

[§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:]

(i) The medical staff members of each separately certified hospital in the system (that is, all medical staff members who hold specific privileges to practice at that hospital) have voted by majority, in accordance with medical staff bylaws, either to accept a unified and integrated medical staff structure or to opt out of such a structure and to maintain a separate and distinct medical staff for their respective hospital;

Interpretive Guidelines §482.22(b)(4)(i)

The decision for a particular certified hospital in a multi-hospital system to use a unified medical staff is a joint one arrived at by the:

- Election of the unified medical staff option by the hospital's governing body; and
- Acceptance by a majority of the medical staff members who hold privileges to practice at that particular hospital, voting in accordance with the medical staff bylaws.

The medical staff of each hospital also has the option to opt out of an existing unified medical staff, when a majority of the medical staff members who hold privileges to practice at that particular hospital, voting in accordance with the medical staff bylaws, vote to do so.

For purposes of voting on whether to accept or opt out of a unified medical staff, the term "privileges to practice at that particular hospital" is interpreted to mean only those practitioners who hold privileges to practice on-site at the hospital. Practitioners who hold only telemedicine privileges at a hospital are not to be included when identifying which practitioners are eligible to vote nor what constitutes a majority of the practitioners holding privileges at the hospital.

A hospital that is part of a hospital system is expected to have medical staff bylaws, rules and requirements that address the regulatory requirements of §482.22(b)(4)(i) – (iv) related to using a unified medical staff, including the processes under the bylaws for voting to accept or opt out of a unified medical staff. This is the case even if the hospital currently does not use a unified medical staff.

If the hospital uses a unified medical staff, depending on State law requirements, the unified medical staff bylaws, rules and requirements required at §482.22(b)(4)(ii) may substitute for hospital-specific medical staff bylaws, rules and requirements. However, CMS recognizes that the process of amending bylaws can be a lengthy one. Hospitals that were part of a hospital system using a unified medical staff as of July 11, 2014 are expected to have initiated the process before December 31, 2014 to effect the necessary amendments, even if the process is not completed until after that date. Likewise, when a hospital is

acquired by a system but maintains separate participation in Medicare, if the hospital's governing body elects to use a unified medical staff and the medical staff accepts such election, the hospital is expected to initiate the necessary changes to its medical staff bylaws, rules and requirements no later than six months after the effective date of its acquisition.

In establishing medical staff bylaws governing medical staff voting on the questions of acceptance of, or opting out of, a unified medical staff, the medical staff and the governing body, which must approve the revised bylaws 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, a hospital may not set up bylaws that unduly restrict the rights of medical staff members when voting on the issue of accepting or opting out of a unified medical staff structure. For example:

Hospitals 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 other amendments to the medical staff's bylaws, 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.)

Hospitals 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.

Hospitals may require for a successful acceptance or opt-out vote a "supermajority", 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 generally required to amend the 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 hospital 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.

- On the other hand, in the case where a hospital that is part of a hospital system but has a separate medical staff is holding a vote on whether to accept participating in a unified medical staff, a hospital may permit a vote by members of the hospital's medical staff executive committee only, if this is consistent with the hospital's medical staff bylaws governing amendments in effect at the time of the vote.

A hospital may establish a minimum interval between acceptance or opt-out votes, such as not permitting a vote more than once every two years. However, a 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.

It is not expected that the medical staff bylaws, rules and requirements that were in effect as of July 11, 2014 would address the issue of a unified medical staff, nor the process of voting by medical staff members at each hospital to accept or opt out of a unified medical staff. Although it is expected that the medical staff bylaws, rules and requirements of hospitals that are part of a hospital system will be amended in a timely fashion as discussed above, this does not mean that a vote to accept or opt out of a unified medical staff may not take place prior to enactment of such amendments.

Voting is governed by the hospital's medical staff bylaws in effect at the time of the vote, except that only voting members of the medical staff who hold privileges to practice on-site at that hospital may participate in the vote. With respect to what constitutes a "majority," the provisions of the bylaws governing voting rights and voting procedures at the time of the vote apply. However, as discussed above, in the case of a vote to opt-out of a unified medical staff, the vote may not be delegated to the executive committee of the unified medical staff.

Since a number of hospital systems interpreted the Medical Staff CoP to permit a unified medical staff prior to publication of the final rule at §482.22(b)(4) on May 12, 2014 or its effective date of July 11, 2014, in the case of a hospital's use of a unified medical staff which began prior to the latter date, it is not necessary for the hospital to hold a vote among the members of the medical staff who hold privileges at that hospital to determine whether the majority accepts the continued use of a unified medical staff. However, the governing body is expected to formally notify the medical staff practicing at each hospital of its preference to continue using a unified medical staff arrangement, as well as of the right of the medical staff holding privileges at each hospital to vote to opt out of the unified medical staff.

If the system governing body of a hospital that is part of the multi-hospital system but which has a separate medical staff elects after July 11, 2014 to create a system unified medical staff structure and/or to include the hospital's medical staff in an already existing unified medical staff structure, the hospital must arrange for a vote by medical staff members, in accordance with the medical staff bylaws, on whether or not to accept use of a unified medical staff for their hospital. The hospital may not use a unified medical staff unless a majority of its medical staff members holding voting rights vote, in accordance with the hospital's medical staff bylaws, to accept a unified medical staff.

Even if a majority of a hospital's medical staff has voted to use a unified medical staff in the past, the members of the unified medical staff with voting rights and holding privileges to practice on-site at that hospital still retain the right to hold a vote to opt out of the unified medical staff structure at a future date. If a majority of the staff with voting rights and holding privileges at that hospital vote, in accordance with the unified medical staff's bylaws, to opt out, then the hospital must establish a separate medical staff.

Survey Procedures §482.22(b)(4)(i)

- Assess compliance with this regulation if the hospital is part of a system that consists of more than one separately certified hospital, regardless of whether it uses a unified medical staff at the time of survey or not. (See survey procedures for §482.22(b)(4) above.)
- If the hospital uses a unified medical staff, ask the hospital's leadership when it began to do so. Is there any documentation to support the response?
 - If the hospital began using a unified medical staff after July 11, 2014, is there evidence that a majority of the medical staff holding privileges at the

hospital at the time of the vote voted in accordance with medical staff bylaws to accept using a unified medical staff?

- If the hospital uses a unified medical staff, do the medical staff bylaws clearly describe a process by which a vote to opt out of using a unified medical staff may be requested and conducted?
 - Are there provisions that are described in the guidance above as unduly limiting the rights of medical staff members to vote on whether to accept or opt out of a unified medical staff?
 - If there are other requirements in the voting process that appear to limit opt-out voting, ask the medical staff leadership to explain why the limitations are reasonable and not unduly restrictive.
 - Ask the hospital and members of the medical staff whether there has ever been a vote on the question of opting out. If yes, ask the hospital to produce evidence that a majority of the practitioners holding privileges at the hospital voted against opting out.
- Can the hospital readily identify the medical staff members who are eligible to vote whether to accept or to opt out of a unified medical staff?