

Early Resolution & Partnership Between Organizations & Insurers

**Are insurers really reluctant to adopt
Communication and Resolution Programs
(CRPs)**

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▶ **At the conclusion of this presentation you should be able to:**

- ▶ Identify the basic components of a Communication and Resolution Program
- ▶ Identify role and purpose of an insurance company
- ▶ Understand actuarial model/underwriting/ratemaking
- ▶ Identify potential barriers to adoption of Communication & Resolution Program by healthcare professionals, organizations, attorneys (both defense and plaintiff), families and insurers

▶ **Components of a Communication and Resolution Program (CRP)**

- ▶ UW Medicine's Collaborative for Accountability and Improvement definition:

“Communication and Resolution Programs (CRPs) are a principled, comprehensive, and systematic approach for responding to unintended patient harm.”

► Process involves:

1. Reporting incidents of harm immediately
2. Conducting rapid investigation of what happened
3. Sharing a full complete explanation about the event with patient and family
4. Providing psychosocial support for the patient, family and involved clinicians
5. Offering apologies
6. Proactively offering compensation for care that was found to be below the standard of care
7. Ensuring that lessons are learned to prevent recurrences

► CRP Core Commitments

1. Being transparent with patients regarding risks and adverse events
2. Using human factor principles to analyze adverse events, and implementing action plans to prevent recurrence
3. Supporting emotional needs of patient, family and involved clinical team
4. Proactively and promptly offering financial and non-financial resolution when preventable adverse events occur
5. Educating patient and families about their right to seek legal representation at any time during the process
6. Collaboration with other organizations and insurers to respond to events involving multiple parties.
7. Assessing the effectiveness of the program using accepted, validated metrics

▶ Role and Purpose of Insurance Company

▶ What is liability insurance?

In exchange for a paid premium, liability insurance provides the insured with protection against claims resulting from injuries and damage to people and/or property. The policies cover both costs to defend and any payout for which the insured is found to be legally liable.

Depending on the structure of the organization's insurance program, commercially purchased insurance may be structured to serve as primary coverage or excess coverage that pays only after the primary layer is exhausted. Excess coverage usually conforms to the primary policy. The primary layer may also be via captive (self-owned) or self-insured retention (amount of retained risk).

▶ What is an actuarial model?

- ▶ Actuarial science is a process by which mathematical and statistical methods are applied to assess risk.
- ▶ An actuarial model is a simplified mathematical description of a certain actuarial task that is used by actuaries to for an opinion or recommend a course of action on contingencies relating to uncertain future events. For the purposes of malpractice insurance the ***stochastic or probabilistic*** model is applied. The information that is output and/or some of the information input are random variables. Examples include ***claims made model and frequency-severity model***.

▶ Role of Underwriting

- ▶ Two concepts to remember:

Price = Cost+Profit

Premium = Losses + LAE + UW Expenses + UW Profit.

- ▶ Underwriting – assessing the risk of providing insurance to a particular client, then determining whether to approve or deny the applicant's ability to purchase a policy. Using actuarial models, must determine what premium, if any will protect profitability.
- ▶ Ratemaking – projection of past loss experience into rates with the intent of setting of premiums that will pay for losses and expenses and provide a margin for profit and contingencies.

LAE = loss adjustment expense; UW = underwriting

▶ Role of the Office of the Insurance Commissioner

When a new product or change to policy form is introduced by an insurance Company it must file for approval by the Office of the Insurance Commissioner.

This filing and approval process can take up to a year.

If you are a carrier that services 50 states, you theoretically would have to file with 50 separate Insurance Commissions.

Barriers to adoption and successful implementation of early resolution programs.

**What are your thoughts?
(10 Minutes)**

▶ Barriers to adoption and successful implementation of early resolution programs

- ▶ Variability in programs and organizations
- ▶ Variability in state statutes supporting early resolution programs
- ▶ Divergence of stakeholder interests
- ▶ Variability in timely reporting of events
- ▶ Variability in timely investigations
- ▶ Competing priorities within facilities that distract from implementing and sustaining the program
- ▶ Lack of physician willingness or training with regard to disclosure, apology and resolution.

