

CHAPTER 103. GOVERNANCE AND MANAGEMENT

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Cross References

This chapter cited in 28 Pa. Code § 101.67 (relating to access by the Department); and 55 Pa. Code § 6100.2 (relating to applicability).

Subchapter A. GOVERNING PROCESS

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Notes of Decisions*Patient Charts*

Requiring the hospital to submit for in camera review the patient charts of the two male patients who allegedly raped a female patient would require the hospital to violate the Pennsylvania Mental Health Procedures Act and these regulations. *Hahnemann Univ. Hosp. v. Edgar*, 74 F.3d 456 (3rd Cir. (Pa) 1996).

GENERAL PROVISIONS**§ 103.1. Principle.**

There shall be an organized governing body or designated person vested with ownership who shall assume the full legal authority and responsibility for the conduct of the hospital.

§ 103.2. [Reserved].**Source**

The provisions of this § 103.2 reserved September 19, 1980, effective September 20, 1980, 10 Pa.B. 3761. Immediately preceding text appears at serial page (37775).

§ 103.3. Governing body bylaws.

The governing body shall adopt bylaws in accordance with all requirements contained in this subpart and in accordance with the community responsibility of the hospital. As a minimum, the bylaws shall do the following:

- (1) State the general and specific goals of the hospital.
- (2) Be reviewed annually, be revised as necessary, and be dated to indicate when last reviewed or revised.
- (3) Describe the powers and duties of the governing body officers and committees and the responsibilities of the chief executive officer.
- (4) State the qualifications for governing body membership, the procedures for selecting members, and the terms of service for members, officers, and committee chairmen.
- (5) Describe the authority delegated to the chief executive officer and to the medical staff. No assignment, referral or delegation of authority by the governing body shall relieve the governing body of its responsibility for the conduct of the hospital. The governing body shall retain the right to rescind any such delegation.
- (6) Require the approval of the bylaws of any auxiliary organizations established by the hospital.
- (7) Require the governing body to review and approve the bylaws of the medical staff organization.

- (8) Establish a procedure for processing and evaluating the applications for medical staff membership and for the granting of clinical privileges.
- (9) Establish a procedure for implementing, disseminating, and enforcing a Patient's Bill of Rights in compliance with §§ 103.21—103.24 (relating to Patient's Bill of Rights).
- (10) Require the governing body to institute procedures to ensure:
 - (i) orientation of newly elected board members to specific board functions and procedures;
 - (ii) periodic reexamination of the relationship of the board to the total hospital community.
 - (iii) an opportunity, at least annually, for the general public to attend a meeting of the governing body; this meeting shall be well publicized in advance of the meeting date and shall be held at a time convenient for attendance by the general public; and
 - (iv) the taking of minutes of all governing body and executive committee meetings and the dissemination of those minutes or summaries thereof on a regular basis to all members of the governing body.

Authority

The provisions of this § 103.3 issued under 67 Pa.C.S. §§ 6101—6104; and Reorganization Plan No. 2 of 1973 (71 P. S. § 755-2).

Source

The provisions of this § 103.3 amended September 19, 1980, effective September 20, 1980, 10 Pa.B. 3761. Immediately preceding text appears at serial page (37776).

§ 103.4. Functions.

The governing body, with technical assistance and advice from the hospital staff, shall do the following:

- (1) Provide appropriate physical resources and personnel required to meet the needs of the patients and participate in planning to meet the health needs of the patients and health needs of the community. A quality control mechanism should be established which includes as an integral part thereof a risk management component and an infection control program.
- (2) Formulate short-range and long-range plans for the development of the hospital.
- (3) Take all reasonable steps to conform to all applicable Federal, State, and local laws and regulations.
- (4) Provide for the control and use of the physical and financial resources of the hospital.
- (5) Review the annual audit of the financial operations of the hospital.
- (6) Utilize the advice of the medical staff in granting and defining the scope of clinical privileges to individuals. When the governing body does not concur in the medical staff recommendation regarding the clinical privileges of

an individual, there should be a review of the recommendation by a joint committee of the medical staff and governing body before a final decision is reached by the governing body.

