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Never Events— Reduced Costs for All?



The decision by the Center for Medicare and Medicaid Services (CMS) to stop paying for “Never Events” that occur in hospitals, beginning in October 2008, continues to receive front-page coverage. As the number of hospitals and health benefit companies that follow Medicare’s lead increases, the excitement over patient safety improvements and saving lives continues to grow. However, until all of the details are ironed out, we will not know for certain whether

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hospitals will be the only organizations that face higher costs related to Never Event policies, lower reimbursements, and the added procedures that are put in place.

History of “Never Events”

The evolution of “Never Events” can be traced back to the pioneering 2002 report from the National Quality Forum (NQF): “Serious Reportable Events in Healthcare.” The report identified 27 preventable, identifiable, and measurable adverse events that should never occur in the healthcare setting. Examples include surgery performed on the wrong body part, surgery performed on the wrong patient, and patient death associated with a fall while being cared for in a healthcare facility.

Since the 2002 report was issued, 11 states have required public reporting on the NQF reportable events.

In its 2007 Quality and Safety Survey, the Leapfrog Group announced

that it would grant public recognition to hospitals if they agreed to follow four specific steps if a Never Event occurred in their facility:

- First, apologize to the patient and/or family
- Second, report the event
- Third, perform root cause analysis
- Fourth, waive all costs directly related to the event.

Note, in particular, the first item here: a requirement for an apology has entered the picture.

Then, Medicare picked up on the “Never Events” initiative. As part of its ongoing program to curb hospital-acquired conditions (HACs), CMS has announced that Medicare will stop paying for eight Never Events as of October 1, 2008. The HAC list includes seven of the 27 conditions previously identified by NQF as Never Events:

- Foreign object retained after surgery
- Air embolism
- Blood incompatibility
- Pressure ulcers
- Patient falls and trauma
- Catheter-associated urinary tract infection
- Vascular catheter-associated infection
- Surgical site infection—mediastinitis after coronary artery bypass graft (CABG).

On April 14, 2008, CMS proposed an expansion of the list, to include nine new HACs, one of which derives from the NQF’s Never Events list. (If you would like more details about the CMS proposal, see: www.cms.hhs.gov/apps/media/fact_sheets.asp.)

Although some organizations like HealthPartners in Minnesota had been early adopters of a policy on Never Events, it was Medicare’s announcement of the initial Never Events list that opened the floodgates for other hospitals and health benefit companies to begin implementing Never Event policies across the country.

The Apology Movement compared to Never Events

The disclosure and apology movement in the healthcare industry has been gaining ground since the beginning of the decade. Yet, even with more than 30 states passing or considering the passage of immunity for apology laws, progress has been slow. While groups like Sorry Works!, books on apology, and success stories from hospitals and insurers have helped increase interest in the apology movement, many insurers and hospitals continue to struggle with how to implement an effective apology program. More important, many worry that a poorly implemented program, without adequate legal protection, might actually increase claim frequency and medical professional liability (MPL) costs. These concerns explain, to a great extent, why the apology

movement hasn’t caught on more quickly across the country.

In the case of the Never Events movement, hospitals and MPL insurers have no choice but to participate. However, while the apology movement promotes open and honest communication with the patient/family and apologizing when appropriate, the Never Events movement doesn’t necessarily require that an apology be offered to the patient or his/her family.

Implications for MPL insurers

For MPL insurers, the ultimate impact of recent Never Events announcements will likely have drastically different cost ramifications, ranging from little or no impact on claim frequency, to a noticeable increase in claim frequency for Never Events that plaintiff’s attorneys might not have pursued in the past. For a hospital or health benefit company that adopts a low-key policy on Never Events, patients and families may never realize that a Never Event has occurred. In this situation, MPL insurers can expect business to continue as usual.

On the other hand, when a hospital or health benefit company opts to follow a policy like Leapfrog’s, which includes apologizing to the patient/family, there is no doubt that MPL claim frequency will rise.

As October 2008 approaches, it will be important for MPL insurers to monitor the announcements of hospitals and health benefit companies to develop a better understanding of which organizations will be offering apologies when a Never Event occurs.

As noted above, developing and implementing an effective apology program is not easy. If the apology is poorly crafted or delivered in the wrong way, or the patient and family does not feel they have been given all the answers to their questions, they may start looking for advice from a plaintiff’s attorney. On the other hand, if the apology is delivered honestly and sincerely, and the patient and his family feel like all their questions have been answered, apologies may help to eliminate or reduce the cost of claims.

However, even if the hospital risk manager or physician delivers a perfect apology, a lawsuit could still be filed. Just imagine what your reaction might be, as a patient or family member, if your physician or the hospital risk manager delivered this apology:

“I wanted to apologize for the Never Event you just experienced. A Never Event is an error in medical care that has been described by patient safety organizations as a clearly identifiable and preventable error with serious consequences for the patient.”

If the apology is for operating on the wrong kidney, then one could probably argue that the apology doesn’t really impact the likelihood that you or your family will file a lawsuit (i.e., *res ipsa loquitur*). However, if the Never Event was a patient fall, pressure ulcer, or a curable infection, could the Never Event wording (combined with the plaintiff’s attorney’s Never Event billboard you passed on the way to the hospital) push you to file a lawsuit? We think so.

Now take it one step further, and imagine what your reaction might be if you learn about your experience with a Never Event, for the first time, when you read about it on your health benefit company's billing statement? Can you say, "1-800- call an attorney"?

Providers and patients, going forward


Providers are anxious about the implications of Never Events, and they are revamping systems to reduce the incidence of Never Event incidents that occur while the patient is hospitalized. The admissions process now includes a battery of tests, and a comprehensive assessment, designed to identify any infections, pressure ulcers, or patient-specific issues that might make them vulnerable to a Never Event.

Demonstrating compliance and implementing proactive processes to prevent them should help reduce the number of Never Events, but they will never be completely eliminated. Professional risks will continue, but will likely continue to decline as hospitals, physicians, and others involved in the care of patients become more focused on these issues.



Older adults are particularly vulnerable to Never Events, because of frail health, poor nutritional status, and for some, limited cognitive capabilities. Working closely with family members and the patients will help reduce the risks and improve the communications and relationships. If a Never Event occurs and the providers have been diligent about following appropriate protocol and are thoughtful in crafting their apology, it may be possible to reduce the likelihood that a claim will be filed.

Conclusion

Whether or not the number of MPL claims grows with Never Events policies, we do believe the focus on reducing the root causes and delivering an appropriate apology are critical first steps to improving patient care. However, until all of the details are ironed out, MPL insurers would be wise to pay close attention to how their insured physicians spend their time treating patients. To the extent that insurers can monitor and educate their insureds on Never Event policies, they will help them in minimizing the potential impact of future Never Event claims. 

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'Physician Insurer' Magazine,
3rd quarter, 2008