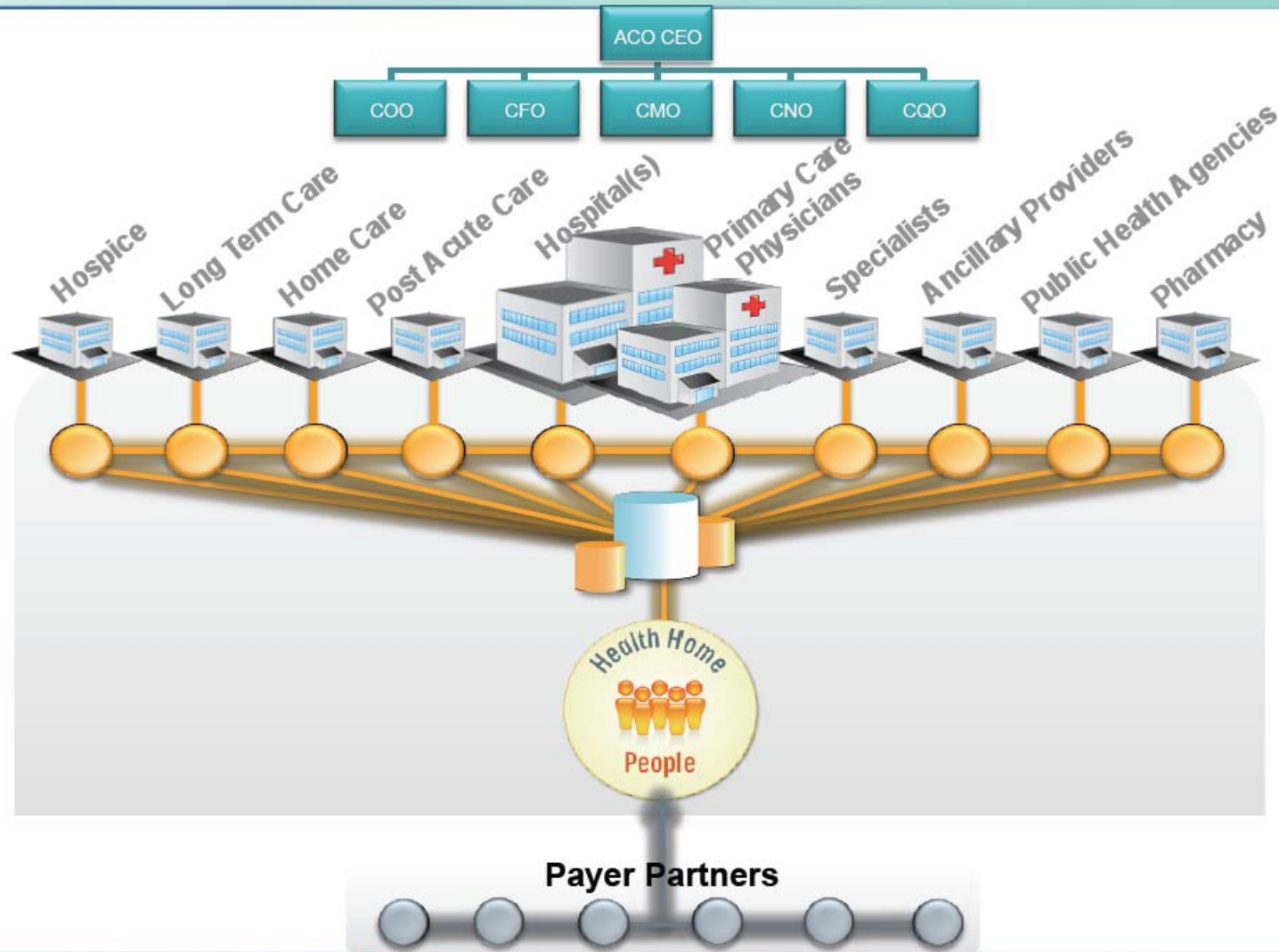
Payer Partners:

- ▶ Insurers
- ▶ CMS
- ▶ Employers

## ....And legal barriers must be overcome

- In initial contracting, CMS should:
  - Give preference to ACOs already working with providers who can share data, initiate quality improvement and demonstrate patient-centeredness
  - Recognize many different ACO structural models
  - Recognize PAs, nurse practitioners, etc as eligible for bonuses
  - Educate the public, and notify them when they have been assigned to ACOs
  - Allow ACOs to contact people to increase engagement and improve care
  - Allow more than one ACO in an area
  - Leverage existing measures and transparently disclose them from the outset
  - Commit to share data across Parts A, B and D with ACOs in a timely manner
  - Allow multiple payment models (FFS +bonus, global payment, capitation,etc.)
  - Provide a safe harbor from anti-trust, Stark and CMP laws for all CMS ACOs

# Complete view of an operational ACO



## So, Now What?

- These new quality utilization and outcome standards and metrics will be incorporated into provider performance profiles.
  - Already looking at ALOS, cost per patient visit, number and kinds of meds ordered and consultants used.
- Providers are creating performance profiles that will be evaluated at time of appointment/reappointment and/or participation in an ACO.