(7) Require that applicants be informed of the disposition of their application for medical staff membership or clinical privileges, or both, within a reasonable period of time after their application has been submitted.

(8) Require that the medical staff bylaws, rules, and regulations be approved by the governing body. Such approval shall not be withheld unreasonably.

(9) Delegate to the medical staff the authority to evaluate the professional competence of staff members and applicants for staff privileges and hold the medical staff responsible for recommending initial staff appointments, reappointments, and assignments or curtailments of privileges.

(10) Require that resources be made available to address the emotional and spiritual needs of patients either directly or through appropriate referral or arrangement with community agencies.

(11) Maintain effective communication with the medical staff. This may be established, *inter alia*, through:

- (i) a joint conference committee;
- (ii) service by the president of the medical staff as a member of the governing body with or without a vote; or
- (iii) appointment of individual medical staff members to governing body committees.

(12) Require the medical staff to establish controls that are designed to ensure the achievement and maintenance of high standards of ethical professional practices.

(13) Ensure that the medical staff is provided with the necessary administrative staff to facilitate utilization review and infection control within the hospital and to support any other medical staff functions required by this subpart or by the hospital bylaws.

(14) Require that each member of the medical staff act in an ethical manner.

(15) Ensure that the following public disclosure requirements are being met:

(i) The hospital provides to the appropriate Health Systems Agency (HSA) information that the HSA is required to collect pursuant to Section 1513(b) of the National Health Planning and Resources Development Act of 1974.

(ii) Information is to be made available to the public upon request regarding to the current daily cost reimbursement of the hospital under Blue Cross Medical Assistance and Medicare as well as the average daily charge to other insured and noninsured private pay patients.

(iii) The hospital provides for public disclosure of the persons owning 5.0% or more of the hospital as well as the officers of the hospital and members of the governing body.

(16) Establish a procedure for reporting the occurrence and disposition of any unusual incidents. The procedure shall insure that:

- (i) Incident reports are analyzed and summarized and that the results and the summaries are kept available for the Department.
- (ii) Corrective action is taken as indicated by the analysis of incident reports.

(17) Establish a procedure to ensure that special emergency reports to the Department under the provisions of § 151.48 (relating to report of emergencies causing interruption of service) are promptly and accurately reported.

Authority

The provisions of this § 103.4 issued under act 67 Pa.C.S. §§ 6101—6104; and Reorganization Plan No. 2 of 1973 (71 P. S. § 755-2).

Source

The provisions of this § 103.4 amended September 19, 1980, effective September 20, 1980, 10 Pa.B. 3761. Immediately preceding text appears at serial pages (37776) to (37778).

Notes of Decisions

Duty

Based upon this regulation and other Federal and State legislation and case law, the medical center had a duty to grant privileges only to those physicians determined to be competent to provide the medical services authorized by the privileges and to implement quality control procedures to ensure proper patient care. *Gurevitz v. Piczon*, 42 D. & C. 4th 308 (1999).

§ 103.5. Other functions.

The governing body or its designee shall do the following:

- (1) Develop efficient and practical arrangements for the provision of extended care and of other long-term health care services. Such services may be provided in the hospital or by outside resources through an effective transfer agreement. Home care services should be utilized whenever feasible.
- (2) Provide and implement a written plan for the care or for the referral, or for both, of patients who are psychiatrically ill or who become psychiatrically ill while in the hospital, as well as for the care or appropriate referral, or both, of persons who suffer the results of alcoholism or drug abuse.

Authority

The provisions of this § 103.5 issued under act 67 Pa.C.S. §§ 6101—6104; and Reorganization Plan No. 2 of 1973 (71 P. S. § 755-2).

Source

The provisions of this § 103.5 amended September 19, 1980, effective September 20, 1980, 10 Pa.B. 3761. Immediately preceding text appears at serial page (37778).

§ 103.6. [Reserved].

Source

The provisions of this § 103.6 reserved September 19, 1980, effective September 20, 1980, 10 Pa.B. 3761. Immediately preceding text appears at serial pages (37778) to (37779).

