Risk Management for Oral Health Programs and HRSA FTCA Program

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NNOHA continues developing Practice Management Resources Through the HRSA Cooperative Agreement

Current chapters in development for the Operations Manual for Health Center Oral Health Programs include:

• Health Center Fundamentals – Published
• Leadership - Published
• Financials - Published
• Risk Management – In process
Main Sections

• What is Risk Management?
• Ethics
• Top Potential Risk Areas for Health Center Oral Health Programs
• Top Types of Record Keeping Errors
• Federal Tort Claims Act (FTCA)
• FTCA FAQs
• National Practitioners Data Bank
Learning Objectives

- Define risk management and the role it plays in providing primary oral health care
- Understand and identify common risks involved in providing primary oral health care and how to prevent them
- Consider how ethics and risk management work together
- Familiarize ourselves with the system of the Federal Tort Claims Act (FTCA)
- Understand how to respond to and address malpractice claims
What is Risk Management?

- **Risk Management** is the identification, assessment, and prioritization of risks, and the application of resources to minimize, monitor, and control the probability or impact of *adverse events*.

- Clinical and administrative activities undertaken to identify, evaluate, prevent, and control the risk of injury to patients, staff, visitors, volunteers, and others to reduce the risk of loss to the organization.
Adverse Event

• An undesired outcome or occurrence, not expected within the normal course of care or treatment, disease process, condition of the patient, or delivery of services
Risk Assessment

• Activities undertaken to identify potential risks and unsafe conditions inherent in the organization or within targeted systems or processes
Risk Analysis

• Determination of the causes, potential probability, and potential harm of an identified risk and alternatives for dealing with the risk

• An example of risk analysis is root-cause analysis
Importance of Risk Management

- Risk management is important for a Health Center patient’s health, for their best treatment, and for the soundness of a Health Center oral health program.
- Successful risk management involves developing and implementing systems that minimize the probability of adverse events in all aspects of providing care.
Important Areas of Risk Management

• HIPPA – Oral health programs must comply with all aspects of HIPPA regulations

• HC Policies and Procedures – Oral health programs must comply with P&P developed by their health center

• Americans with Disabilities Act

• Culturally and Linguistically Appropriate Services Standards
Risk Management Components

• Proactive – prevent adverse occurrences or losses, help to improve the quality of patient care, and reduce the probability of an adverse outcome turning into a medical malpractice claim

• Reactive – responses to adverse occurrences or claims
Standard of Care

- That degree of care and skill which is expected of a reasonably competent provider acting in the same or similar circumstances (from court case Blair vs. Eblen)
- Can change over time based on emerging clinical practice, prevailing knowledge and court case precedent
Definition of *Tort*

- *Tort* is a wrong that involves a breach of duty owed to someone else, that causes injury. The person who suffers injury is entitled to receive compensation for damages from the person or people responsible.

- In health care/dentistry the most common tort liability is negligence or malpractice.
Elements to Establish Negligence

- A duty (standard of care) was owed by dentist to patient
- The dentist violated the applicable standard of care
- The patient suffered a compensable injury
- Said injury was caused in fact and proximately caused by the substandard conduct
Ethics and Risk Management

- Ethical practices are the foundation of risk management programs
- Both ultimately benefit the patient and improve the Health Center’s quality of care
- Ethical practice helps mitigate the risks of providing oral health care
Ethics

- ADA principles of ethics
  - Patient autonomy (self-governance)
  - Nonmaleficence (do no harm)
  - Beneficence (do good)
  - Justice (fairness)
  - Veracity (truthfulness)

http://www.ada.org/sections/about/pdfs/ada_code.pdf
Ethics

• Autonomy refers to the patient’s right to be informed about his or her treatment and protection of confidential patient information.

• Providing full informed consent prior to dental procedures, followed by appropriate documentation, are important elements of risk management in an oral health program.

• Protection of patient information and complete, accurate progress notes are the best supporting documentation in a malpractice defense.
Ethics

• Ethical oral health care practice has no room for “Churning”

  • Churning can be defined as the systematic practice of maximizing the number of visits/encounters while at the same time minimizing the amount of treatment delivered per visit in order to maximize revenues. Churning is counterproductive and against the best services for your patients.

