

4.13 LEGAL ISSUES AND RISK MANAGEMENT

Introduction

Risk Management is a discipline commonly perceived to be the domain of institutional personnel and committees who are called upon to address adverse events that have already occurred. However, consequence management is far from the most effective utilization of such resources, as they are most efficiently and ethically deployed in preventive programs. Risk management therefore prospectively draws upon the disciplines of patient safety, performance improvement, systems management (including engineering and technology), ethics, and human factors in addition to medicine, in an effort to eliminate or ameliorate the undesirable consequences of delivering healthcare services. Hospitalized children are a highly vulnerable population due to social dependencies and developmental needs and have unique legal regulations that may impact care delivery. Pediatric hospitalists deliver care in this acute, high-risk healthcare environment and should be knowledgeable about legal and regulatory requirements, prevention strategies, and ways in which to collaborate with other professionals in management of hospitalized children.

Knowledge

Pediatric hospitalists should be able to:

- Summarize the role of common entities that accredit and license organizations, including The Joint Commission (TJC), the Centers for Medicare and Medicaid Services (CMS), and state health departments.
- Cite examples of how interfacility transfer of patients may be affected by the Emergency Medical Treatment and Active Labor Act (EMTALA).
- Summarize the basic regulatory and legal stipulations that may impact pediatric hospitalist contracting and practice, as noted in the anti-kickback regulations (Stark Rules) and anti-trust regulations (Sherman Act).
- Discuss the importance of fraud and abuse regulations for billing, coding, documentation, collections, utilization review, and managed care operations.
- Describe the common features of privacy regulations, such as the Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- Review the role of physician licensing and oversight agencies such as the state Medical Board, National Practitioner Data Bank, and Drug Enforcement Agency.
- Define “medical liability,” “standard of practice,” and “negligence” and discuss the role of state malpractice statutes of limitation for children.
- Discuss the role of behavior and attitudes in generating patient and family/caregiver complaints.
- Describe the behavioral and physical characteristics of the impaired practitioner, including fatigue, substance abuse, and disruptive behavior.
- Summarize the role of the hospital medical staff in granting clinical privileges and initiating disciplinary actions through peer review process.

- List responsibilities associated with maintaining malpractice insurance, including documentation and disclosure requirements.
- Define the terms “assent” and “consent” and describe the circumstances in which informed assent or consent is needed.
- Give an example of legal issues that can arise in various clinical scenarios, such as end of life care, “no code” discussions (do-not-resuscitate or allow-natural-death), organ donation, guardianship, and newborn resuscitation.
- Describe the role of pediatric hospitalists in appropriate and timely notification to risk management or hospital counsel when medical errors or preventable events occur.
- Describe the role of pediatric hospitalists in recognizing and reporting family violence for the child, spouse, or elder.
- Provide examples of potential errors related to devices and technology, including Electronic Health Record (EHR) data entry, use, and documentation, privacy, device alert fatigue, and others.
- Review the relationship between human factors, design factors, risk management, patient safety, and quality improvement.

Skills

Pediatric hospitalists should be able to:

- Obtain informed assent and/or consent from patients and/or the family/caregivers.
- Disclose medical errors clearly, concisely, and completely to patients and the family/caregivers.
- Communicate in difficult situations and when delivering sensitive information, with compassion and a professional attitude.
- Support and communicate end-of-life decisions and planning.
- Transfer patient information concisely and precisely to other healthcare providers during all transitions of care.
- Prescribe treatments using safe medication prescribing practices.
- Document in the medical record with accuracy and appropriate detail.
- Identify when legal and risk management notification and/or expert consultation is indicated and initiate the escalation process.
- Demonstrate basic skills in utilizing risk reduction strategies, in partnership with local legal and risk management experts.

Attitudes

Pediatric hospitalists should be able to:

- Role model professional behavior.
- Recognize the importance of responding to complaints in a compassionate and sensitive manner.
- Reflect on the importance of collaborating with legal and risk management experts to learn and practice risk reduction strategies, such as failure modes and effects analysis (FMEA) and others.
- Reflect on and provide support and education for trainees in

discussions on the importance of communication and documentation from the legal and risk management perspective.

Systems Organization and Improvement

In order to improve efficiency and quality within their organizations, pediatric hospitalists should:

- Lead, coordinate, or participate in organizational risk management efforts and promote risk prevention by active participation in appropriate hospital committees.
- Collaborate with hospital administration and other colleagues to advocate for and modify systems and processes that help risk reduction.
- Lead, coordinate, or participate in healthcare information

systems related initiatives that enhance the ease and accuracy of documentation and prescribing.

- Lead, coordinate, or participate in efforts to create a comprehensive risk reduction program encompassing education for hospital staff, medical staff, and trainees.

References

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2. Vincent C, Taylor-Adams S, Chapman EJ, et al. How to investigate and analyze clinical incidents: Clinical risk unit and association of litigation and risk management protocol. *BMJ*. 2000;320(7237):777-781. <https://doi.org/10.1136/bmj.320.7237.777>.