I have no disclosures.

Objectives

At the conclusion of this session, the participant will prepare students to:

• Apply federal and state laws, third-party payment policies, and hospital policies and procedures appropriately during the provision of acute care physical therapy services.
• Respond to emerging legal and risk management issues during the provision of acute care physical therapy.
• Utilize the electronic medical record as a risk management tool.
• Respond to institutional changes resulting from innovative payment models.
• Understand that risk management is a tool to protect themselves as well as their patients.
Start program

- How and when do we teach "risk management"?
- Is our approach "preventing things from going wrong" to "making as many things as possible go right"?
- Do we apply these concepts to cases during clinical management courses or are they only included in courses dealing with professional issues and/or administration?
- Do we help our students/CIs revisit this content while in clinic?
**Patient-centered vs. Systems Approach to Risk Management**

<table>
<thead>
<tr>
<th>Patient-Centered</th>
<th>Systems Approach</th>
</tr>
</thead>
<tbody>
<tr>
<td>Are the bedrails up?</td>
<td>How do I help manage infection control?</td>
</tr>
<tr>
<td>Is the call bell within reach?</td>
<td>Is my documentation complete and timely?</td>
</tr>
<tr>
<td>Is the patient wearing grippy socks or shoes?</td>
<td>Have I helped the team with discharge planning?</td>
</tr>
<tr>
<td>Are the vital signs stable?</td>
<td>Do I take responsibility for falls risk of any patient?</td>
</tr>
<tr>
<td>Have I cleared the patient with the nurse?</td>
<td>How can I help reduce readmissions to the hospital?</td>
</tr>
<tr>
<td>Is the right equipment within reach?</td>
<td>Am I protecting private health information?</td>
</tr>
<tr>
<td>Have I managed the lines and tubes?</td>
<td></td>
</tr>
</tbody>
</table>

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**What Is Risk?**

**Risk** is the exposure to loss or harm.....

“...and may be avoided through pre-emptive action.”

**Risk management** is pre-emptive action designed to deter or prevent an anticipated situation or occurrence.

**QUESTION:** What skills do our students need to anticipate risk?
PT Decision Making: Guideposts to Manage Risk

1. APTA and FSBPT
2. Federal Laws
3. State statutes and regulations
4. Facility policies and procedures
5. Payer policies/Accreditation organizations
6. International law

APTA and FSBPT

• Code of Ethics, Standards of Practice, NPTE Content Outline

APTA documents are not by themselves a “law” or “regulation”, however, they may be used by other entities as a “standard” for clinician decision making.

• States may use APTA language to support their regulations or statutes.
• Payers may use APTA language to support their payment coverage policies.
• Lawyers may refer to APTA documents when arguing for or against a physical therapist during litigation.

NPTE

PROFESSIONAL RESPONSIBILITIES

This category refers to the responsibilities of health-care providers to ensure that patient/client management and health-care decisions take place in a trustworthy environment.

• Standards of documentation
• Patient/client rights (e.g., ADA, IDEA, HIPAA, patient bill of rights)
• Human resource legal issues (e.g., OSHA, sexual harassment)
• Roles and responsibilities of the physical therapist, physical therapist assistant, other health-care professionals, and support staff
• Professional behavior
• Standards of billing, coding, and reimbursement
• Obligations for reporting illegal, unethical, or unprofessional behaviors (e.g., fraud, abuse, neglect)
• State and federal laws, rules, regulations, and industry standards set by state and accrediting bodies (e.g., state licensing entities, Joint Commission, CARF, CAAOS)
• Risk management and quality assurance (e.g., policies and procedures, incident reports, peer chart review)
• Cultural factors and/or characteristics that affect patient/client management (e.g., language differences, disability, ethnicity, customs, demographics, religion)
• Socioeconomic factors that affect patient/client management
• Health information technology (e.g., electronic medical records, telemedicine)
NPTE

SAFETY & PROTECTION

This category refers to the critical issues involved in patient/client safety and protection and the responsibilities of health-care providers to ensure that patient/client management and health-care decisions take place in a secure environment.

- Factors influencing safety and injury prevention (e.g., safe patient handling, fall prevention, equipment maintenance, environmental safety)
- Functions, implications, and related precautions of intravenous lines, tubes, catheters, monitoring devices, and mechanical ventilators/oxygen delivery devices
- Emergency preparedness (e.g., CPR, first aid, disaster response)
- Infection control procedures (e.g., standard/universal precautions, isolation techniques, sterile techniques)
- Signs/symptoms of physical, sexual, and psychological abuse and neglect

Federal Laws

- Health Insurance Portability and Accountability Act (HIPAA)
  - Security and protection of privacy of protected health information (PHI)
  - Accidental disclosures
  - Informed consent
- American for Disabilities Act (ADA)
  - Access (housing, transportation, interpreters, bathrooms etc.)
- Patient Protection and Affordable Care Act (ACA)
  - "Qualified Interpreters" - additional language
  - Patient Bill of Rights
- Anti-kickback (gifts, inducements)
- False Claims Act (intentional misrepresentation on claims)
- Compliance programs
- Sexual Harassment

HIPAA: Privacy

Protected Health Information: "...individually identifiable health information held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral."

