Selected highlights from a May 2014 Best’s Review webinar:

“What Insurance Professionals Should Know About Patient Safety and Ambulatory Care”
Sweeping changes in regulations are having a profound impact on the business of healthcare delivery in the United States. The Affordable Care Act is incentivizing consolidation of hospitals, medical practices, and other provider organizations. It is driving creation of alternatives to high-cost treatment settings, such as Emergency Departments, and sharpening focus on performance metrics, including patient safety, as key reimbursement drivers. As a result, lower-cost healthcare delivery settings, such as outpatient clinics, ambulatory surgery centers, home health, and urgent care centers are emerging coast to coast.

So far, there are more questions than answers when it comes to the emerging risks related to the expansion of ambulatory care. In May 2014, Best’s Review magazine hosted a panel of experts to examine this reshaping of healthcare delivery and its implications to risk and patient safety. The resulting webinar was sponsored by Lexington Insurance, an AIG company.

The panel included:

**Tejal K. Gandhi, MD, MPH, CPPS**
President, National Patient Safety Foundation

**Paul McLaughlin**
Product Line Manager, Healthcare, Lexington Insurance Company

**Brenda K. Pierce, J.D., BSN, RN, ARM**
Corporate Counsel, Christiana Care Hospital System

**Jonathan D. Rubin**
Partner, Kaufman Borgeest and Ryan, LLP

The following is a summary of their discussion, which encompassed areas ranging from mitigation efforts to protect patients against diagnostic, administrative, and clinical errors and the role that insurance is playing. Undoubtedly, participants agreed, greater accessibility to healthcare coupled with evolving healthcare technology and advancements in patient safety can allow people to live healthier, more prosperous lives ... but what are the risks to the healthcare industry?
THE IMPACT OF THE AFFORDABLE CARE ACT (ACA)

Setting the Stage

Several million people have signed up to obtain healthcare insurance under the ACA. Some 30 million or more are expected to acquire a policy in the near future. In order to meet this increased population’s demand for cost-efficient, accessible healthcare, the ambulatory care sector is booming.

Increasingly, we can expect to see more non-physician practitioners, such as nurse practitioners and physician assistants, independently providing care in ambulatory settings.

Post-ACA, we are also seeing consolidation creating larger hospital systems, as they acquire the smaller hospitals or systems. These bigger systems are taking more professional liability risk with higher self-insured retentions and the creation of captives, leaving less premium dollars “in play” in the insurance industry.

More physicians are opting for employment by hospital systems. Aligning the physician and hospital is positive for both quality improvement and patient safety: everyone is working on the same team to obtain optimal outcomes. From a professional liability insurer standpoint, this allows a joint defense when claims arise, with more cooperation and collaboration in settlement negotiations.

How do you foresee ACA impacting the legal liability landscape?

Over the past 10 years, the frequency of medical liability claims has declined in many areas of healthcare, though severity has increased. A greater volume of patients moving through the healthcare system suggests the opportunity for more liability, so is likely to stem this decrease in frequency. Great volume also means the potential for more errors that could lead to lawsuits, frivolous or not. (Counterbalancing this is good news: More patients will receive primary preventive care, potentially creating a healthier patient population, which could lead to fewer liabilities long term.)

The ACA also requires increasing amounts of publicly reported data from healthcare providers, raising concerns of how that data will play out in a claims scenario. Will it change the standard of care?

TRENDS IN PATIENT SAFETY

Setting the Stage

The numbers are astounding. In 2013, The Journal of Patient Safety reported that medical errors and healthcare acquired infections are the third leading cause of death in the U.S.

Fifteen years ago, the Institute of Medicine issued the report “To Err is Human,” in which it estimated that 98,000 Americans were dying each year from medical error. The report included inpatient settings only, while deaths related to ambulatory care settings were not included. More recent studies estimate higher numbers of patients being harmed. That can be partially attributed to today’s better measurement and tracking of issues. But the point is clear. Patient safety is a critical issue.

What are the main safety issues in the ambulatory care setting?

Today, ambulatory or “outpatient” care is delivered in diverse settings, from large system environments to small, walk-in clinics in strip malls and drug stores. A growing array of services are being delivered in different jurisdictions across patient populations. Meanwhile, current patient safety knowledge and practices are derived from acute care practices.

As the volume of ambulatory care increases, there is also greater fragmentation. Transitioning care from setting to setting and provider to provider is challenging. Information, follow-up care, and critical communication can fall through the cracks.

Medication safety is a hot-button concern. Providers need to know what patients are taking across the continuum of care – including prescription and over-the-counter drugs.

Diagnostic error is another significant risk and liability exposure. A simple systems glitch, for example, might keep a provider from receiving a follow-up reminder or test results; a lapse in cognitive thinking may lead to a provider’s failure to order appropriate tests.
How is the healthcare industry making improvements in patient safety?

