

THE ROLE OF EDUCATION IN MANAGING HOSPITAL LIABILITY

With Increasing Liability Exposures and Tightening Finances, can your Hospital afford *not* to have a Robust Education Program?

Greater Liability Risks...

Trends in the healthcare industry have led to an increase in liability risk and exposures for hospitals. Hospitals are under greater scrutiny from many areas, such as the increase in regulatory laws by the government in pricing policies and transparency. Hospitals must be prepared against violations of regulatory laws, such as EMTALA, HIPAA, OSHA, Medicare & Medicaid Regulations, Hospital Billing and Collection Practices. From the patient side, there is a rising consumerism as patients have access to more data on providers and expectations of quality care. This makes credentialing practices of a hospital more critical, and reputational risk of a hospital greater as they are being held to an even higher standard.

Increased competition with other types of healthcare providers, a shortage of doctors, and the drive to merger & acquisition activity in various forms put a hospital at risk for violations of Stark laws, numerous Antitrust laws, such as the Sherman Act, Clayton Act, FTC act, or breaches of fiduciary duties. There have also been an increase in staffing challenges in hospitals, and resulting employment-related claims and Federal Fair Labor Standards Act (FLSA) Violations.

With declining reimbursements & increasing indigent services, the resulting financial struggles can cause additional liabilities for hospitals. There is liability to creditors or bondholders for inability to pay debts or violation of loan covenants, and alleged or actual breaches of fiduciary duties in managing funds and assets of the hospital.

Despite a soft insurance marketplace over the past few years, with increasing financial challenges many hospitals are not able to maintain adequate insurance protection. Some are taking on higher deductibles/retentions in order to afford coverage. Combining these two factors- an increase in liability exposures, and a failure to maintain adequate insurance, could expose a hospital to a higher risk of underinsured or uninsured liability- creating even more financial uncertainty.

...A Greater Need for Education

While insurance is the main avenue relied upon for managing risk at a hospital, it cannot be the sole risk management technique for hospitals. Some areas of liability cannot be covered by insurance, and for some exposures, limits high enough are not available. (*Not convinced? Google "Tuomey hospital" and "Stark violation."*) Insurance will help to financially cover areas of liability when they arise, and is especially critical for hospitals with financial challenges. But insurance will



not prevent all losses from occurring, especially in the healthcare space. There must be a robust risk control, loss prevention, and loss reduction plan in place as well. Hospitals must be careful to take greater care of the increasing risk they face and a key to doing so involves *education*.

While many rural hospitals struggle to expand the education and compliance programs, whether due to finances or staffing limitations, it is a critical piece of managing the ongoing liability of a hospital. Areas of liability exist whether recognized or not, but those that are recognized and prepared for are better prevented against. This makes a robust education program critical. Training programs must be in place to not only maintain compliance, but also to facilitate growth of personal and professional skills, such as communication skills and customer service. They should involve making staff familiar with policies and procedures, focus on quality improvement efforts, and make them familiar with their roles and responsibilities in managing particular areas of liability.

Education is needed at all levels of a hospital organization – executives, board members, departments heads, and employees - for each of the areas of liability risk to whom responsibility can apply. For example, many hospitals think managing HIPAA regulations are an issue for the HIT department to manage, when in truth, a privacy breach and HIPAA violation has the potential to affect all areas of a hospital. Financial challenges of fines and penalties, lawsuits from patients alleging damage from the breach, and the reputational risk of a breach in the hospitals community can be great. Even more important, the majority of privacy breaches in hospitals today aren't due to a lack of security on the IT side, but rather due to human error- such as misplaced laptops by employees. HIPAA is an area that all employees, from the front desk, to maintenance, clinical- to the business office and c-suite, must be educated about. This need for broad education is especially true for board members and executives, who are tasked with oversight and governance of the hospital- and are also held personally liability for many areas of liability.

Other Benefits of Education

Education not only has the potential to minimize against loss from liability, but also has the potential to maximize gain. With increased regulation in billing and collections, an educated Business Office not only has the ability to help the hospital avoid key areas of liability or decrease RAC findings, but also to maximize reimbursements. An HIT team that looks to put HIPAA security measure in place not only helps to prevent against hackers, but also makes the hospital more prepared for HIE and Meaningful Use attestation. In addition, a well-trained staff and documented clinical compliance program makes hospitals more attractive for competitive bids to insurance underwriters, as well as potentially better loss histories, providing more affordable insurance coverage in the long run.

Like a successful risk management program, a hospital's education program must start at the top. The hospital executives and board members must set the example and take the lead in requiring compliance in ongoing quality education, whether from annual education, webinars, CE and certifications, or seminars and conferences.

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