

## Medical Records Access Review Committees

Effective date: 9/30/15

Pursuant to the authority vested in the Commissioner of Health by section 18(4) of the Public Health Law, Subpart 50-3 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Sections 50-3.1, 50-3.2, 50-3.3 and 50-3.4 are amended to read as follows:

### Section 50-3.1 Application.

This [regulation] Subpart shall govern the functioning of medical record access review committees established pursuant to Public Health Law, section 18 to hear appeals from the denial of access to patient information.

### Section 50-3.2 Definitions.

For the purpose of this [section] subpart:

(a) *Committee* means a medical record access review committee [appointed] designated by the Commissioner of Health to hear appeals from the denial of access to patient information as provided in Public Health Law, section 18.

(b) *Health care provider or provider* [means a health care facility or a health care practitioner as defined in subdivisions (c) and (d) of this section] shall have the same meaning as in section 18 of the Public Health Law.

[(c) *Health care facility or facility* means a hospital as defined in Public Health Law, article 28; a home care services agency, as defined in Public Health Law, article 36; a

hospice, as defined in Public Health Law, article 40; a health maintenance organization, as defined in Public Health Law, article 44; and a shared health facility, as defined in Public Health Law, article 47.

(d) *Health care practitioner or practitioner* means a person licensed under Education Law, article 131, 131-B, 132, 133, 136, 139, 141, 143, 144, 153, 154, 156 or 159 or a person certified under Public Health Law section 2560.]

[(e)] (c) *Patient information [or information* means any information as defined in Public Health Law section 18(1)(e)] shall have the same meaning as in section 18 of the Public Health Law.

[(f)] (d) *API coordinator* means the Department of Health employee responsible for administration, coordination and operation of the access to patient information program within the Department of Health.

[(g)] (e) *Qualified person* [means any properly identified subject, committee for an incompetent appointment pursuant to article 78 of the Mental Hygiene Law, or a parent of an infant, a guardian of an infant appointed pursuant to article 17 of the Surrogate's Court Procedure Act or other legally appointed guardian of an infant who may be entitled to request access to a clinical record pursuant to Public Health Law, section 18] shall have the same meaning as in section 18 of the Public Health Law.

[(h)] (f) *Personal notes and observations* shall mean a practitioner's speculations, impressions (other than tentative or actual diagnosis) and reminders, provided such data is maintained by a practitioner. Handwritten notes and observations shall not be presumed to be personal notes and observations.

Section 50-3.3 Medical record access review committee.

[(a) *Appointment.* (1) A medical record access review committee shall consist of three to five licensed professionals appointed by the commissioner. The commissioner shall designate a chairperson and a vice-chairperson] Every reasonable effort will be made to include on the committee a professional in the same or related field as the health care provider who is the subject of the appeal.

[(2) The commissioner may appoint new members to the committee when vacancies arise.

(3) The commissioner may remove members of a committee for cause. Cause for removal includes, but is not limited to, absence from three consecutive meetings or criminal conviction or findings of professional misconduct against the member.

(4) The commissioner shall appoint alternates who shall serve on the committee when a standing committee member is absent. The API coordinator shall determine when a standing member is absent and which alternate shall serve in place of the absent member. The alternate chosen shall have the same duties and responsibilities as a member.

(b) *Term.* Initial members shall be appointed for a one- or two-year term. Thereafter, the term shall be for two years.

(c) *Quorum.* A majority of the members of a committee constitutes a quorum.

(d) *Meetings.* A committee shall meet as frequently as its business may require. The API coordinator shall schedule meetings in consultation with the committee chairperson.

(e) *Voting.* Each member of the committee shall have one vote. No proxy voting is allowed. A majority vote of the members on the committee is required for committee action.]

Section 50-3.4 Notification of patient rights.

(a) If a provider denies access to patient information the provider shall inform, in writing, the qualified person of the reasons for denial and the qualified person's right to obtain a review of the denial. The provider shall furnish the qualified person a form, approved by the Department of Health, which can be used for requesting such a review.

(b) If a qualified person decides to request a review, he or she shall do so by forwarding the request to the API coordinator for review. The API coordinator shall notify the provider of the request for review and of the name and address of the chairperson of the [appropriate] committee where the patient information shall be sent. A copy of the patient information, and a statement of the reasons for denial must be sent by the provider to the chairperson within 10 days of notification of the request. The qualified person shall be given a reasonable opportunity to present written information and written statements.

Sections 50-3.5, 50-3.6 and 50-3.7 are deleted in their entirety. Existing sections 50-3.8 and 50-3.9 are renumbered as 50-3.5 and amended as follows:

Section [50-3.8] 50-3.5 Decisions [and determinations].

[(a) Committee decisions shall be in writing and issued promptly. The decision shall include the specific reasons for which access was denied or granted.

(b)] A copy of the decision shall be [mailed] provided to the provider and qualified person [by certified mail. When the committee's decision does not involve a finding of personal notes and observations, the qualified person shall also be notified in writing of the right to appeal the decision. A copy of the decision and record of the meeting shall be provided to the API coordinator].

[(c) Copies of all patient records shall be returned to the provider within 10 days following the committee meeting.

Section 50-3.9 Records.

