2021 Yellowstone Virtual Risk Management Conference

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2021 Yellowstone Virtual Risk Management Conference

Thursday October 21, 2021- Virtual Risk Management Conference

10:00 Joe to welcome everyone and opening remarks

10:15 The Evolution of HIPAA Compliance and Cyber Risk in Healthcare - COVID-19
This presentation will discuss the current cyber-threat landscape and how it has changed because of Covid 19. Also will address how HIPAA has changed during Covid 19, and what to expect. Presenter: Jeff Mongelli, CEO of Acentec

11:15 Break

11:30 Claims Analysis by Yellowstone

12:30 Lunch

1:00 Closed Claims Review
1. Deer Lodge- Sexual abuse closed claim
2. Shodair – Hospital elopement closed claim

2:00 or 2:30 Adjourn

Friday October 22, 2021- Virtual Risk Management Conference

10:00 Kelly to welcome everyone and opening remarks

10:15 An update "Covid-19 Litigation In the Eye of the Storm" 2021 Covid-19
This presentation discusses the status of the orders and laws enacted at the start of the pandemic, court decisions, pending litigation concerning identified loopholes and continuing risks.
Objectives:
- Describe updates on federal law, state laws and executive orders enacted to protect some health care treaters from liability related to COVID-19
- Explain how the immunity protections have been used and the outcomes in COVID related lawsuits
- Identify tools for identifying and managing COVID related claims

Presenters: Belinda Dodds-Marshall and John Mullahy

11:15 Break

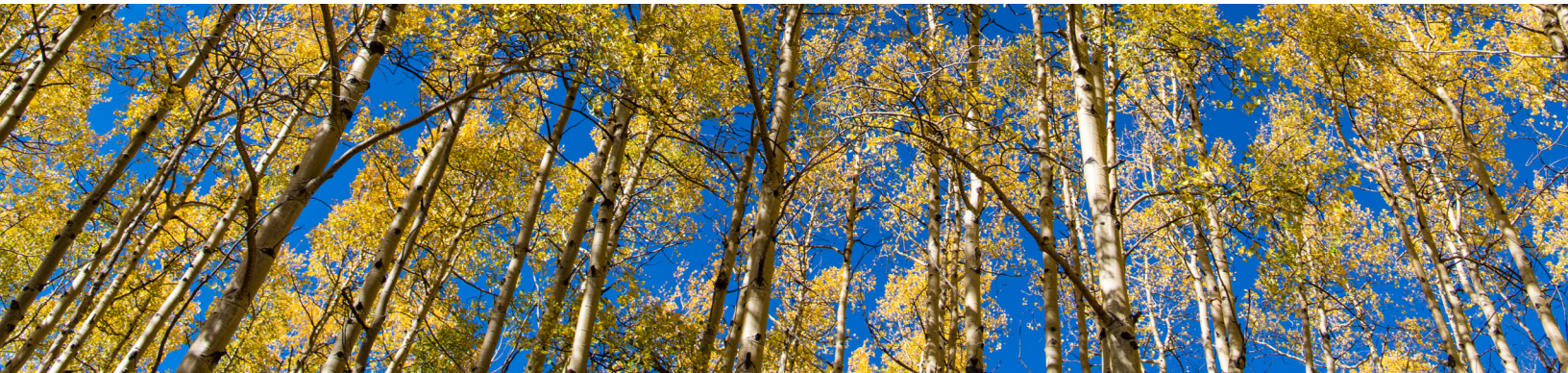
11:30 The Importance of Early Intervention
1. Barrett and review of their Covid lessons learned and what they did for community support.
2. A sexual liability claim on how they dealt with the patient and with the employees

12:30 2020 Recognition Program by Denise

12:40 Power of One Review by Julie

12:45 Conference Wrap-up and Yellowstone Services Review

12:50 Adjourn



The Evolution of HIPAA Compliance and Cyber Risk in Healthcare - COVID-19

This presentation will discuss the current cyber-threat landscape and how it has changed because of Covid 19. Also will address how HIPAA has changed during Covid 19, and what to expect.

Presenter: Jeff Mongelli, CEO of Acentec

You may view and print a copy of this presentation by clicking on the link below:

https://1drv.ms/p/s!Akmxf3ImoIpJgfJTAVZp8kXLFSxrjg?e=QmwucY

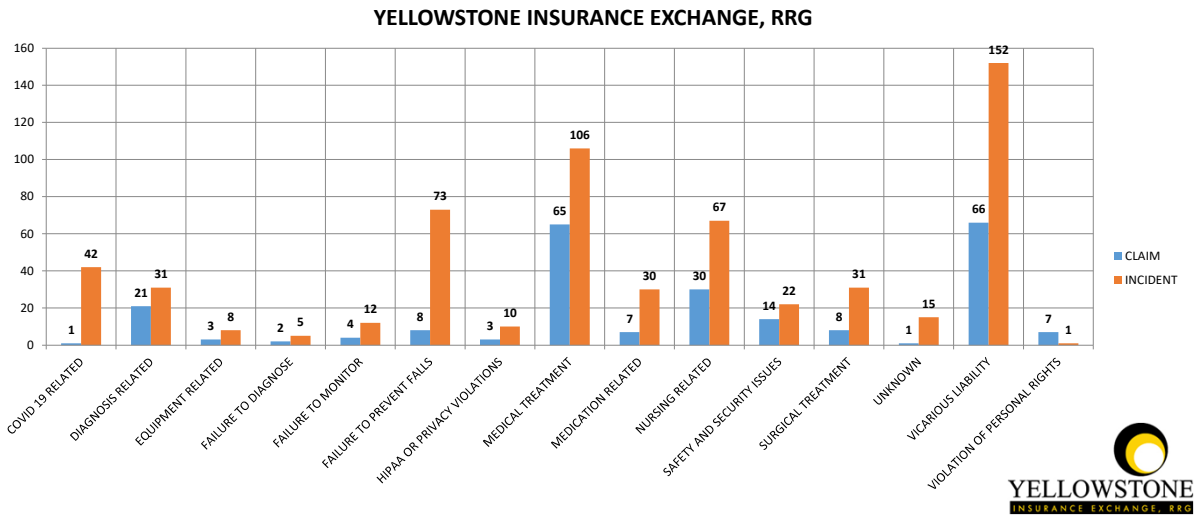
Yellowstone Claims Analysis and Risk Management

2021

PCE

- What is a PCE
- Challenges of collecting PCE's
- What is a claim
- How is data collected

Top 15 Claims and PCEs



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Takeaways at a Glance

- Percentage of PCE to Claims
- Safety & Security 14 claims- 22 PCEs/ 64% goes to a claim(includes general liability)= #1 highest risk to go to a claim
- Diagnosis Related & Delay in Diagnosis 23 claims- 37 PCEs/ 62% goes to a claim #2 highest risk to go to claim
- Medical Treatment 65 claims- 106 PCEs/ 61 % goes to a claim #3 highest risk to go to a claim
- Nursing Related 30 claims- 67 PCEs/ 45% goes to a claim #4 highest risk to go to a claim
- Vicarious Liability 66 claims- 152 PCEs / 43% goes to a claim #5 highest risk to go to a claim
- Surgical 8 claims- 31 PCEs/ 26% goes to a claim #6 highest risk to go to a claim
- Medication Related 7 claims- 30 PCEs/ 23% goes to a claim #7 highest risk to go to a claims
- Falls 8 claims- 73 PCEs/ 11% goes to a claim #8 highest risk to go to a claim

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Frequency and Severity

- Categories are seen different
- You may have a less frequency but higher severity = higher harm = higher pay out
- Medical Treatment has a higher severity then Vicarious Liability now
- Diagnosis issues have a high severity
- Nursing related issues and failure to monitor have high severity

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Frequency & Severity by Amount Paid by Category

1) Diagnosis Related & Delay in Diagnosis (excludes Failure to Diagnosis 119,686.94) 23 claims- 4,127,423.99 = 179,453.22 per claim
2) Nursing Related (To include failure to monitor) 34 claims- 4,808,884.69 = 141,437.79 per claim
3) Medical Treatment 65 claims- 8,078,843.57 = 124,289.91 per claim
4) Failure to prevent a fall 8 claims- 952,769.25 = 119,096.16 per claim
5) Surgical Treatments 8 claims- 772,923.19 = 96,615.40 per claim
6) Vicarious Liability 66 claims- 5,522,071.40 = 83,667.75 per claim

Grand total to date **26,878,600.33**

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Background Deeper Dive/ Yellowstone Examples

- Vicarious Liability: Is a situation in which 1 party is held partly responsible for an unlawful action of a 3rd party. The 3rd party also carries their own share of the liability. Basically, a provider that is not employed & has his own insurance or is employed but the plaintiff attorney only names the hospital and not the provider or independent contractor
- True claim examples:
  Wrong medication used, perforated bowel during surgery, surgery errors, failure or delay to diagnose, improper medical treatment, death during transport or after discharge, OB/labor complications or lack of skills, Peds death, and poor medical management

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Background Only Deeper Dive/ Yellowstone Examples

- Medical Treatment true claim examples:

  Inadequate debridement, not treated timely, lack of consent, failure to diagnose, denied appropriate medication, death after discharge, cardiac arrest, unexpected death, fetal demise, delay in delivery, delay in placenta delivery, reaction to contrast, shoulder dystocia, VBAC delivery after CS refusal, bladder perforation, injury during PT, retained FO, expired surgical implants, sepsis, lab specimen lost, chest tubes not placed correctly, patient unhappy

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Background Deeper Dive/ Yellowstone Examples

- Failure to prevent a fall true claim examples:

  LTC fall, ground fall, visitor fall, patient fall, infant fall, newborn fall

- Nursing related true claim examples:

  Negligent monitoring, failure to prevent pressure sores, wrong dosing, wrong medication , wrong rate, wrong placement of foley, sepsis in central line, failure to prevent a fall, unsuccessful resuscitation, fall from a table or cart, improper care, pt burned with hot packs, nursing negligence, unexpected death, failure to communicate, failure to document, complicated discharge, IV infiltrated, nursing diversion

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Background Only Deeper Dive/ Yellowstone Examples

- Medication related true claim examples:

  Overdose, failure to give, wrong dose, wrong medication, wrong rate, wrong patient, nursing diversion, allergic reaction, prescribed med caused neurologic issues, wrong dose caused blood clot, over medicated found unresponsive

- Diagnosis Related & delay in diagnosis true claim examples:

  Fetal death/ demise, delay in treatment, delay in CA Dx, misdiagnosis, death after discharge, ruptured appendix, sepsis, missed ectopic Pg, NB & ped respiratory distress, missed Fx. inappropriate care by provider, death during transfer

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Background Only Deeper Dive/ Yellowstone Examples

- Safety & Security true claim examples:

  Alleges sexual assault, negligent conduct, falls, struck by a cart, self inflicted wounds, broke arm while being restrained, disruptive patient handcuffed by PD. * Many are visitor and went to General Liability