Important drivers of patient safety improvements are coming from several areas:

- Education requirements for quality improvement and patient safety training are being deployed early in nurse and physician professional curricula, followed-up with ongoing continuing education requirements for licensed practitioners.
- Technology and electronic health records are enhancing the flow of information and communication.
- Processes for communication and care “hand-offs” are being standardized, ensuring better continuity of care.
- Patient portals are facilitating communication between patients and providers.

THE ROLE OF THE PROFESSIONAL LIABILITY INSURANCE INDUSTRY IN PATIENT SAFETY

What can the insurance industry do to help advance patient safety?

Healthcare professional liability carriers can work with the healthcare industry to promote the development and implementation of systems that improve patient safety and care, while also providing motivations like financial incentives and premium discounts. This support resonates particularly well in the current environment. According to a recent AIG survey, Patient Safety; Hospital Risk, two-thirds of hospital leaders said maximizing patient safety was their #1 priority. Yet they also pointed to maximizing financial sustainability as their biggest threat.

Experienced healthcare professional liability insurers have substantial in-house expertise and healthcare risk management experts who can provide on-site risk assessments for clients and make meaningful recommendations for improvements at both hospital and ambulatory facilities.

In addition, the insurance industry is a major source of best practices. Healthcare professional liability insurers, such as AIG, that have been in the business for decades have treasure troves of years worth of medical incident data across jurisdictions. This is a tremendous source of knowledge and experience that can be used as a tool to benefit healthcare systems.

CLAIMS LANDSCAPE

What are the common litigation triggers for ambulatory care facilities?

Frequent claims against ambulatory care facilities involve diagnostic error, mismanagement of medications, and complications related to surgical care.

Many people these days are on many medications. Communication and coordination between pharmacies, patients, and ambulatory care providers can be challenging, and can impact the quality and outcomes of care.

Diagnostic error is a major issue, and the leading cause of claims against physicians, especially given the increasingly high-volume nature of these facilities. Claims also include failure to treat in a timely manner, failure to refer to a specialist, and treating patients beyond the scope of the provider’s capabilities and the scope of practices in an ambulatory care center.

Surgical services also lead to issues, typically arising from anesthesia, post-operative monitoring and care, and inappropriate or premature discharge and patient hand-off.

What liability concerns arise with electronic recordkeeping?

Sound, consistent electronic recordkeeping is one of the best tools to defend a claim, but this can create liability exposures as well. Claims may arise from documentation of care (recorded on templates that is incomplete or not followed-up upon).

Cyber liability is a growing area of concern. Industry reports indicate that the healthcare industry is particularly vulnerable to breaches.
Electronic recordkeeping: Friend or foe?

What are the pros and cons of electronic recordkeeping?

**PROS:**
- All entries are legible.
- It facilitates standardization of care; provides reminders for basic preventative care and steps.
- Custom-made templates can serve as reminders of care elements for a particular visit; data can be easily collected to populate this record.

**CONS:**
- What if you receive a reminder and do not act on it? (Hint: The lapse is documented.)
- Records and templates must be crafted to avoid “set answers” or encouraging over-recording.
- Privacy liability exposure in the event records are breached.
- Potential billing, fraud, or malpractice issues.

SOCIAL MEDIA & TELEMEDICINE

What concerns are on the radar with social media?

Confidentiality is critical in all healthcare settings, including home care. The proliferation of social media has desensitized people to the need to keep certain information confidential. Anything and everything that is put out there in social media is permanent, traceable, and usable. Healthcare providers at all levels must respect patient privacy and never divulge or post identifiable patient information on social media.

What about telemedicine?

With the explosion in technology and mobile capabilities, telemedicine seems a natural way to save money and provide access to healthcare. But there are concerns and risks. A patient may be in one location and the doctor in another — raising regulatory issues related to state licensure. There are also issues around the standards of care, including the relationship between the doctor and the patient in terms of things like securing informed consent, and accomplishing appropriate following up.

KEY TAKEAWAYS

- Culture is key to the success of patient safety in every setting. Within hospitals, leaders and staff strive to create a culture of safety where people are comfortable talking about errors, as well as talking about problems that could lead to errors and harm. The same support for a safety culture, must be embraced in the ambulatory care setting.
- In an era of cost reduction, patient safety must remain a priority. Tools must be available to help make the “cost case” for safety and ensure that we have metrics to measure the impact of safety on outcomes and cost.
- The patient safety efforts seen in hospitals must continue with the same rigor in the ambulatory setting. We must study and understand the problems and design solutions for them.
- Thorough recordkeeping, including appropriate use of electronic medical record systems, is foundational for effective communication and continuity of care.
- Financial sustainability and patient safety can and must coexist. Working together, healthcare providers, insurers, consultants, and legal teams will make this a reality.
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