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What Keeps You Up at Night?

A Series on Liability and Compliance Issues

Addressing Enterprise Risk After the Affordable Care Act



Today's Host



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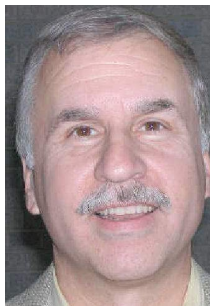


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Risk Management

Operational Risk Management within the Physician Enterprise

Southwind Practice Management

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Southwind in Brief

\$300M+

In total opportunities identified
across past five years

1,150+

Engagements completed

1,800+

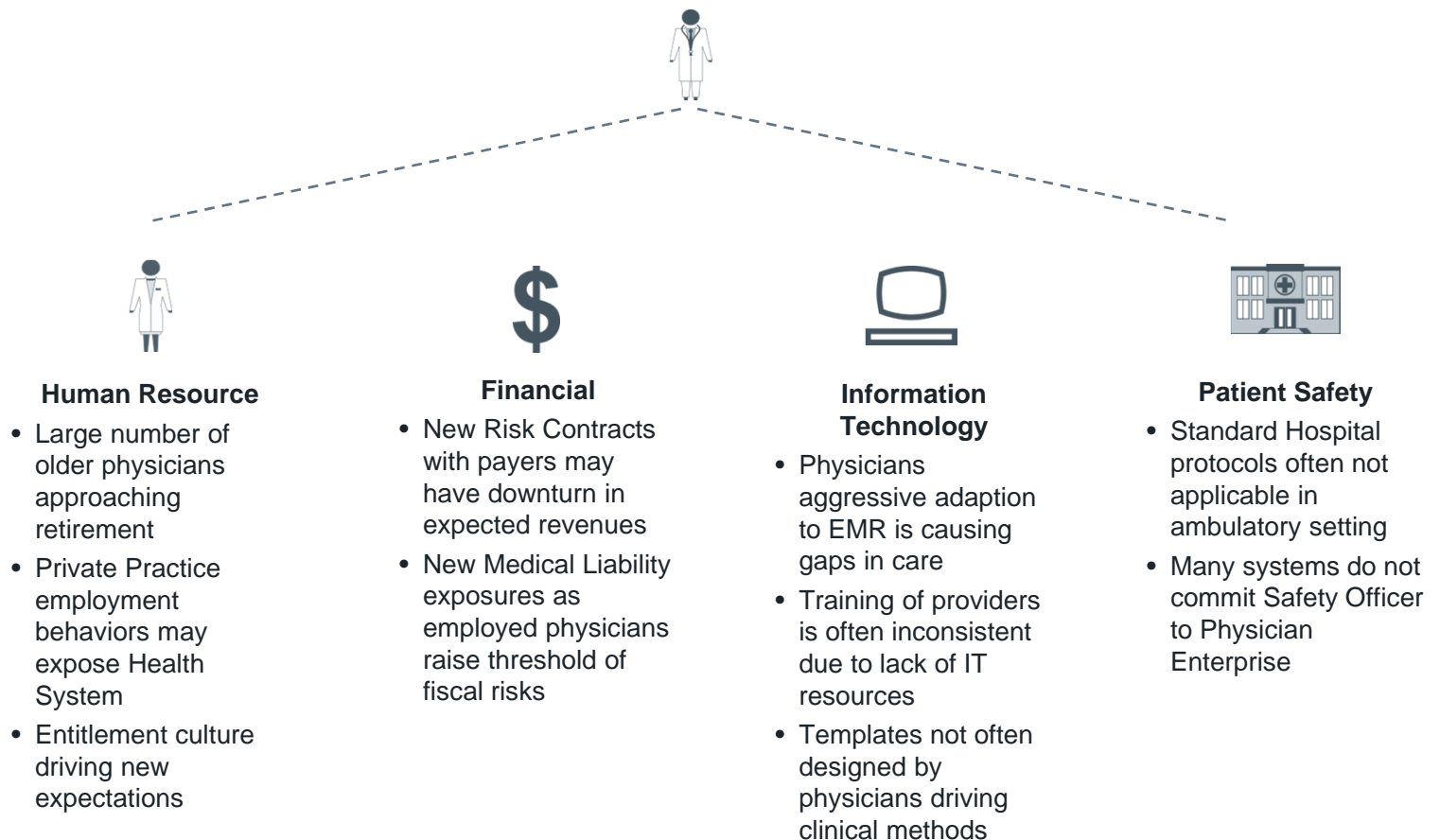
Years of experience

PHYSICIAN PRACTICE MANAGEMENT	PRACTICE PERFORMANCE IMPROVEMENT	MERGERS & ACQUISITIONS	VALUE-BASED CARE PROGRAMS	MEDICAL STAFF PLANNING	HOSPITAL CONSULTING
<p><i>Experienced, progressive physician practice management</i></p> <ul style="list-style-type: none"> • Long-term management solution for the physician enterprise • Interim management ideal for driving meaningful improvement efforts • Deep-dive assessment to identify and quantify improvement opportunities • Executive recruiting for the physician enterprise 	<p><i>Focused improvement efforts that achieve a significant ROI</i></p> <ul style="list-style-type: none"> • Specialized team of experts in patient flow, revenue cycle, and IT • Start-to-finish physician compensation redesign • Financial data consolidation, reporting, and benchmarking • Satisfaction solutions through patient and provider satisfaction surveys 	<p><i>Structuring physician practice acquisitions for long-term success</i></p> <ul style="list-style-type: none"> • Thorough pre-acquisition due diligence • Negotiating deal terms to reach a definitive agreement • Post-transaction transition assistance 	<p><i>Establishing value-based care programs for shifting payment models</i></p> <ul style="list-style-type: none"> • Clinical integration and accountable care • Patient-centered medical homes • Clinical transformation • Bundled payments • Co-management 	<p><i>Comprehensive medical staff development planning</i></p> <ul style="list-style-type: none"> • Strategic community/physician needs assessment • Determining fair market value and reasonableness of compensation • Recruitment policies for a high-performing medical staff 	<p><i>Improving the patient's experience and the hospital's bottom line</i></p> <ul style="list-style-type: none"> • Coordination and process improvements for inpatient throughput • Benchmarks and process improvements for managing change across the acute setting • Strategic guidance and evaluation to improve the impact of quality programs • Surgical services performance evaluation

Physicians Seeking Shelter ... Hospitals Seeking Lives

New Surge of Employed Physicians Creates New Risk Exposures

Changes in the Physician Enterprise Risks



Physician Integration Introduces New Exposures

Enterprise Risk Management: Overview & Executive Opportunity

Health System Dilemma

New Risks as a Result of:

- Expanded Physician Employment
- Changes in Healthcare Legislation
- Increased Awareness to Quality
- Educated Health Services Consumer
- Accentuated Efforts towards Patient Safety
- Increased Expectations of Provider Accountability



Health System Actions

- Deploy Assessments and Surveys