  • It is illegal, and prosecutable!
Top Potential Risk Areas for Health Center Oral Health Programs

1. Lack of Informed Consent
2. Failure to Diagnose
3. Lack of a Comprehensive Exam
4. Failure to Follow-Up On Emergency Cases
5. Treatment of The Wrong Tooth/Wrong Site
6. Surgical Complications
7. Unsatisfactory Removable Dental Prostheses
8. Lack of/or Inadequate Treatment Plan
9. Failure to Complete Procedures
10. Inappropriate or Unnecessary Procedures
Top Risk Areas (Cont’d)

1. Lack of Informed Consent

The American Medical Association defines informed consent as “the process of communication between a patient and a physician that results in the patient’s authorization or agreement to undergo a specific medical intervention”
Top Risk Areas (Cont’d)

Informed Consent should include...

a. Statement of Diagnosis
b. Proposed Treatment Options
c. Statement of consequences without treatment
d. Procedure to be performed, and
e. Statement that risks and benefits were discussed with the patient

If patient is non-English speaking, the document should be provided and discussed in his/her preferred language
Top Risk Areas (Cont’d)

2. Failure to Diagnose

- Periodontal disease status, documentation of pocket depth is insufficient
- Failing to identify early signs of oral cancer lesions – persistent lesions that last longer than a week should be biopsied
- Failure to diagnose radiographic anomalies
- Failure to refer patient to a medical provider or social services (suspected child abuse or child neglect)
- Failure to diagnose other common conditions such as cracked tooth syndrome, orthodontic conditions, TMD, and endodontic pathosis
Top Risk Areas (Cont’d)

3. Lack of a Thorough Exam
   a. Medical history
   b. Oral hygiene status
   c. Evaluation of occlusion
   d. Soft tissue/oral cancer evaluation
   e. Periodontal exam and charting
   f. Hard tissue examination and charting

“A provider’s first line of defense is thoroughly documenting a patient’s history. If it is not on the record, you have not done it... You have to document everything, not just what you are going to do.” David Rosenstein, D.M.D., M.P.H.
Top Risk Areas (Cont’d)

4. Failure to Follow-Up On Emergencies

• Calling patients 24 to 48 hours after a surgical procedure is considered a best practice for quality care

• An effective strategy used by providers is a pre-printed follow-up form on the chart
Top Risk Areas (Cont’d)

5. Treatment of the Wrong Tooth/Wrong Site (ways to avoid this)

- Ensure there is a documented diagnosis for every tooth considered for extraction
- Informed consent process is completed the day of the procedure
- Verification of procedure by the patient, surgical assistant, and oral surgeon to reconfirm the tooth before its actual removal

This 3-step process is known as *Time-Out* period

- The purpose of Time-Out is to conduct a final assessment that the correct patient, and procedure are identified.
Top Risk Areas (Cont’d)

6. Surgical Complications

- The only way to completely avoid surgical complications is to never perform any surgical procedures.
- Eventually all providers will encounter surgical complications.
- The best way to manage these risks is to discuss them with the patient before the procedure is started and include these discussions in the informed consent documentation.
Potential Oral Surgery Complications

- Infection
- Severe pain
- Prolonged bleeding
- Sinus Perforation
- Fractures
- Nerve Damage
- Systemic Health Complications
Top Risk Areas (Cont’d)

7. Unsatisfactory Removable Dental Prostheses

• Patients often have unrealistic expectations about dental removable prostheses, and the provider needs to determine the patient’s expectations before starting.

• Patient satisfaction increases when providers set expectations of what removable dental prostheses can and cannot accomplish in practical and understandable terms and explain all limiting factors that govern these appliances.
Top Risk Areas (Cont’d)

Unsatisfactory Removable Dental Prostheses Outcomes

• Providers must remind patients that dentures are not a substitute for teeth, they are a substitute for NO teeth

• Providers are responsible for educating patients on new technologies and treatment modalities such as dental implants which may improve prostheses’ function, even if the patient cannot afford them or they are not part of the Health Center’s Scope of Service
Top Risk Areas (Cont’d)

8. Lack of/or Inadequate Treatment Plan

• Treatment Planning – the process of formulating a rational sequence of treatment steps to eliminate disease and restore efficient, comfortable, esthetic masticatory function to a patient

• Providers are responsible for presenting and discussing the treatment plan with the patient, and to document it in the patient’s record
8. Lack of Treatment Plan (Cont’d)

- Absent Diagnosis – Dental schools train us to formulate treatment plans, often based on clinical findings, not on diagnosis
- We must re-train ourselves to establish treatment plans based on diagnoses
- Multi-factorial diagnosis is the most common used by oral health providers when developing comprehensive treatment plans
- A problem list without a specific, urgent chief complaint
Top Risk Areas (Cont’d)

8. Lack of Treatment Plan (Cont’d)

• A comprehensive treatment plan addresses the problem list and aims at providing maximum comfort, function, and esthetics.

