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A Newsletter for Health Care Professionals and Facilities
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Save the Date

KaMMCO Announces 2018 Fall Loss Prevention Events Scheduled for September 11 & 12

Monica Cook, CEO/Consultant of Quality Plus Solutions, LLC

Mark your calendar now for KaMMCO's Fall Loss Prevention Events scheduled for Tuesday or Wednesday, September 11 and September 12. Physicians and healthcare professionals across Kansas are invited to "Provider Safety: Managing Patient Aggression and Violence in the Healthcare Setting," presented by nationally renowned speaker, Monica Cooke, CEO/Consultant of Quality Plus Solutions, LLC.

"Ms. Cooke is an informative and entertaining speaker who is passionate about educating healthcare professionals to assist them in risk mitigation and quality improvement efforts within their organizations," stated Shannon Haire, KaMMCO Vice President of Member Services.

This presentation will provide a framework and practical strategies to assist Kansas healthcare providers in making the necessary shift to a culture with zero tolerance for patient aggression and establishes universal precautions for staff.

The Fall Loss Prevention Event offers members multiple opportunities to participate in the presentation:

- Tuesday, September 11, in-person live presentation in Topeka at the KaMMCO Conference Center;
- Wednesday, September 12, in-person live presentation in Wichita at the Wichita Marriott;
- Wednesday, September 12, Live webinar presentation.

Stay tuned as more details will be provided soon for KaMMCO's Fall Loss Prevention Event. Questions: please contact Kimberly Qualls, KaMMCO Education Coordinator, via email at: kqualls@kammco.com.

Final KaMMCO Spring Education Series Webinar to Highlight: Top Trending Issues in Healthcare Risk Management: The Good, The Bad and The In-Between

Mitigating risk is difficult to do when you may not be aware of the top trending issues impacting healthcare risk management. This webinar will discuss risk management challenges currently making headlines in an evolving environment.

The final spring series webinar, Top Trending Issues in Healthcare Risk Management: The Good, The Bad and The In-Between, will be presented by Yolanda Sims, JD, MHA, KaMMCO's Loss Prevention and Risk Management Advisor, on Wednesday, May 9 from 12:00 p.m.-1:00 p.m.

The webinar will review recent high profile topics such as cybersecurity breaches, workplace violence, artificial intelligence, opioid abuse and ERM, and other risk and patient safety issues every risk professional should have on their radar. In addition, attendees will learn risk management best practices and strategies used to minimize liability and reduce patient harm.

Yolanda Sims, JD, MHA, KaMMCO's Loss Prevention and Risk Management Advisor

Clinic and hospital administrators, risk managers, office and support staff, and other interested healthcare professionals are invited to attend.

To register for the May 9 webinar, visit: www.kammco.com/Media/Events/Top-Trending-Issues-in-Healthcare-Risk-Management.aspx.

CMS Changes Name of the EHR Incentive Program and Advancing Care Information Performance Category

In late April, the Centers for Medicare and Medicaid Services (CMS) announced proposed rule changes directly aimed at empowering patients and reducing administrative burden for physicians. These changes are tied to CMS's ongoing commitment to interoperability, patient data access and system-wide health information exchange (HIE).

The meaningful use EHR Incentive Programs will now be known as "Promoting Interoperability", and the Merit-based Incentive Payment Program (MIPS) Advancing Care Information performance category will be known as the "Promoting Interoperability performance category" to maintain alignment across both programs.

The goal is to put patients first so they may access high quality care, benefit from more choices and enjoy better outcomes. In addition, the proposed rule prioritizes price transparency and interoperability while also allowing hospitals greater flexibility. CMS is updating its guidelines to specifically require hospitals to post their standard charges. CMS is seeking comment from the public on what price transparency information would be most useful and how best to help hospitals create patient-friendly interfaces. The goal is to make it easier to access relevant healthcare data and to compare providers.

As part of CMS' commitment to reducing burden, it is proposing the removal of unnecessary, redundant, and process-driven quality measures from a number of quality reporting and pay-for-performance programs. A significant number of the measures acute care hospitals are currently required to report would be eliminated, and duplicative measures across the five hospital quality and value-based purchasing programs would be removed. This would remove a total of 19 measures from the programs and de-duplicate another 21 measures.

CMS is proposing other changes that reduce the number of hours providers spend on paperwork, so more time can be spent providing patient care. The elimination of 25 total measures across the five programs is estimated to reduce two million burden hours and save approximately $75 million.

The proposed rule reiterates the requirement for providers to use the 2015 edition of certified electronic health record technology in 2019 as part of demonstrating meaningful use to qualify for incentive payments and to avoid reductions to Medicare payments. Under Promoting Interoperability, updates to EHR and related technology includes the use of application programming interfaces, or APIs for patients to collect their health information from multiple providers, and to potentially incorporate all of their data into a single portal, application, program, or other software.

Just a reminder CMS reporting for the Quality Payment Programs can be simplified using the tools and resources of the Kansas Health Information Network (KHIN). For more information on KHIN, contact Susan Penka, spenka@kammco.com.

