



## What does it mean for physician practices?



*Iowa's peer review law provides legal protections for health care entities, including group medical practices, that conduct peer review through a peer review committee.<sup>1</sup> Many physician practices and clinics, however, don't appreciate the benefits of instituting peer review within their organizations.*

## Frequently Asked Questions

### WHY IS PEER REVIEW IMPORTANT?

Peer review is ultimately a way to protect patients and improve the quality of patient care. Under Iowa's peer review law, "peer review" means the evaluation of professional services rendered by a person licensed to practice a profession.<sup>2</sup> This includes physicians, podiatrists, physician assistants, nurses, physical therapists, and other licensed health care professionals.<sup>3</sup>

A health care entity is authorized under Iowa statutes to create its own peer review committee. A "peer review committee" means one or more people acting in a peer review capacity who also serve as an officer, director, agent, or member of a health care entity, including a group medical practice, that provides health care services and follows a formal peer review process for the purpose of furthering quality health care.<sup>4</sup>

Having a formal peer review policy and procedure in place provides legal protections for peer review records. "Peer review records" include "all complaint files, investigation files, reports, and other investigative information relating to licensee discipline or professional competence in the possession of a peer review committee or an employee of a peer review committee." Peer review records, with

limited exceptions, are privileged and confidential, and are not subject to discovery, subpoena, or other means of legal compulsion for release to a person other than an affected licensee or a peer review committee. Information discoverable from sources other than the peer review committee are not protected under the peer review privilege merely because they are made available to or are in the possession of a peer review committee, e.g., a patient's medical records.<sup>5</sup>

While most of us are familiar with peer review in the hospital setting, other health care entities, including a physician practice or clinic, can conduct peer review under the law. But many practices don't take advantage of the legal protections under the peer review law. When practices are asked if they discuss cases regularly, have morbidity and mortality conferences, receive patient complaints, or have experience with a physician who may be impaired, often the answer is yes. But when asked whether a practice has a formal peer review process with policies in place to address these activities, often the answer is no.

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<sup>1</sup> Iowa Code § 147.1(5)(f).

<sup>4</sup> Iowa Code § 147.1(5)(f).

<sup>2</sup> Iowa Code § 147.1(4).

<sup>5</sup> Iowa Code § 147.135(2).

<sup>3</sup> Iowa Code § 147.1(6).

# Iowa's Peer Review Law

PEER REVIEW FAQs (FROM PAGE 1)

Without the legal protections afforded by having these policies and procedures in place, conversations, emails, and text messages about a patient's care, a patient complaint, or a provider's professional conduct are not protected under the peer review privilege. They may need to be disclosed in a subsequent lawsuit involving a patient's care.

## WHAT DOES PEER REVIEW INVOLVE?

To conduct peer review pursuant to federal and state law, a physician practice or clinic must adopt and adhere to written policies and procedures governing its peer review committee.<sup>6</sup> COPIC has developed a **peer review checklist** of what is required under Iowa law as well as **template peer review policies and procedures** to assist practices in establishing their peer review programs. These template policies should be reviewed by an attorney who can add information specific to the practice.

The federal HCQIA law applies to both hospitals and group medical practices that provide health care services and follow a formal peer review process for the purpose of furthering quality health care.<sup>7</sup>

Federal HCQIA grants immunity from damages liability with respect to actions taken by professional review bodies, to the review body, any member or staff to the body, contractors, and participants, provided they:

- Made a reasonable effort to obtain the facts of the matter,
- Took the action warranted by the facts,
- Took the action in furtherance of quality health care, and
- Followed appropriate notice and hearing procedures that were fair to the physician involved.<sup>8</sup>

Any person who provides information to a professional review body is not liable in damages under any state or federal law, as long as that person does not knowingly provide false information.<sup>9</sup> Iowa's peer review protections are very similar to HCQIA. Under Iowa law, a person is not liable as a result of filing a report or complaint with a peer review committee or providing information to such a committee, or for disclosure of privileged matter to a peer review committee.<sup>10</sup> Peer review committee members are protected under the peer review law. Unless a person acts with malice (ill will), he or she cannot be civilly liable as a

result of acts, omissions, or decisions made in connection with the person's service on a peer review committee.<sup>11</sup>

Ideally, medical practices will address any issues through peer review before it reaches the stage where they determine that a physician is unsafe to practice. Under the Iowa medical board regulations, a licensee with knowledge that another licensee may have engaged in "reportable conduct" is required to report that to the medical board. "Reportable conduct" includes wrongful acts:

- that are grounds for license suspension, including habitual intoxication or addiction to the use of drugs; or
- that demonstrate a licensee's inability to practice medicine competently, safely, or within the bounds of medical ethics.<sup>12</sup>

There are exceptions for reporting a confidential communication obtained in the course of a physician-patient relationship if, for example, you are treating a physician for substance use disorder or for those in compliance with the Iowa Physician Health Program.<sup>13</sup>

Peer review allows a more full and fair assessment of a provider, and an opportunity for them to address any educational deficiencies or behavioral health issues so they can practice safely and don't need to be reported to the medical board.

