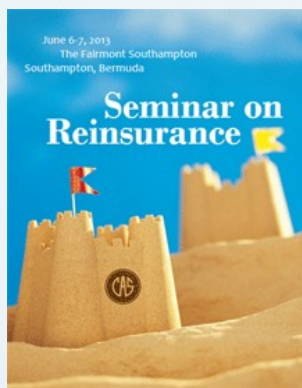


Medical Professional Liability: Effects of the New Healthcare Law



Elke Kirsten-Brauer
EVP/Chief Underwriting Officer
MGIS Underwriting Managers, Inc.

Insurance Physicians Expect

Agenda

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

ACA Impacts

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?

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85% of our eligible providers attested to Meaningful Use in 2011

Physicians Need to Explore the Personal Risk of Joining ACOs

Blog | January 27, 2013 | ACO, Healthcare Careers, Patients, Personal Finance, Practice Models
By Jeffrey D. Brunken

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85% of our eligible providers attested to Meaningful Use in 2011

The Malpractice Risk of Poor Patient Hand-offs at Your Practice

Blog | February 24, 2013 | Law & Malpractice, Operations, Patient Relations
By Jeffrey D. Brunken

Some call it the black hole, some the missing link, some just an oversight. Whatever the term, when physicians handoff patients, there are opportunities for gaps in coverage, improper or inaccurate transmission of critical patient data, or simply information lost that could have serious repercussions and potentially lead to malpractice claims.

In fact, in many respects, the patient hand-off process can be like the childhood game of telephone. With each conversation there are opportunities for missed or lost critical patient information.

One study reported by *American Medical News* estimated that botched hand-offs play a role in 80 percent of serious preventable adverse effects and that a staggering 70 percent of handoffs in hospitals participating in a recent research study were defective.

While troubling, the fact there are mistakes or oversights made is also not surprising. Each day thousands of hand-offs are made at hospitals and medical offices nationwide.

Is your practice ready for Meaningful Use Stage 2?

Click here to view a FREE ON-DEMAND webinar

ED Legal Letter™

The Essential Monthly Guide to Emergency Medicine Malpractice Prevention and Risk Management
From the publishers of *Emergency Medicine Reports* and *ED Management*

AHC Media

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EPs Being Held Liable for Mistakes Made by NPs, PAs

"All right, 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 examiner," 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

PHYSICIAN *Risk Management*

MAY 2013 | Vol. 1, No. 11

PAGES 121-131

Negative online review of MD? Keep legal risks front of mind

Patient postings coming up 'more and more' in med/mal suits

Did a dissatisfied patient post a negative review online about you or your practice? "We often hear from physicians who really, really want to tell their side of the story," says Brandy A. Boone, JD, a senior risk management consultant at ProAssurance Companies in Birmingham, AL.

Physicians should consult with an attorney before responding to a negative post, cautions Bruce D. Armon, JD, an attorney at Saul Ewing in Philadelphia. "Make sure there is an awareness of long-term implications. Pause and reflect

when a patient posts an online review," Boone explains.

Therefore, referencing a patient's health information in response to an online review could be viewed as an unauthorized disclosure, she says.

John W. Miller II, a malpractice insurance broker and principal of Sterling Risk Advisors in Marietta, GA, says, "A response can turn a well-intentioned statement to defend one's professional reputation into an actionable item for the patient, not to mention the fines and penalties that a physician could then face for HIPAA violations

A physician's response online to a negative posting can be taken out of context and damage the physician's defense...

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

The New York Times Business Day

WORLD | U.S. | N.Y. / REGION | BUSINESS | TECHNOLOGY | SCIENCE | HEALTH | SPORTS | OPINION

Global | DealBook | Markets | Economy | Energy | Media

Published: February 5, 2011

The Aging of America

Baby boomers began turning 65 in January, heralding a seismic shift in demographics worldwide. In the United States, by the year 2035, 1 in 5 people are expected to be age 65 or older. America's aging population has profound implications for society, as well as for policy makers and businesses. [Related Article >](#)