- Surgical true claim examples:

  Death secondary to tumor removal, unexpected death, perforations, return to OR, massive hemorrhage, wrong prosthesis used, mismanagement, death 30 days after surgery, hospital acquired infection, retained FO, burned by OR circulating fluid heating pad, seizure post-op, patient unhappy

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Maybe the Importance of PCE Reporting

- Take PCEs seriously
- PCEs can be a proactive way to resolve issues before it becomes a claim
- PCE trends in other facilities can help us alert all our facilities on possible issues proactively
- FMEAs and RCAs can prevent harm or further harm
- Near misses, increase reporting for proactive prevention of harm
- Yellowstone can assist to resolve PCEs before they are a claim
- Thank you for reporting

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How to Improve

- Vicarious Lability
- Review and improve:
  - The credentialing, appointment, reappointment, privileging, and peer review process
  - Medication usage and checks
  - Education on good bedside manner, communication, documentation, retaining skills check lists and certifications kept current and mandatory
  - A minimum of annual competencies to include drills
  - Improve the discharge and follow up processes with good communication and documentation
  - Improve processes for lab & test results and documentation

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Background Only How to Improve

- Medical Treatment
- Review and Improve:
  - Slide 13/ Vicarious Liability
  - Improve drug diversion policies and processes
  - Improve and educate on Informed Consent
- Failure to Prevent Falls:
  - Develop or improve and educate a Fall Prevention Program
  - Involve family
  - Environmental rounding

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Background Only How to Improve

- Nursing Related
- Review and Improve:
  - Develop a solid New Employee Orientation, with skills check list
  - A minimum of annual competencies to include high risk and low volume topics
  - Develop a peer review processes
- Medication Related
  - Increase Near Misses
  - Develop red flag for Med rec, allergy alerts, and double checks
  - Security review for drug diversion and educate staff

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Background Only How to Improve

- Diagnosis Related & Delay in Diagnosis
  - Slide 13/ Vicarious Liability
- Safety & Security
  - Environmental rounding
  - Develop and educate on conduct
  - Develop a relationship with the local PD to develop policies and processes when PD are involved in hospital processes
- Surgical
  - Slide 13/ Vicarious Liability

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Summary

- Be as proactive in preventing harm as you can
- Review, investigate, and report PCEs
- Use your event system for find your issues
- Listen to complaints, have a prepared disclosure
- Get proficient with FMEAs and RCAs
- Review and update your policies & processes and educate your staff
- Involve Yellowstone (You are not alone. We are on your side.)
- To prevent a claim you must prevent harm
- Yellowstone works in real time through your action plans, webinars, and member alerts

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To Help Everyone in Yellowstone

- PCE's – we need better data reporting
  - Accuracy
  - Number of incidents
  - Members reporting
    - We can give you a group summary
    - You can look at your individual data

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Thank you for reporting!

Questions?

Yellowstone Risk Management

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Risk Management Conference

October 21 & 22, 2021

1

Sexual Misconduct

1) What Happened?

- Ultrasound technician sexually assaulted patients while giving ultrasound examinations. There appeared to be at least three incidents of misconduct.
- In this first incident, the anonymous patient (Jane Doe 1) reported the assault to her husband, who contacted the ordering physician and also contacted the Powell County Sheriff's Department ("PCSD"). PCSD initiated a criminal investigation. The hospital was notified of this alleged assault by Sheriff's Department . The hospital allowed immediate access to the technician, the ordering physician, and a chaperone who had been present during part of Jane Doe 1's ultrasound. PCSD was allowed access to the ultrasound room and the equipment used. The CEO spoke with the physician, DLMC's COO, DLMC's Radiology Department Manager and another physician about the allegations. The physician told him that he did not think Jane Doe 1's complaint was valid. The PCSD's concluded their investigation and contacted Pfaff, telling him they did not see any merit to Jane Doe 1's complaint.

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2

Sexual Misconduct

2) Allegations:

Claimant's alleged negligence of the healthcare providers includes allegations that neither DLMC nor St. James provided appropriate supervision of the employee and upon receiving complaints of sexually inappropriate conduct toward other female patients, it did not adequately prevent incidences of sexual assault by him.

Two lawsuits were filed naming the hospital and St. James Healthcare who originally provided the employee to the hospital as part of a contractual agreement. The allegations included claims that there was no female employee present for the exam in violation of the standard of care and hospital policy. It was also claimed that the hospital did not provide appropriate supervision of the employee and upon hearing of sexually inappropriate conduct towards female patients, neither hospital reported the conduct to law enforcement or other authorities. Both Claimants leveled allegations of punitive conduct and against the hospital for failing to protect the victims of Baylor sexual assaults.

Plaintiff's claim was further strengthened by the fact that second and third allegations resulted in the arrest of the employee who admitted the sexual misconduct and agreed to a plea bargain resulting in a prison sentence.

And of course this was a very public matter that was well publicized by the media.

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Sexual Misconduct

3) Claim Issues

- The case boiled down to whether the hospital took appropriate steps to investigate allegations of sexual assault against their employed technician, leveled by an unidentified victim, identified by police as Jane Doe No. 1.
- The hospital relied upon the police investigation which informed their actions in regard to how to deal with the employee regarding the unsubstantiated allegation (#1). So the central question was whether the hospital did enough to further investigate this allegation against Baylor, or whether it was reasonable to have relied on the outcome of the PCSD's criminal investigation.

Sexual Misconduct

4) Defense Strategy

- Part of the defense strategy was to argue that the correct villain has been brought to justice and punished for his crimes.
- Claimant alleged that the hospital knew or should have known of Mr. Baylor's criminal behavior prior to Claimants' alleged assaults. However, the hospital did not have notice of his sexually deviant ways, and when put on notice, terminated him. Making this known was an essential part of our defense.
- Perhaps most challenging in this case however was since the technician was employed by the hospital, they would be vicariously liable for the conduct of him. To the extent any defense to these claims involves demonizing and blaming him, (which made perfect sense, since he is the evil doer here) the problem was that the hospital was vicariously liable for his conduct.

5

Sexual Misconduct

4) DAMAGES:

- Part of the defense strategy was to argue that the correct villain has been brought to justice and punished for his crimes Demand amount: An offer of compromise settlement was sent demanding $5 million for each claim.
- A first mediation did not settle this claim because the Plaintiffs would not lower their policy limits demand.
- After a lot more legal costs, the claim was settled in a second mediation.

6

Sexual Misconduct

- Final Thoughts:
  - Settlement for the two patients was – $1,260,000.00 excluding all legal expenses.
  - This was a very lengthy and emotional case given the facts.
  - Guidelines should be put in place to protect staff and the patients.
  - Potential for negative press and impact of Hospital's reputation.
  - St. James settlement quickly without consulting DLMC and without regard to the affect on DLMC's case.

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October 21 & 22, 2021

1

Hospital Elopement

1) What Happened?

- 15-year-old psychiatric residential patient was in family therapy by phone with her parents, became so upset during the session that she ran from the office. The fire alarm system was broken shortly thereafter, which caused the locks on the doors to open.
- They ran toward the nearby interstate. The police report indicated that she was walking on the southbound lanes of I-15 around 2 p.m. Monday in Helena when she was hit by a Dodge truck ½ mile away from the facility.

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Hospital Elopement

- The girl died at the scene and her cause of death was blunt force trauma.
- The other two patients who has also escaped ran in other directions and were later returned to Shodair safely.
- The hospital received an attorney letter of representation who represents the driver of the car that struck and killed the patient eloping from the hospital on Interstate 90.
- Approximately seven months later The family's attorney for the deceased disclosed he is also representing the plaintiff's sister, who apparently had no prior diagnosed mental illness but tried to commit suicide after her sister's death. As a result, he will bring a separate claim on the sister's behalf.

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Hospital Elopement

2) How it impacted his hospital & staff ?

- Any incident of this nature is traumatic.
- The staff was sadden but also shocked.
- This was reported in the papers and also on television.
- We lost staff as a result of the event
- Forced to stop admissions
- Clergy and EAP involved around the clock for several weeks

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Hospital Elopement

3) How it impacted the patient:

- Attorney of deceased makes demand:
- Alleges the elopement was part of a persistent problem where patients used the fire alarm system to facilitate escape. This is not a medical malpractice case. Instead the Attorney states "These facts (alleged patterns of elopements), demonstrate to us that this is not a case of medical malpractice.
- The case involves a failure to adequately and properly maintain a premises, the failure to train workers, common law negligence for custodial errors under Reinstatement (Second) of torts § 323 and a violation of the Montana Consumer Protection Act for representing itself in promotional materials as a safe place where 'all exit doors are locked and require staff to open them.

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Hospital Elopement

- Demand amount $4,000,000.00
- Plaintiff's claim is further strengthened by the 90-Day Intent to Terminate Medicare Provider based on the determination that Shodair "was not in compliance" with several conditions of participation for hospitals. Since this is a public document, Plaintiffs obtained the report and a number of their allegations are taken directly from it.
- Absent the history and number of patient elopements from 2018 through 2019 and the CMS report citing the hospitals deficiencies this is a case to move towards settlement.

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Hospital Elopement

- Driver of the Pick-up Truck
- Demand amount $200,000.00
- Claims emotional distress and also claims she cannot look at the pick-up. Shodair try's to reduce the emotional impact of the accident by storing the vehicle so she would not see it every day.
- Their automobile liability policy should have been used for any damage to her vehicle.
- Attorney alleges “Aggravated liability”

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7

Hospital Elopement

4) What was Done:

- Goal One: Evaluate policies, procedures and practices to identify areas of liability exposure and make recommendations to help manage or decrease liability.
- Elopements: Need continuous evaluation and possible involve staff and patients
- Proactive contact with patient/family when it is found out that there was an unexpected death or outcome, error, complaint, or request for medical records.
- Improve staff communication and “Speak Up” policies to ensure the staff communicate concerns
- Department of Transportation built an 8 foot high fence between Shodair and the Interstate at no cost to Shodair

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8

Hospital Elopement

- Elopement: Definition: When a patient leaves hospital grounds without authorizations.
- Indication: Sentinel event and previous elopements.
- Shodair is a secure building but not a secure campus, thus during the summer months when patients are outside, the likelihood of an elopement is higher. In addition, due to the sentinel event that occurred in July 2019, elopement prevention is a high priority.

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Hospital Elopement

- Goal: To prevent elopements and to minimize harm in the event of an elopement
- Review training to new staff and annual training to staff
- Review any education that is giving to patient/families on elopement attempts and what is done for patient safety (not a jail) Patient Hand book
- Review policies on patients that elope and moving forward/consequences

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10

Hospital Elopement

- Have developed an educational piece in the manual that is reviewed with parents and patients on admission. This states that Shodair a locked facility not a secure facility. Parents are educated on what will occur if the patient elopement (staff will not chased and the police will be called). For education and prevention, very detailed drills have been done last month.
- For the future, policy will be reviewed quarterly and drills will occur quarterly.
- There was an elopement in February. Staff responded as educated and PD returned the patient unharmed.
- Yearly policy sign off, badge buddies for everyone, training annually and in new employee orientation

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11

Hospital Elopement

- Action-Provider/ Staff improved patient/ family experience and increase communication (patient satisfaction):
  - Providers- Improved policies and process on bedside manner (to include attire, nametags, and respect) and Informed Consent education. Have provider education on Good Bedside Manner is getting hardwired into Health streams for a yearly review
- Community Outreach:
  - Develop a program for Shodair to explain the challenges and benefits of the facility to the community. How the community can help in the future.

