

Tuesday, April 28, 2009

DAY ONE

Listen, Harry Smith just called me. He just got out of the OR from operating on a 22 year old woman. He found a foreign body in the right lower quadrant of a patient, Ms. Jones. He operated on her two months ago and thinks a foreign body may have been left behind then. He's not sure what it is but he knows it shouldn't be there.

What should we do?

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DAY TWO

She presented two months ago to her gyn, Sarah Connor, with fever and right lower quadrant tenderness. Ultrasound showed a right lower quadrant mass involving the right ovary and Dr. Connor proceeded directly to do a pelvic laparoscopy. When she got it there, she found a normal right ovary and the rest of the pelvis looked fine, but her appendix had a large inflammatory mass around it suggesting acute appendicitis with possible perforation. She called Harry, a general surgeon, who came to the OR, scrubbed in, looked through the laparoscope and went on to do an open appendectomy because of the size of the mass. Fortunately there was no massive perforation and Ms. Jones was out of the hospital in two days, completed a course of antibiotics for two weeks and was doing well.

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DAY TWO (Continued)

Five days ago she developed low grade fever and increasing pain and night before last she presented to the ER with increasing discomfort and a fever of 104. Harry saw her, did a CT scan, and found another inflammatory mass in the region where he operated. They did an exploratory laparotomy and found an inflammatory mass which he drained and she'll be in the hospital for about 10 days on IV antibiotics. What surprised him was when they drained the mass, they found what looks like a small piece of laparoscopy equipment in the mass. We're not sure exactly which part yet but we think it was left behind when Sarah left the case and Harry took over from her during the original surgery.

FIRST 7 DAYS

Team Meeting To Follow Up on Progress
in the "Never Event" in Ms. Jones

Agenda

- Jennifer's Report
- Jeff's Report
- Steve's Report
- Next Steps

Day 30

Follow Up Team Meeting on "Never Event"
in Ms. Jones

Agenda

- Jennifer's Report
- Jeff's Report
- Steve's Report
- Next Steps

Multidisciplinary Review of Issues in Compliance

Steve Ortquist, JD
Managing Director
Aegis Compliance & Ethics Center, LLP

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- October 1, 2007 – CMS begins requiring “present on admission” (“POA”) reporting of all secondary diagnoses

POA Reporting

- Appended to diagnostic codes submitted on all claims
 - “Y” – Present at time of admission
 - “N” – Not present at time of admission
 - “U” – Unable to determine based on documentation
 - “W” – Condition is clinically undetermined
 - “1” – Unreported/exempt from POA requirement

- October 1, 2008 – CMS will not pay hospitals for 12 “hospital acquired conditions” unless the conditions were POA

12 Non-Payable Hospital Acquired Conditions

- Foreign object retained after surgery
- Air embolism
- Blood incompatibility
- Stage III and IV pressure ulcers
- Falls & trauma
- Catheter associated UTI
- Vascular catheter associated infection
- Surgical site infection following CABG
- Manifestation of poor glycemic control
- Surgical site infection following bariatric surgery
- Deep vein thrombosis and pulmonary embolism following certain orthopedic procedures

Three New NCDs – Uniform Policy of Non-Payment for Certain Events

- Wrong Surgery Performed on a Patient (CAG-00401N)
- Surgery on the Wrong Body Part (CAG-00402N)
- Surgery on the Wrong Patient (CAG-00403N)

Reporting Hospital Quality Data for Annual Payment Update Program

- Begging October 1, 2008, hospitals are required to report 30 inpatient measures in 6 sets:
 - Heart attack (MI) – 8 measures
 - Heart failure (HF) – 4 measures
 - Pneumonia (PN) – 7 measures
 - Surgical Care Improvement Project (SCIP) – 7 measures
 - Mortality – 3 measures
 - Experience of Care (HCAHPs Survey)
- Non-participating hospitals receive a 2% reduction in Medicare Annual Payment Update for 2009

State Reporting Requirements

- As of January 1, 2008, as many as 26 States have adverse event reporting requirements and systems
- OIG Study: *Adverse Events in Hospitals: State Reporting Systems* (December 2008)
- Also: Reporting Requirements – Commercial Contracts??