(a) The record of a meeting will include notices, written statements, [a transcript of the meeting if requested,] any other information submitted[,] and a copy of the decision. [The API coordinator shall retain the records of all meetings.

(b) Meetings may be mechanically, electronically or otherwise recorded under the supervision of the chairperson, and the original recording or an official transcript thereof shall be part of the record.

(c) Upon prior request made by the provider or qualified person, the API coordinator will prepare a transcript of proceedings within a reasonable time and shall furnish a copy to the requester. Except when any statute authorizes otherwise, the department is authorized to charge the cost for preparation and furnishing of such record or transcript or any part thereof.]

Existing section 50-3.10 is renumbered as section 50-3.6 and amended as follows:

Section [50-3.10] 50-3.6 Confidentiality.

All patient information is confidential as provided for in New York State law and regulations. Any patient information, [review] committee records, [committee] deliberations, or correspondence sent to the committee or API coordinator will be treated confidentially and all records will be stored in a secure place.

## **REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

The authority for the promulgation of these amended regulations is contained in the Laws of 2010, Chapter 58, Part A, section 13. This section revised Public Health Law (PHL) § 18(4) and directs the commissioner of health to designate medical record access review committees to hear appeals of denial of access to patient information and to promulgate the necessary rules and regulations to effectuate these provisions.

Subpart 50-3 of Title 10 of NYCRR regulates the function of medical record access review committees established pursuant to PHL § 18 to hear appeals from the denial of access to patient information.

### **Legislative Objectives:**

The legislative objective of the proposed amendments to Subpart 50-3 is to address specific requirements of a medical record access review committee outlined in the earlier version of PHL § 18(4). The regulations must be updated for consistency with new provisions of PHL § 18(4) which were necessary to implement the health and mental hygiene budget for the 2010-2011 state fiscal year. The new provisions of PHL § 18(4) require the commissioner of health to designate rather than appoint medical record access review committees to hear appeals from the denial of access to patient information. The regulations must be updated to reflect this change.

### **Needs and Benefits:**

The amendments to Subpart 50-3 will clarify the steps that health care providers must take in the event of an appeal to the denial of access to patient information. The amendments will simplify the process by designating Department of Health (DOH) staff

as members of medical record access review committees. Since DOH staff will not receive honorariums, the amendments will also provide a cost savings to the state.

Various provider and patient organizations were contacted to determine if they had any concerns about the proposed amendments. The organizations representing psychologists, nurses and social workers requested that any medical records access review committee designated to hear an appeal for psychological or social work records include a professional in the same field as the health care provider who is the subject of the appeal. The Medical Society of the State of New York concurs with this suggestion and also requested that any medical records access review committee designated to hear an appeal for medical records include a physician in the same specialty as the subject of the appeal. The proposed regulations were drafted to address that concern.

**Costs:**

**Costs to State and Local Government:**

The amended regulations will not impose any costs upon State and local governments.

**Costs to Private Regulated Parties:**

These amended regulations will not impose any costs on the regulated parties.

**Costs to the Department of Health:**

These amended regulations will not increase costs to the Department. Department costs will actually be reduced by using staff instead of paid experts.

**Local Government Mandate:**

There are no additional programs, services, duties or responsibilities imposed upon any county, city, village, school district, fire district or other special district by this proposal.

**Paperwork:**

No additional new paperwork will be required. Qualified parties will use the same form to file an appeal of denial of access to patient information.

**Duplication:**

This is an amendment to an existing State regulation and does not duplicate any existing federal, state, or local regulation.

**Alternatives:**

This amendment is required by the Laws of 2010, Chapter 58, Part A, section 13. This section revised Public Health Law (PHL) § 18(4) and directs the commissioner of health to designate medical record access review committees to hear appeals of denial of access to patient information and to promulgate the necessary rules and regulations to effectuate these provisions.

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an appeal for medical records include a physician in the same specialty as the subject of the appeal. The proposed regulations were drafted to address that concern.

**Federal Standards:**

This regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

**Compliance Schedule:**

This proposal will go into effect upon a Notice of Adoption in the *New York State Register*.

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**REGULATORY FLEXIBILITY ANALYSIS FINDING  
FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS**

No Regulatory Flexibility Analysis is required pursuant to Section 202-b (3)(b) of the State Administrative Procedure Act. The proposed amendment does not impose any adverse economic impact on small businesses or local governments, and does not impose reporting, recordkeeping or other compliance requirements on small businesses or local governments.

No cure period or other opportunity for ameliorative action is required pursuant to Section 202-b of the State Administrative Procedure Act. The proposed amendment does not establish or modify penalties associated with a violation.

## **RURAL AREA FLEXIBILITY ANALYSIS FINDING**

No Rural Area Flexibility Analysis is required pursuant to Section 202-bb(4)(a) of the State Administrative Procedure Act. The proposed amendment does not impose any adverse impact on facilities in rural areas, and does not impose any reporting, recordkeeping or other compliance requirements on regulated parties in rural areas.

## **JOB IMPACT STATEMENT**

A Job Impact Statement is not required because it is apparent, from the nature and purpose of the proposed rule, that it will not have a substantial adverse impact on jobs and employment opportunities.