• It is prioritized according to urgency, addresses chief complaint, follows a common sense approach, and uses professionally accepted terminology.
Top Risk Areas (Cont’d)

9. Failure to Complete Procedures

• Treatment started is sometimes not completed for a variety of reasons
• Sometimes patients believe the absence of pain means further treatment is unnecessary, or fees become a barrier to care
• Providers are responsible to ensure patients follow the proposed treatment plan once it has been initiated
• Providers should develop a system that follows up on patient’s care once they leave the health center
Top Risk Areas (Cont’d)

10. Inappropriate or Unnecessary Procedures

- Unnecessary endodontic treatment, excessive bleaching are common examples

- Even replacing functioning alloy restorations with composites – in these cases the provider must be cautious if the patient believes the alloy restorations are the source of ongoing medical problems. If restorations are replaced and the medical condition does not improve, the patient may find fault with dental treatment
Top Types of Errors in Record Keeping

1. Treatment plan is not documented
2. Health history not clearly documented or updated regularly
3. Informed consent not documented
4. Informed refusal not documented
5. Assessment of patient is incompletely documented
6. Words, symbols, or abbreviations are ambiguous
7. Telephone conversation with patient are not documented
Top Types of Errors in Record Keeping

8. Treatment rendered not clearly documented
9. Subjective complaints not documented
10. Objective findings incompletely documented
11. Post operative instructions and patient verbalization of understanding not documented
12. Patient education not documented
13. Premedication and post operative prescriptions given not documented
14. Illegible documentation (paper records)
15. Lack of signatures or illegible signatures (paper records)
Working Outside of Competence

• Dentists working at CHCs in many instances are the only dental provider in the community; they know patients will experience financial hardship if referred to a specialist.

• Dentists, however, must remember their first duty is to safeguard the patient. Therefore, they should not try to perform procedures beyond their level of competency and experience in order to “help” the patient.
To be informative, we should have a standard refusal form and have patients sign it whenever they refuse treatment.

Sometimes refusal stems from lack of understanding, it is our duty to re-explain the rationale for the procedure or treatment, emphasizing probable consequences of the refusal.

- Refusal form should state in lay terms the consequences of refusing treatment.
- Dentist must document in record patient’s verbalization of understanding.
What to do when faced with an Adverse Outcome

• Patient’s wellbeing comes first and everything else is second

• Providers should:
  • Remain calm and seek immediate assistance from their colleagues or help from an appropriate, evidence-based source
  • Stop the procedure, admit what is clear, and document everything in the chart.
  • Acknowledge the error, take care of the patient personally or through referral, and strive to be a better dentist by learning from that process.
What to do when faced with an Adverse Outcome (Cont’d)

• Involve the Health Center Risk Manager, QA Department, HC Management and Clinical Leadership

• Do not:
  • Become defensive
  • Blame the patient
  • Alter the record
FTCA

• The **Federal Tort Claims Act** (FTCA) is the federal legislation that allows parties claiming to have been injured by negligent actions of employees of the United States to file claims against the federal government for the harm they suffered.

• The FTCA also provides authority for the federal government to defend against such claims.
Amendments to the Public Health Service Act in 1992 and 1995 provide that employees at deemed Health Centers are to be treated as employees of the United States for purposes of medical malpractice. These "employees" include board members, officers, employees and certain contractors of deemed Health Centers.

"Employees" are given malpractice protection for actions within their scope of employment, and within the scope of project of a deemed Health Center.
FTCA (Cont’d)

• **Deeming** is an application process that an eligible Health Center must undertake in order to activate and maintain its FTCA malpractice protection. The law allows only organizations funded through section 330 of the Public Health Service Act, to be deemed.