- Modify Hospital Operational Processes to Encumber Similar, but Different Risk
- Develop of Risk Management Policy
- Mitigate of New Physician Exposures through Management Procedure
- Facilitate Risk Transfer via Insurance and Risk Retentions
- Ensure Physician Focus as Separate Initiative

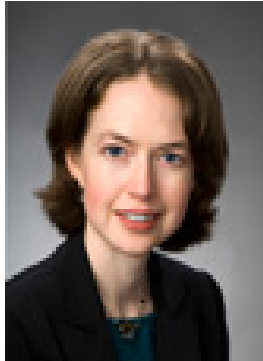
Key Elements of Focus on Risk Management

- 1 **Design effective infrastructure / risk management to support physician enterprise**
 - Dedicated risk/safety staff with resources
 - Physician leadership and support
- 2 **Close gap between *established* hospital programs and *new* physician groups**
 - Structured and consistent risk management process – efficient “blocking and tackling” (not a one-person function)
 - Efficient information systems/data sources; use of surveys
- 3 **Complete a risk reporting package and broad distribution**
 - Physician quality and safety information
 - Management and leadership over risk/safety/quality
 - Routine *and* timely distribution of risk data to physicians / board personnel on a monthly basis
- 4 **Implement physician risk/safety/quality model**
 - Strike a healthy balance of risk management leads to better safety towards higher quality; and *vice versa*
- 5 **Facilitate effective risk strategy to be inclusive of management, legal and insurance expertise**

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Enterprise Risks Presented by Integration

New Risks:

- Different legacy risk management cultures
- Varying legacy risk tolerances
- More and new types of risks
- Larger organizations can mean more dollars at issue

Need for Enterprise Risk Management

New Pressures:

- More investigations by more actors
- Increased whistleblower lawsuits
- New substantive focus areas
- Data mining and analysis
- Targeting executives, physicians, and small practices

New Ways of Looking At and For Risk

A New Approach to Risk:

- Stay on top of issues by **looking for risk** in traditional and new areas
- **Collaborative effort** to identify and address risk areas
 - Legal
 - Compliance
 - Medical Staff
 - Human Resources



A New Way of Acting



- Encourage people to speak up about risk
- Get outside perspectives about potential risk areas
- Devote real resources to risk identification and management
- Conduct audits and reviews of high-risk areas
- Implement plans for responding when potential risk becomes real

Areas of Potential Risks

1. Stark Law Compliance
2. Electronic Medical Records
3. Assignment of Physician Billing Rights
4. Quality Reporting
5. Physician Co-Management



Stark Law Compliance

Two Major Compliance Issues:

1. Subsidizing physician organizations
2. Structuring incentive compensation in indirect relationships



Practice Tips:

1. Regular review of contracts for compliance
2. Document Stark considerations using Stark definitions

Electronic Medical Records and Coding

In some settings, the hospital may choose the EMR software, but the physician is responsible for proper documentation and coding



Practice Tips:

- Carefully select EMR software
- Explicitly address coding expectations and training
- Agree up front who bears the risk of coding errors
- Routinely review coding patterns

Assignment of Physician Billing Rights

Physicians are responsible for billing done by others using the physician's billing number.



