Mitigating Your Liability Risks

Physician Office Risk Assessment and Management

Presented to: S.C. American Society for Healthcare Risk Management
S.C. Organization of Nurse Leaders
Presented by: Becky Lowman, MBA, RD, LD, CPHRM, CPPS
June 13, 2014
Disclaimer

The content and information presented in this program is intended to be used for general information and is not intended to be legal advice. Consult a licensed attorney-at-law to assist with specific situations that require legal advice or counseling.
Educational Objectives

At the conclusion of this presentation, the participant will:

• Recall trends in medical professional liability based on closed claims data;

• Identify issues commonly associated with medical liability claims in an outpatient setting; and

• Identify key components of a comprehensive risk assessment for an outpatient setting.
Closed Claims by Top Five Specialty Groups

Comparative Average Indemnity by Top Five Specialties

Chief Medical Factors – Combined Specialties

1985-2012

- Foreign body left in patient: 1688
- Not performed: 1757
- Failure to instruct or communicate with patient: 1850
- Delay in performance: 1994
- Medication error: 4965
- Failure to recognize complication: 5224
- Failure to supervise or monitor case: 7169
- Errors in diagnosis: 18453
- No medical misadventure: 19614
- Improper Performance: 25432

Top Presenting Medical Conditions Associated with Closed Claims

1. Symptoms involving the abdomen and pelvis
2. Pregnancy
3. Back disorders
4. Obesity
5. Desire for plastic surgery

Paid Medical Liability Claims Per 100 Physicians

PY 2004 - 2013

National Practitioner Data Bank, Public Use Data File, As of March 31, 2014
Paid Medical Liability Claims – Average Indemnity

National Practitioner Data Bank, Public Use Data File, As of March 31, 2014
Medical Liability in the Outpatient Setting
Location of Loss

Hospital (62%)
Practitioner’s office (27%)
Hospital outpatient facility (3%)
Surgicenter (2%)
Other (6%)

Paid Malpractice Claims Study

- $1.3 billion paid for outpatient events in 2009
- Major injury or death accounted for almost two-thirds of paid claims in the outpatient setting
- Diagnosis-related errors was the main reason for paid claims in the outpatient setting

Need to focus on patient safety initiatives in the outpatient setting
More attention should be paid to adverse events related to diagnostic errors

Diagnostic Errors in Ambulatory Care

Outpatient Risks

- Patients seeing multiple physicians
- Coordination of care is often suboptimal
- Problems with transitions (hospital and medical office)
- Physician not immediately available
- Patients often rely on telephone advice for acute illnesses

Errors in the Ambulatory Setting

- Medication errors, such as prescriptions for incorrect drugs or incorrect dosages
- Diagnostic errors such as missed, delayed, and wrong diagnoses
- Laboratory errors such as missed and delayed tests
- Problems with patient follow-up on test results

Errors in the Ambulatory Setting

- Clinical knowledge errors
- Communication errors
- Administrative errors, such as errors in scheduling appointments and managing patient records
“Care for inpatients is much more likely to be related to treatment, rather than diagnosis, while the opposite is largely true for the outpatient side. That means much of the risk management and patient safety systems designed for inpatient care will have to be adapted or completely re-conceptualized for the outpatient setting.”

Ann Louise Puopolo is Director of Loss Prevention and Patient Safety at CRICO.
Assessing the Risks
Definition of risk domain and eight categories of risks developed by the ASHRM ERM Task Force for 2012/2013

- Operational
- Clinical/Patient Safety
- Strategic
- Financial
- Human Capital
- Legal/Regulatory
- Technology
- Hazard
Categories of Risk

- Culture
- Laws and Regulations
- Health Information Management
- Access to Care and Office
- Terminating the Patient-Physician Relationship
- Communication
- Medication Safety
- Environmental Safety
- Emergency Procedures

Culture

- Is there a mechanism to report safety events?
- Do the leaders behaviors demonstrate that safety is a high priority?
- Are individual accountabilities documented in job descriptions, performance evaluations, and communicated to the staff?
- Does a potential or actual severity of an outcome play a role in the how staff are treated when evaluating risk and errors?
- Does the organization respond to “at-risk” behaviors?
Laws and Regulations

HIPAA

• Are there appropriate environmental and technical safeguards in place to secure protected health information?

