Privileged, Confidential, Accessible?
Nursing Home QAPI/QAA Activity

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Goals for Session

• Appreciate difference between QAA and Health Care Services Review
• Appreciate differences between disclosure, confidentiality and privilege
• Understand basis for confidentiality of certain activity/documentation
• Processes and procedures to establish
• Limits of protections
• QAPI Challenges

Nursing Home QAA

• DHS 132.46 (3) CONFIDENTIALITY. The department may not require disclosure of the records of the quality assessment and assurance committee except to determine compliance with the requirements of this section. This paragraph does not apply to any record otherwise specified in this chapter or s. 50.04 (3), 50.07 (1) (c) or 146.82 (2) (a) 5., Stats.
Nursing Home QAA

- Federal (current) Counterpart: 483.75
  - (o)(3) “A State or the Secretary may not require disclosure of the records of such committee except in so far as such as disclosure is related to the compliance of such committee with the requirement of this section.”
  - (o)(4) “Good faith attempts by the committee to identify and correct quality deficiencies will not be used as a basis for sanctions.”
  - New: Same language found in 483.75(h)&(i)

WI Health Services Review

- History Wis. Stats. 146.38
- Applicability
- Covered health care providers/professionals

WI Health Services Review-Content

“Health Care Provider” =
- A person specified in s. 146.81 (1) (a) to (hp), (r), or (s).
- A facility, association, or business entity, as specified in s. 146.81 (1) (i) to (q) and including a residential care apartment complex, as defined in s. 50.01 (6d).
- A person working under the supervision of or in collaboration with a person specified in subd. 1.
- A parent, subsidiary, or affiliate organization of a facility, association, or business entity, as specified in subd. 2.
WI Health Services Review-Content

• "Incident or occurrence report" means a written or oral statement that is made to notify a person, organization, or an evaluator who reviews or evaluates the services of health care providers or charges for such services of an incident, practice, or other situation that becomes the subject of such a review or evaluation.

WI Health Services Review-Content

• No person who participates in the review or evaluation of the services of health care providers or charges for such services may disclose an incident or occurrence report or any information acquired in connection with such review or evaluation except as provided in permitted exceptions found in (3) or (3m).

WI Health Services Review-Content

• Persons/organizations/evaluators who review or evaluate the services of health care providers to help improve the quality of health care shall keep a record of their investigations, inquiries, proceedings and conclusions.
• No such record may be released to any person except as provided under exceptions.
WI Health Services Review-Content

• No such record may be used in any civil or criminal action against the health care provider;
• However, except for incident or occurrence reports or records from other persons, organizations, or evaluators reviewing or evaluating health care providers, information, documents or records presented during the review or evaluation may not be construed as immune from discovery or use in any civil or criminal action merely because they were so presented. (*presented to...*)

WI Health Services Review-Content

• Any person who testifies during or participates in the review or evaluation may testify in any civil or criminal action as to matters within his or her knowledge, but may not testify as to information obtained through his or her participation in the review or evaluation, nor as to any conclusion of such review or evaluation.

WI Health Services Review-Content

• An incident or occurrence report may not be used in any civil or criminal action against a health care provider.
WI Health Services Review-Content
Release Exceptions

(3) Information acquired in connection with the review and evaluation of health care services shall be disclosed and records of such review and evaluation shall be released, with the identity of any patient whose treatment is reviewed being withheld except as permitted under s. 146.82, in the following circumstances:

(a) To the health care provider whose services are being reviewed or evaluated, upon the request of such provider;
(b) To any person with the consent of the health care provider whose services are being reviewed or evaluated;
(c) To the person requesting the review or evaluation, for use solely for the purpose of improving the quality of health care, avoiding the improper utilization of the services of health care providers, and determining the reasonable charges for such services;
(d) With regard to an action under s. 895.441, to a court of record after issuance of a subpoena; and
(e) To the appropriate examining or licensing board or agency, when the organization or evaluator conducting the review or evaluation determines that such action is advisable.