§ 103.7. [Reserved].**Source**

The provisions of this § 103.7 reserved September 19, 1980, effective September 20, 1980, 10 Pa.B. 3761. Immediately preceding text appears at serial page (37779).

§ 103.8. Conflicts of interest.

Members of the governing body shall not maintain substantial personal or business interests which conflict with those of the hospital. All governing body members shall execute a conflict of interest statement.

§ 103.9. Self-dealing prohibition.

Members of the governing body shall not engage in the following forms of self-dealing:

- (1) The sale, exchange or leasing of property or services between the hospital and a governing board member, his employer or an organization substantially controlled by him on a basis less favorable to the hospital than that on which such property or service is made available to the general public.
- (2) Furnishing of goods, services, or facilities by a hospital to a governing board member, unless such furnishing is made on a basis not more favorable than that on which such goods, services, or facilities are made available to the general public or employees of the hospital.
- (3) Any transfer to or use by or for the benefit of a governing board member of the income or assets of a hospital, except by purchase for fair market value.

Cross References

This section cited in 28 Pa. Code § 105.23 (relating to transfer agreements).

§ 103.10. Disclosure requirements for related organizations.

The governing body shall prohibit the lease, sale or exclusive use of any hospital buildings or facilities receiving a license in accordance with this subpart to any entity which provides medical or other health services to the hospital's patients, unless there is full, complete, and, except in the case of a sale, periodic disclosure to the governing body of that entity's financial assets, liabilities, and earnings distribution with regard to any single hospital facility served by that entity and for which the governing body is responsible.

Authority

The provisions of this § 103.10 issued under section 2102(g) of The Administrative Code of 1929 (71 P. S. § 532(g)); and section 803 of the Health Care Facilities Act (35 P. S. § 480.803).

Source

The provisions of this § 103.10 amended through December 3, 1982, effective December 4, 1982, 12 Pa.B. 4129. Immediately preceding text appears at serial page (52741).

PATIENT'S BILL OF RIGHTS**§ 103.21. Principle.**

It is the purpose of these sections to promote the interests and well-being of the patients and residents of hospitals subject to this subpart even in those instances where the interests of the patients may be in opposition to the interests of the hospital. It is declared to be the public policy of the Department that the interests of patients be protected by a Patient's Bill of Rights. Nothing in these sections is intended to serve as evidence of a standard of reasonable conduct for the purpose of determining civil liability between providers and consumers of health services. The hospital has the right to expect the patient to fulfill patient responsibilities as may be stated in the hospital rules affecting patient care and conduct.

Authority

The provisions of this § 103.21 issued under 67 P. S. §§ 6101—6104; and Reorganization Plan No. 2 of 1973 (71 P. S. § 755-2).

Source

The provisions of this § 103.21 amended September 19, 1980, effective September 20, 1980, 10 Pa.B. 3761. Immediately preceding text appears at serial page (37780).

Cross References

This section cited in 28 Pa. Code § 103.3 (relating to governing body bylaws).

Notes of Decisions*Production of Records*

Although patients must be given access to, or copies of, their medical records, such records are the property of the hospital, and a subpoena for the production of such records was properly served on the hospital. *In re the June 1979 Allegheny County Investigating Grand Jury*, 415 A.2d 73 (Pa. 1980).

§ 103.22. Implementation.

(a) The hospital governing body shall establish a Patient's Bill of Rights not less in substance and coverage than the minimal Patient's Bill of Rights provided by subsection (b).

(b) The following are minimal provisions for the Patient's Bill of Rights:

(1) A patient has the right to respectful care given by competent personnel.

(2) A patient has the right, upon request, to be given the name of his attending physician, the names of all other physicians directly participating in his care, and the names and functions of other health care persons having direct contact with the patient.

(3) A patient has the right to every consideration of his privacy concerning his own medical care program. Case discussion, consultation, examination, and treatment are considered confidential and should be conducted discreetly.

(4) A patient has the right to have all records pertaining to his medical care treated as confidential except as otherwise provided by law or third-party contractual arrangements.