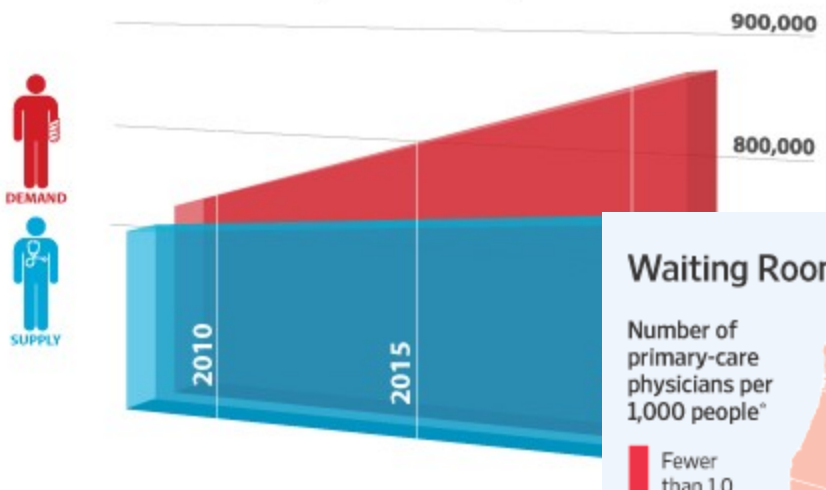
Play

Age 100+
95-99
90-94
85-89
80-84
75-79
70-74
66-69
60-64
55-59
50-54
45-49
40-44
35-39
30-34
25-29
20-24
15-19
10-14
5-9
0-4

1950
13,042,000
People age 65 and older
8.3%
Share of the U.S. population age 65 and older

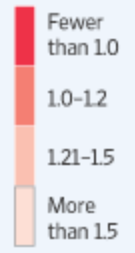
The New York Times | Send Feedback

Projected Supply and Demand, Physicians, 2008-2020 (ALL SPECIALTIES)

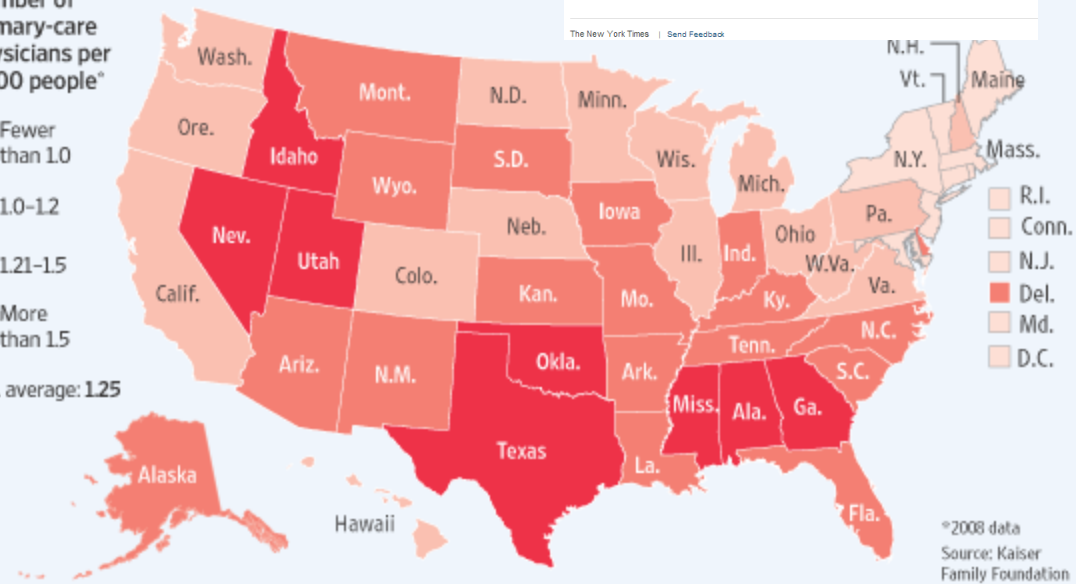


Waiting Room | A shortage of doctors c

Number of primary-care physicians per 1,000 people*



U.S. average: 1.25



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 parents'
insurance plan until age 26

17 million Americans
With pre-existing conditions
will have access to insurance

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

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

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



Presenter Bio

Elke Kirsten-Brauer, Dipl. – Kfm.

EVP/Chief Underwriting Officer for MGIS Underwriting Managers, Inc.

- 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.
- elke.kirsten-brauer@mgis.com