Insight and Perspectives

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We are pleased to offer our latest installment of *Insight and Perspectives*. This newsletter is dedicated to sharing healthcare news, trends and developments impacting our broker and insureds.

In this particular installment you will find Kathleen Shostek's article on *Managing the Risks of Nurse Practitioners and Physician Assistants.*

As always, we appreciate your continued support and thank you for allowing Endurance to be a part of your risk and insurance programs.

About Us

Our U.S. and Bermuda teams provide healthcare professional liability coverage to non-profit and for-profit hospitals and other healthcare organizations.

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Managing the Risks of Nurse Practitioners and Physician Assistants

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Nurse Practitioners (NPs) and Physician Assistants (PAs) have practiced in a wide variety of non-acute settings such as physician practices and retail health clinics for some time. However, over the last several years, the number of NPs and PAs has increased dramatically in all healthcare settings, no doubt in response to the changing landscape of our healthcare system. In hospitals, NPs and PAs are also being given increasing responsibility for patient admissions and inpatient care, including conducting daily rounds, performing interventional procedures, managing "fast tracks" in emergency departments, and handling patient discharges.

Although NPs and PAs are often referred to as "mid-level providers", the term is opposed by the professional organizations supporting these two groups (American Association of Nurse Practitioners and American Association of Physician Assistants, respectively) given their increasingly valuable contribution to patient care. However, these more expansive roles create greater potential liability for the healthcare facilities where they practice.

Increased Roles, Increased Risk

To assess and manage the risks of NPs and PAs, it is useful to have a frame of reference for their scope of practice and professional roles, both of which are determined by state laws and state regulatory boards. Although highly trained, PAs are not independent practitioners by design but rather provide services as assigned by and under the supervision of a physician, including delegated prescriptive authority in every state. A written "practice agreement" between a PA and a supervising physician must be in place and fully describe how the PA will practice. The American Association of Physician Assistants website provides a useful snapshot of PA practice profiles by state: https://www.aapa.org/threeColumnLanding.aspx-?id=328.

In contrast, NPs have wider authority for patient care than PAs. While some states such as Pennsylvania require a collaborative agreement for NPs to practice and prescribe drugs, New Jersey allows NPs to practice independently although they still need a collaborative agreement with a physician to prescribe drugs. In recent years, legislative initiatives in many states have further expanded the role of the NP. As of January 2015, experienced NPs in New York no longer needed a collaborative practice agreement with a physician and have independent prescriptive authority. For a summary of NP scope of practice laws, visit

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Barton Associates' website at http://www.bartonassociates.com/nurse-practitioners/nurse-practitioner-scope-of-practice-laws.

NPs and PAs practicing in hospitals may be engaged under several scenarios, including: non-physician members of the medical and professional staff; contracted providers as employees or members of a contracted physician group; or directly employed by a hospital or health system. Within these different employment relationships, various theories of liability can affect their practice, including but not limited to[1]:

- Direct liability when there is a deviation from the accepted standard of care and a patient is injured;
- Agency, linking the acts of the NP or PA to the hospital, where the NP or PA is said to be an agent of the hospital;
- Vicarious liability where the hospital or physician is held vicariously liable for the negligence of its employee; and,
- Negligent credentialing where the hospital or physician is negligent in ensuring that the NP or PA is appropriately trained and licensed to practice.

Leading Risks and Mitigation Strategies

Recent analysis of malpractice claims reveals that leading areas of liability for NPs and PAs include inadequate examination, failure to diagnose or delay in diagnosis, and failure to make a timely referral to a physician.[2]

Whether in an office, clinic, or hospital emergency department, NPs and PAs are subject to the same production pressures for efficient patient throughput as other healthcare workers. This can lead to inadequate examinations which are often associated with rushed or incomplete physical examination and/or cursory patient interview resulting in incomplete documentation of patient history.

Diagnostic errors or delays frequently result from failure or delay in ordering appropriate tests or addressing abnormal test results, which are more likely to occur when the facility lacks a fail-safe test results management system. Diagnostic failures can also occur when the complexity of the patient's condition is beyond the NP's or PA's level of expertise or competence.

Deferring referral of a patient to a physician (or consultation with the supervising physician) may result from the NP or PA attempting to treat conditions beyond his or her training or skill, inadequate supervision by the collaborating physician, poor teamwork and communication, or a lack of resources for the NP or PA to draw upon when treating a patient.

Mitigation strategies that should be implemented in order to reduce the risk of liability for NPs and PAs, regardless of practice setting, include the following[3]:

- Careful credentialing, hiring, and where required, implementation of practice agreements.

  Work with human resources and/or the medical staff office to ensure that state laws regarding scope of practice are followed. Confirm training, certification and licensure of the NP or PA to minimize the risk of claims for negligent credentialing, negligent hiring, and even criminal charges should an unlicensed person be hired.

- Appropriate orientation to care setting, care team, and communication and consultation protocols.

  Verify that each NP or PA has a clear understanding of his or her obligations and role as part of the team, including scope of practice, clinical protocols or algorithms for patient care, and methods and frequency of communication with supervising physician, including any triggers for consulting with a physician.

- Periodic performance review including review of medical records, medication orders, and diagnostic testing of patients evaluated and treated by NPs and PAs.

  Ensure that quality, safety, and risk management monitoring procedures include the practice of NPs and PAs. Establish regular meetings with supervisors to review the cases of complex patients, share information, and clarify treatment plans and handoff documentation.

Managing the risks of NPs and PAs entails applying sound risk management and patient safety practices focused on prudent credentialing/hiring, incorporating these valuable providers into the care team, and monitoring the quality of their practice on an ongoing basis. ◄

1. TDC. Midlevel Practitioner Liability: Preventive Action and Loss Reduction Plan. [online] http://www.thedoctors.com/ecm/groups/public/@tdc/@web/@kc/@patientsafety/documents/article/con_id_005897.pdf
2. ECRI Guidance. Scope of Practice Laws for Nurse Practitioners and Physician Assistants. 2015 Jan 5.
3. Gaffey A. Nurse practitioners and physician assistants: Managing potential liability in the physician office. Sedgwick PL Risk Resource First Ed. 2015. http://www.sedgwick.com/news/Risk%20Resources/Sedgwick_PL_Newsletter_final(2015-1stEd).pdf