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12

Hospital Elopement

5) Lessons Learned:

- Do not chase an Eloped patient in the future
- Annual training and education for staff on policies and processes on how to handle elopements. (?)
- Staff debriefs and emotional support ASAP- I believe staff left after this event
- (Education to patient and family on elopement on admit. This is in the Patient Handbook)?? Explain to parents some children do try elopement and \ or suicide. It can be almost impossible to stop. (There has got to be a better way to say that??)
- Walkie-talkies for better communication
- More tabletop drills to include all staff and contract staff on grounds
- Then we send to Craig for his lessons learned…..

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Hospital Elopement

- Final Thoughts:
  - Settlement patient – $1,100,000.00 Driver $100,000.00 excluding all legal expenses.
  - This was a very demanding case given the facts.
  - Had a large emotional appeal to the Shodair' s team and the Community.
  - Sometimes you do receive the most complaint patients and working with them can be challenging.
  - Guidelines should be put in place to protect team and the patients.
  - The design of the new facility creates a safer environment for all.

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Hospital Elopement

- Questions?

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Risk Management Conference

October 21 & 22, 2021

COVID-19 Litigation: Still in the Eye of a Persistent Storm

1

About the Presentation

In response to health care worker shortages at the outbreak of COVID-19, the federal government and many states issued orders and passed laws to protect certain health care facilities and workers from liability for certain negligent acts and omissions during the crisis.

Those laws and orders are limited in scope. They exclude liability for, among other things: gross negligence; willful, reckless or criminal conduct; or acting under the influence of alcohol/drugs or outside the scope of one's licensure.

As such, we expect plaintiff's attorneys to undertake efforts to overcome the protections in as many ways possible.

This program examines those executive orders and laws and the loopholes in them, which create some risks for health care insureds.

2

Key Learning Objectives

1. Obtain an understanding of federal law and the state laws and executive orders enacted to protect some health care treaters from liability related to COVID-19
2. Obtain an understanding of the legal and factual limitations of the COVID-19 immunity laws and orders, as they apply to certain acts and actors
3. Obtain an understanding of how plaintiffs' attorneys are seeking to overcome the immunity protections for healthcare treaters, to capitalize on the pandemic

About the Presenters

Belinda Dodds-Marshall, Esq.
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Belinda is a partner at Kaufman Borgeest & Ryan LLP with extensive experience representing healthcare individuals and entities in all aspects of professional liability litigation through trial. As part of her risk management services, Belinda counsels, lectures at conferences and has published on various topics including best practices in medical institutions and most recently on COVID Immunity Legislation Gaps. Belinda is licensed in New York, New Jersey and Washington, DC. Prior to practicing law Belinda worked for the New York City Department of Health's Division of Communicable and Infectious Diseases at the beginning of the AIDS epidemic focusing on surveillance and epidemiology.

About the Presenters

John Mullahy, Esq.
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John manages Kaufman Borgeest & Ryan LLP's Parsippany, NJ, office. His practice focuses on professional-liability defense, commercial litigation, and risk management. He is part of the firm's Healthcare, Medical Malpractice, and Skilled Nursing Home groups—among others. He represents hospitals, LTC facilities, ALFs, medical and mental-health professionals, employers, brokers and other professionals. He also counsels facilities, individuals, insurers, and employers on coverage, employment, and risk-management issues. In addition, he has lectured and published on standards of care, best practices, and COVID-19's immunity laws and loopholes.

5

This presentation represents the conclusions, opinions, and views of Kaufman Borgeest & Ryan, LLP, not of Yellowstone Insurance Exchange, RRG or its parent/affiliates.

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6

In our last Webinar, we identified the potential theories of liability against health care providers *despite* the COVID-19 immunity laws, and the proofs defendant providers will likely need to defend such claims. We also discussed the main sources of immunity including the CARES Act, The Volunteer Protection Act, the PREP Act, and State immunity laws.

Today, we will discuss updates regarding the immunity laws since our last presentation, and recent court decisions that apply these immunity laws (mainly, the PREP Act) to COVID-19 scenarios.

PREP Act – Public Readiness and Emergency Preparedness Act, 42 U.S.C § 247d-6d and 42 U.S.C. § 247d-6e

The PREP Act protects "covered persons" (individuals and entities) for "recommended activities" and the use of "covered countermeasures."

April 14, 2020, HHS Secretary advisory opinion : The PREP Act applies during the COVID-19 crisis.

October 22, 2020, HHS Secretary advisory opinion: The "Decision" to withhold covered countermeasures may lead to immunity.

Included physical provision and "activities and decisions" directly relating to delivery/distribution and "program planners" who take direction from "authorities having jurisdiction" (*i.e.*, the CDC).

These terms are defined within the PREP Act (See Appendix A. and Appendix "B" for FDA approved devices and therapeutics.)

PREP Act

December 3, 2020, HHS dec: immunity to covered persons :

Using "on-label" countermeasures authorized by the FDA/under investigation;

Using respiratory protective devices HHS Sec. deemed priority with no agreement with govt;

PREP Act could apply when countermeasure not administered to a person.

January 8, 2021, the HHS Secretary advisory opinion:

Prioritization of purposeful allocation of covered countermeasure (*i.e.*, vaccine) could fall under the Act's immunity protections.

Any FDA- or OSA-approved product, including COVID-19 vaccines, is considered a "covered countermeasure."

PREP Act – Jan 2021 DOJ's Statement of Interest

Bolton v. Gallatin Ctr. For Rehab & Healing, Civil Action No. 3:20-cv-00683 (M.D. Tenn.)

The PREP Act is a complete-preemption statute, with broad immunity extended to administration or use of covered measures.

Claims for loss caused by administration/use of covered countermeasure are removable to federal court, the proper forum.

Not a final decision as the Tennessee Federal Court has not formally ruled on this issue yet.

PREP Act

Practical Application

Suit commenced in state court alleging injury under state law

The PREP Act provides immunity under federal Law, and not every state provides complete or partial immunity

Defendant removes to federal court seeking PREP Act immunity

- Does PREP Act preempt state law completely?
- Should case be remanded to State Court?

Plaintiff seeks to remand

PREP Act – Inconsistent Decisions

Garcia v. Welltower Op Co Group, LLC, 8:20-cv-02250-JVS-KESx - The Central District of CA – February 21, 2021

Plaintiff sued in state court claiming defendants failed to implement infection-control measures. Defendants removed the case to federal court and raised the PREP Act as the exclusive remedy. And the Court dismissed the action, finding PREP Act preemption/immunity.

Robertson v. Big Blue Healthcare, 2:20-cv-02561-HLT-TJJ, United States District Court, D. Kansas – February 26, 2021

Plaintiff said defendant failed to protect decedent parent against COVID-19, causing death. The defendant sought removal based on the PREP Act. The Court found the Act's provisions inapplicable to negligence claims stemming from failure to follow policies/guidelines on COVID-19.

PREP Act – Decision Applying PREP Act to COVID

1. Maglioli v. Andover Subacute Rehab., 2:20-CV-06605 (DNJ, Aug. 12, 2020);

2. Rodina v. Big Blue, 2:20-CV-2319, 2020 WL 4815102 (D. Kan., Aug.19, 2020); and

3. Haro v. Kaiser Found. Hosps, 2020 WL 5291014 (CD Cal. Sept. 3, 2020).

PREP Act

PREP Act as applied to COVID-19:

In Maglioli and Rodina, the Court held that PREP Act immunities are not broad enough to preempt all state-law claims; it also found no "covered countermeasures" at issue.

In Haro, the Court remanded after finding that a minimum-wage claim was not causally connected to a "covered countermeasure"—namely, medical screenings that could have occurred during work hours.

PREP Act – Recent Decisions

Grohmann v. HCP Prairie Village KS POC, LLC, No. 20-2304-DDC-JPO, United States District Court, D. Kansas – Jan. 29, 2021

A resident's son sued in state court because his father contracted COVID-19 and died. He claimed the facility failed to take a variety of measures to prevent the spread of COVID. The Court held that under the circumstances, "inaction" was a not covered under the PREP Act.

Lopez v. Life Care Centers of Am., Inc., No. CV 20-0958 JCH/LF, United States District Court, D. New Mexico – Mar. 24, 2021

Plaintiffs claimed the facility failed to create a plan to stop the spread of COVID. The Court said the PREP Act did not apply because the case did not involve injuries caused by use or administration of countermeasures.

PREP Act – Recent Decisions

Est. of Jenkins v. Beverly Hills Senior Care Facility, Inc., No. CV 21-4902-JFW(KSX), The Central Distr. of CA - Aug. 12, 2021

Plaintiff claimed the facility failed to take basic precautions to protect residents from COVID-19 (*i.e.*, providing adequate PPE, testing residents, and quarantining exposed staff). The court held that the PREP Act does not apply.

Analysis: The PREP Act does not prevent plaintiffs from bringing state-law claims based on failure to use covered countermeasures. It also does not provide a substitute for Plaintiff's claims based on Defendants' alleged negligence. Instead, when applicable, it provides immunity to defendants on state negligence claims.

State Immunity Laws

Generally, a state regulates medical practice within its borders.

Most states issued emergency declarations due to COVID-19, but they also limited the immunity for care during the pandemic to negligent conduct. Those states offered and addressed that immunity through:

1. executive orders (usually effective for a specific date of time and in response to a governor's emergency powers) and

2. statutes (enacted by legislatures that could later repeal them).

State Immunity Laws

Idaho – §39-1391C: IMMUNITY FROM CIVIL LIABILITY

"Any licensed physician and surgeon . . . [who] . . . furnish[es] any emergency . . . care . . . regardless of the specialty training or skills . . . [based on a] good faith judgment . . . the condition and best interests of the patient require . . . such care . . . and, in the absence of gross negligence . . . shall [not] be . . . liable [neither shall the hospital where such care is done] in any civil action arising out of the furnishing of such emergency care and treatment."

In addition, no physician "responding to any request for emergency care [shall] be held liable in any civil action by reason of failure to so respond with any greater promptness than may be reasonably required or expected, under the existing circumstances . . .."

State Immunity Laws

Idaho – HB 149

In March 2021, House Bill 149 ("HB 149") was passed, which extends immunity from lawsuits for damages or injury resulting from exposure of an individual to COVID-19 to July 2022.

State Immunity Laws

Wyoming – 35-4-114. Immunity from liability.

