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Working with Hospital-Based Practice Groups to Monitor and Enforce Quality and Peer Review Standards

Illinois Risk Management Services

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Background

- Most hospitals and health systems have physicians and physician groups provide hospital-based services usually through some form of contractual arrangement
- Example services include ED, radiology, pathology and anesthesia
- More recently, hospitals have entered into similar arrangements, usually exclusive, for other specialty services such as ICU, cardiology, and call-coverage

Background

- When the relationship is with an independent physician group, hospitals have expressed concern about whether the groups are totally transparent when adverse patient events occur either within their group practice, in the hospital, or at other practice sites in which they have a contractual arrangement.

Background

- The failure of the group or the hospital to identify and address these events, as well as to determine whether the group has complied with quality standards as well as applicable legal and accreditation standards as well as hospital policies can lead to increased liability exposure to the hospital, loss of reimbursement as well as running afoul with regulatory and accreditation agencies.

Legal Liability Theories

- Respondeat Superior
  - When the physician or physician group is employed by the hospital as the employer, the hospital will be directly liable for any of the provider's negligent conduct which results in a patient's compensable injury.

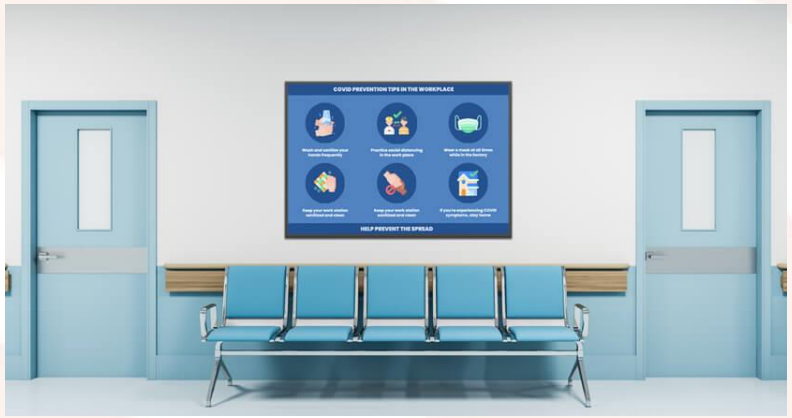
- Negligent Credentialing/Corporate Negligence
  - If the hospital gave clinical privileges to an unqualified practitioner, or if it knew or should have known that the practitioner was unqualified, it can be held liable under this theory if it caused a patient's compensable injury. This liability theory applies to independent, non-employed practitioners.

Legal Liability Theories

- Apparent/Ostensible Agency
  - ➢ The apparent agency standard in Illinois was articulated in the Supreme Court of Illinois decision in Gilbert v. Sycamore in 1993:
    - ✓ The hospital, or its agent, acted in a manner that would lead a reasonable person to conclude that the individual who was alleged to be negligent was an employee or agent of the hospital; 2) where the actions of the agent create the appearance of authority, the plaintiff must also prove that the hospital had knowledge of or acquiesced in them and; 3) the plaintiff acted in reliance upon the conduct of the hospital or its agent, consistent with ordinary are and prudence."

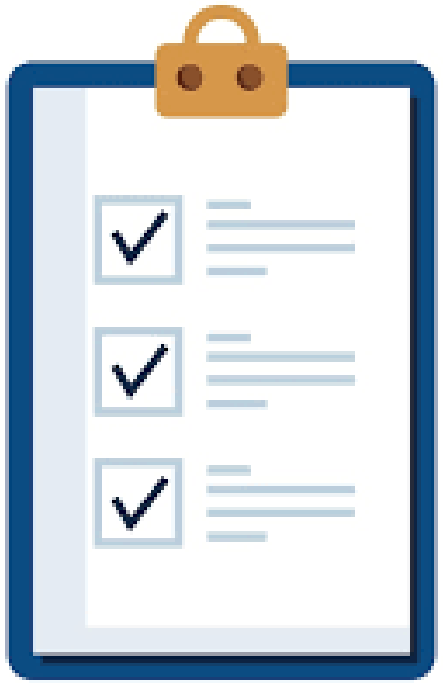
Legal Liability Theories

- To defend against apparent agency arguments, hospitals have informed patients through signage, language in the informed consent form and in verbal communications that the hospital-based practitioners are not employed by the hospital and are instead independent contractors responsible for their own actions.



Regulatory/Accreditation Standards

- CMS Conditions of Participation
- EMTALA
- Hospital Licensing Act
- Joint Commission



Available Privilege Protections From Discovery

- Illinois Medical Studies Act
  - ➢Privilege protections apply to hospital and employees but not independent physicians or physician groups
- Medical Practice Act
  - ➢Privilege protections apply to physicians and physician groups
- Patient Safety and Quality Improvement Act of 2005
  - ➢ Broader privilege protections apply to hospital and to physicians or physician groups if "affiliated" with the hospital
  - ➢Protections contingent on whether the hospital in a member of a PSO and employs, owns, controls or manages the group or if group is in a PSO

Methods Used to Monitor Quality and Peer Standards

- Development and enforcement of applicable quality indicators, metrics and quality improvement initiatives
- Development and enforcement of process and outcome measures
- Development and tracking of compliance with OPPE and FPPE standards
- Data collection and patient satisfaction surveys
- Compensation/bonus/sharing arrangements tied to compliance with quality improvement goals

Methods Used to Monitor Quality and Peer Standards

- Contract includes key requirements
  - ➢ Must comply with all legal, regulatory and accreditation standards as well as the medical staff and hospital bylaws, rules, regulations and policies.
  - ➢ Hospital has the right to audit compliance
  - ➢ Group required to disclose any and all instances of patient complaints, adverse events, threatened or actual litigation, termination from Medicare/Medicaid/Managed care programs, etc., emanating from any practice site.
  - ➢ Failure to comply, with opportunity to cure, is grounds for terminating a particular physician or the group as a whole

Methods Used to Enforce Quality and Peer Standards

- Hospital has the right access group policies and procedures to determine compliance
- Hospital has the right to membership on key physician group committees
- Clean sweep provisions - if physician/group contract is terminated, hearing and appeal rights are waived - no Data Bank reporting is required
- Bylaws and provider agreement state that in the event there is a conflict between the bylaws and the agreement, the agreement prevails

Other Related Issues and Considerations

- Make sure that all quality related information is collected and shared from all practice sites where group is treating patients within hospital/health care system
- For independent groups, review insurance coverages to make sure that required limits apply to each group practice site
- Request list of exclusions including the COI
- Strive for uniform contracts, and quality standards and clinical privilege eligibility criteria

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Questions?

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Michael R. Callahan brings an unparalleled level of healthcare consulting experience. Formerly a healthcare attorney for over 40 years, he provides consultative services, educational programs and thought leadership in his role as Senior Consultant.

His areas of focus include hospital/physician relations, medical staff bylaws and policies, peer review policies and investigations, privileging and credentialing issues, National Practitioner Data Bank guidelines and reporting standards, EMTALA standards, accreditation compliance, medical staff integration and hospital/medical staff disputes.

In addition, he is recognized as a national expert involving all aspects of the federal Patient Safety and Quality Improvement Act of 2005.

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Thank You!

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