▶ Variability in programs and organizations

- ▶ Many of the organizations that have long standing programs:
 - have been closed systems with employed medical staffs
 - are self-insured either with large retention or captive insurance company
- ▶ Organizations with open or mixed medical staff models:
 - have difficulty engaging independent physicians either in training due to time commitment
 - independent medical staff may have varying malpractice insurance carriers
 - independent medical staff may often view the issues as the hospitals problem or have difficulty with conversations where errors are acknowledged

▶ **Variability in state statutes supporting early resolution programs**

- ▶ Most often cited program UMHS results may also have been impacted by tort reform that included caps on non-economic damages, a six-month mandatory pre-suit notice period and specific expert witness requirements that resulted in an overall reduction in number of malpractice claims.
- ▶ Every state has variability in statutes that may or may not impact early resolution programs, so difficult to develop one size fits all.

▶ Divergence of stakeholder interests

	Healthcare Facilities	Insurers	Defense Attorneys	Plaintiffs' Attorneys	Patients
Rapid resolution	Maximize	Maximize	Neutral	Maximize	Maximize
Increased Quality Improvement/ High Quality Care	Maximize	Maximize	Maximize	Maximize	Maximize
Trust among parties	Maximize	Maximize	Maximize	Maximize	Maximize
Binding agreements	Maximize	Maximize	Neutral	Neutral	Maximize
Legal Liability	Limit	Limit	Neutral	Maximize	Maximize
Attorney fees	Limit	Limit	Maximize	Maximize	Limit
Financial Compensation to Patient	Limit	Limit	Limit	Maximize	Maximize

Key 1: Blue=shared, Orange=potentially conflicting, Red=conflicting

Source: Van Neil, M., DeVoe, T., Shah, R., Samds, K., 2016, Patient Representation in Communication and Resolution Programs: What is the best model?, *Healthcare Professional Liability Review*, 12, 1-10

▶ Variability in timely reporting and investigation of events

- ▶ As late as 2012 the Office of the Inspector General's (OIG) generated a report: *Hospital Incident Reporting Systems Do Not Capture Most Patient Harm*. This indicated that hospital staffs do not report 86 percent of events to incident-reporting systems, partly because of staff misconceptions about what constitutes patient harm.
- ▶ Health care organizations across the country have not identified a common method to identify harm.
- ▶ Lack of reporting, as well as a lack of event classification may lead to confusion in the urgency or need to investigate events.

Source: Office of Inspector General (OIG). *Hospital Incident Reporting Systems Do Not Capture Most Patient Harm*. Daniel R. Levinson, January 2012. Accessed March 28, 2019 via Internet.

▶ Discussion with claims staff

- ▶ Identified that the lack of a outcome data makes many of them less than eager to try and convince insureds, especially physicians whom are skeptical that this is the right thing to do. Some have concern that they would position the company for a potential bad faith lawsuit.
- ▶ Common comment was that many of the larger organizations are self insured, and they see that there is difficult with those facilities implementing and sustain a program.
- ▶ Feel that the organization should own the facilitation of the process and create a common methodology. It would then be easier to work with their insureds.
- ▶ Many insurers do support some form of early resolution: (I will provide verbal examples)

▶ What can your organization do?

- ▶ If you are self-insured either via a captive or a self-insured retention, find out the barriers within your own organization.
- ▶ If you have employed medical staff, how are you educating and engaging them in the process?
- ▶ What do your medical staff bylaws, and/or rules and regulations say about disclosure in general, and more specifically Communication and Resolution Programs (CRPs)? Is there a medical staff champion willing to lead an effort to incorporate CRP into Rules and Regulations?
- ▶ Take the lead with community practicing physicians. Many physicians in private practice fall into one of two categories. They either want the insurance company to handle the issue and make it go away, or they take a position of defend at all costs.

▶ Questions?

At the beginning of the presentation I stated these objectives.
Did I address the adequately and do any of you have questions?

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