

Preventive Action

Quarterly Risk Management Newsletter for Policyholders of FPIC

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Identifying and Managing Practice Risks



Healthcare providers are faced with a paradox that the more medicine advances, the greater the error potential. Patients have higher expectations of their healthcare providers given continuing advances in technology. While all undesired outcomes cannot be eliminated even by extremely well-qualified providers using the most advanced technology, a number of indefensible cases can be eliminated or reduced by simply utilizing risk reduction strategies and tools.

The Risk Management Department at First Professionals provides consultations with insured providers to identify liability risks and recommend effective risk management tools in an effort to eliminate or reduce those risks. These comprehensive consultations are an excellent example of the value-added component of coverage with First Professionals.

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The consultations consist of an interview with a key office staff member, a tour of the facility, and a patient record review. This service is provided at no cost to our insureds. Consultations are also conducted when underwriting concerns arise or claim frequency is encountered.

The consultation primarily focuses on:

- General Practice Issues
- Office Observations
- Office Policies and Procedures
- Pharmaceuticals
- Equipment and Supplies
- Diagnostic Functions
- OSHA and Infection Control Issues
- Office Procedures
- Credentials
- Patient Contact and Communications
- Emergency Procedures
- Staffing
- Patient Recordkeeping

The practice is assessed with consideration for professional liability and compliance with applicable state and federal regulations. From the assessment, risk management strategies for reducing any identified risk exposures are recommended. The most common liability issues discovered during risk management consultations, relative to frequency, are as follows:

85% Do not have an adequate emergency response kit including an Ambu bag

- 81% Do not include the patient's name on every chart page
- 77% Do not secure chart pages to the chart cover
- 73% Do not document vital patient clinical information:
 - Clinical communications
 - After hours communication
 - Phone calls for post-procedure follow-up
 - Document "NKA" or patient's allergies
- 71% Do not have an established follow-up system to track:
 - Missed appointments
 - Referrals
 - After hours calls
 - Biopsies sent out to labs
 - Test results reviewed by the treating dentist

“...a number of indefensible cases can be eliminated or reduced by simply utilizing risk reduction strategies and tools.”



First Professionals Insurance Company publishes Preventive Action on a quarterly basis as a service to policyholders. Information in this publication does not establish a standard of care, nor is it a substitute for legal advice. The information and suggestions contained in this newsletter are generalized and may not apply to all practice situations. First Professionals Insurance Company recommends you obtain legal advice from a qualified attorney for a specific application to your practice. The information should be used as a reference guide only.

For comments, questions or to obtain additional copies contact the First Professionals Insurance Company Risk Management department at 800-741-3742, ext. 3016.

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- 71% Do not post a notice in the office to remind female patients to notify staff members if they may be pregnant prior to being x-rayed
- 70% Do not obtain a written consent to treat minors from authorized adult
- 59% Do not initial the medical history questionnaire completed by the patient
- 57% Do not obtain a written consent for any invasive procedures

Risk Management Office Tips:

- Place beside each telephone a list of all important phone numbers. If an emergency occurs, this will lessen the time it takes to make that important phone call.
- To ensure your answering service is courteous to your patients, check up on them occasionally. A periodic call by the dentist or a staff member will help identify a potential problem.
- To protect you and your patients, keep all blank prescription pads out of sight of patients.
- Errors or mistakes in charting are corrected by drawing a single line through the incorrect portion, initialing and dating the correction.
- Place magazines in all treatment rooms for patients to read while waiting for the dentist.
- In case of a power failure, all treatment rooms should be equipped with flashlights or some form of emergency lighting. The batteries in the flashlight should be checked frequently.
- Entries in the patient chart must be dated and initialed by the dentist or staff member making the notation.
- Lab reports must be dated and initialed by the dentist before the results are placed in the patient's file.
- All pamphlets and educational information given to the patients should be documented in their chart.
- Any contact with a patient needs to be documented in their chart. Include telephone calls and all services.
- Maintain an emergency response kit, including oxygen, an Ambu bag, Epinephrine, Corticoid, Atropine, and injectable antihistamine and intravenous administration supplies in a central location.

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- Be sure all charts are secured to the chart folder.
- Remind all female patients to notify staff members if they may be pregnant prior to being x-rayed.
- Ensure the patient's name and date are listed on every chart page.
- Include "NKA" prominently on the front of the patients chart as indicated.

The importance of identifying risks cannot be overstated. In an effort to eliminate or reduce risk in your practice, contact the Risk Management Department at First Professionals to schedule a consultation. Remember, this service provides added protection for your practice and is available at no cost to our insureds. —

CMS Delays Reporting Requirement

The Medicare Secondary Payer Act [42 U.S.C. 1395y(b)(7) & (8)] requires that all liability carriers report payments made to any Medicare plaintiff/claimant to the Center for Medicare and Medicaid Services ("CMS"). This reporting requirement may also apply to payments made directly by a dentist and by "self-insured" dentists.