• Are patients informed of their privacy rights?

• Is there a designated Compliance Officer to handle HIPAA complaints?
Laws and Regulations

HIPAA

• Does the practice maintain current HIPAA policies and procedures?

• Do staff members receive HIPAA training during orientation and at least periodically thereafter?

• Has the practice performed a HIPAA security analysis and developed a performance improvement plan?

• Are employees involved in release of information specifically trained for this responsibility?
Interpreters and Auxiliary Aids

• Are interpreter services available for hearing impaired and limited English proficient patients?

• Are auxiliary aids and services available and provided for deaf or hearing-impaired patients?
Laws and Regulations

OSHA

• Does the practice maintain an exposure control plan?

• Does the practice provide necessary personal protective equipment and engineering controls as required by the OSHA standard?

• Do employees who have occupational exposure to bloodborne pathogens receive training on the required elements?
Health Information Management

• Do providers manually or electronically sign all medical record entries and treatment orders?
• Do staff members manually or electronically sign all medical record entries?
• Is there a written process for making corrections/amendments in the medical record?
• Are all treatment-related electronic communications stored in the medical record?
If an electronic medical record is utilized, are scanned documents reviewed in the system prior to destroying paper copies?

When using social media sites, do providers avoid rendering treatment advice?
Documentation of the Patient Encounter

• Does each progress note include a chief complaint or reason for the encounter?

• Does each progress note contain documentation of the pertinent findings/observations of the physical examination and/or diagnostic testing?

• Does each progress note contain documentation of the assessment/working diagnosis?

• Does each progress note contain a treatment plan?
Terminating the Patient-Physician Relationship

- Is there a written policy?
- Does the physician approve all dismissals?
- Do providers document the rationale for dismissal?
- Does the dismissal and notification comply with the **S.C. Board of Medical Examiner’s policy** relative to termination of patient-physician relationships?
Terminating the Patient-Physician Relationship

- Do you consider any requirements if the patient is a member of a managed care organization?
- How do you handle dismissals when there are multiple practices within the organization?
- Is the patient notified of the dismissal in writing and a copy of the letter maintained in the medical record?
Access to Care and Office

• Does the practice monitor patient wait times?

• Does the practice monitor the average waiting time to schedule a routine examination?

• Does the practice monitor the average waiting time to schedule a sick visit?

• Are trends observed in number and reasons for rescheduling a visit?
Communication

On-Call Communication

- When the patient calls after regular office hours, is he/she advised of how to access the provider for care?
- Does the provider have access to medical records when taking after-hours calls?
- Does the provider document any treatment advice rendered after hours?
Communication

Patient Communication

• Is patient education documented, and if appropriate, educational materials distributed?

• Is failure to comply with treatment recommendations or refusal of care documented in the medical record?

• If the practice communicates with patients electronically, is there a policy that ensures HIPAA compliance?

• Is the chaperone policy communicated to patients?
Communication

Informed Consent

• Is informed consent obtained prior to performing a procedure or prescribing a high-risk medication?

• Are informed consent discussions documented in the medical record?

• Are procedure-specific consent forms used?

• Are medication-specific consent forms used?

• If minors are treated, is a consent to treat form signed by a parent or legal guardian?
Communication

Telephone procedures

• Are clinical telephone calls documented in the medical record?
• Are clinical calls referred to clinical staff?
• Are non-clinical staff members authorized to provide treatment advice?
• If written telephone triage protocols used, are they approved by a physician and reviewed periodically?
Communication

Diagnostic Test Tracking

• When the patient is sent to another physician for consultation, is the purpose for the consultation clearly stated?

• Is there a system to reconcile consultant reports?

• Is the consultant contacted when a report is not received?

• Is there a mechanism to track any follow-up care that may be needed?
Closed Claim Lesson

Absence of a Test Tracking System Results in Delay in Diagnosis of Squamous Cell Carcinoma
Referral Management

• When the patient is sent to an outside testing facility, is the indication for the test is clearly stated?
• Is there a process for reconciling test results?
• Is the facility contacted when a report is not received?
• Is there a mechanism for special handling of critical test results?
Communication

Transitions in Care

• Do the providers use structured communication for hand-off and sign-out at transitions in care?

