

# *Quality Advisory*

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## **Legal Concerns with JCAHO Periodic Performance Review**

September 23, 2003

### **A Message to America's Hospitals:**

Earlier this year, the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) announced a new accreditation process: Shared Visions-New Pathways, to be implemented in January 2004 where the emphasis is placed upon continual compliance with accreditation standards. A key part of this new process is the requirement that an accredited organization complete a Periodic Performance Review (PPR) at the mid-portion (18 months) of the triennial survey cycle. Organizations approaching the mid-portion of their accreditation cycle as of January 1, 2004, will be required to complete the PPR, which the JCAHO will make available through restricted Web site access at the end of October or beginning of November.

The Periodic Performance Review requires each accredited organization to assess itself against all applicable JCAHO standards, develop a plan of action to address areas of non-compliance, and identify measures of success to demonstrate that the identified problem areas have been resolved when the organization undergoes its complete on-site survey 18 months later. All information developed through this process is to be shared with the JCAHO.

Since the JCAHO's announcement of the PPR process this spring, the AHA, American Society for Healthcare Risk Management (ASHRM), and several state hospital association legal counsel have identified several significant legal and risk management concerns that could adversely impact accredited hospitals. Legal issues of concern are:

- "Waiver" of protection – loss of state peer review or other protection incurred by disclosure of the PPR results to the JCAHO.
- Limited/no protection – in several states, due to routine and systematic nature of the assessment, the PPR is not protected by "peer review" statutes, regardless as to whether it is disclosed to the JCAHO.

- Access by regulatory oversight agencies – where JCAHO is “deemed” by a state oversight agency and/or possibly a federal agency, a hospital could be required to submit the results of the PPR to the respective agency. Possible consequences of such a submission could be regulatory action taken by the oversight agency and/or disclosure of the PPR results to any individual requesting those results.

Over the past five months, the AHA, ASHRM, and state hospital association legal counsel have worked with the JCAHO to clarify the legal and risk management issues and to develop options to the existing PPR that would effectively address these issues.

To date, the JCAHO has approved two options that a hospital can use if, on the advice of legal counsel, the hospital attests that it is unable to submit the standard PPR:

- Option 1 – The organization completes the PPR, but DOES NOT submit the results, any plans of action, or measures of success to the JCAHO; the organization attests to the fact that it has completed the PPR; measures of success are made available to the on-site surveyors at the time of the triennial survey.
- Option 2 – One surveyor assesses compliance with the relevant JCAHO standards by conducting a fee-based, condensed on-site survey, approximately one-third the length of the typical triennial survey. Corrective action plans and measures of success will be completed and submitted to the JCAHO by the organization for all areas where the organization is found to be in non-compliance.

To retain its JCAHO accreditation, an organization must utilize the standard PPR or one of these options. Unfortunately, neither of the approved options fully addresses all of the legal and risk management issues that have been identified by the AHA, ASHRM and state hospital association legal counsel. Discussions between the JCAHO, AHA, ASHRM and state legal counsel are continuing in an effort to develop solutions for these unresolved issues.

In the interim, since the JCAHO will be making the PPR available to eligible organizations by the end of October/beginning of November, it is extremely important that CEOs of all JCAHO-accredited hospitals and health systems seeking re-accreditation, in coordination with their risk and quality managers, contact their state hospital association legal counsel or their own internal legal counsel to discuss the risks and benefits of completing the PPR or utilizing one of the available alternatives.

Please share this advisory with your legal counsel, risk management and quality management team. If you have any questions related to this advisory, please contact Maureen Mudron, the AHA’s Washington counsel, at (202) 626-2301, [mmudron@aha.org](mailto:mmudron@aha.org); Don Nielsen, M.D., the AHA’s senior vice president for quality, at (312) 422-2708, [dnielsen@aha.org](mailto:dnielsen@aha.org); or Elizabeth Summy, executive director, ASHRM at (312) 422-3989, [esummy@aha.org](mailto:esummy@aha.org).

Sincerely,

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