For a fact sheet on the proposed rule (CMS-1694-P), please visit: www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2018-Fact-sheets-items/2018-04-24.html.

To comment on the proposed ruling, CMS-1694-P, visit: www.regulations.gov/ no later than 5 p.m. on June 25, 2018. Follow the "Submit a comment instructions."

CME Webinar Offered on June 5

In today's environment, Medicare's payment programs reward quality over quantity. Success relies upon high quality, accurate data, secured in a trusted health information exchange that physicians can utilize for analysis of patients' and populations' healthcare trends.

To help Kansas physicians move forward in this new data-driven world, Laura McCrary, Ed.D, Executive Director of the Kansas Health Information Network, will present an educational webinar, Quality Matters: The Data Dilemma Continues, on Tuesday, June 5 from 5:00 p.m. to 6:30 p.m.

This presentation is designed to provide physicians and clinicians with the knowledge to drive quality improvement and transform healthcare through the application of meaningful data analytics for quality reporting, population health management, risk management and clinical effectiveness.

This live activity is approved for *AMA PRA Category 1 Credit™*.

For more information and to register, visit: www.kammco.com/events.

KaMMCO: 2017 a Year of Astounding Success

As KaMMCO enters its 30th year of business, it is gratifying to once again report to its members the depth of its commitment to physician advocacy, the breadth of its progress in keeping the company vital and relevant, and its financial measure of success.

The 2017 report landed in KaMMCO members' email accounts in late April. Printed copies will be distributed with annual member proxy statements in late May.

Today, we share with you some of the highlights of 2017:

To read the complete 2017 KaMMCO Annual Report, visit our website: www.kammco.com/About-Us/Member-Communications/Annual-Reports-Marketing-Materials.aspx.

Cyber Security Continues to be Huge Concern for Healthcare Providers

In 2018, we have continued to see multiple headlines on cybersecurity issues that plague health IT. While ransomware and malware exploits appear to lead in attacks crippling data systems and potentially harming patient safety, there is a new threat, more geared toward the smaller practice.

According to a joint technical alert issued by the U.S. Computer Emergency Response Team, a new concern is a Russian cyberattack on network infrastructure devices such as routers, switches and firewalls.

So what should individuals or companies be looking for?

One technique being used to compromise security is called "man-in-the-middle," which allows an "actor" to pretend they are the computer, or the device that you think you are talking to, to get into the middle of a connection between two different devices. In this way, the "actor" can spy on, as well as manipulate, the traffic that is going back and forth.

What action should be taken? The vendors of network infrastructure devices, like routers and switches, are providing guidance specific to the make and model of their network device. Organizations should be vigilant. They need to check the vendor along with the make and the model of a router, for example, then search online to download the vendor guidance on how to address the issue.

To help address growing risks, KaMMCO provides members with the most advanced cyber insurance solutions at competitive rates. Contact the Underwriting Department at 800.232.2259 for more information about cyber insurance or visit www.KaMMCO.com and select the Insurance tab to access Cyber Security Resources available to members.

Tips from the Trenches: Claims Update

Kim Davenport, KaMMCO Medical Liability Analyst

Subject: Vicarious Liability in Missouri

Procedure: A 64 y/o female patient with a history of lower back pain, sciatica, pain in both of her knees and legs (more on the right), feeling unsteady on her feet and feeling like her legs were giving away and collapsing, had an MRI in September of 2012 showing broad right lateral L4-L5 disc protrusion with moderate narrowing of the right neural foramen, moderate L4-L5 spinal stenosis, mild L3-L4 spinal stenosis and moderate left L5-S1 neural foraminal stenosis. She underwent lumbar epidural injections at L4-5 which provided no relief. Her PCP ordered an electrodiagnostic study and referred her to a neurosurgeon. She was seen by a neurologist for an EMG which was abnormal, suggestive of an acute phase right L5 radiculopathy.

In November of 2012 the patient was seen by a neurosurgeon who was, at that time, employed by our insured. Because of the patient's atypical presentation for L5 radicular patterns, he ordered follow-up testing and imaging studies to rule out myelopathy. By January of 2013 he diagnosed foraminal stenosis at L4 and L5 on the right secondary to a far lateral disc herniation which was compressing the exiting L4 root on the right. He discussed his findings and reasonable management strategies including the risks and benefits of a right sided transforaminal lumbar interbody fusion (TLIF) with the patient.