• Is there a mechanism to obtain discharge summaries on patients who were recently hospitalized or visited the ED?

• For hospital-affiliated practices, do you have a continuity of care plan?

• Are medications reconciled at transitions in care?
Closed Claim Lesson

Meningitis – Communication Issues Result in a Delay in Diagnosis/Delay in Treatment
Medication Safety

- Do you maintain a complete medication history, including over-the-counter medications, vitamins, and herbal products for every patient at each encounter?
- Is there a process to track patients receiving warfarin that includes notices to patients for periodic testing of INRs and documented review of INRs?
Closed Claim Lesson

Weak On-Call Handoff and Discharge Instructions Botch Patient’s Coumadin Therapy
Medication Safety

• Do providers obtain informed consent before prescribing opioid medications?

• Do you use a medication use agreement or pain contract with patients treated for chronic (non-cancer pain)?

• Do you update the medication list when initiating or discontinuing medications?

• Do you use two forms of identification prior to administering medications?
Medication Safety

• Do you put an expiration date on multi-dose vials?

• Are mutli-dose vials stored outside of the treatment rooms?

• Do you document medication samples provided to patient in the medical record?

• When samples are provided, are they labeled with documentation that includes the medication, strength, dose, frequency, lot number, expiration date, quantity, patient’s name, date dispensed, and prescriber information?
Medication Safety

• Are females of childbearing age required to have a documented negative pregnancy test or other notation in the chart before teratogenic medications are prescribed?

• Are all refills documented in the medical record?

• Is there a mechanism to identify requests for early refills?

• Are all vaccines dispensed or administered by the practice documented in a log that contains the name of the vaccine, lot number, expiration date, patient name, dose and date administered or dispensed?
Medication Safety

• Are females of childbearing age required to have a documented negative pregnancy test or other notation in the chart before teratogenic medications are prescribed?

• Are refills documented in the medical record?

• Is there a mechanism to identify requests for early refills?

• Are vaccines dispensed or administered by the practice documented in a log that contains the name of the vaccine, lot number, expiration date, patient name, dose and date administered or dispensed?

• Do you have written refill protocols for the staff?
Medication Safety

• If e-prescribing is used, do providers ignore or disable patient safety alerts?

• Are all medications administered in the office documented and includes medication name, dose route, location, and date?

• Are allergies documented and updated at each patient encounter?
Emergency Procedures

• Do you have a written policy for handling medical emergencies?
• Is the policy communicated to new employees and reinforced periodically?
• Are emergency medications and supplies appropriate to your patient population?
Emergency Procedures

• Do you check the emergency cart regularly to ensure that supplies and medications are in date and all equipment is functioning properly?

• Is there a periodic team review of what must be done in emergency situations?
Environmental Safety

• Are there written fire safety procedures?

• Is there an emergency response policy for violence in the workplace?

• Are environmental rounds conducted to identify and correct safety hazards?

• Are fall hazard precautions in place?

• Is there a program for routine maintenance agreement for all biomedical equipment?
Supervision of Mid-Level Providers

- Are delegated medical acts performed pursuant to written protocols between the physician and NP, CNM, or CNS?
- Are the written protocols, with any amendments, reviewed and signed by the supervising physician annually?
- Does the supervising physician facilitate periodic performance improvement activities with the mid-level provider?
- Does the licensed nurse clearly identify himself or herself as officially licensed by the board.
Infection Prevention

• Is there sufficient and appropriate supplies necessary for adherence to standard precautions?

• Are there written infection prevention policies and procedures appropriate for the services provided in the office?

• Is staff training provided upon orientation and repeated regularly?

Key Characteristics
Highly Reliable Office Practice

1. Assessment and Diagnosis
2. Disease Management
3. Health Screening
4. Test Results Management
5. Referral Management
6. Internal Office Function

Emerging Issues

• Electronic documentation – overuse of templated documentation

• Supervision of mid-level providers

• Cyber liability

• Pain management issues

• Patient engagement at a much higher level than in the past
The Road Ahead
References


Thank You

Rebecca Summey-Lowman, MBA, RD, LD, CPHRM, CPPS
rlowman@mmpsi.com
(803) 920-9458