Note: There are only 2 allowed reasons for required disclosure:
- Individuals or their representatives specifically ask.
- Health & Human Services (Fed Govt) is undertaking an investigation.
  - A covered entity may use and disclose PHI for operations, payment, treatment
Safeguarding Patient Information

- Speak quietly when discussing family member’s condition in public area or waiting room.
- Avoid using patient names or identifiable information in public hallways or elevators.
- Isolating and locking cabinets holding PHI.
- Using passwords and time-outs as an extra security layer.
- Restricting who has access to PHI.

Breach Notification

The law requires HIPAA covered entities and business associates to provide notification of a breach of unsecured PHI.

https://www.hhs.gov/hipaa/for-professionals/breach-notification/index.html

HIPAA Privacy

Allowed disclosures:
- Public health activities (eg controlling disease outbreaks)
- In some instances, govt entities may receive information on victims of abuse, neglect, domestic violence
- Audits/Health oversight
- Judicial or administrative proceedings
- Law enforcement
- Tissue donation entities; funeral directors;
- Research (limited)
- Threats (to public or an individual)
- Essential government functions
- Workers compensation compliance
HIPAA Security

**Reasonable safeguards must be in place**

- Ensuring that only those who should have access to PHI do!
- Only electronic (created, received, maintained, transmitted)
- **Administrative safeguards** (eg who is responsible, implementation of policies to maintain safeguards)
- **Physical safeguards** (eg off-site backups, restricting access, locked doors)
- **Technical safeguards** (eg authentication, encryption, log off)


[https://www.hhs.gov/hipaa/for-professionals/training/index.html](https://www.hhs.gov/hipaa/for-professionals/training/index.html)

Patient Protection and Affordable Care Act (ACA): Strengthened Guidance for Interpreters

Hospitals, SNFs, clinics, must offer "qualified interpreters "to limited English proficient patients: (remote or face-to-face)
- Adhere to accepted interpreter ethics principles including confidentiality
- Demonstrated proficiency
- Able to interpret accurately and impartially
- Bans the use of family members and minor children as interpreters


Low Literacy: Where Are the Risks?

• Consent is not understood.
• Communication during treatment is not understood or misunderstood.
• Following instructions for HEP is impaired leading to confusion or errors.
• Patient self-management of complicated chronic conditions is challenging.
• Self-advocacy in the health care system is limited.

Affordable Care Act (ACA) Requires...

Increased anti-fraud activities
• Data mining
• Enrollment tightening
• More interagency data sharing
• More state and federal data sharing
• Licensure boards more involved

Fraud and Abuse Definitions

**Fraud:** Intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to that person or another.

**Abuse:** Involves payment for items or services when there is no legal entitlement to that payment and the provider has not knowingly and/or intentionally misrepresented facts to obtain payment; rules are not followed resulting in unnecessary costs or improper payment.
False Claims Act (FCA)

The False Claims Act (FCA) imposes liability on any person who submits a claim to the federal government that he or she knows (or should have known) is false.

- A failure to return an improper overpayment (if there is an "established duty to do so") is now the basis for a FCA action.

Penalties for violating the Federal False Claims Act can be up to three times the damages, plus from $5,500 to $11,000 in fines, per claim.

Examples: Possible Fraud

Note: "Observation beds" are billed under Part B

1. Using an incorrect CPT code to get around payment policy.
2. Administrative assistant, knowingly or unknowingly, entering incorrect payment code, leading to higher reimbursement for licensee.
3. Knowingly or unknowingly falsifying related medical documentation.
4. Fictitiously creating medical records to bill false claims to a third party.


DOCUMENTATION: Medicare Benefit Policy Manual, Chapter 15, Sec 220.3:
Sexual Harassment: EEOC

Key Areas of Concern for Hospitals - OIG

- Submission of accurate claims
- Referral for profit
- Substandard care
- Relationships with beneficiaries (e.g. waiving cost-sharing)
- HIPAA Privacy and Security rules

Note: Hospitals can offer free transportation of low value (within the $10 value, $50 annual limits)

Write Down a New Idea for Teaching Federal Laws Impacting Risk (next slide)

Consider:
- Add this content into an additional course earlier or later in the curriculum.
- Develop an acute care case that incorporates protection of personal health information when using mobile EMRs.
- Develop a reflection that can be done during a clinical education experience related to HIPAA.
- Role play sexual harassment.
State Statutes and Regulations

Students must understand that each jurisdiction is different!
1. **Statutes** (laws or "practice act")
2. Boards develop **Regulations for:**
   a. Supervision (e.g. PTA, aide, SPT)
   b. Documentation*
   c. Standards of Practice
   d. Code of Ethics
   e. Informed consent

*Documentation regulations may be increasingly outdated as many were written for paper records.

