Economic credentialing issues

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Rather than basing credentialing decisions on qualitative data and a physician's clinical competence, some hospitals are placing emphasis on economic considerations when deciding when to grant hospital privileges. This practice is known as "economic credentialing." The American Medical Association (AMA) is among the groups that have taken exception to this practice, and has asserted that it may be in violation of state and federal laws.

The AMA defines economic credentialing as "the use of economic criteria unrelated to quality of care or professional competence in determining a physician's qualifications for initial or continuing hospital medical staff membership or privileges," and states in AMA Policy H-230.975 (Economic Credentialing), that it strongly opposes such behavior. Economic credentialing can include any practice in which a hospital conditions granting staff privileges on a physician providing a certain volume of services at, or referring a certain number of patients to, the hospital, as well as conflict of interest policies (also known as loyalty oaths), where the physician is not allowed to invest in or own facilities that compete with the hospital.

The Joint Commission Hospital Accreditation Standards state that "decisions on appointments or on granting of clinical privileges must consider criteria that are directly related to the quality of care," and "decisions on reappointment or on revocation, revision, or renewal of clinical privileges must consider criteria that are directly related to the quality of care." *The Physician's Guide to Medical Staff Organization Bylaws* recommends that medical staff bylaws bar credentialing based on any criteria other than education, experience, and clinical competence.

AMA Policy E-4.07 (Staff Privileges) states, "The mutual objective of both the governing board and the medical staff is to improve the quality and efficiency of patient care in the hospital. Decisions regarding hospital privileges should be based upon the training, experience, and demonstrated competence of candidates, taking into consideration the availability of facilities and the overall medical needs of the community, the hospital, and especially patients. Privileges should not be based on numbers of patients admitted to the facility or the economic or insurance status of the patient. Personal friendships, antagonisms, jurisdictional disputes, or fear of competition should not play a role in making these decisions. Physicians who are involved in the granting, denying, or termination of hospital privileges have an ethical responsibility to be guided primarily by concern for the welfare and best interests of patients in discharging this responsibility."

The Department of Health and Human Services (HHS) Office of the Inspector General (OIG) has indicated that economic credentialing by hospitals may violate the federal anti-kickback statute, which prohibits the offering, payment, solicitation, or receipt of any remuneration in exchange for a patient referral or referral of other business for which payment may be made by a federal health care program. The OIG has stated that conditioning privileges on a particular number of referrals or requiring the performance of a particular number of procedures, beyond volumes necessary to ensure clinical proficiency, potentially raise substantial risks under the statute. On the other hand, a credentialing policy that *categorically* refuses privileges to physicians with significant conflicts of interest would not appear to implicate the statute in most situations. Whether a particular credentialing policy runs afoul of the anti-kickback statute would depend on the specific facts and circumstances, including the intent of the parties.

Hospitals' use of economic credentialing has been challenged under different legal theories with varying success. For example, hospitals have primarily prevailed in court cases challenging economic credentialing on antitrust grounds.

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On the other hand, courts have been less permissive when hospitals deny privileges based on claims of conflict of interest. In one case, *Murphy v. Baptist*, the Arkansas Supreme Court ruled that the hospital's conflict of interest policy caused irreparable harm to the physician-patient relationship because it interfered with the physician's referring patterns and ability to provide continuing care.

Economic credentialing may violate the Internal Revenue Code, which requires nonprofit hospitals to have an open staff, ie, "admission to the medical staff must be open to all qualified physicians in the area, consistent with the size and nature of the facilities." Hospitals that engage in economic credentialing may violate this requirement.

Wisconsin Administrative Code Chapter HFS 124.12 (Medical Staff) (4)(c) (Criteria for Appointment) states that criteria for appointment to the medical staff shall include individual character, competence, training, experience, and judgment. Wisconsin Statute § 50.36(3)(a) states that "each individual hospital shall retain the right to determine whether the applicant's training, experience, and demonstrated competence is sufficient to justify the granting of hospital staff privileges." Neither the code nor the statute mentions economic criteria.

Wisconsin Medical Society members who would like to read more about economic credentialing can contact the Society for additional reading material. Physicians who feel they have been excluded from a medical staff based on economic criteria should contact their personal attorney.

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