Practice Tips:

- Provide mechanism for physician supervision
- Keep physicians informed and involved in coding

Reporting Quality and Other Data



Quality-driven payment systems create greater scrutiny of quality reporting

Practice Tips:

- Implement regular auditing of quality data
- Provide structure to ensure changes in quality data are transmitted to all entities that have reported or who are paid based on the data

Physician Co-Management

New Skills for Physicians that were not Taught in Medical School:

- Staffing/Human Resources
- General Protocol Development
- Public Relations
- Patient Satisfaction

Practice Tip:

- Training
- Training
- Training

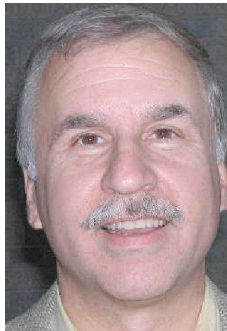


Developing an Enterprise Risk Approach

Putting the Pieces Together

- Create a culture of collaboration on risk management issues
- Get outside help identifying unrealized areas of risk and new ways to address risk
- Integrate physicians into the enterprise's compliance and risk functions





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ACA/Reform Liability: Exposures

Affirming the ACA Underlines Clinical Integration Strategies

Potential for Increased Medical Professional Liability Exposures

- MPL Direct
- Vicarious Liability and Ostensible Agency
- Contractual Liability
- Financial Incentives Could Distort Medical Necessity Decisions
 - “Substitution Liability”: Generics, Less Expensive Medical Devices
- Performance Risk: Can Utilization be Safely Decreased?
- Sufficient Numbers of Physicians/Extenders for Patient Volume
- A Fluid Standard of Care

ACA/Reform Liability: Non-MPL Exposures

ACA/Clinical Integration's Non-MPL Exposures Increase

- Errors and Omissions e.g. Utilization/Other Administrative/Denials
- Cyber/Network Privacy
- Antitrust: Economic Credentialing/Exclusion from an ACO, etc.
- Regulatory Risk
 - Fraud and Abuse, etc.
 - Other Fines/Penalties and Associated Legal Fees
- Fiduciary Liability/Crime
- Employment Practices Liability
- Financial Risk of Caring for Populations

ACA/Reform Liability: Claims Impact

Claims Defense Becomes More Complex

- More Co-Defendants Due to More ACO Participants
- Hospitals: Lack of Experience in Defending Physician Claims
- Hospitals: Excess Limits Now Exposed to Physician Claims
- Hospitals/Systems More Focused on Adverse Publicity: Settlement
- Do More Patient Encounters Increase Claims?
- What Types of Claims Potentially Increase?
 - PCPs and Extenders? VL? Agenc?
- More Telemedicine Risk is Likely
 - Managing Claims in Other Venues
- Joint Defense/Collaborative Defense
 - Written Agreements/Templates

ACA/Reform Liability: Risk Management Impact

Risk Management Strategies/Offerings Must Evolve

- More Focus on Physician Extenders
- Advice/Strategy on Managing Telemedicine Risk
- Advice/Strategy on Intra-Network Communications
- Advice/Strategy on Critical Test Results Management
- Reduce Defensive Medicine Practices to Reduce Cost
- Managing Patient Expectations is Essential
 - Verbal
 - Written
 - Online/Other Technology
- Risk Management Strategies Must Be Focused on Both Patient Populations and Individual Encounters

ACA/Reform Liability: Less Risk?

Reform/Clinical Integration May Also Reduce Risk

- One Goal is to Reduce Over-Utilization
 - Less Treatment = Less Exposure to Harm
- Focus on Preventive Care
 - Need for Less Acute Care
- Better Coordination Among All Providers
- Telemedicine Improves Care
- Bedside Clinical Informatics Improve Care
- EMR's Goal is to Improve Care/Communication
- Patients Less Likely to Sue if Insurance Coverage Applies?
- Managing Patient Expectations is Crucial in a Time of Transition

Enterprise Risk Management

- Identify critical risks – Whether insurable or not
- Quantify their impact on organizational objectives
- Develop and implement risk management strategies
- Mitigate risk and maximize value
- Reform risks, such as financial risk, can be taken into account and mitigated
- ERM goes beyond reform risk and addresses organizational risk

Four Quadrants of Risk



ERM: Risk Evaluation

Diagram 1
The classic risk map



Beswick, Kelsey and Bloodworth, Jane: Housing Corporation "Risk Mapping – Dilemmas and Solutions"; Risk Management Topic Paper No. 4

What ERM Achieves

- Systematic & objective management of risks across an organization
- Reduced business volatility and better ability to capitalize on opportunities
- Linking of risk management to organizational performance
- Increased risk awareness throughout the organization
- Reduction in the total cost of risk

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Questions?

Thank You for Joining our Webinar

Please Contact Us with Other Questions or Issues:

- **Mike D'Eramo:** deramom@advisory.com
- **Paul Greve:** paul.greve@willis.com
- **Emily Root:** emily.root@squiresanders.com

Thank You for Joining our Webinar

Join Squire Sanders for Future Calls in this Series ...

- Corporate Integrity Agreements and Compliance Programs – January, 2013
- Proper Recordkeeping in a Heightened Enforcement Environment – March, 2013

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