• The deeming process has some basic requirements. Health Centers that wish to participate must assure the Bureau of Primary Health Care that they conduct complete and thorough **credentialing of their providers** including a query of the National Practitioner Data Bank.
FTCA (Cont’ d)

- Participating Health Centers must maintain clinical protocols, tracking systems, complete and accurate medical record reviews, and active quality assurance programs.
- Participating health centers must reapply annually for “Re-deeming” via HRSA/BPHC Electronic Handbook.
- For Re-deeming applications, Health Centers are required to provide basically the same documentation as for the initial application.
- All Health Centers must complete the Re-deeming process each year.
FTCA FAQs

• How is FTCA different from my individual malpractice policy?

  • Under FTCA you do not have an individual malpractice policy
  • If you have FTCA protection, you have financial protection from a malpractice lawsuit
  • The United States government would be substituted as the defendant in any malpractice claim for your activities, which are within your scope of employment and within the scope of project of a deemed Health Center
FTCA FAQs (Cont’d)

• I am a dentist/dental hygienist. Does FTCA cover my profession?
  • Yes. FTCA malpractice protection applies to you and all other employees (and certain contractors) of appropriately deemed Health Centers.
  • Dentists who are contractors (receive a 1099 from the deemed Health Center) must be full time, that is, they must work at least 32 ½ hours per week for the deemed health center. Dentists who are employees (receive a W-2 from the deemed health center) can be full or part time and receive FTCA coverage.
  • Malpractice protection is not available for Health Center volunteers.
FTCA FAQs (Cont’d)

- I am a dental resident at a Community Health Center, do I get FTCA protection?
  - Malpractice protection is not available for students or residents training in a Health Center. Malpractice protection for these individuals should be provided through a means other than FTCA.
  - Health Center dental programs participating in Residencies and other training programs must have clear contracts with the residency defining malpractice coverage for attendings and preceptors as well as for the students/trainees.
FTCA FAQs (Cont’d)

• What is my coverage limit?
  • There is no monetary limit.
  • If you come under FTCA malpractice protection, the Federal Government is the defendant for claims made against your Health Center-related actions or omissions.
  • FTCA settlements and judgments are the responsibility of the United States government.
  • As a provider, your and your organization are responsible for the clinical outcomes related for the claim
  • FTCA coverage does not preclude provider from being reported to the NPDB in case of an adverse lawsuit outcome or a settlement
If a patient files a claim under the FTCA...

- The complaint filed with HRSA
- A review of the complaint by experts
- A decision is made by HHS Office of General Counsel regarding the claim (pay, deny, attempt to settle).
- If no payment or settlement of claim, a potential suit against the United States the patient may file claim in Federal Court
- The claim is litigated in Federal Court
If a patient files a claim under the FTCA…

- If provider is employed by a deemed Health Center and acting within the scope of project and her/his scope of employment, it is likely that they are covered by FTCA.

- Settled claims are reviewed in HHS by the Medical Claims Review Panel to determine whether the clinical standards of care have been met by providers involved.

- Providers should consult with appropriate staff (CEO, Risk Manager, Medical/Dental Director regarding FTCA questions.)
If a patient files a claim under the FTCA...

• Providers can call the FTCA Hotline at 1-866-FTCA-Help (382-2435) with questions or concerns
For More Information…

• Health Center Policy Manual, FTCA Policy Information Notice (PIN 2011-01)  
  http://bphc.hrsa.gov/policiesregulations/policies/pin201101.html

• FTCA Program Assistance Letter (PAL 2011-05)  

• FTCA FAQs  
  http://bphc.hrsa.gov/ftca/about/aboutfaqs.html
National Practitioner Data Bank (NPDB)

- Enacted by U.S. Congress
- Alert or flagging system intended to facilitate a comprehensive review of health care practitioners’ professional credentials
- What is reported
  - Provider’s practice limited in any way as a result of disciplinary actions
  - A payout is made to a patient
  - Any action of the Department of Health
National Practitioner Data Bank (NPDB)

- Practitioners protected by FTCA may be reported to the NPDB if a payment is made on their behalf
- When a provider applies for a position at a Health Center, he/she is subject to a credential search
- Being listed in the NPDB does not mean the dentist is barred from practicing or employment, but may require follow-up and explanation
QUESTIONS?
THANK YOU

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