In late May the patient underwent the recommended TLIF. During the left-sided portion of the discectomy, the neurosurgeon encountered brisk bleeding and the patient's BP was sagging. The procedure was aborted and the wound was packed off and closed quickly. Nursing staff was instructed to bring blood products as quickly as possible and request a vascular surgeon be brought emergently to the OR. The patient was unstable and undergoing CPR when a thoracic surgeon arrived to offer assistance. He exposed the fascia and found a very large retroperitoneal hematoma which was evacuated but there was significant hemorrhaging. Once he had partial control of the bleeding the thoracic surgeon requested a vascular surgeon to assist. The surgeons exposed the left common iliac and identified a posterolateral laceration with proximal and distal control. They were able to rotate the artery and place 2 figure 8 sutures along the laceration. They spent an hour evacuating the hematoma, exploring the tract created by the hematoma and controlled the hemorrhaging with electrocautery, clips and topical agents. Eventually the patient was hemodynamically stable and was transferred to ICU. Postoperatively the patient remained neurologically stable, worked with physical therapy and continued to improve. Upon dismissal from the hospital she was admitted for inpatient rehab for one week. Her pain was less intense following surgery and she was referred to a pain management specialist. She was diagnosed with lumbar radiculopathy and neuropathic pain. She was treated with epidural injection and Nortiptyline.

Allegations: Plaintiff raised claims against our insured solely on a theory of vicarious liability as the employer of the neurosurgeon at the time of the alleged events. Plaintiff claimed the surgeon: (1) Failed to properly inform the patient of the risks and complications, including a vascular injury; and (2) Failed to properly use fluoroscopic imaging during the surgery which led to the vascular injury.

Resolution: The case went to trial against our insured and its former neurosurgeon. On the morning of day 2 of trial, without explanation, plaintiff dismissed our insured and the surgeon went on to receive a defense verdict 3 days later.

Cost of Defense: $81,546.20

A little more on vicarious liability as it may apply to your practice: Medical malpractice laws differ from state to state. Missouri law and Kansas law differ in many ways but one difference prevalent in this case was in the area of vicarious liability or a situation where someone is held responsible for the actions or omissions of another person. Kansas healthcare providers that are defined by the Fund law as "healthcare providers" cannot be held vicariously liable for another defined healthcare provider's actions. In Missouri, a facility can be held responsible for the actions of an employed physician or other provider and physicians can be held responsible for the actions of other providers. In this case, we felt the facility had acted appropriately and felt the facility should have been dismissed from the lawsuit, because of the state of Missouri law, our facility was required to go to trial to defend the fact that it employed the physician that provided the care in question. If practicing in Missouri, be prepared to not only defend your own care, but also those of the providers you employ or supervise.

Know your jurisdiction. If the state permits **vicarious liability** claims against healthcare providers, you need to know that because it changes the equation of evaluating risk and exposure significantly. With vicarious liability comes the counterbalancing concept of **indemnification**.

If an institution (a hospital or a professional corporation) is held vicariously liable – not for its own misdeeds, but solely due to the negligence of its agent or employee – then that institution has a common law right of indemnity against the agent or employee whose fault resulted in the liability in the first place. That could lead to a subsequent lawsuit by the institution against its own agent or employee. Typically, case law will not allow an institution to pursue such a claim against an employee who is insured under the same policy as the institution (which is why hospitals do not pursue such indemnity claims against their own nurses). These claims are rare, and usually only occur where the agent or employee has a separate liability policy insuring them individually. But there are the very real practical considerations which need to be taken into account before filing a lawsuit for indemnity against a current member of your own staff.

Consult your corporate counsel or insurance agent for advice and counsel in this area proactively.

Redacting PHI for Bankruptcy Claim Filings

Yolanda Sims, JD, MHA,
KaMMCO's Loss Prevention and Risk Management Advisor

Q: Our practice was recently identified as a potential creditor in a patient's bankruptcy case. The proof of claim will be filed electronically. How much information must we redact to prevent a privacy violation?

A: The Consumer Financial Protection Bureau reports medical debt continues to be the number one reason why people file bankruptcy. All creditors who wish to be paid following a bankruptcy proceeding, must fill out a proof of claim form, officially known as, Bankruptcy Form B 410. Before a document is filed, it must be redacted in accordance with Federal Rule of Bankruptcy Procedure 9037 to protect information known as personal identifiers.

The form expressly states "if the claim is based on the delivery of healthcare services or goods, limit the disclosure of the goods and services so as to avoid embarrassment or the disclosure of confidential health information." To remain in compliance with HIPAA, federal and state privacy laws and the bankruptcy court rules, a creditor must redact filing documents in the manner listed below.

A creditor may only show the following:

- The last four digits of a social-security, individual's taxpayer-identification, or financial account number;
- Only the initials of a minor's name; and
- Only the year of any person's date of birth.

Tenth Annual Summit on Quality Scheduled for May 4 in Wichita

The Kansas Healthcare Collaborative and the Kansas Foundation for Medical Care, Inc., will jointly host the Tenth Annual Summit on Quality, Friday, May 4, at the Hyatt Regency Wichita. The program is designed to educate Kansas physicians and health care professionals.

As a part of the Summit program, the KaMMCO Foundation sponsors the 2018 Leadership in Quality Award. Annually, this award is presented at the Summit, recognizing hospitals for leadership and achievement in quality improvement and patient safety.

In addition to outstanding keynotes, the Summit includes morning and afternoon breakout sessions presented by physicians, nurses, and quality and patient safety professionals to share their experiences, best practices and innovative healthcare delivery in Kansas facilities.

Questions, contact: Jared Martin at the Kansas Hospital Association, 785-233-7436.