(5) A patient has the right to know what hospital rules and regulations apply to his conduct as a patient.

(6) The patient has the right to expect emergency procedures to be implemented without unnecessary delay.

(7) The patient has the right to good quality care and high professional standards that are continually maintained and reviewed.

(8) The patient has the right to full information in layman's terms, concerning his diagnosis, treatment, and prognosis, including information about alternative treatments and possible complications. When it is not medically advisable to give such information to the patient, the information shall be given on his behalf to the patient's next of kin or other appropriate person.

(9) Except for emergencies, the physician must obtain the necessary informed consent prior to the start of any procedure or treatment, or both. Informed consent is defined in section 103 of the Health Care Services Malpractice Act (40 P. S. § 1301.103).

(10) A patient or, in the event the patient is unable to give informed consent, a legally responsible party, has the right to be advised when a physician is considering the patient as a part of a medical care research program or donor program, and the patient, or legally responsible party, must give informed consent prior to actual participation in such a program. A patient, or legally responsible party, may, at any time, refuse to continue in any such program to which he has previously given informed consent.

(11) A patient has the right to refuse any drugs, treatment, or procedure offered by the hospital, to the extent permitted by law, and a physician shall inform the patient of the medical consequences of the patient's refusal of any drugs, treatment, or procedure.

(12) A patient has the right to assistance in obtaining consultation with another physician at the patient's request and own expense.

(13) A patient has the right to medical and nursing services without discrimination based upon race, color, religion, sex, sexual preference, National origin or source of payment.

(14) The patient who does not speak English should have access, where possible, to an interpreter.

(15) The hospital shall provide the patient, or patient designee, upon request, access to all information contained in his medical records, unless access is specifically restricted by the attending physician for medical reasons.

(16) The patient has the right to expect good management techniques to be implemented within the hospital considering effective use of the time of the patient and to avoid the personal discomfort of the patient.

(17) When medically permissible, a patient may be transferred to another facility only after he or his next of kin or other legally responsible representative has received complete information and an explanation concerning the needs for and alternatives to such a transfer. The institution to which the patient is to be transferred must first have accepted the patient for transfer.

(18) The patient has the right to examine and receive a detailed explanation of his bill.

(19) The patient has a right to full information and counseling on the availability of known financial resources for his health care.

(20) A patient has the right to expect that the health care facility will provide a mechanism whereby he is informed upon discharge of his continuing health care requirements following discharge and the means for meeting them.

(21) A patient cannot be denied the right of access to an individual or agency who is authorized to act on his behalf to assert or protect the rights set out in this section.

(22) A patient has the right to be informed of his rights at the earliest possible moment in the course of his hospitalization.

Authority

The provisions of this § 103.22 issued under section 2102(g) of The Administrative Code of 1929 (71 P. S. § 532(g)); and section 803 of the Health Care Facilities Act (35 P. S. § 448.803).

Source

The provisions of this § 103.22 amended through December 3, 1982, effective December 4, 1982, 12 Pa.B. 4129. Immediately preceding text appears at serial page (55616).

Cross References

This section cited in 28 Pa. Code § 103.3 (relating to governing body bylaws); and 28 Pa. Code § 115.29 (relating to patient access).

Notes of Decisions

Access

Although patients must be given access to, or copies of, their medical records, such records are the property of the hospital, and a subpoena for the production of such records was properly served on the hospital. *In re the June 1979 Allegheny County Investigating Grand Jury*, 415 A.2d 73 (Pa. 1980).

§ 103.23. Procedures for distribution and display.

The hospital shall develop procedures to inform each patient of his rights. Copies of the hospital's Patient's Bill of Rights shall be made generally available through one of the following ways:

(1) Prominent displays in appropriate locations in addition to copies available upon request.

(2) Provision of a copy to each patient or responsible party upon admission or as soon after admission as is feasible.

Authority

The provisions of this § 103.23 issued under 67 Pa.C.S. §§ 6101—6104; and Reorganization Plan No. 2 of 1973 (71 P. S. § 755-2).

