Military Medical Records and Quality Review Processes

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Legal Issues

• Exclusive Federal Jurisdiction
  – Challenges for the State
  – Challenges for the Feds

• Separate Claims and Litigation Process

• Federal Peer Review Laws/Restrictions

• Obtaining medical records from a Military Treatment Facility
Federal Jurisdiction

• Federal Jurisdiction of Military Lands outlined in Army Regulation 405-20

• 40 USC 319-319(c)- Authorized relinquishment of authority over road and right of way areas only.

• “Only Congress has authority to legislate for areas held under exclusive federal jurisdiction”
  – AR 405-20 Para 4(a)
A practitioner may practice on a federal enclave if they hold a valid unrestricted license in *any state in the union*. (AR 40-68)

However, a state has authority over any of *their own* license holders, no matter where they are located.

What about providers located in your state on a federal enclave, licensed in other jurisdictions?

And your licensees located outside of your state—who is watching them?
Claims Regulation: AR 27-20
- Non-adversarial process where claim is investigated for merit and compensability.

Quality Review initiated on any PCE or Claim filed.
- Per DoDM 6025.13.

These are separate processes overseen by separate government agencies.
- Claims by US Army Claims Service
- Quality by US Army Medical Command
- Similar process for Navy and Air Force SG’s
• *Feres* Doctrine currently precludes active duty SM from suing the government if the origin of the claim stems from malpractice to the Member of the Armed Forces- but their issue still reviewed in Quality Assurance process.

• DoD 6025.13 now interpreted to mean we review quality of care for *any* payment for iatrogenic injury, whether *Feres* Doctrine bars claim or not.
  – Death Gratuity
  – Disability System Compensation
Quality Assurance Program

- AR 40-68 and now DoDM 6025.13 governs program
- Risk Management reviews of all “questionable” or adverse outcome or complaints
- Multidisciplinary Committee of Senior Staff
- Both privileged providers and non-privileged patient care is reviewed
- All “SOC Not Met” determinations reported to appropriate Medical Command for decision on reporting to the NPDB
Governed by DoDM 6025.13 (All Services)
Any Risk Management case or pattern of cases may be referred to Command for Investigation
Provider placed in “Abeyance”
  – Off Duty Employment Permission rescinded!
  – Military also “flagged”
Due process allows for 3 person Peer Review Panel to determine:
  – Standard of Care determination
  – Reasonable Cause for Adverse Action
  – Recommendation for Action
Authority for reporting any adverse privileging action is specifically reserved to the Office of the “servicing” Surgeon General (DoDM 6025.13).

Quality Assurance Documents regarding federal peer review are prohibited from release under 10 USC 1102.

This applies to all quality assurance information, even if the practitioner has an affirmative duty to report misconduct under state licensure laws.

Applies to release to DOJ even in defense of tort claims cases.
Overview of U.S.C. 1102

- **Purpose:** Encourage unimpeded free exchange of information & ideas about providers, programs & equipment so that quality of care in the DoD can be improved

- **Confidentiality:** “Medical quality assurance peer review (MQAPR) records created by or for the DOD as part of a MQA program are confidential and privileged. Such records may not be disclosed to any person or entity, except as provided in subsection (c).” 10 U.S.C. 1102 (a)

- **Information not subject to discovery** [10 U.S.C. 1102(b)(1)]. 3rd party disclosure prohibited

- **Reviewers, Creators, and participants in MQA programs** are not permitted or required to testify regarding such records in any judicial or administrative proceeding [10 U.S.C. 1102(b)(2)]. Cannot be waived [Cole v. McNaughton 742 F.Supp 587 (W.D. Okl. 1990)]

- **Application:** Must be an activity designed to assess quality of medical care

- **Quality Assurance Records** must be handled IAW Privacy Act of 1974, 10 U.S.C. Section 1102, DoDM 6025.13
Changes Under NDAA--2012

• Section 714
• Medical QA privilege—10 USC 1102
• The new law narrows the privilege from “ANY activity” carried out to assess the quality of medical care
  – TO “any PEER REVIEW activity carried out...to assess the quality of medical care”.
• The law defines “peer review” as “any assessment of the quality of medical care carried out by a health care professional, including any such assessment of professional performance, any pt safety program root cause analysis or report, or any similar activity prescribed in regulations by the Secretary”.
• DoD Manual 6025.13, October 2013
• Now allows (at OTSG level) for release of de-identified aggregate quality data so MTF’s can compare trends and benchmark’s with civilian hospitals
Overview of U.S.C. 1102

- Examples: Medical Quality Review, Credentials Function, Staff Committees and Functions, RM and QA activity/programs, Claims RM investigation, Peer reviews
- **Example 1**: Mrs. A’s Medical Records are reviewed by a medical reviewer in connection with a claim filed against the facility.
  - The medical record is not a QA record because it was not *produced or compiled* as part of a QA program.
  - The report the reviewer generates is a QA record since it was produced as part of a QA program
- **Example 2**: The Credentials Committee reviews various medical records pertaining to Dr. H’s patients to determine whether his credentials should be renewed. Copies of medical records showing substandard patient care are copied from the various charts and attached to the record of proceedings.
  - The medical records themselves are not QA records
  - The copies of the medical records attached to the record of proceedings are because they were *compiled* as part of a QA program

– Special Thanks to DHA for these scenarios!
• *Any* federal government record is covered by the Federal Privacy Act (5 USC 522(a))- even medical records!

• Release to state authorities must meet Privacy Act requirements
  – Letter signed by head of the agency
  – Subpoena signed by a judge of competent jurisdiction
  – Or patient release (DoD Regulation 6025.18)
• Electronic Medical Record at MTF shows all DoD records within that electronic system.
  – Some hospitals have other systems
  – Examples: Essentris, CHCS, AHLTA, HAIMS, ICDB, PACS, CERNER

• *Hard copy record* still follows patient to each duty location......

• If no longer a DoD affiliation, then record archived to the National Personnel Records Center (NPRC) and outside of DoD control
Thoughts from Military Providers

• Please be patient with response deadlines!
  – Deployments to places with limited access
  – Frequent PCS Moves can delay mail
• They are not Release Authority for Records, even if they still have access to them!!!
  – Records on Patient Complaint
    • Patient Administration Division or Servicing Legal Office
  – Records involving an NPDB Report from OTSG
    • Records must be obtained from Medical Command Level
    • MTF has no authority to release QA outside of DoD*

* MT purchaser has no authority to release QA outside DoD.
Helpful Links

- **US Army Medical Command (MEDCOM)**
  - Med Law Attorneys at every large MTF

- **Air Force Medical Operations Agency (AFMOA)**
  - Med Law Consultants Based on Med Wing or Group

- **Navy Bureau of Medicine and Surgery (BUMED)**

- **National Personnel Records Center (NPRC)**