WI Health Services Review-Content
Release Exceptions

(3m)(a) Information acquired in connection with the review and evaluation of health care services may be disclosed, and records of such review and evaluation may be released, in statistical form with the consent of the person authorizing or with the authority to authorize the review or evaluation. Information disclosed or records released under this subsection shall not reveal the identity of any patient except as permitted under s. 146.82.

(b) Information acquired in connection with the review or evaluation of health care services may be disclosed, and the records of such a review or evaluation released, to any of the following persons, with the consent of the person authorizing or with the authority to authorize the review or evaluation:

1. The employer of a health care provider, as defined in sub. (1) (b) 1., and 2.
2. The parent, subsidiary, or affiliate organization of a health care provider, as defined in sub. (1) (b) 2.
3. The parent, subsidiary, or affiliate organization of the employer of a health care provider, as defined in sub. (1) (b) 1. and 3.

WI Health Services Review-Content

• A record described under sub. (2) or an incident or occurrence report disclosed either under sub. (1) or (3m) or in violation of this section remains confidential and may not be used in any civil or criminal action against the health care provider or any other health care provider.
• Any person who discloses information or releases a record in violation of this section, other than through a good faith mistake, is civilly liable therefore to any person harmed by the disclosure or release.
• Health care provider specific information acquired by an administrative agency in order to help improve the quality of health care, to avoid the improper utilization of services of health care providers, or to determine the reasonable charges for health care services is exempt from inspection, copying, or receipt under s. 19.35 (4).
WI Health Services Review-Summary

- Certain activity in furtherance of improvement of quality of care, utilization review, and reasonable charges is confidential.
- May coordinate with others and still be confidential
- Exceptions recognized for release without losing confidential status
- Should not be subject to public records

Discoverable vs. Inadmissible

- Discovery and Admissibility not the same
- Explicit limitations in 146.38
- Subject of frequent disputes in litigation

Conditions for application

The party asserting the health care services review privilege bears the burden of establishing 2 conditions:
1) the investigation must be part of a program organized and operated to improve the quality of health care at the health care provider, and
2) the person conducting the investigation must be acting on behalf of, or as part of a group with relatively constant membership, officers, a purpose, and a set of regulations.

Summarizing test from Phelps v. Physicians Insurance Company of Wisconsin, Inc (pre-statute change)
Conditions for application

Recent Circuit Court test:
To be confidential and not discoverable must establish:
1. The record was created by a person, evaluator, or organization.
2. The person is tasked with reviewing or evaluating the services of provider.
3. The record consists of investigations, inquiries, statements, or conclusions.
4. The record pertains to an investigation that is part of the review or evaluation process.
5. The record was not presented to the reviewer or evaluator during the review process by an entity other than, unless that entity was a person, organization, or evaluator who reviews or evaluates health care providers, or the document is an incident or occurrence report as defined in §146.38(1)(bn).
6. The purpose of the record must be:
   a) To improve the quality of health care, or
   b) To avoid improper utilization of the services, or
   c) To determine the reasonable charges for such services.

Formalizing Quality Process

• To assure compliance with applicable regulations.
• Focus efforts
• Establish process for advancing quality concerns
• Increase efficiency
• Increase confidentiality protection for efforts
• Foster greater review

Formalizing Quality Process

• Minimums:
  – Operating documents
  – Identification of participants (NHS meet minimums required)
  – Establish purpose
  – Establish regular meetings/activities
  – Identify mandatory review items
  – Identify process for advancing issues to committee
  – Establish rules/regulations to follow
  – Identify when and how permitted exceptions are followed.
Formalizing Quality Process

• Next Steps
  – Review applicable regulations
  – Identify policy/procedures
  – Review or develop QAA/Quality Committee operating document
    • Review at least annually, and as needed (QAPI development)
  – Understand exceptions for releasing

Reports/Incidents/Investigation

• Internal incident reports
• Internal review requests
• Misconduct incident reports to DQA
• Survey documents/SODs
• Provision of information to surveyors
  – When can you provide
  – When must you provide
• Release to resident/legal decision maker

Bolstering your Efforts

• Review QAA/Quality Committee operating documents
• Review Job descriptions for committee and key personnel: Does it include responsibility to engage in the improvement of health care services
• Forms review
  – Fact gathering vs. evaluation
Bolstering your Efforts

- Policy review, particularly Falls, skin/wound: Reference “review and evaluation for quality improvement” ”Incident or Occurrence Report”
- Create culture of improvement and sensitivity to maintaining confidentiality of evaluation and deliberative process.