"(a) During a public health emergency as defined by W.S. 35-4-115(a)(i), any health care provider or other person, including a business entity, who in good faith follows the instructions of the a state, city, town or county health officer in responding or who acts in good faith in responding to the public health emergency is immune from any liability arising from complying with those instructions or acting in good faith. This immunity shall apply to health care providers who are retired, who have an inactive license or who are licensed in another state without a valid Wyoming license and while performing as a volunteer during a declared public health emergency as defined by W.S. 35-4-115(a)(i). This immunity shall not apply to acts or omissions constituting gross negligence or willful or wanton misconduct."

State Immunity Laws

Wyoming – SF 1002

Senate File 1002 (“SF 1002”) provides liability protection for health care providers following the instructions of a state, city, town or county health officer in responding to the public health emergency. The acts must be undertaken in good faith, and the protection does not extend to gross negligence or willful or wanton misconduct. Also, the acts or omissions must be tied to complying with the instructions

State Immunity Laws

New Mexico

New Mexico is one of multiple states that have enacted The Uniform Emergency Volunteer Health Practitioners Act (UEVHPA)

The UEVHPA grants immunity of civil liability to out-of-state licensed health professionals for gratuitous care provided in a declared emergency, who have registered in advance or during an emergency.

State Immunity Laws

Montana – SB 65

On January 8, 2021, **Montana Senate Bill 65** was introduced which limits the liability of healthcare providers in response to COVID-19, and providing a safe harbor for those who comply with certain regulations. SB65 states that health care professionals are not liable for causing or contributing to the death or injury of an individual while, "providing or arranging health care in support of the state's response," to COVID-19. The bill requires "substantial compliance" with federal, state, or public health guidance in order to be protected from liability.

Potential Lawsuit Scenarios

Scenario # 1: Lack of Emergency Preparedness

Before the outbreak, few health care facilities likely had specific plans to respond to pandemics.

We have begun to see claims that failures to have such plans have resulted in insufficient resources to address the crisis.

That happened in a class-action suit against a Bronx facility.

Recent COVID-19 State Cases

Karen Webb v. Patrick Henry Hospital, et. al, Case No. CL2004931M-03 (Va. Cir. Ct. Newport News)

Plaintiff alleges nursing home caused decedent's COVID-19 related death by telling healthcare providers with direct patient contact to not wear masks, even when exhibiting symptoms, and by ordering providers to work even when symptomatic.

Soper v. Life Care Centers of America, No. 20-2-15915-8 SEA (Wa. King Cty. Super. Ct.)

Plaintiff alleges facility caused decedent's COVID-related death, suspected first COVID case in February 2020, did not quarantine until early March, and admitted new residents. The claims include fraudulent concealment, negligent misrepresentation of facts concerning threat to decedent's health.

Potential Lawsuit Scenarios

Scenario # 2: Allocation of Testing Kits and PPEs etc.

Sparring between the federal and state governments and the facilities as to the sufficiency of PPEs creates another ripe issue for suits.

Expected suits could come from staff members, as well as patients:

NY federal judge dismissed a nurse association's suit against a NYC hospital for failing to provide PPEs and adopt measures to stop the spread of COVID-19, as the matter was subject to arbitration.

Potential Lawsuit Scenarios

Scenario # 3: Inspection Surveys & Board Complaints

Counsel will likely rely on inspections to support gross negligence and reckless misconduct claims, and file board complaints.

Washington State: Fed. regulators assessed $611K fine to Kirkland nursing home; inspector residents placed in "imminent danger" of COVID-19 outbreak by not containing respiratory infections, notifying the DOH, or having a backup-plan in the absence of a PCP, who fell ill.

Immunity orders/laws protect against civil/criminal liability, not state-licensing (certifying) board claims of misconduct.

Potential Lawsuit Scenarios

Scenario # 4: Understaffing

Counsel have begun targeting staffing levels during the COVID-19 crises, and claiming facilities were ill-equipped to address it.

- Former Detroit Medical Center employees sued for $100M, claiming an unsafe and "severely understaffed" environment affected care during COVID-19 and left them "overwhelmed by dying patients."
- A Chicago suit claims a rehab center failed to monitor patients and staff for symptoms of the virus and that the resulting wrongful death was a "byproduct of years, if not decades, of the nursing home's mismanagement, misallocation of resources and understaffing."

Potential Lawsuit Scenarios

Scenario # 5: Documentation

Providers must document all informed-consent and other discussions with residents and patients (and their families) about COVID-19 care, namely the risks, benefits and alternatives to that care.

They must also review and comply with state and local restrictions or requirements that may impact the decision-making process.

We have begun to see suits based on community transmissions, limitations on the availability of PPEs, and/or limited ICU availability.

Potential Lawsuit Scenarios

Scenario # 6: COVID-19 Reporting Data

Plaintiff's attorneys have started looking at CMS and CDC data for facilities' infection rates and outcomes.

Claims have focused on underreporting of COVID-19 mortality rates, failure to provide prompt notification caused injuries and deaths.

Facilities may still argue the reporting was delayed or incorrect because of the crisis; but they need to overcome arguments that delays/errors are evidence of inadequate resources and staffing.

Potential Lawsuit Scenarios

Scenario # 7: Gross Negligence and Willful Misconduct

Immunity excludes "gross negligence" and "willful misconduct": conscious disregard of reasonable care, likely to cause grave injury.

Standards are difficult to prove—similar to manslaughter elements—and will likely create an issue of fact for a jury.

Plaintiffs' attorneys have begun pleading this in complaints.

Potential Lawsuit Scenarios

Scenario #8: Negligence Before COVID-19 Orders/Laws

While the immunity orders and laws frequently have a "start date" or "effective date," plaintiffs' counsel will assert claims that any care or services provided preceded immunity's effective date.

Suits have begun claiming negligence that predated the effective date; the prevalent issue will be when the alleged acts first occurred.

Risk-Management Takeaways

1) Document what you did to prepare for COVID-19: *(i.e.*, the policies placed, efforts to obtain PPEs, and staff contingency plans).
2) Be transparent with your staff members concerning your team effort to address the virus while also protecting residents and staff.
3) Document your compliance with CMS, CDC and state guidelines, and incorporate any changes to those regulations and guidelines.
4) Keep track of your staff's in-servicing, education, and training, as well as the development of new policies in response to COVID-19.
5) Document all communications with family members concerning the status of COVID-19 and your ongoing responses to it.
6) Have a plan to address any actual/potential staffing shortages.

Litigation Strategy Takeaways

- Remove cases to Federal Court asserting application of the PREP Act
- Provide arguments supporting federal jurisdiction, which include every possible basis
- If opposing a remand to State Court include arguments of Pre-emption and HHS opinions
- Seek hearing to establish applicability of the PREP Act
- Be pro-active: File cross-motion for a DJ to establish PREP Act is applicable
- Distinguish cases that did not find pre-emption

Questions
???

Appendix A – PREP Act Definitions

Manufacturer: Any supplier/licenser of components/services in design, testing, investigation, or manufacturing of a covered countermeasure

Distributor: Any entity engaged in distributing a covered countermeasure, ranging from re-packers to retail pharmacies.

Program planner: A state or local government or its employee or another person who supervises or administers a program on the administration, dispensing, distribution, provision, or use of a covered countermeasure. This includes those who establish requirements, provide policy guidance, supply technical or scientific advice or assistance, or provide a facility to administer or use a covered countermeasure in accordance with the PREP Act declaration.

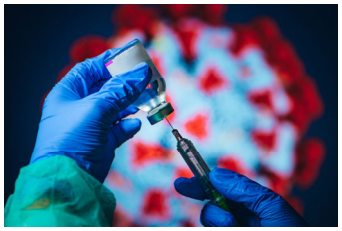
Qualified person: A licensed health professional and another authorized to prescribe, administer, or dispense the countermeasure.

Appendix B – FDA Sources

- FDA List of Approved Devices -https://www.fda.gov/media/136702/download
- FDA List of Approved Therapeutics - https://www.fda.gov/media/136832/download

Thank you!

BARRETT
HOSPITAL & HEALTHCARE



COVID-19 EARLY INTERVENTION

YELLOWSTONE
INSURANCE EXCHANGE, LLC

1

PLANNING, DECISION-MAKING, & RECORD-KEEPING

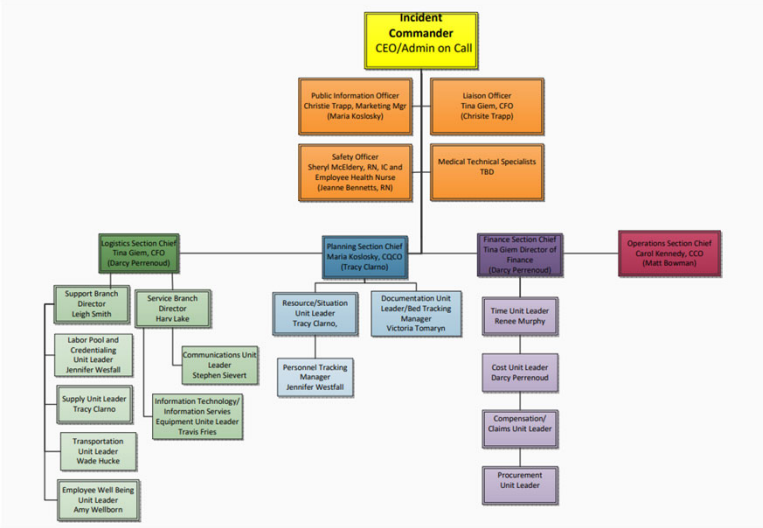
Triggered by the announcement that the first COVID cases in Montana may have generated from a gathering at the local college, Barrett Hospital & HealthCare (BHH) stood up their Incident Command (IC) structure.

Simultaneously, BHH worked with the county's Unified Command to ensure that efforts were integrated in the community.

- Over time the size and composition of the IC expanded and contracted (as the design intended) to meet the current needs. IC meetings ranged from daily to eventually weekly, as plans were formulated and carried out, tasks were accomplished, and the staff adapted to the necessary changes in workflow.
- Consistent minute-taking and task assignment and follow through allowed us to stay focused and on track to accomplish our goals of safe patient care and staff safety. Central location to maintain COVID-related plans, procedures, and guides was designated.