While the initial implementation date was April 1, 2010, it has been delayed to January 1, 2011. All insurers should currently be registered as "responsible reporting entities" and testing of the reporting system should continue throughout 2010. Insurers that feel they have satisfactorily completed testing may begin submitting reports earlier if desired. It is not clear at this time if all claims paid to Medicare beneficiaries in 2010 will have to be reported, or if only those claims paid in the immediately preceding quarter will have to be reported.

First Professionals will continue to provide updates regarding this requirement as necessary. For more information, please contact our Risk Management Department at (800) 741-3742, ext. 3016 or send an e-mail to rm@fpic.com. —

New Alerts

Texas Nurse Faces Prison for Reporting Doctor's Alleged Malpractice

A nurse who reported a doctor's unorthodox-at-best techniques now finds herself facing criminal charges of misusing official information. Last June, Anne Mitchell and Vickilyn Galle, two nurses at Winkler County Memorial Hospital in Texas, sent an anonymous letter to the Texas Medical Board detailing their concerns about Dr. Rolando Arafiles' treatment of patients. Mitchell and Galle each have more than 20 years of nursing experience and their duties included quality improvement issues. Mitchell also served as the hospital's compliance officer. The letter they sent to the board included relevant file numbers, but no patient names. They cited six specific problematic cases in the letter. The nurses also claimed that Arafiles had e-mailed patients, encouraging them to purchase an herbal supplement he sold on the side. After Arafiles heard about the report from the medical board, he told the county sheriff—a personal friend who credits the doctor with saving his life after a heart attack—that he felt the report amounted to harassment. In response, the sheriff got a search warrant, seized computers at the hospital, and eventually discovered that Mitchell and Galle were responsible. They were fired in June 2009. Shortly afterward, the county prosecutor brought charges against the women for "misusing official information." Eventually, charges against Galle were dropped, but Mitchell's trial started this week. A third nurse who had reported Arafiles in her own letter to the medical board after resigning from the hospital was not charged. Mitchell and Galle have countersued in federal court, alleging vindictive prosecution and a denial of First Amendment rights by the hospital, sheriff, prosecutor, and Arafiles. (HealthExecNews, 2/9/2010) —

Legal FAQs For information specific to your state of practice, contact First Professionals' Risk Management department



What is the HIPAA Security Rule?

Security standards that were developed to protect electronic health care information. The Security Rule adopts a set of national standards for safeguards to protect the confidentiality, integrity, and availability of protected health information.

Does HIPAA Privacy Rule compliance establish Security Rule compliance?

No. However, many of the requirements set forth by the Privacy Rule satisfy those required by the Security Rule in terms of a covered entity having in place appropriate administrative, physical, and technical safeguards for the protection of protected health information. However, the Security Rule contains 18 security standards that must be implemented. Moreover, there are 42 implementation specifications

that are either required or addressable. If implementing a specification is not reasonable and appropriate, the covered entity must document why, and must implement an equivalent alternative measure that is reasonable and appropriate.

What are 'compensatory damages'?

Generally, damages designed to compensate the injured party. Compensatory damages include past, present and future medical bills, lost wages, and other expenses attributed to the negligent act or injury.

Should professional fees be waived or refunded when a patient is dissatisfied?

Not always. It depends on the particular situation. First give the patient the opportunity to describe the reason for their dissatisfaction. Attempt to correct the situation, if possible. If the patient demands a refund, waiver of fees, or the issue cannot be remedied, contact the First Professionals Risk Management Department or personal counsel for specific guidance. What some may interpret as an act of accommodation, others may view as an admission of liability.

What action should be taken when a "Notice of Intent" letter is received?

Immediately notify First Professionals by calling the Claims Department at (800) 741-3742, ext 3047. First Professionals only has limited a limited number of days to prepare a response on your behalf to the notice of intent and assign a defense attorney, if necessary. It is important to not discuss the case with the patient, the patient's attorney or other parties involved in the care and treatment of the patient. You should gather and secure the patient's records immediately.

Does the dentist-patient relationship end at the time insurance coverage expires or managed care plan terminates?

No. Once established, the dentist-patient relationship does not end merely because insurance is no longer available or a change in managed care coverage occurs. A dentist's responsibility to the patient continues unless and until the patient severs the relationship or the physician provides proper notification to the patient of the intent to withdraw from providing further care and treatment. Always seek legal or risk management guidance before terminating the physician-patient relationship. •