## So, Now What? (Cont'd)

- Bylaws, rules, regs and policies need to address how these standards are to be incorporated and utilized with the hospital/practice group/ACO.
- What impact on membership:
  - Current focus is in on adverse quality
  - Is poor performance under new standards and metrics the same as poor quality?



## So, Now What? (Cont'd)

- Should adverse results, after attempts to remediate, lead to reduction or termination of privileges/membership in provider group, hospital and/or ACO?
- Same or different hearing procedures?
- Reportable to Data Bank or State?
- Is this economic credentialing?

# ***Protection of Peer Review Information***

## Steps to Maximize Confidentiality Protection Under Peer Review Statute

- The relevant provisions of the Medical Studies Act are as follows:
  - All information, interviews, reports, statements, memoranda, recommendations, letters of reference or other third party confidential assessments of a health care practitioner's professional competence, or other data of health maintenance organizations, medical organizations under contract with health maintenance organizations or with insurance or other health care delivery entities or facilities, physician-owned insurance companies and their agents, committees of ambulatory surgical treatment centers or post-surgical recovery centers or their medical staffs, or committees of licensed or accredited hospitals or their medical staffs, including Patient Care Audit Committees, Medical Care Evaluation Committees, Utilization Review Committees, Credential Committees and Executive Committees, or their designees (but not the medical records pertaining to the patient), used in the course of internal quality control or of medical study for the purpose or reducing morbidity or mortality, or for improving patient care or increasing organ and tissue donation, shall be privileged, strictly confidential and shall be used only for medical research, the evaluation and improvement of quality care, or granting, limiting or revoking staff privileges or agreements for services, except that in any health maintenance organization proceeding to decide upon a physician's services or any hospital or ambulatory surgical treatment center proceeding to decide upon a physician's staff privileges, or in any judicial review of either, the claim of confidentiality shall not be invoked to deny such physician access to or use of data upon which such a decision was based. (Source: P.A. 92-644, eff. 1-1-03.)
  - Such information, records, reports, statements, notes, memoranda, or other data, shall not be admissible as evidence, nor discoverable in any action of any kind in any court or before any tribunal, board, agency or person. The disclosure of any such information or data, whether proper, or improper, shall not waive or have any effect upon its confidentiality, nondiscoverability, or nonadmissibility

## **Steps to Maximize Confidentiality Protection Under Peer Review Statute (cont'd)**

- It is important for all medical staff leaders and the hospital to know the language and interpretation of your peer review statute
- As a general rule, courts do not like confidentiality statutes which effectively deny access to information
- Although appellate courts uphold this privilege, trial courts especially look for ways to potentially limit its application and will strictly interpret the statute

## **Steps to Maximize Confidentiality Protection Under Peer Review Statute (cont'd)**

- The courts have criticized attorneys for simply asserting the confidentiality protections under the Act without attempting to educate the court about what confidentiality and peer review is or explaining why the information in question should be treated as confidential under the act
- One effective means of improving the hospital and medical staffs odds is to adopt a medical staff bylaw provision or policy which defines “peer review” and “peer review committee” in an expansive manner while still consistent with the language of the Act. Examples are set forth below:

## Peer Review:

- “Peer Review” refers to any and all activities and conduct which involve efforts to reduce morbidity and mortality, improve patient care or engage in professional discipline. These activities and conduct include, but are not limited to: the evaluation of medical care, the making of recommendations in credentiality and delineation of privileges for Physicians, LIPs or AHPs seeking or holding such Clinical Privileges at a Medical Center facility, addressing the quality of care provided to patients, the evaluation of appointment and reappointment provided to patients, the evaluation of appointment and reappointment applications and qualifications of Physicians, LIPs or AHPs, the evaluations of complaints, incidents and other similar communications filed against members of the Medical Staff and others granted clinical Privileges. They also include the receipt, review, analysis, acting on and issuance of incident reports, quality and utilization review functions, and other functions and activities related thereto or referenced or described in any Peer Review policy, as may be performed by the Medical Staff or the Governing Board directly or on their behalf and by those assisting the Medical Staff and Board in its Peer Review activities and conduct including, without limitation, employees, designees, representatives, agents, attorneys, consultants, investigators, experts, assistants, clerks, staff and any other person or organization who assist in performing Peer review functions, conduct or activities