2

INCIDENT COMMAND STRUCTURE



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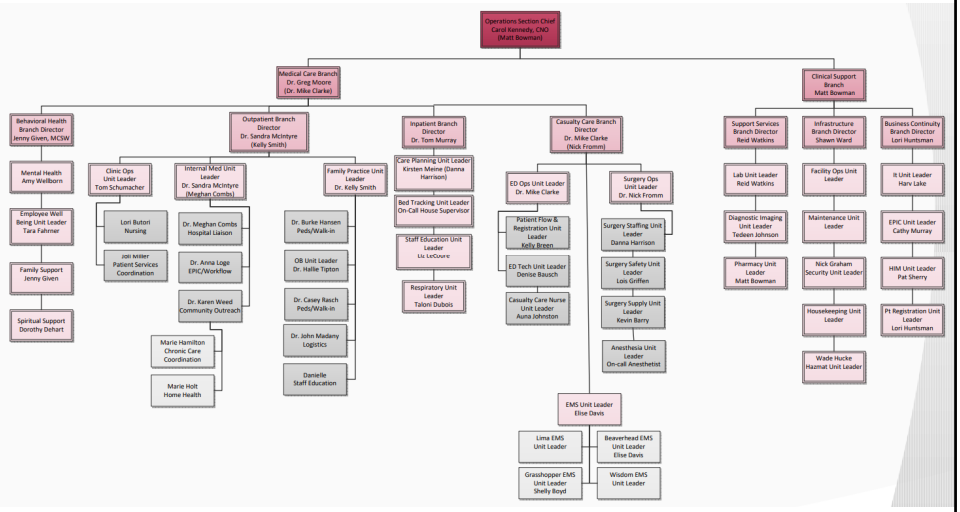
INCIDENT COMMAND STRUCTURE



4

POLICIES & PROCEDURES

Welcome to your Barrett Hospital & HealthCare Policy Manager (BPM)

COVID-19

Click on link:

COVID-19 Policies and Procedures

https://bhh.ellucid.com/manuals/binder/3366

5

COMMUNICATION

INTERNAL COMMUNICATION INCLUDED:

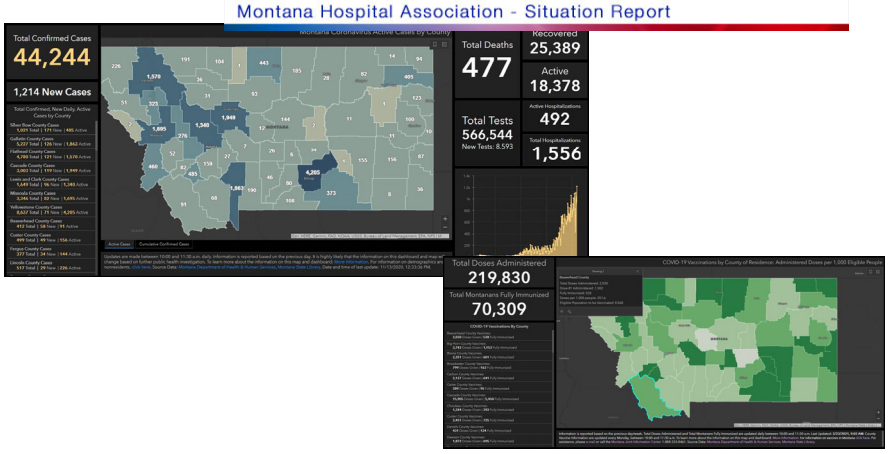
- Compliance/ Data staff kept on top of maintaining records, reporting, and keeping internal information flowing
- Daily emailed status updates to all staff on county and state case counts
- Daily emailed state situation reports to all staff
- IC meeting minutes shared with all staff within 24 hours of meetings
- CEO video message update
- Policies & procedures shared as needed with appropriate staff but available to all in central location

EXTERNAL COMMUNICATION INCLUDED:

- Marketing staff used a multitude of venues and a mix of hospital-specific and general information to inform the public
- Radio PSA's
- Radio 30-minute talk show
- Newspaper PSA's, press releases, reporter article questions, interviews, and ads
- Website home page banner www.barretthospital.org
- Internal TV monitors in hospital and clinic public areas
- Social Media (Facebook)
- Clinic & ED staff fielded thousands of calls from the public and eventually phone tree messaging was implemented
- MANDATORY FEDERAL & STATE REPORTING

6

COMMUNICATION - Internal



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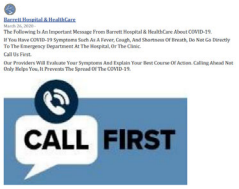
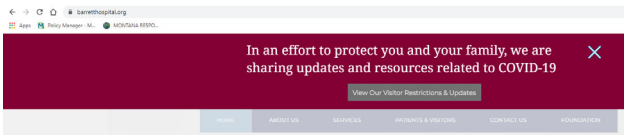
COMMUNICATION - External



https://www.facebook.com/barretthospital/videos/1097686497356453



8

COMMUNICATION - External

Barrett Hospital & HealthCare

May 4, 2020 ·

Barrett Hospital & HealthCare Phases in Some Services and Elective Procedures, Further Enhances Safety Measures

Barrett Hospital & HealthCare has opened clinic visits, diagnostic imaging services, lab testing, along with physical, occupational and speech therapies, as well as some elective procedures. For safety, a mandatory mask policy for patients and staff on both campuses is in place, requiring masks to be worn in the hospital and clinic.

The Montana Hospital Association now recommends restarting elective procedures, after calling for them to be canceled in late March as concerns grew over a potential spike of COVID-19 cases. Elective procedures are surgeries and other procedures that are planned and are performed in the hospital Operating Room. Patients scheduled for elective procedures that could require intubation or aerosol-generating procedures are COVID-19 tested several days prior to their procedure. COVID-19 testing samples from elective procedure patients are sent off for lab analysis and take about three to four business days for results. Patients will need to self-quarantine for the period of time between the test sample being collected and the date of their scheduled procedure.

Barrett Hospital & HealthCare has put in place many other safety measures at its hospital and clinic:
- Patients are screened for fever and respiratory symptoms at the entrances.
- All employees are screened when they come to work.
- A mandatory mask policy for patients and staff.
- Cloth masks for patients are being distributed at all open entrances to those who do not already have one.
- No visitors are allowed on campus unless a caregiver is needed to assist the patient.
- Patients are being asked to arrive for appointments right when they start.
- Patients will be waiting in their cars until called in for some services.
- Hand sanitizer is available for good hand hygiene practices.
- Waiting and common areas have been redesigned to allow for 6 feet of social distancing.
- We continue to disinfect patient care areas after each patient use
- High touch surfaces in common areas are disinfected on a schedule at greater frequency.

398 People Reached

38 Engagements

Barrett Hospital & HealthCare

September 11, 2020 ·

ATTENTION HOSPITAL VISITORS – REVISED RESTRICTIONS ARE NOW IN PLACE

To protect the health and safety of Barrett Hospital & HealthCare's patients, guests, coworkers and community, we are restricting visitors to the Hospital. This helps us to prevent and slow the spread of infectious illnesses such as COVID-19. The following restrictions are currently in place:

We may allow one (1) healthy pre-screened adult visitor 18 yrs. or older only in the following circumstances:

- Inpatient without COVID-19: 1 designated visitor (preferably home caregiver).
- Obstetrics and Birthing Rooms: 1 support person
- Pediatric patient: 1 parent/guardian

No visitors will be allowed for:

- Emergency Department/ Outpatient Surgery/ Outpatient Testing/ Clinic Visit: unless patient is under 18 yrs. old then parent/guardian only
- Suspect or confirmed COVID-19 patients

Exceptions may be considered for extenuating circumstances at the discretion of the medical provider.

1,011 People Reached

176 Engagements

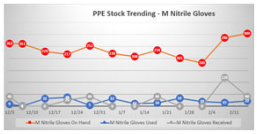
9

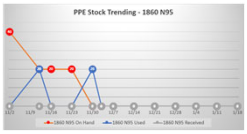
LOGISTICS (SUPPLIES, EQUIPMENT, & PEOPLE)

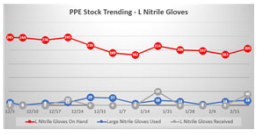
- Supply chain posed daily challenges and our Materials staff worked to find new vendors and stay on top of ordering, stocking, and monitoring our supplies, particularly personal protective equipment for our staff
- Laboratory and Pharmacy personnel ensured that we had the testing supplies and equipment and the medications needed to care for our patients
- Maintenance crew set up outdoor tents with heat and electricity for testing and built temporary walls that formed our COVID units
- Peri-operative and laboratory staff re-deployed to ED to assist with scheduled drive through outpatient swabbing/testing
- With the help of our Foundation and COVID relief money, a new ventilator, new Vapotherm (high velocity therapy – noninvasive ventilation device), bedside blood gas analyzers, and portable negative pressure devices were purchased
- IT staff worked to supply tablets for patient/family communication during no visitor stays and procured equipment necessary to ramp up telemedicine and make it possible for Zoom and Teams meetings to occur and for many staff to work from their homes
- Human Resources tracked employees quarantined and testing positive
- Social Services provided resources to bolster the resilience of staff
- Clinic staff community outreach working with local seamstresses to produce masks and create a distribution plan

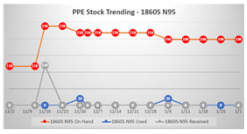
10

CAREFUL TRACKING OF PPE, TESTING SUPPLIES, AND PHARMACEUTICALS









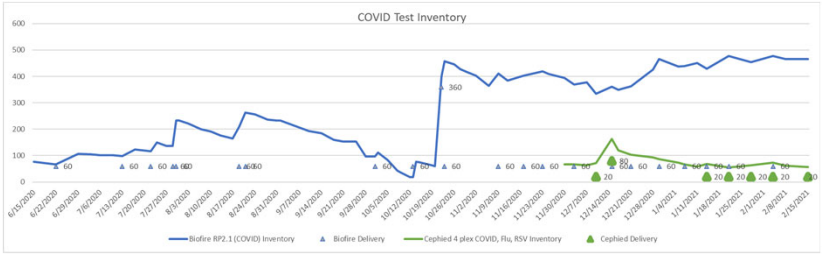
Earloop Masks (50/bx)			
Week	2/8	2/15	2/22
Quantity expensed	5	9	
Quantity received	0	0	
Beginning Balance	199	194	185
Quantity On Hand	194	185	
M Gloves (100/bx)			
Quantity expensed	15	22	
Quantity received	120	40	
Beginning Balance	181	286	304
Quantity On Hand	286	304	
L Gloves (100/bx)			
Quantity expensed	14	18	
Quantity received	0	40	
Beginning Balance	197	183	205
Quantity On Hand	183	205	
1860 N95 (each)			
Quantity expensed	0	0	
Quantity received	0	0	
Beginning Balance	0	0	0
Quantity On Hand	0	0	
1860S n95 (each)			
Quantity expensed	20	0	
Quantity received	0	0	
Beginning Balance	198	178	178
Quantity On Hand	178	178	
DUCK BILL MASKS (each)			
Quantity expensed	0	0	
Quantity received	0	0	
Beginning Balance	953	953	953
Quantity On Hand	953	953	
OTHER N95'S (each)			
Quantity expensed	0	0	