When Does FCA Liability Arise for Quality of Care Issues

- Historic Argument: knowingly or recklessly billing for “worthless services” is a violation of FCA
- With new POA requirements – FCA liability will derive from failure to accurately report POA conditions or inadequate documentation

Compliance Issues

- Bill Hold
- Accurate coding of POA conditions
- Adequacy of documentation for “Y,” “U,” and “1” Codes (compliance audit opportunity)
- To bill or not to bill
- Implications for non-hospital providers

Multidisciplinary Review of Issues in Safety and Quality

Jennifer Daley, MD
Chief Medical Officer
Partners Community Healthcare Inc.

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Multidisciplinary Review – Safety & Quality

- Implications on System Improvement
 - System error?
 - Individual error?
 - Error in judgment?
 - Error in technique?
 - Does not meet professional standards?
- Role of root cause analysis
 - Education
 - System redesign
 - Human factors redesign
 - Device failure

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Peer Review and Medical Staff Action

- Follow the medical staff bylaws to the letter
- Involve appropriate peer reviewers (confidentiality clause)
- Move the process along (time limited peer review)
- Involved physicians' responses
- Appropriate next steps

External Reporting and Medical Licensure

- Varies by state regulations
- Expanding mandatory reporting to state department of health, board of registration in medicine
- Expect state and perhaps CMS to visit the facility
- Expect state level review of physicians' and nurses' records
- Communicate with internal leadership, Board of Trustees, Patient Care Assessment Committee, etc.

Caring For The "Second Victims"

- Crisis management debriefing
- Counseling and/or EAP as needed
- Loss of staff
- Support, counseling, follow-up and system redesign as appropriate

Multidisciplinary Review of Issues in Risk & Insurance

Jeffrey Driver, JD
Executive Vice President/Chief Risk Officer
Stanford University Medical Indemnity & Trust
Stanford University Medical Center

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Multidisciplinary Review – Risk & Insurance

Mens Rea and Insurance Coverage

- ▶ Intentional Acts will not be covered by insurance
- ▶ What is intentional?
 - ◆ Volitional Act
 - ◆ Intent - Specific (goal) or General
(knows with substantial certainty)
 - ◆ Causation

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Multidisciplinary Review – Risk & Insurance

Cooperation Clause

Failure of the insured to cooperate with the insurance company and/or admissions of liability by insured will, at the insurance company discretion, relieve the insurance company of its duty to defend and/or pay damages, expenses and costs.

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Analysis of Tort Elements

(Negligence)

- ▶ Duty to conform to a certain standard of conduct, care
- ▶ Breach of that duty by an insured
- ▶ Causation is actual and proximate cause of harm
- ▶ Damages to person or property

Admissions of Liability

(Federal Rules of Evidence)

An admission is a statement (by party opponent) or act done (adoptive admission by reference or silence) that amounts to prior acknowledgement by one of the parties to an action of one of the relevant facts.

Admissions are admissible as substantive evidence so long as they are subject to cross examination. Personal knowledge (hearsay) does not necessarily exclude a party's admission.

Early Offers

(Stanford University, VA Medical, University of Michigan,
University of Illinois, COPIC)

In cases that involve preventable unanticipated outcomes (including *applicable* never events), apologies to the patient are recommended along with explanations of what lessons have been learned, and in certain cases with prior approval of the insurance company, early offers of compensation may be made in order to resolve patient and family needs and/or loss.

**Best Practices in Coordinating
Investigation and Resolution with
Other Stakeholders**

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**Best Practice in Coordinating
Investigation & Response**

- Immediate Risk Mitigation
- First Responder Team
- Bill Holds
- Internal vs. External Investigations
- E-Discovery
- Managing Patients
- Managing Internal Communications
- Managing External Communications

**Best Practice in Coordinating
Investigation & Response**

- Protections and Privileges
 - Attorney-Client
 - Federal and State Peer Review
- Managing the C-Suite
- Look Back Programs