## Peer Review (Cont'd)

- “Peer Review Committee” means a Committee, Section, Division, Department of the Medical Staff or the Governing Board as well as the Medical Staff and the Governing Board as a whole that participates in any Peer Review function, conduct or activity as defined in these Bylaws. Included are those serving as members of the Peer Review committee or their employees, designees, representatives, agents, attorneys, consultants, investigators, experts, assistants, clerks, staff and any other person or organization, whether internal or external, who assist the Peer Review Committee in performing its Peer Review functions, conduct or activities. All reports, studies, analyses, recommendations, and other similar communications which are authorized, requested or reviewed by a Peer Review Committee or persons acting on behalf of a Peer Review Committee shall be treated as strictly confidential and not subject to discovery nor admissible as evidence consistent with those protections afforded under the Medical Studies Act. If a Peer Review Committee deems appropriate, it may seek assistance from other Peer Review Committees or other committees or individuals inside or outside the Medical Center. As an example, a Peer review Committee shall include, without limitation: the MEC, all clinical Departments and Divisions, the Credentials Committee, the Performance Improvement/Risk Management Committee, Infection Control Committee, the Physician’s Assistance Committee, the Governing Board and all other Committees when performing Peer Review functions, conduct or activities

## Peer Review (Cont'd)

- Another concept to keep in mind is that Appellate Courts have held that information which is normally generated within the hospital or medical staff which is not clearly treated as a “peer review document” cannot be kept confidential by simply submitting it to a Peer Review Committee for review and action. Therefore, the hospital and medical staff should consider identifying those kinds of reports, such as incident reports, quality assurance reports, etc., as being requested by or authorized by a qualified Peer Review Committee
- Unilateral vs. committee action should be avoided
- Self-serving language such as “privileged and confidential under the Act: document cannot be admissible or subject to discovery” should be placed at the top or bottom of Peer Review materials



## Peer Review (Cont'd)

- If there is a challenge as to whether the Act applies to Peer Review documents, hospital and medical staff should prepare appropriate affidavits, or other testimonials which effectively educate the court as to why these materials should be considered confidential and therefore, protected under the Act
- If a physician or plaintiff cannot admit Peer Review Information into evidence, it can effectively foreclose one or more causes of action because the physician will not be able to introduce proof to substantiate the claim, i.e., an alleged defamatory statement made during a Peer Review proceeding

## **Additional Steps to Ensure that Data Collected and Reports Prepared are Treated as Confidential**

- Goal is to maximize efforts to keep performance monitoring, quality and utilization data and reports and peer review records as privileged and confidential from discovery in litigation proceedings
- Need to identify the following:

## **Additional Steps to Ensure that Data Collected and Reports Prepared are Treated as Confidential** (cont'd)

- List all relevant reports, studies, forms, reports, analyses, etc., which are utilized by the hospital and medical staff
  - Profiling data and reports
  - Comparative data
  - Utilization studies
  - Outcomes standards and comparisons by physicians
  - Incident reports
  - Quality assurance reports
  - Performance improvement reports

## **Additional Steps to Ensure that Data Collected and Reports Prepared are Treated as Confidential** (cont'd)

- Patient complaints
- Cost per patient visit, ALOS, number of refunds and consultants used, etc.
- Identify which reports and info, if discoverable, could lead to hospital/physician liability for professional malpractice/corporate negligence
- Identify all applicable state and federal confidentiality statutes and relevant case law
  - Peer review confidentiality statute
  - Physician-patient confidentiality
  - Medical Records

## **Additional Steps to Ensure that Data Collected and Reports Prepared are Treated as Confidential** (cont'd)

- Attorney-client communications
  - Business records
  - Records, reports prepared in anticipation of litigation
  - HIPAA
  - Drug, alcohol, mental health statutes
- Identify scope of protections afforded by these statutes, and steps needed to maintain confidentiality, to list of reports to determine what are and are not practiced
  - Can steps be taken to improve or maximize protection?

## **Additional Steps to Ensure that Data Collected and Reports Prepared are Treated as Confidential** (cont'd)

- What documents are left and how sensitive is the information in the reports?
- If sensitive information remains, can it be moved to or consolidated with a confidential report?
- Can information be de-identified or aggregated while not minimizing its effectiveness?
- Adopt self-serving policies, bylaws, etc, which identify these materials as confidential documents — need to be realistic. A document is not confidential because you say it is. See attached definitions of “Peer Review” and “Peer Review Committee”

## **Additional Steps to Ensure that Data Collected and Reports Prepared are Treated as Confidential** (cont'd)

- Need to consult with your legal counsel before finalizing your plan
- Plan needs to be updated as forms and law changes
- Consider participation in a Patient Safety Organization

## Golden Rules of Peer Review

- Physicians need to be able to say “I made a mistake” without fear of retribution or disciplinary action.
- Everyone deserves a second or third chance.
- Medical staffs and hospitals should strive to create an intra-professional versus adversarial environment.
- Steps should be taken to de-legalize process.
- Develop alternative remedial options and use them.
- Comply with bylaws, rules and regulations and quality improvement policies.



## Golden Rules of Peer Review (cont'd)

- Apply standards uniformly.
- Take steps to maximize confidentiality and immunity protections.
- Know what actions do and do not trigger a Data Bank report and use this knowledge effectively.
- Be fair and reasonable while keeping in mind the requirement to protect patient care.
- Determine whether physician may be impaired.