11

CAREFUL TRACKING OF PPE, TESTING SUPPLIES, AND PHARMACEUTICALS

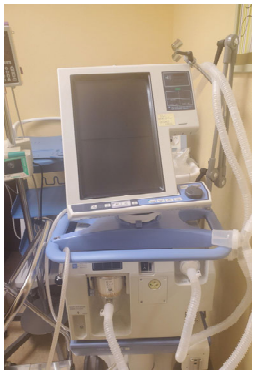
LAB COVID-19 INVENTORY	3/24/2020	6/15/2020	11/30/2020	2/15/2021
Collection Media (Lab Location)				
UTM Viral (1.0ml)	165	250	425	1000
UTM Viral (3.0ml)	80	120	20	50
Test Inventory				
Biofire RP2.1 (COVID) Inventory		76	395	465
Biofire Delivery				
Cephied 4 plex COVID, Flu, RSV Inventory			66	56
Cephied Delivery				20

COVID-19 Pharmacy Inventory				
Date:	3/25/2020	11/4/2020	11/22/2020	2/17/2021
Remdesivir (Par level 40)		78	52	51
Inhalers**				
Albuterol HFA	60		17	15
Atrovent HFA (ipratropium)	1		3	3
Antibiotics				
Azithromycin 500mg vial	93	57	22	40
Azithromycin 250mg tab	190		78	70
Dexamethasone 4mg/mL			100	225
Dexamethasone 10mg/mL			75	150
Dexamethasone 10 mg/mL Presertivie Free			50	75
Dexamethasone MDV 100 mg/mL			30	40
Dexamethasone 4 mg tablet			200	200

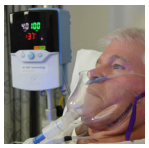


12

EQUIPMENT – ventilators, Vapotherm & portable negative pressure

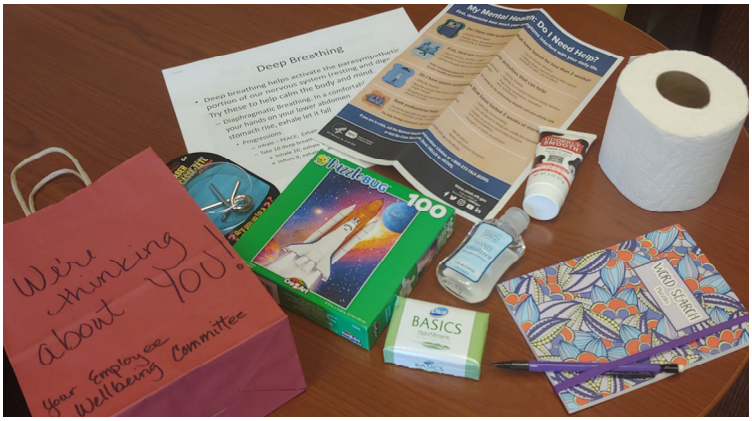


Vapotherm.com



13

CARING ABOUT OUR COLLEAGUES IN QUARANTINE



14

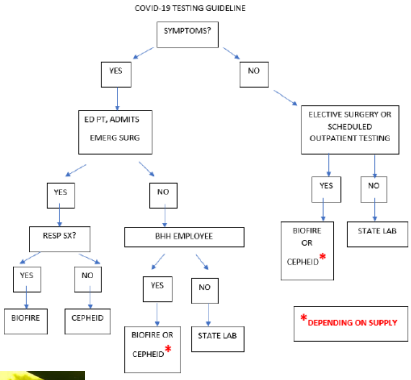
OPERATIONS/ PATIENT CARE

- Medical & Clinical Staff researched guidance, contacted colleagues across the country, and worked together to determine how best to deliver patient care
- Testing algorithms were developed and revised as supply and demand changed
- Plans were made early on for surge capacity and entailed numerous details of equipment and supply location and workflow planning
- Difficult decisions were made to curtail elective services and each clinical department developed detailed plans for servicing patients and "reopening" safely
- Medical, Nursing, Cardiopulmonary, and Imaging Staff were generous of their time when needed and brave in their care of these patients
- Cardiopulmonary staff developed and deployed rapid ventilator training
- Visitor restrictions were thoughtfully implemented
- Cold, warm, and hot zones were designated to protect our most vulnerable patients
- Telemedicine was brought on-line in record time
- Informatics staff kept abreast of EMR adjustments and supported clinical staff
- Home Health and Hospice staff limited access to patients and equipment in homes and did telephone visits for COVID positive and those in assisted living

15

COVID UNITS

Testing tent



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COVID UNITS

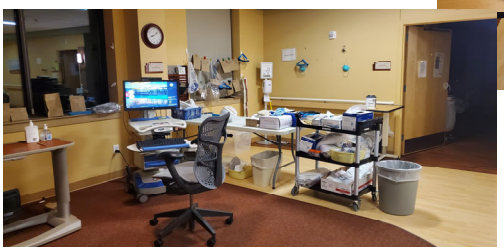
ED warm and hot zones

17

AMBULATORY SURGERY TURNED INTO COVID SURGE UNIT

18

INPATIENT COVID UNIT



19

SAFETY

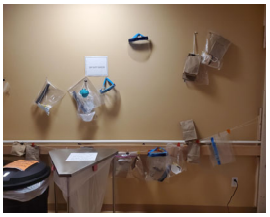
- Infection Prevention staff worked with local infectious disease experts to ensure that all staff were proficient and safe in PPE donning and doffing and rounded daily to ensure staff were practicing safely and had the PPE needed
- N-95 fit testing was completed for all affected staff more than once due to changes in vendors/ products. Additional PAPRs (powered air purifying respirator) were procured and allowed patients to see the face of their provider
- Patient Financial Services Staff and Clinic Staff guarded the limited access points ensuring symptomatic people were routed to the ED, maintaining our clinic and other areas of the hospital as “cold” zones. Clinic created and hired a triage position for this purpose.
- Staff were required to check in and report any symptoms daily when on site and as many people as possible worked remotely from home
- Human Resources and Patient Financial Services staff ensured public and high touch surfaces were cleaned regularly outside of their normal duties
- Perioperative staff safely reprocessed N-95 respirators
- Housekeeping staff implemented the use of electrostatic disinfectant sprayers to allow more comprehensive disinfection and quicker turn-around times

20

PPE & DISINFECTION







21

FINANCE

- Early layoffs and redeployments due to curtailing services
- Early application for CARES Act $$ and Payroll Protection Program
- Careful tracking of resources used to respond to the pandemic
- Coding and Patient Financial Services Staff learned quickly what and how to code and bill

PARTNERS & POLITICS

- Worked closely with LTC and assisted living facilities
- Community made thousands of cloth masks
- Supported Public Health when City-County Board of Health was not so supportive (public skepticism of mask wearing and group gathering restrictions)

DILLON TRIBUNE
Keeping you informed since 1881

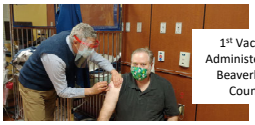
City Council talk of health board withdrawal off-board, off-table tonight

Doubts about whether or not the city should stay on the county-city health board came about during months of disputes between Klakken and the board over views on the COVID-19 pandemic and whether the board had legal authority to impose restrictions on people's behaviors to try to limit the spread of the pandemic—as well as on what behaviors would or would not accomplish that.

22

Vaccine administration

- Healthcare workers 1st
- Due to logistics rather than build our own vaccine admin workflows we chose to partner with the Public Health Department in mass vaccination clinics



1st Vaccine Administered in Beaverhead County

DILLON TRIBUNE
Keeping you informed since 1881

Barrett Hospital not providing COVID-19 vaccines in clinic, partnering with public health

Tuesday, March 9, 2021

Barrett Hospital and HealthCare is no longer providing COVID-19 vaccines through it's clinic as of March 1.

The hospital instead will partner with Beaverhead County Public Health to provide the vaccines through their regularly scheduled COVID-19 vaccination clinics.

"We feel one location and process will better serve those wanting to be vaccinated, and in a more timely manner," a press release stated.

Beaverhead County Public Health will continue to communicate which patient criteria they are currently vaccinating, as the community moves into each phase. Our teams will collaborate throughout the process as new developments arise regarding vaccine distribution and delivery.

To reach Public Health for scheduling a COVID-19 vaccine appointment call: 406-683-3203.

For COVID-19 related questions, or to schedule a general medical appointment call: 406-683-1188.

23

OUTCOMES

- Maintained workforce to be able to care for patients locally
- No healthcare-acquired COVID cases
- No confirmed work-related employee COVID cases
- No lapse in PPE, test supplies, or meds
- Employees annual ratings of “had the resources to do my job” and “felt recognized and appreciated” increased over previous year
- Maintained financial solvency

24

LESSONS LEARNED

- STRENGTHS
  - Cohesiveness, hard work, positive attitude, and creativity to maintain focus on safety of patients, staff, and community
  - Strong Incident Command able to delegate, execute, and adapt rapidly – well organized and engaged, overall agility
  - Supply management and availability of patient care space to exceed critical care capacity
  - Frequent, non-contradictory, and effective communication both internal and external
  - Patient check in areas well organized and restrictions enforced consistently
  - Safe and organized re-opening for elective procedures
  - Emotional support offered to staff
  - Early recognition & response to financial impacts

25

LESSONS LEARNED

- OPPORTUNITIES
  - Early confusion of role of Incident Command resolved once recognized – need to establish authority and chain of command early on
  - Rapid testing not readily available throughout due to limited allocations
  - As the situation lingered, proper use of PPE had to be reminded
  - Visitor policy difficult to enforce
  - Further development of telemedicine needed
  - More video messages for communication
  - More directed communication for frontline staff on policy changes
  - Discrepancies between Public Health contact tracing quarantine instructions and internal policy for quarantine to maintain the workforce

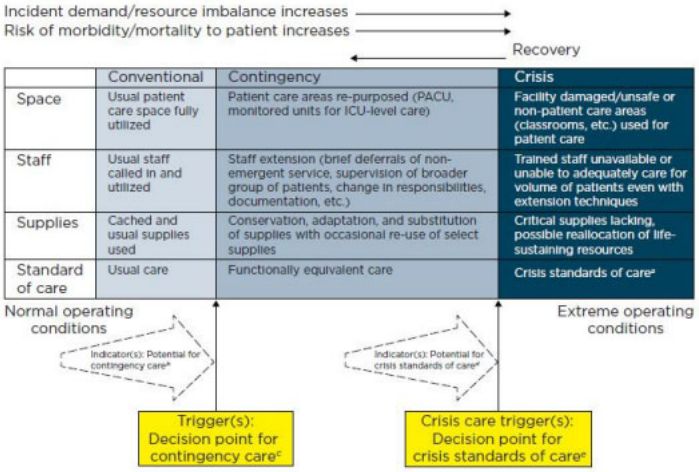
26

SECOND WAVE - CRISIS CARE

- Crisis Standards of Care (CSC): A state of being that indicates a substantial change in health care operations and the level of care that can be delivered in a public health event, justified by specific circumstances. Medical care delivered during disasters shifts beyond focusing on individuals to promoting the thoughtful and equitable stewardship of limited resources intended to result in the best possible health outcomes for the population as a whole. Crisis capacity activation constitutes a significant adjustment to standards of care. Crisis care is distinguished from contingency care (Provision of functionally equivalent care - care provided is adapted from usual practices; for example, boarding critical care patients in post-anesthesia care areas) by an inability to adhere to the accepted standard of care.
- No ICU and no critical care trained nurses
- Inability to transfer out – not just COVID cases, but emergency cardiac, surgical, & trauma cases
- Not enough neg pressure rooms, medical air to run vapotherms, not enough vapotherms

