RESOLUTION 207 - 2012

Subject: Call Requirements for Private Independent Physicians

Introduced by: Albert L. Fisher, MD

Referred to: Quality and Clinical Outcomes

Whereas, Clinics or entities may require private independent physicians to take excessive call including 24/7 call; and

Whereas, Clinics or entities may take disciplinary action against private independent physicians if they change their call schedule, make a change in their call coverage arrangement, or take a day off from being on call; and

Whereas, The technical advisory group for EMTALA makes it clear that no physician should be required to take 24/7 call; and

Whereas, The American Academy of Family Physicians has the policy that no family physician should take call at a higher rate than the baseline for his or her department, unless he or she is properly compensated; and

Whereas, Clinics or entities may not compensate private independent physicians whom they force to take unlimited call; and

Whereas, Clinics or entities may require private independent physicians to find other doctors to provide coverage for them, despite the fact that the clinic or entity physicians refuse to share call with non-clinic or entity physicians, which may cost private independent physicians hundreds of thousands of dollars in recruiting costs, moving expenses, and income guarantees; therefore be it

RESOLVED, That the Wisconsin Medical Society investigate clinics or entities’ on call requirements for private independent physicians, and be it further

RESOLVED, That the Wisconsin Medical Society will adopt a policy in support of equitable call coverage arrangements in which no physician is required to take unlimited call, or be disciplined for taking days off from being on call, and that no physician should be required to take call at a higher rate than the baseline for his department.

Fiscal note: First Resolve $50,000 or greater for third party to perform investigation. The Society does not have the legal authority to require another corporation to cooperate in this type of investigation. Second Resolve within current budget.

Relevant Policies

Society:

HMS-005
Hospital Medical Staffs: The Wisconsin Medical Society (Society) reaffirms support for the autonomy of the structure and governance of the independent medical staffs of hospitals including the ability of the independent medical staff to elect its own officers.
The Society supports codifying state law to mandate the hospital medical staff bylaws be viewed as contracts that must include a physician’s due process and hearing rights.

Further, the Society supports the efforts of all Wisconsin hospital medical staff members to advocate for the highest quality of medical care for the patients they serve. (HOD, 0410)

AMA:

H-130.948 On-Call Physicians
Our AMA:
(1) strongly encourages physicians and hospitals to work collaboratively to develop solutions based on adequate compensation or other appropriate incentives as the preferred method of ensuring on-call coverage and will monitor and oppose any state legislative or regulatory efforts mandating emergency room on-call coverage as a requirement for medical staff privileges and state licensure that are not supported by the state medical association;

(2) advocates that physician on-call coverage for emergency departments be guided by the following principles: (a) The hospital and physicians should jointly share the responsibility for the provision of care of emergency department patients. (b) Every hospital that provides emergency services should maintain policies to ensure appropriate on-call coverage of the emergency department by medical staff specialists that are available for consultation and treatment of patients. (c) The organization and function of on-call services should be determined through hospital policy and medical staff by-laws, and include methods for monitoring and assuring appropriate on-call performance. (d) Hospital medical staff by-laws and emergency department policies regarding on-call physicians responsibilities must be consistent with Emergency Medical Treatment and Active Labor Act (EMTALA) requirements. (e) Medical staffs should determine and adopt protocols for appropriate, fair, and responsible medical staff on-call coverage. (f) Hospitals with specialized emergency care capabilities need to have a means to ensure medical staff responsibility for patient transfer acceptance and care. (g) Hospitals that lack the staff to provide on-call coverage for a particular specialty should have a plan that specifies how such care will be obtained. (h) The decision to operate or close an emergency department should be made jointly by the hospital and medical staff;

(3) supports the enforcement of existing laws and regulations that require physicians under contract with health plans to be adequately compensated for emergency services provided to the health plans’ enrollees; and

(4) supports the enactment of legislation that would require health plans to adequately compensate out-of-plan physicians for emergency services provided to the health plans’ enrollees or be subject to significant fines similar to the civil monetary penalties that can be imposed on hospitals and physicians for violation of EMTALA. (CMS Rep. 3, I-99; Reaffirmation A-00; Modified: Sub. Res. 217, I-00; Reaffirmation I-01; Reaffirmation A-07; Appended and Reaffirmed: CMS Rep. 1, I-09)

H-130.955 Patient Responsibility of On-Call Physicians
The AMA urges hospital medical staffs to have written policies and procedures in place to delineate clearly the patient follow-up responsibilities of staff members who serve in an on-call capacity to the hospital emergency department. (CMS Rep. F, I-92; Reaffirmed: CMS Rep. 10, A-03)
H-285.910 The Physician’s Right to Engage in Independent Advocacy on Behalf of Patients, the Profession and the Community

Our AMA endorses the following clause guaranteeing physician independence and recommends it for insertion into physician employment agreements and independent contractor agreements for physician services:

Physician’s Right to Engage in Independent Advocacy on Behalf of Patients, the Profession, and the Community

In caring for patients and in all matters related to this Agreement, Physician shall have the unfettered right to exercise his/her independent professional judgment and be guided by his/her personal and professional beliefs as to what is in the best interests of patients, the profession, and the community. Nothing in this Agreement shall prevent or limit Physician’s right or ability to advocate on behalf of patients’ interests or on behalf of good patient care, or to exercise his/her own medical judgment. Physician shall not be deemed in breach of this Agreement, nor may Employer retaliate in any way, including but not limited to termination of this Agreement, commencement of any disciplinary action, or any other adverse action against Physician directly or indirectly, based on Physician’s exercise of his/her rights under this paragraph. (Res. 8, A-11)

D-225.979 Guaranteeing Due Process for Employed Physicians

Our American Medical Association will (1) study the unique employment arrangements of physicians employed or contracted by health care organizations; (2) seek legal advice for producing model language for inclusion in employment contracts and medical staff bylaws that would provide the greatest possible protection for physicians against denial of due process by health care organizations; and (3) design, produce, and make available to all members, an educational package that helps physicians negotiate contracts and formulate staff bylaws that provide the greatest possible protection from denial of due process following termination of employment or premature termination of contracts by health care organizations. (Res. 811, I-09)

E-9.05 Due Process

The basic principles of a fair and objective hearing should always be accorded to the physician or medical student whose professional conduct is being reviewed. The fundamental aspects of a fair hearing are a listing of specific charges, adequate notice of the right of a hearing, the opportunity to be present and to rebut the evidence, and the opportunity to present a defense. These principles apply when the hearing body is a medical society tribunal, medical staff committee, or other similar body composed of peers. The composition of committees sitting in judgment of medical students, residents, or fellows should include a significant number of persons at a similar level of training. These principles of fair play apply in all disciplinary hearings and in any other type of hearing in which the reputation, professional status, or livelihood of the physician or medical student may be negatively impacted. All physicians and medical students are urged to observe diligently these fundamental safeguards of due process whenever they are called upon to serve on a committee which will pass judgment on a peer. All medical societies and institutions are urged to review their constitutions and bylaws and/or policies to make sure that these instruments provide for such procedural safeguards. (II, III, VII) Issued prior to April 1977; Updated June 1994.