Malpractice Prevention

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Medical malpractice is defined as a deviation from the standard of care by a medical professional that is a proximate cause of injury to a patient. In most cases, a plaintiff must establish negligence by presenting testimony of a physician who practices in the same field as the defendant healthcare provider. The testimony must state that the defendant did not treat the patient in accordance with the standard of care.

Malpractice is a concern for all providers. A lawsuit costs money and time and can result in increased insurance premiums. Moreover, a suit can provoke anxiety and lead a physician to question the level of care that he or she provides. Despite these negative consequences, practitioners often fail to consider reasonable preventative measures that could help to avoid malpractice suits. Fortunately, many providers have learned that a little prevention can go a long way toward improving care and reducing malpractice claims.

The First Steps of Prevention

Simply put, the best way to prevent a lawsuit is to provide good care. Malpractice claims in long-term care (LTC) settings frequently involve the development or worsening of pressure ulcers, unexplained weight loss, behavioral effects of psychotropic medications, end-of-life care and decisions, and elopement risks.

Facility staff must identify any acute clinical changes in a resident's condition and immediately notify the physician. Once the physician has been notified, the facility staff must ensure that the physician responds in a timely manner and that all orders are carried out. If the physician fails to respond in a timely manner, the facility staff must inform the medical director or similarly tasked physician leader. The staff must then continuously monitor the success or failure of the treatment to assess whether a change in plan is required.

Implementing a Closed Staff Model

Critical to these responsibilities is a knowledgeable and dedicated team. Most LTC facilities operate with an open clinical staff, which allows any community practitioner to act as an attending physician at the facility. This practice makes clinical oversight impossible. LTC facilities interested in delivering the highest level of care to its residents should incorporate a "closed staff" model. By hiring only the most dedicated quality providers, a facility can achieve greater quality control. Furthermore, nurse practitioners are valuable members of a facility's interdisciplinary team and should be utilized whenever practical.

Communication and Documentation

An unfortunate reality is that malpractice suits can be filed even when the medical provider adhered to the standard of care. In fact, a negative outcome or even a settlement does not necessarily mean that malpractice has occurred. All too often, such a result is the consequence of a failure at the intersection of nonclinical factors, such as an inadequate caregiver-patient relationship or an unexpected clinical outcome. In other words, lawsuits in LTC can be caused by a simple failure in communication and a failure to delicately but definitively define the expectations and limitations of a treatment plan. A poor result does not necessarily equate with a failure in care. It is critical to note that in geriatric care, the physician or facility are communicating not only with the patient but with the patient's family as well, some of whom may be skeptical about placing their loved ones in a skilled nursing facility and, therefore, instantly suspicious of the care to be provided.

Setting and Documenting Expectations

LTC physicians can better serve their residents, families, and staff by devoting time to communication. By discussing expectations regarding a resident's medical condition, comorbidities, and the limitations of treatment, and then documenting these communications, a malpractice claim may be prevented. However, this is not a cure-all and it requires that documentation be completed in a timely manner—ideally, contemporaneously with the communication. Fully documenting a resident's condition and the physician's care plan, allows for better coordination of care with staff and accurately reflects the discussions with the family about reasonable expectations.

Oncologists have developed a tool for delivering bad news to patients diagnosed with cancer called the SPIKES Method.[1] *SPIKES* stands for:

- **S**etting (Pick a private location.)
- **P**erception (Find out how the patient views the medical situation.)
- **I**nvitation (Ask whether the patient wants to know.)
- **K**nowledge (Warn the patient before dropping bad news.)
- **E**mpathy (Respond to the patient's emotions.)
- **S**trategy/Summary (Once patients know, include them in treatment decisions.)

The Legislative Environment: States of Reform

Many states have implemented tort reform to reduce frivolous malpractice suits. For example, Pennsylvania implemented reform in 2002 and has seen a significant decrease in the number of suits.

In 2005, Congress proposed federal legislation that would dismantle state judicial authority and preempt all existing state laws governing medical malpractice lawsuits with a federal statute. This proposed statute would place limits on noneconomic damages (pain and suffering) at $250,000. Additionally, new limits with regard to the statute of limitations and the awarding of attorneys' fees and punitive damages have been proposed.

To date, Congress has been unable to pass a federal tort reform law for medical malpractice cases. Specifically, in 2006, Congress voted against two proposed laws that would have significantly reformed awards in medical malpractice cases. However, states have enacted laws that mirror the proposed federal legislation. For example, the State Legislature in Texas enacted reform that caps noneconomic damages at $250,000 per occurrence for all physicians or healthcare institutions, and a second $250,000 per occurrence for any other completely separate institution.[2] The law also provides that future medical expenses be compensated through periodic payments. Other reforms were enacted with regard to expert witness reports and pretrial depositions.

Barriers to Change: The IMPACS Study

A Robert Wood Johnson Foundation study of the malpractice environment (Improving Malpractice Prevention and Compensation Systems or IMPACS) identified many issues concerning tort reform.[3] The program director and deputy program director concluded that the political and economic interests invested in the current tort system make meaningful reform difficult to achieve. If reform were to come about, it would require a compelling policy rationale in league with an active public relations campaign to convince the constituency that its passage is necessary. For example, the most effective way to promote malpractice reform may be as a patient-safety mechanism, which will prevent more medical errors than the current tort system has allowed.

IMPACS has also shown that, except for the small number of policy and health researchers working in the field, there is not a strong constituency invested in malpractice reform. Certainly there are advocates for reform, but the issue does not rank as a top priority for those not directly impacted by it, even though they may be impacted in the future. However, many opponents of reform are vehement in their resolve.

Further complicating the reform process is the fact that many would-be reformers focus on a quick cure and push to simply limit monetary awards. This so-called solution often placates those decrying the system, but prevents lawmakers from making fundamental changes.

Conclusion: Malpractice Reduction Through Better Communication

Proper care and better communication can help prevent malpractice cases. This communication should begin with the patient's first visit to a physician or on admission to a LTC facility. From the outset, a physician can take a proactive position by explaining the planned treatment, with its attendant risks, limitations, and reasonable expectations. The next step is to document everything that is said and ask patients or their families questions to ensure that they understand what was discussed. For patients and families, this can be a stressful, confusing, and potentially upsetting experience. However, by properly communicating a care plan, that stress can be alleviated while relationships are built with patients. Of course, this plan and the specifics of these discussions should be completely documented to avoid later confusion.

Many states have implemented preventive measures to decrease frivolous medical malpractice suits. However, without the benefit of these laws, measures can be taken within a facility to improve quality of care and prevent malpractice cases. Communicating difficult issues can be improved by using the SPIKES method. As a result, expectations can be better managed, reducing the risk of perceived problems in care. ALC

References

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