27

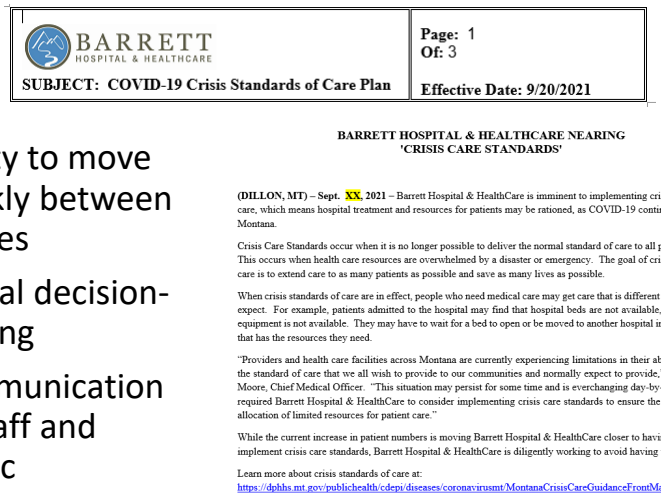
CONVENTIONAL -> CONTINGENCY -> CRISIS



28

MORE PLANNING

- Agility to move quickly between phases
- Ethical decision-making
- Communication to staff and public



BARRETT HOSPITAL & HEALTHCARE

SUBJECT: COVID-19 Crisis Standards of Care Plan

Page: 1 **Of:** 3

Effective Date: 9/20/2021

BARRETT HOSPITAL & HEALTHCARE NEARING 'CRISIS CARE STANDARDS'

(DILLON, MT) – Sept. XX, 2021 – Barrett Hospital & HealthCare is imminent to implementing crisis standards of care, which means hospital treatment and resources for patients may be rationed, as COVID-19 continues to surge in Montana.

Crisis Care Standards occur when it is no longer possible to deliver the normal standard of care to all persons in need. This occurs when health care resources are overwhelmed by a disaster or emergency. The goal of crisis standards of care is to extend care to as many patients as possible and save as many lives as possible.

When crisis standards of care are in effect, people who need medical care may get care that is different from what they expect. For example, patients admitted to the hospital may find that hospital beds are not available, or that needed equipment is not available. They may have to wait for a bed to open or be moved to another hospital in or out-of-state that has the resources they need.

"Providers and health care facilities across Montana are currently experiencing limitations in their ability to provide the standard of care that we all wish to provide to our communities and normally expect to provide," said Dr. Greg Moore, Chief Medical Officer. "This situation may persist for some time and is everchanging day-by-day, which has required Barrett Hospital & HealthCare to consider implementing crisis care standards to ensure the most equitable allocation of limited resources for patient care."

While the current increase in patient numbers is moving Barrett Hospital & HealthCare closer to having to implement crisis care standards, Barrett Hospital & HealthCare is diligently working to avoid having to do so.

Learn more about crisis standards of care at:
https://dphhs.mt.gov/publichealth/cdepi/diseases/coronavirusmt/MontanaCrisisCareGuidanceFrontMatter.pdf

29

RESOURCES FOR CRISIS STANDARDS OF CARE

- Scarce Resource Management & Crisis Care Guidance Overview & Materials: Critical Care Algorithms | Scarce Resource Cards | Triage Team Guidelines & Worksheets. Drafted for use in Montana in response to the 2020-2021 COVID-19 pandemic emergency https://dphhs.mt.gov/publichealth/cdepi/diseases/coronavirusmt/MontanaCrisisCareGuidanceOverviewMaterials.pdf
- Scarce Resource Management & Crisis Care Guidance Front Matter. Drafted for use in Montana in response to the 2020-2021 COVID-19 pandemic emergency https://dphhs.mt.gov/publichealth/cdepi/diseases/coronavirusmt/MontanaCrisisCareGuidanceFrontMatter.pdf
- Institute of Medicine (US) Committee on Guidance for Establishing Standards of Care for Use in Disaster Situations. 2009. https://www.ncbi.nlm.nih.gov/books/NBK219958/
- Crisis standards of care: Guidance from the AMA Code of Medical Ethics https://www.ama-assn.org/delivering-care/ethics/crisis-standards-care-guidance-ama-code-medical-ethics
- HHS ASPR TRACIE (Technical Resources, Assistance Center, and Information Exchange) Topic Collection: Crisis Standards of Care https://asprtracie.hhs.gov/technical-resources/63/crisis-standards-of-care/0

30

"Aus der Kriegsschule des Lebens.—Was mich nicht umbringt, macht mich stärker,"
19th century German philosopher Friedrich Nietzsche

"*That which does not kill us makes us stronger*"
1982 Conan the Barbarian

"I believe whatever doesn't kill you simply makes you stranger."
2008 Joker – The Dark Knight

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Risk Management Conference

October 21 & 22, 2021

1

EMPLOYEE MISCONDUCT COMPLAINTS

- Increasing number of allegations involving employee misconduct, particularly sexual misconduct
- Multi-Pronged Issue: patient safety, employee discipline, public perception
- Requires prompt action to address all three considerations

2

WHAT HAPPENED

- A Family Practice Provider reported to the hospital Administration a complaint she received from a patient regarding the interaction of a hospital lab technician. It was stated that the lab tech spent an inordinate amount of time in the patient's room and would sit in a chair and try to talk to him. He asked him why he was spending so much time in his room and the lab tech stated it was not often that we get such a handsome young man in the hospital. He also related that the lab tech took ureteral and rectal swabs that he was not expecting. Hospital administrators immediately informed the lab tech to have no further contact with this patient and began an internal investigation. To assist in the investigation, the hospital had an attorney advise them of how to proceed

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PATIENT COMPLAINT

- Following the patient disclosure to the Family Practice Provider, he followed up with an official complaint to the hospital administrator. The patient reported that the urethral swab and rectal swabs were obtained by the lab tech with no one else in the room and it made him feel uncomfortable. The patient also wondered why the rectal swab had to be repeated since the specimen had been previously obtained by a provider in the emergency department. The patient reported that the behavior the lab tech exhibited towards him was sexually suggestive and inappropriate. He stated he should not have been subjected to staff acting inappropriately toward him or his safety in a hospital setting and a made a demand for monetary damages because of the assault.

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GETTING AHEAD OF THE ISSUE

- Since this occurred at a critical access hospital in a small community public knowledge of the incident could spread and be counter productive to the hospital's reputation. Accordingly, the hospital CEO immediately began a review of the complaint.

THOROUGH & TIMELY REVIEW

- The hospital administrators initiated an internal review of the allegation and the lab tech's reported behavior. They reviewed the medical records and noted there was no orders for rectal or urethral swabs. There was also no documentation in the medical records that the swabs were taken. They also noted that per his job responsibilities, this lab technician had no reason to be in the patient's room.

PATIENT'S ACCOUNT

- After hearing from the patient and reviewing the medical records, the lab technician was asked to come to the administrator's office to discuss his contact with the patient.

INVOLVED EMPLOYEE INTERVIEW

- The hospital administration met with the involved laboratory tech three days after the incident. The lab tech admitted spending a significant amount of time in the patient's room with no clinical reason and made comments related to the patient's appearance that the patient could have taken as suggestive.

INVOLVED EMPLOYEE INTERVIEW

- He acknowledged the collection of these samples was his own independent decision and was completed without an appropriate chaperone and without proper training. He admitted that he obtained these specimens without an order and did not collect them per appropriate standards. And he indicated that he did not document this action in the patient's medical record.

ACTION TAKEN

- Based upon his own admissions and the report from the patient, it appears that he engaged in unprofessional conduct as defined in Montana Code 37-1-316 and the Administrative Rules of Montana Section 24.129.2301. Since the hospital did not authorize or condone the lab technician's behavior and since it appears that he violated Montana statutes and administrative rules, he was terminated.

RESOLUTION

- The patient made a six figure demand for settlement of the claim. Following their investigation and establishing the facts of the event, hospital administrators conducted direct negotiations to settle the claim for significantly less than it would have cost to defend the matter. They were also able to settle this with a confidentiality clause that prevented unwanted negative attention for the hospital. Importantly they ensured that the offending party was reported to the state so his behavior would not continue somewhere else.

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LESSONS LEARNED

Final Thoughts:

- Alleged sexual misconduct cases can be very expensive to defend and settle. These claims if made public can have emotional appeal and sympathy in the Community and a subsequent trial. They can also have an impact on staff.
- A timely, fair and thorough investigation to determine facts is important for all parties involved. Should involve all parties, including patient and employee, and need to document all steps of process
- In cases of clear exposure an early settlement is the goal.
- Building a rapport with the Claimant can result is a fair and reasonable settlement.
- Holding offenders accountable and reporting them to licensing boards prevents future incidents.
- Guidelines should be put in place to protect staff and the patients.

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Risk Management Conference
October 21 & 22, 2021

1

The 2020 Recognition Program Winners

2

The 2020 Recognition Program Winners

1) Sidney Health Center won **gold** on "Implementation of a Successful Safety Huddle Process" by Nancy Dynneson
2) Mineral Community Hospital won **gold** on " Fall Prevention" by Laurel Chambers
3) Barrett Hospital & HealthCare won **gold** on "COVID-19 Pandemic Response by Maria Koslosky
4) Northern Montana Hospital won **silver** on "Culture of Safety" by Eric Koch
5) Weston County Health Services won **silver** on "Discharge Process Improvement Project" by JoAnn Farnsworth
6) Cody Regional Health won **silver** on "COVID-19 Organization Response" by Risk Management

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The 2020 Recognition Program

- Deer Lodge Medical Services "Proactive Care@DLMC" by Andy Dreesen and Kyle Kohn
- Bonner General Health "Vicarious Traumatization During 2020" by Tracy Autler
- Boundary Community Hospital "A Pandemic For All Seasons" by Tari Yourzek
- Nor-Lea Hospital District "COVID-19 Navigating a Pandemic" by Kim Brown
- Shodair Children's Hospital "Coaching & Supervision" by Michelle Herron and Anna Hoerner
- Steele Memorial Medical Center "Inpatient Respiratory Therapy Program by Wendy Chesley

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Thank you all for participating!

This program is near and dear to my heart.

Every year our members work on projects to decrease harm/ increase safety and then share it with all of Yellowstone.

Gold winners win $1,200. Silver wins $300.

Thank you for taking great care of your patients/ families, your staff, and your community.

Julie and Denise

* For 2021, we have 23 of 24 hospitals participating!!

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2020 Power of One Challenge

One healthcare employee can save a life. Be Observant, Vigilant, Aware, Focused, Engaged, Dedicated.