QAPI

- Phase II and III Implementation
  483.75: Each LTC facility, including a facility that is part of a multiunit chain, must develop, implement, and maintain an effective, comprehensive, data-driven QAPI program that focuses on indicators of the outcomes of care and quality of life.

QAPI

The facility must:
1. Maintain documentation and demonstrate evidence of ongoing QAPI program.
2. Present its QAPI program to SSA no later than 1 year promulgation of regulation.
3. Present its QAPI program to SSA at annual survey and upon request.
4. Present documentation and evidence of its ongoing QAPI programs implementation and facility’s compliance with requirement upon request.
QAPI

**Design and scope:** A facility must design its QAPI program to be ongoing, comprehensive, and to address the full range of care and services provided by facility, it must:
- Address all systems of care and management services.
- Include clinical, quality of life, and resident choice.
- Use best available evidence to define and measure indicators of quality.
- Reflect complexities, unique care, and services of facility.

QAPI

**Program Feedback, data systems and monitoring:**
*Written P&P for feedback, data, and monitoring, including adverse event monitoring.*
- Effective systems to obtain feedback/input from direct care staff, others.
- Effective systems to identify, collect, and use data from all departments.
- Facility development, monitoring, and evaluation of performance indicators.
- Facility adverse event monitoring, including methods to systematically identify, report, track, investigate, analyze and use data to prevent adverse events.

QAPI

**Systematic analysis and action:** Must take actions aimed at performance improvement, and measure success, and track performance to sustain. Will develop policies:
- How use systemic approach to determine underlying causes of problems impacting larger systems;
- How they will develop corrective actions designed to effect change at system level;
- How monitor effectiveness of its performance.
QAPI

Program Activities:
• Set priorities for PI, focus on high risk, high volume; problem-prone areas;
• Must track medical errors and adverse resident events, analyze their causes, and implement preventive action.
• Conduct distinct PIPs (at least one annually).

QAPI

Governance and Leadership: Governing body/executive leadership is responsible and accountable for ensuring:
• Ongoing QAPI is defined, implemented, maintained;
• QAPI is sustained in change of leadership and staffing;
• Adequately resourced;
• Program ID’s and prioritizes problems and opportunities...based on data, resident/staff input;
• Corrective action gaps in systems/evaluated for effectiveness;
• Clear expectations are set around safety, quality, rights, choice, and respect.

QAPI

Quality Assessment and Assurance:
• Must maintain QAA committee, consisting of:
  – DON; Med. Director
  – At least 3 other staff members, at least one of which must be the NHA, owner, board member, or other in leadership;
  – The infection control and prevention officer.
QAPI

Quality Assessment and Assurance:
• Must report to governing body.
• Meet at least quarterly to coordinate and evaluate activities under QAPI program;
• Develop and implement appropriate plans of action to correct identified quality deficiencies;
• Regularly review and analyze data collected under QAPI and drug regime reviews;

QAPI

Quality Assessment and Assurance:
• Disclosure of information: A State or the Secretary may not require disclosure of the records of such committee except in so far as such disclosure is related to the compliance of such committee with the requirements of this section.
• Sanctions: Good faith attempts by the committee to identify and correct quality deficiencies will not be used as a basis for sanctions.

QAPI

483.95 Training requirements:
...Training topics must include but are not limited to-
(d) A facility must include as part of its QAPI program mandatory training that outlines and informs staff of the elements and goals of the facility’s QAPI program as set forth at § 483.75.