Source

The provisions of this § 103.23 amended September 19, 1980, effective September 20, 1980, 10 Pa.B. 3761. Immediately preceding text appears at serial page (37782).

Notes of Decisions

Although patients must be given access to, or copies of, their medical records, such records are the property of the hospital, and a subpoena for the production of such records was properly served on the hospital. *In re the June 1979 Allegheny County Investigating Grand Jury*, 415 A.2d 73 (Pa. 1980).

Cross References

This section cited in 28 Pa. Code § 103.3 (relating to governing body bylaws).

§ 103.24. Investigation and enforcement procedures.

The hospital shall adopt procedures to ensure effective and fair investigation of violations of patients' rights and to ensure their enforcement. These procedures shall ensure that:

- (1) a system is established to identify formal written complaints;
- (2) formal written complaints are recorded and investigated;
- (3) complaint records and case dispositions are kept for one year or until the next annual survey and made available to the Department upon request;
- (4) investigation and resolution, when possible, of formal complaints shall be timely; and
- (5) disciplinary and remedial education procedures will be developed for members of the hospital and medical staff who consistently cause patient relationship problems.

Notes of Decisions

Although patients must be given access to, or copies of, their medical records, such records are the property of the hospital, and a subpoena for the production of such records was properly served on the hospital. *In re the June 1979 Allegheny County Investigating Grand Jury*, 415 A.2d 73 (Pa. 1980).

Cross References

This section cited in 28 Pa. Code § 103.3 (relating to governing body bylaws).

MANAGEMENT AND ADMINISTRATION OF OPERATIONS

§ 103.31. The chief executive officer.

The governing body shall appoint a chief executive officer whose qualifications, authority, responsibilities and duties shall be defined in a written statement

adopted by the governing body. The chief executive officer shall be responsible for the application and implementation of established policies in the operation of the hospital and for providing liaison among the governing body, the medical staff, and the departments of the hospital.

§ 103.32. Qualifications of chief executive officer.

The chief executive officer shall be qualified by education and experience appropriate to the proper discharge of his responsibilities. It is desirable that the chief executive officer have at least a baccalaureate degree and a minimum of three years' experience in a responsible administration position in a hospital or in the health care field or have completed formal education in an appropriate graduate program.

§ 103.33. Responsibilities.

(a) The chief executive officer shall be the official representative of the governing body.

(b) The chief executive officer should be responsible for:

- (1) designation of an individual to act for him in his absence;
- (2) management of the hospital, commensurate with the authority conferred on him by the governing body and consonant with its expressed aims and policies;
- (3) attending all meetings of the governing body and appropriate meetings of the medical staff;
- (4) organizing the administrative functions of the hospital, delegating duties, and establishing formal means of accountability on the part of subordinates;
- (5) establishing such hospital departments as are indicated, providing for departmental and interdepartmental meetings and attending or being represented at such meetings, and appointing hospital departmental representatives to medical staff committees where appropriate or when requested to do so by the medical staff;
- (6) appointing the heads of administrative departments;
- (7) reporting to the governing body and to the medical staff on the overall activities of the hospital as well as on appropriate Federal, State, and local developments that affect health care in the hospital;
- (8) reviewing the annual audit of the financial operations of the hospital;
- (9) fiscal planning and financial management of the hospital;
- (10) developing, in cooperation with the departmental heads and other appropriate staff, an overall organizational plan for the hospital which will coordinate the functions, services, and departments of the hospital, when possible; and
- (11) ensuring that the agreements with service providers—that is, such as laundry, laboratory, and X-ray—specifically indicate that compliance will be maintained with applicable State regulations as would apply to the same services if provided directly by the hospital.

Authority

The provisions of this § 103.33 issued under section 2102(g) of The Administrative Code of 1929 (71 P. S. § 532(g)); and section 803 of the Health Care Facilities Act (35 P. S. § 448.803).

Source

The provisions of this § 103.33 amended through December 3, 1982, effective December 4, 1982, 12 Pa.B. 4129. Immediately preceding text appears at serial page (55620).