Jennifer McIntosh – Nor-Lea General Hospital **January 2020**

Jennifer McIntosh, RN, an emergency room nurse, discovered that patients' medical information from the ER was not linking to the Omnicell correctly. The interface between the charting system and the Omnicell were not transferring the patients' allergies to help avoid medication errors/incidents. Jennifer brought this issue to the ER managers Emily Rodriguez and BranDee Savell, CNO. The problem was resolved with IT adding another computer in the medication room so nurses can access patient information and allergies. Identifying this issue potentially reduced errors. By speaking up, Jennifer very well could have saved a life.

Brittney Vincent – Cody Regional Health **February 2020**

Brittney Vincent is an RN in our Cancer Treatment Center. She recently entered the following event: A cancer patient arrived for a scheduled appointment and needed two medications infused. Her IV was started and her prep was done when it was realized that one of the medications was not available. Her treatment had to be modified, requiring her to return to the clinic again to receive the medication that was not in stock. Brittney reported this immediately to her supervisor, Jen Ball, as well as the pharmacy, so service recovery could take place and the medication could be ordered. She also reported this event into YES. Jen then worked with the pharmacy director, Doug Wenke, and developed an action plan and process improvement that they implemented immediately. They are now monitoring daily to ensure availability of all meds for all patients to prevent a recurrence. Thanks to Brittney speaking up and being proactive. Service to patients has been enhanced.

Tabitha Cole – Shodair Children's Hospital **March 2020**

Our nurse manager received a call from a parent stating that Tabitha Cole, RN, on High Desert had gone above and beyond and should be recognized as a wonderful nurse. We recognize Tabitha for the following reasons that promote not only physical safety (suicide prevention), but also psychological, moral, and social safety. 1. Therapeutic rapport with family/child; 2. Attentive to patient needs; 3. Ability to be empathetic with difficult family members, while managing difficult milieu; 4. Genuine, kind, caring, compassionate; 5. Patient advocate; 6. Addressed concerns of a difficult parent of a child on our unit. Thank you for your work each day Tabitha.

Meagen Healy– Deer Lodge Medical Center **April 2020**

In our current healthcare environment, there is a great amount of stress and expectations placed on staff throughout the facility. Our Dietary Director, Meagen Healy, took it upon herself to try to alleviate some of this stress so our staff can focus on providing the best care to our patients. Meagen built a program where staff members can complete grocery orders and submit to our dietary department. Meagen is able to place the orders on behalf of our staff members, through our suppliers, and the items are delivered directly to the facility and available for pickup. As a result, the many staff working long hours and practicing social distancing can get their essentials while at work vs going to the grocery store – protecting both our community and our staff from potential exposure to COVID-19. Meagen has truly thought outside of the box and developed a way to GREATLY assist our staff. She is a true asset to our team and our facility.

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2020 Power of One Challenge

One healthcare employee can save a life. Be Observant, Vigilant, Aware, Focused, Engaged, Dedicated.

Barrett Hospital and HealthCare — May 2020

Barrett Hospital and Healthcare employees came together to demonstrate the power of one hospital as they prepared to stand up their COVID unit. The way the team worked to make ready their hospital deserves recognition and earns the May Power of One. Incident Command and every department pitched in over and over a span of 2½ weeks researched, identified areas of maximum impact, planned for what was needed and executed their readiness response. When we asked for a few examples of individuals, the hospitals response was that everyone pitched in and they could not pick one or even a few individuals. So, we agree that they together show the power that one hospital can have in providing for the health and safety of their community and each other. Well done to all at Barrett Hospital and Healthcare. What a great example of one team you have given us.

Helen Denruyter – Madison Valley Medical Center — June 2020

Twice, in the last couple of weeks, Helen has caught potential missed doses of IV antibiotics and fixed them prior to any doses being missed. One event was an ordering error for which we completed an incident report. The other event was a timing issue that could have resulted in a missed dose. We greatly appreciate Helen's consistent and diligent order checking. Her actions corrected mistakes before they could actually happen and resulted in better patient care!

Jacquelyn Free – Sidney Health Center — July 2020

Jacquelyn is the sole primary care provider at the MonDak Clinic, a rural health clinic Sidney Health Center operates in Fairview, Montana. She also serves as the Health Officer on the Richland County Board of Health. During the Covid pandemic, Jacquelyn has not only advocated for the safety of our patients, but the best practices for the safety of all the residents in Richland County. She has been a shining example of Sidney Health Center's core values "Integrity, Compassion, Accountability, Respect and Excellence." Prior to the Phase I reopening, Jacquelyn also served as one of the primary testers in Sidney Health Center's Covid Testing Clinic. She worked with other individuals and agencies in Richland County utilizing order checking which has resulted in catching mistakes before they happen. We greatly appreciate your dedication to the continuous improvement of patient care!

Melody Miles – Niobrara County Hospital District — August 2020

I can't put into words how grateful I am for Melody Miles. This week I cross trained in Housekeeping. On my second day, an employee had a family emergency and needed to leave. By the end of the day, I was behind on everything but ECF & Clinic. I was able to at least get some critical items washed and into the dryer, but there were still several loads of laundry to do. I came in early the next day to finish, dreading all the work ahead. Thankfully, Melody Miles had come down to housekeeping that night and finished the laundry. It would have been so easy for Melody to simply deal with her assigned tasks, but instead she saw a need and filled it. Words can't describe my appreciation. This help our residents to get their items and for us to be able to concentrate on the cleanliness of the facility. This is an example of the team coming together to help one another.

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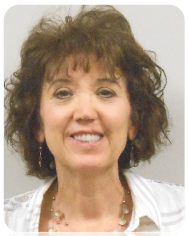
2020 Power of One Challenge

One healthcare employee can save a life. Be Observant, Vigilant, Aware, Focused, Engaged, Dedicated.

Dana Warren & Angie Mellen – Mineral Community Hospital — September 2020

We would like to recognize our pharmacist, Dana Warren, and pharmacy technician, Angie Mellen, for working so hard in our pharmacy to reduce medication errors. Over the course of the last 4 months, these wonderful ladies have spent countless hours packaging take home packs, ensuring that single dose vials are used appropriately, and making certain medication sign outs follow the Board of Pharmacy. Dana and Angie have also successfully researched and campaigned to get Mineral Community Hospital their very own Pixys. Pixys will help us keep better inventory, ensure compliance with nursing sign outs, and keep our formulary correct. We are so excited to have Dana and Angie as our pharmacy crew to help keep our patients safe!

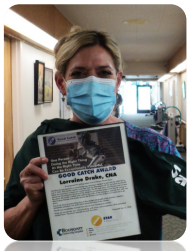


Lisa Weir – Weston County Health Services — October 2020

I overheard a resident speaking to someone on her cell phone saying, "I'm 82. I don't remember what my SS number is." I then went out to where this resident was and asked her if I could please help her with this call. The resident stated, "This guy is telling me that my SS check is going to be late and he needs my SS number." The resident then handed me her phone. I let the person on the other end know that I knew this was a scam call and for him not to call this number ever again. Kudos to Lisa for catching this questionable conversation and protecting this resident's information!

Briannne Bell – Northern Rockies Medical Center — November 2020

Brianne found an error that protected multiple patients from harm. Brianne had drawn clindamycin for a patient. After she drew the drug up into the syringe, she noticed what appeared to be shards of glass in the drug. She called the pharmacist and confirmed that the drug was not supposed to look like that. If the drug is not kept at the correct temperature particles resembling glass shards can form. Brianne checked all vials of clindamycin and only two of the vials were without these particles. By double-checking and looking closely at the syringe, Brianna potentially saved multiple patients. Thank you for your attention to detail and dedication to outstanding patient care!



Lorraine Drake – Boundary Community Hospital — December 2020

Lorraine was utilizing a lift to raise a resident. While over the bed and attempting to lift the resident higher, the lift failed and went down instead. The lift would not stop lowering and just before it hit the resident, Lorraine placed her hand between the lift and the resident. She was able to hold it in place and prevent the lift from resting on the resident's pelvis. She quickly notified other staff of the emergency via her radio. Together they were able to lower the bed and quickly remove the lift. Thanks to Lorraine's focus and commitment to preventing injury to patients, she reacted to this situation quickly and correctly. Her actions prevented injury to the resident. The lift was immediately removed from service and maintenance notified. Well done Lorraine!!

2021 Power of One Challenge

One healthcare employee can save a life.

Be Observant, Vigilant, Aware, Focused, Engaged, Dedicated.

In just about any endeavor, one person doing the right thing at the right time can be exceptionally powerful. Within the context of healthcare this notion is especially true. Each and every professional in a hospital has the power to prevent harm to patients by making certain patient safety measures and best practices are consistently followed.

An important part of ensuring patient safety in hospitals is identifying non-compliance with protocols or finding errors before harm to patients can happen. One person intervening in such situations can literally be a lifesaver. Many of your dedicated staff work vigorously to prevent errors and ensure patients are safe. Take every opportunity to identify the "Power of One" occurring in your hospital and celebrate those efforts.

Yellowstone challenges you to identify and learn about those stories in your hospital where one person identified non-compliance or found an error that protected the well-being of a patient or patients. Capture your staff increasing safety measures and preventing harm, then share those stories with your employees and Yellowstone.

When one person prevents true harm:

- Recognize them with a thank you card signed by administration and include a reward of some type such as a coffee/drink/desert voucher
- Take their picture and summarize the event to share with all staff
- Identify additional opportunities to reward individuals exhibiting the "Power of One"

Submit your "Power of One" entries to Julie Gemar-Williams or Denise McCord at Yellowstone. Each entry will receive a "Power of One" certificate from Yellowstone recognizing the individual for their effort. One entry per month from all entries will be selected to receive a "Power of One" lunch and learn event for the department where the person works. Submit as many "Power of One" entries per month as you can. We look forward to hearing from you!

Julie Gemar-Williams: julieg@yierrg.com • Denise McCord: denisem@yierrg.com

The Power of One

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Risk Management Services –

- Annual Action Planning
- Risk Management Manuals
  - Risk Management
  - Office Practice
- Member Alerts
- Consultation
  - Telephone
  - Email
  - On-Site
- Yellowstone Risk Management Library
  - Go to www.yierrg.com
  - Then to the Yellowstone Event System
  - On the drop down go to the Yellowstone Event System (members only) the password is (xxxxx)
  - The top right tile: The Risk Management Library
  - The username and password are (xxxxx)
  - Mcacloud\risklibrary
  - FYI - You will need to put this password in twice.
- Packets of Information
- Video Library
- Surveys
- Self-Assessments
- Incident Reporting System
- Publications
  - *Lessons from Losses*
  - *Info On the Go*
  - *Thorofare*
  - *Power of One Stories*
- Education
  - Audio Conferences
  - Webinars
  - On-Site
  - Interactive Video
  - Annual Meeting
- Recognition Program
- Power of One Challenge

2021 Yellowstone Virtual Risk Management Conference

Thank you for participating!

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