Medical Professional Liability: Effects of the New Healthcare Law

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Insurance Physicians Expect
Agenda

- Changing Healthcare – w/or w/o ACA or despite of it?
- Data/Technology Impacts
- Impact on Underwriting/Exposures
- Impact on Claims/Risk Management
- The Future
Impact of the new healthcare law on care/patient management

- **ACOs**
  - Who is driving the changes?

- **MORE IS LESS and LESS IS MORE**
  - Value vs. Volume
  - Quality and performance measures

- **Who delivers the care?**
  - Physicians - Coordinator/Manager of Care
  - PAs, NPs, Push to Techs
    - Who will set the standards?
    - Patient “Hand-off”
    - Who is accountable for the care?
EPs Being Held Liable for Mistakes Made by NPs, Pas

“Alright, so technically I’m responsible ...” or “Well, OK, I may be legally responsible, but ...” These comments are common responses by emergency physicians (EPs) named in lawsuits involving mistakes made by physician assistants (PAs) or nurse practitioners (NPs) they’re supervising, says David W. Spicer, JD, a health care attorney in Palm Beach Gardens, FL.

“My response is well, technically and legally, if they screw up, you are on the hook,” says Spicer. “There is no way around that.”

NPs and PAs are being used more often in EDs, and time-strapped EPs need to rely on them working somewhat independently, acknowledges Spicer, but “a lot of EPs don’t understand that they are ultimately responsible for what they do. The fact that PAs and NPs are allowed to write prescriptions and to do certain orders blurs the line between the EP and the physician extender.”

PAs filling out electronic medical records, for instance, are less likely to document the medical decision-making process in the comments section. “The subtleties that a doctor might pick up on — that there is a somewhat suspicious family history of heart disease, for example — will get lost on a PA,” Spicer says.

EPs should never allow a PA to interpret test results, advises Spicer. Spicer was involved in a claim that named an EP, involving a patient who dislocated her knee, whose CT angiogram showing complete occlusion with minimal runoff was characterized by the PA as “she’s got blood flow.” “If you are letting a PA look at blood work or an X-ray report and telling you what it says, that is fraught with disaster,” says Spicer.

Another issue is that PAs and NPs are doing clinical exams in the ED and “the clinical exam is only as good as the examining,” he notes. Spicer was involved with a lawsuit naming an EP alleging misdiagnosis of epididymitis in a young man who presented with testicular pain. “The EP was involved only tangentially. The PA made the call, and it was wrong,” he says.
Technology Impacts

Data/IT – New Frontier

- EMR/mobile devices
  - BYOD
  - Tools and data to effectively document, communicate and access information at site of care
  - Issues (from design to maintenance, training, usage)

- Privacy/Data Security

- Social Media
  - On-line reviews of physicians
Underwriting/Exposure Impacts

Impact on Underwriting

- Where are we?

- Changing exposures:
  - Physician demographics
    - Growing shortage
    - Older physicians re-entering the work force
    - Younger physicians that want a better work/life balance
    - P-T, Non-Physician providers
Underwriting/Exposure Impact (cont’d)

- How do we rate/assess new liabilities and exposures?

- Do our current tools and rating techniques still work?
  - Historical loss experience may not be a predictor for future losses
New Risks and Exposures

Changing patient demographics:
- Impact 2014 - 22 to 36M formerly uninsured entering the system
- Caring for an aging population
- Health Status of the Nation
  - Unaddressed, untreated, u/l and chronic health issues
  - Employer driven wellness programs include personal accountability
  - Informed Patient/Patient expectations
- Care/healthcare provider shortages
- Telemedicine

**Health Care In America**
- 2.6 trillion dollars spent annually
- The U.S.A. Ranks 50th in life expectancy
- 50 million Americans are uninsured

**Since the Affordable Care Act**
- 105 million Americans no longer have lifetime limits on insurance
- 30 million Americans are expected to gain insurance coverage
- 86 million Americans have obtained a free preventive service
- 3.1 million young adults have stayed on their parent's insurance plan until age 26
- 17 million Americans will have access to insurance

ACA and MPL Impacts | DATE 10 May 2013
New Risks and Exposures (cont’d)

ACO – new deep pockets?
- Direct corporate liability?
- Managed care type allegations?

Evolving Standards
- Higher limits?
- Changing standard of care
- Data/IT - risks
Claims

- ACA requires quality measures
  - Who is “accountable” for failure to meet, provide care?
- Changes in Standard of Care
- Cooperating in the defense
Risk Management

- Using data to drive change to promote Quality & Patient Safety
- Credentialing/Quality Assurance
- Early intervention and resolution
Claims/Risks

New Types of Allegations:
- VL for malpractice of others
- Duty to investigate and monitor
- Failure to assure patient compliance
- New corporate liability exposures
- Breach of contractual obligation to provide quality of care

Will Tort Reform apply?
- Potential changes in frequency & severity
The Future

More risk in the system

- Excess capacity
- Financial pressure
- Changing risk profiles
- More pressure on ERs

Embrace and adapt to change - Opportunity for intelligent innovation
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- MGIS (www.MGIS.com) and Freedom Specialty Insurance Company, a Nationwide Insurance Company (www.Freedomspecialtyins.com), partnered to provide MPL coverage to physicians, surgeons, and medical groups. Its physician-focused underwriting allows them to offer premier products at a competitive price.

- Kirsten-Brauer is a seasoned and proven leader in insurance/reinsurance and program business with extensive experience in the complex professional liability and medical malpractice market.

- She served in leadership positions for carriers like MMI Companies and Health Providers Insurance Company (both part of St. Paul/Travelers), reinsurers, MGUs and risk management service providers.

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