§ 103.34. Personnel policies and practices.

The governing body, through the chief executive officer, shall ensure that personnel policies and practices which adequately support sound patient care are established and maintained. The policies shall be reduced to writing and made available to all employees, and they shall be reviewed periodically, but no less often than once every two years. The date of the most recent review shall be indicated on the written policies. A procedure shall be established for notifying employees of changes in the established personnel policies.

Notes of Decisions

Based on this regulation and other Federal and State legislation and case law, the medical center had a duty to grant privileges only to those physicians determined to be competent to provide the medical services authorized by the privileges and to implement quality control procedures to ensure proper patient care. *Gurevitz v. Piczon*, 42 D. & C. 4th 308 (1999).

§ 103.35. Job descriptions.

There shall be a written job description for each type of job in the hospital, including the chief executive officer and heads of departments.

§ 103.36. Personnel records.

(a) Accurate and complete personnel records shall be maintained for each hospital employe during his term of employment and for 2 years thereafter. The chief executive officer may designate an individual to carry out this assignment.

(b) There shall be an established standard of content for personnel records which shall contain at least the following:

- (1) Information regarding the employe's education, training, and experience, including, if applicable, professional licensure status and license number, sufficient to verify the employe's qualifications for the job for which he is employed. Such information shall be kept current. Applicants for positions requiring a licensed person should be hired only after obtaining verification of their licenses, records of education and written references.
- (2) Current information relative to periodic work performance evaluations.
- (3) Records of such pre-employment health examinations and of subsequent health services rendered to the employes as are necessary to ensure that all hospital employes are physically able to perform their duties.
- (4) Reports verifying that reasonable precautions have been taken to assure the absence of detectable active communicable disease.

§ 103.37. [Reserved].**Source**

The provisions of this § 103.37 reserved September 19, 1980, effective September 20, 1980, 10 Pa.B. 3761. Immediately preceding text appears at serial page (37786).

§ 103.38. Education programs.

Orientation and in-service training programs should be provided in order that hospital personnel may maintain their skills and learn of new developments in health care.

§ 103.39. Personnel health requirements.

Employes shall have preemployment medical examinations and interim examinations in accordance with medically acceptable criteria.

Authority

The provisions of this § 103.39 issued under 67 Pa.C.S. §§ 6101—6104; and Reorganization Plan No. 2 of 1973 (71 P. S. § 755-2).

Source

The provisions of this § 103.39 amended September 19, 1980, effective September 20, 1980, 10 Pa.B. 3761. Immediately preceding text appears at serial page (37786).

FISCAL CONTROL**§ 103.41. Principle.**

A budget shall be developed with the participation of appropriate staff. There should be departmental budgets which are related to the objectives of the department and to the budgetary program of the hospital.

§ 103.42. Rates.

A current written schedule of rates and charges for all hospital services for which charges are assigned shall be maintained and made available upon request to those who use those services.

Authority

The provisions of this § 103.42 issued under 67 Pa.C.S. §§ 6101—6104; and Reorganization Plan No. 2 of 1973 (71 P. S. § 755-2).

Source

The provisions of this § 103.42 amended September 19, 1980, effective September 20, 1980, 10 Pa.B. 3761. Immediately preceding text appears at serial page (37786).

§ 103.43. Insurance.

There should be an insurance program which provides for the protection of the physical and financial resources of the hospital. There should be appropriate coverage of the buildings and equipment and adequate comprehensive liability insurance or an equivalent self-insurance plan covering members of the governing body and appropriate medical and administrative personnel.

§ 103.44. Purchasing and inventory.

There shall be written policies governing the control of inventories, including purchasing procedures, product selection and evaluation, and supply distribution. Records shall be maintained from annual survey to annual survey documenting compliance with these established policies.

§ 103.45. Audit of financial operations.

An audit of the financial operations of the hospital should be performed by an independent public accountant at least once a year.

§ 103.46. Equipment and supplies.

The hospital shall provide all necessary equipment and supplies to meet the needs of the services it undertakes to provide.

[Next page is 105-1.]