While it is very unlikely that a provider's care will rise to the level of reporting an adverse professional review action to the medical board, a practice's policy needs to address the due process requirements under federal HCQIA and Iowa's peer review law.<sup>14</sup> This allows for a fair hearing for the provider if a peer review committee recommends that the practice's governing board take an adverse professional review action.

The practice will need to identify what peer review activities fall within the policy. Some examples include the review of

- patient safety incidents, including near-misses
- unscheduled patient returns
- patient complaints
- cases identified through screening by quality indicators
- reported unprofessional conduct
- concerns regarding a possible impaired provider

<sup>6</sup> 42 U.S.C. § 11112; 45 C.F.R. § 60.3; Iowa Code § 147.1(5)(f).

<sup>7</sup> 42 U.S.C. 11151(4).

<sup>8</sup> 42 U.S.C. § 11112(a).

<sup>9</sup> 42 U.S.C. § 11111(a)(2).

<sup>10</sup> Iowa Code § 147.135(2).

<sup>11</sup> Iowa Code § 147.135(1).

<sup>12</sup> Iowa Code § 147.55; Iowa Admin. Code § 653-22.2(1).

<sup>13</sup> Iowa Admin. Code § 653-22.2(2)(d).

<sup>14</sup> 42 USC § 11111(a)(1); 42 USC § 11112(a); Iowa Code § 147.1(5)(f).

# Implementing Peer Review at Your Medical Practice



Practices that have successfully utilized peer review and had positive experiences share common themes. Foremost, these practices have developed a culture of understanding that the purpose of peer review is not to hinder or punish practitioners. Instead, they believe it allows them to continually improve the quality of care, treatment, and services provided as well as protect the safety of the patients they treat and ensure the best possible outcomes.

When implementing peer review, it can be important to dispel a common misunderstanding among physicians that all reviews of a physician will be reported to the medical board. The reality is that they are reported only if:

The findings of an investigation indicate that a physician lacks competence or has exhibited inappropriate professional conduct

**AND**

The professional review committee recommends an action to adversely affect the person's membership or privileges with the practice

**AND**

After a fair hearing process, the governing board takes a *final professional review action* that adversely affects the clinical privileges of the physician for more than 30 days or accepts the surrender or any restriction of clinical privileges while the physician is under investigation or in return for not conducting such an investigation or proceeding.<sup>15</sup>

Recommendations for additional education or treatment for behavioral health issues where there is no final adverse action would not need to be reported. Knowing this enhances the participation of clinicians. An example of how peer review facilitated a practice's improving its patient safety follows.

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<sup>15</sup> 42 U.S.C. § 11133(a); 42 U.S.C. § 11151(9)

## CASE STUDY

*A middle-aged patient complaining of a persistent hacking cough a week after recovering from influenza was worked into a busy clinician's schedule during the afternoon. The patient was evaluated and treated with a codeine cough suppressant and told to return if symptoms worsened. Just five hours later, the patient felt much worse and went to the emergency department and was diagnosed with bi-lobar pneumonia and admitted to the ICU due to hypoxia, hypotension, and presumed sepsis.*

*The peer review committee at the clinic reviewed the medical care and noted that vital signs had not been performed at the time of the clinic visit. Although there is no way to know definitively whether the vital signs would have been abnormal, they presumably would have been and could have provided a clue that the patient was more severely ill than he appeared. The peer committee investigated further and learned that vital signs had not been performed on nearly half of acute visits not just for this doctor, but clinic-wide. They discovered a workflow challenge for acute visits that made it difficult for medical assistants to check vital signs and this system failure was subsequently corrected. Now, nearly 100% of acute visits to the clinic have vital signs checked, which almost certainly has improved patient safety and outcomes.*

In this case, and in many other examples, peer review protections have helped physician practices and clinics, with physicians' buy-in and assistance, identify and address problems to prevent adverse patient outcomes. The medical literature is rich with examples where proactive peer review, such as in the case above, and a culture of patient safety has resulted in a reduction in medical liability claims.

Many practices have found that the protections under peer review promote a culture of patient safety and continuous improvement, and when the practices work to educate their practitioners about how and why the peer review process works, they can help facilitate use of this valuable tool.



## Peer Review Resources

COPIC promotes professional/peer review as a way to improve medicine in our communities. This process can be used as a tool for improving patient safety as case reviews can provide learning opportunities regarding preventable harm for patients going forward.

In order for physician practices and clinics to use peer review, COPIC's Legal Department has developed state-specific peer review toolkits that contain:

- A **Peer Review Checklist** of what's required (consistent with state and federal peer review laws)
- **Confidentiality Agreement—Peer Review Participant**
- **Peer Review Policy and Fair Hearing/Corrective Action Policy**
- **Practitioner Behavior Policy**
- **Practitioner Health Policy**



Access COPIC's peer review resources on our website at [www.callcopic.com/peerreview](http://www.callcopic.com/peerreview)

*Please note: COPIC has developed templates to assist practices in establishing a formal Peer Review process through appropriate policies and procedures. These templates are consistent with the requirements for Peer Review under state and federal law but should be reviewed by an attorney who can add information specific to the practice.*