

**[§482.22(b)(4) - If a hospital is part of a hospital system consisting of multiple separately certified hospitals and the system elects to have a unified and integrated medical staff for its member hospitals, after determining that such a decision is in accordance with all applicable State and local laws, each separately certified hospital must demonstrate that:]**

**(ii) - The unified and integrated medical staff has bylaws, rules, and requirements that describe its processes for self-governance, appointment, credentialing, privileging, and oversight, as well as its peer review policies and due process rights guarantees, and which include a process for the members of the medical staff of each separately certified hospital (that is, all medical staff members who hold specific privileges to practice at that hospital) to be advised of their rights to opt out of the unified and integrated medical staff structure after a majority vote by the members to maintain a separate and distinct medical staff for their hospital;**

#### **Interpretive Guidelines §482.22(b)(4)(ii)**

A hospital that uses a unified medical staff must ensure that the unified medical staff has one set of bylaws, rules and requirements that describe the medical staff's processes for self-governance, appointment, credentialing, privileging, oversight, peer review, and due process rights guarantees. Consistent with the requirements for a system governing body in §482.12, the documentation of the bylaws, rules and requirements that apply to the unified medical staff must identify each separately certified hospital that has elected to use a unified medical staff and which, therefore, is covered by the unified medical staff bylaws, rules and regulations. Depending on State law requirements, the unified medical staff bylaws, rules and requirements may be in addition to or instead of hospital-specific medical staff bylaws, rules and requirements. The unified medical staff's bylaws, rules and requirements must not conflict with any of the specific requirements for medical staff found elsewhere in §482.12 or §482.22, or under any other hospital CoPs which assign responsibilities to the hospital's medical staff.

The unified medical staff's bylaws, rules and requirements addressing its self-governance processes must provide for a process by which members of the unified medical staff holding privileges to practice on site at each separately certified hospital are advised that they have the right to vote on whether to opt out of participation in the unified medical staff, and that if a majority vote to opt out, then the hospital must establish a separate medical staff. At a minimum, the hospital must advise medical staff members in writing of their right to vote by majority to opt out when medical staff membership is first granted, and when it is renewed.

The bylaws must address the process by which a vote to opt out of the unified medical staff is conducted. In establishing the unified medical staff bylaws governing opting out, the unified medical staff, and the system governing body, which must approve the medical staff's bylaws, rules or regulations in accordance with §482.12(a)(4), have the flexibility to determine the details of the voting process, such as how an acceptance or opt-out vote can be requested; whether all categories of members holding privileges to practice on-site at the hospital are afforded medical staff voting rights; whether voting will be in writing and open or by secret ballot, etc. However, the unified medical staff and system governing body may not set up bylaws that unduly restrict the rights of medical staff members at each separately certified hospital to vote whether to accept or opt out of a unified medical staff structure. For example:

The bylaws, rules and requirements may not establish different criteria as to which categories of medical staff members have voting rights with respect to a vote to accept or opt out of a unified medical staff than are used for any other type of voting the medical staff engages in, except as required under the regulation at §482.22(b)(4) that only members holding privileges to practice at the hospital may vote. (See also the discussion below concerning delegation of authority to the medical staff executive committee.)

The bylaws, rules and requirements may not require as a condition for holding an opt-out vote that there be a petition signed by the same number of voting members as would be required for a successful vote to opt out.

The bylaws, rules and requirements may require for a successful acceptance or opt-out vote a "super-majority," that is, a majority that is greater than a simple majority of more than fifty percent of the medical staff members with voting rights holding privileges to practice at the hospital, so long as the same type of supermajority is otherwise required to amend the unified medical staff's bylaws, rules and requirements.

In the case where a hospital system has a unified medical staff and members of the staff at a hospital in the system exercise their right to hold a vote on the question of opting out, the unified medical staff bylaws may not permit delegation of an opt-out decision to the unified medical staff's executive committee. This is the case even when the executive committee is otherwise delegated authority to amend unified medical staff bylaws, rules and requirements that it recommends for approval to the governing body. In cases where the bylaws permit such delegation to the unified medical staff's executive committee for other purposes, a "majority" for purposes of conducting a vote on whether to opt out of a unified medical staff consists of a simple majority, that is, any number which is greater than fifty percent of the medical staff members practicing at the hospital who have voting privileges.

The bylaws, rules and requirements may establish a minimum interval between acceptance or opt-out votes, such as not permitting a vote more than once every two years. However, minimum interval between votes longer than two years might unduly restrain the rights of the members of the medical staff and would not be

permissible.

### **Survey Procedures §482.22(b)(4)(ii)**

- Assess compliance with this regulation only if the hospital uses a unified medical staff. (See survey procedures for §482.22(b)(4) above)
- Ask the hospital's leadership for evidence that the unified medical staff's bylaws, rules and requirements are readily available, and that it is clear that they apply to that hospital.
- Ask the hospital's leadership to provide evidence that the unified medical staff bylaws, rules or requirements address the rights of members holding privileges and voting rights at the hospital to vote to opt out of using the unified medical staff, including notification of these rights.
- Ask how the unified medical staff bylaws define a majority for the purpose of an opt-out vote. If the unified medical staff bylaws require a super-majority, ask for evidence that this is consistent with the way "majority" is defined for other amendments to the bylaws.
- Do the bylaws, rules or requirements clearly describe how and when voting members holding privileges at the hospital are advised of their rights?
- Can the hospital readily identify the members of the unified medical staff practicing at the hospital who are eligible to vote to opt out and therefore must be advised of their rights?
- Do the credentialing and privileging files of members of the medical staff have any evidence of their being notified of their right to vote by majority to opt out?
- Interview several members of the medical staff to determine if they recall being notified of their right to vote by majority to opt out.