Informed Consent

- APTA Guide to Professional Conduct
- State Law supersedes APTA

Informed consent for research
- Research protections for patients
- (See slides on Helsinki Agreement and Nuremberg codes)
State-Level Risk Examples

Egregious patient safety errors are often reported to Boards by those who have been hurt:
- Falls (fractures, TBI)
- Transfer to wrong height chair causing trauma
- Not following precautions (eg vital signs, weight-bearing)

Documentation may be insufficient to protect the therapist if:
- Communication with other professionals, patient, and family is omitted.
- Demonstration of clinical reasoning is lacking
- Timely and appropriate response to an adverse event is not evident
- Insufficient supervision of personnel

FSBPT: Easy Link to State Licensing Information

Ideas: Have Students Apply This Information (next slide)

Consider:
- Explore a jurisdiction’s regulations and apply to a case.
- Compare and contrast two jurisdictions’ regulations.
- Explore language of state regulations before start of internships (e.g. supervision, documentation)
- Simulate a documentation audit: Does the documentation comply with state regulations?
- Concept map: “Group think” - connecting risk management in acute care to regulations.
Facility Policies and Procedures

- **Policies** are principles, rules, and guidelines formulated or adopted by an organization to reach its long-term goals. They are designed to influence and guide major decisions, actions, and activities.

- **Procedures** are the methods used to put policies into action in day-to-day operations.

Examples of Facility “Policies and Procedures” Categories

- Medical Record Documentation standards/ Abbreviation list/ Peer audits
- HIPAA Issues (Privacy and Security)
- Insurance Verification/Financial Policies
- Continuing education requirements used to demonstrate advanced competencies
- Compliance programs (refer to Federal issues)
- Use of cell phones related to patient care and family communication
- Natural disaster procedures
- Bill of Rights (see next slide)
- Infection Control
- Use of aides

The Joint Commission and CARF Accreditation will impact clinical and administrative standards in a facility.
OSHA: Safety and Injury Protection Considerations

- Emergency procedures
- Equipment calibration schedule
- Sexual harassment
- Incident reports
- Use of safe-patient handling equipment

https://www.osha.gov/dsg/hospitals/

Falls

- In 2015, total medical costs for falls totaled more than $50 billion. (CDC)
- Over 800,000 people/yr are hospitalized because of a fall injury.
- Average hospital cost for a fall injury > $30,000.

https://www.cdc.gov/homeandrecreationalsafety/falls/index.html

Falls: Student QI project for a facility policy

https://www.youtube.com/watch?v=A7EcprAXbHE
Safety Huddles: Example of Institutional Culture of Safety

- Dedicated team meeting time:
  - NO interruptions!
  - Ban on other meetings at the same time!

- Expand to hospital or systems-wide approach once problem is identified (e.g., flu epidemic, infection control)

Write Down a New Idea for Teaching about Facility Policies and Procedures Impacting Risk (next slide)

Consider:
1. Read and review hospital policies and procedures related to falls before internships.
2. Create a hospital-based sexual harassment scenario and discuss how to manage.
3. Complete an incident report related to a patient falling in the hallway.
4. Listen to podcast: “Halfway to Zero Serious Safety Events” (https://catalyst.nejm.org)
Payer Policies and Interests

1. Coverage policies
2. Use and supervision of personnel
3. Documentation
4. Admission/discharge criteria
5. Reduction in re-admissions
6. Reduction in hospital acquired infections/bedsores
7. Appropriate billing for Observation beds

Medicare: Supervision in Acute Hospitals

Language pertaining to supervision is not specifically included in the acute hospital regulations.

- Defer to state law and consider professional society standards.
- Recommend co-signatures on all notes and include how the PT was involved in the care.
- Consider using SNF regulations which are more specific:
  - SPTs in SNF - do not have to be in line-of-sight however supervising therapist must make a determination as to the capabilities of the SPT.
  - PTAs in SNF - General supervision is the initial direction and periodic inspection of the activity; PT need not always be present or on the premises.
- Facility policies and procedures should be specific and note sources.

Medicare: Use of Aides in Acute Care

Services must be safely and effectively performed by or under the supervision of a qualified PT; staff must meet qualifications specified by medical staff and consistent with state law.

- On-the-job training of skills should be documented and regularly updated.
Medicare National and Local Coverage Determinations (NCDs, LCDs):

Provide guidance for what is covered and definitions for medically reasonable and necessary care and documentation.

- NCDs: apply nationwide
- LCDs: apply to local area covered by that Medicare Administrative Contractor (MAC)
- Utilized for Observation Bed services

https://www.cms.gov/medicare-coverage-database/

Non-Coverage Example

International: Medical Research

Nuremburg Code: Key principles for medical research
- Voluntary, well-informed consent
- Avoids mental suffering and injuries
- Aim of study is to benefit society
- Should not include risk of dying or suffering
- Research staff should be fully trained.
- Human subjects should be free to quit experiment.

**Declaration of Helsinki:** Principles for Medical Research involving Human Subjects
(origin 1964, with multiple updates)
- Codified separately by countries
- Self-determination is the underlying principle
- Laid the groundwork for IRBs (1981) in the US

[https://jamanetwork.com/journals/jama/fullarticle/1760318](https://jamanetwork.com/journals/jama/fullarticle/1760318)

**There Is Overlap in Guidance!**
- Supervision (PTA, aides)
- Informed consent
- Maintaining patient records
- Documentation
- Scope of practice vs. what is “skilled care”
- Security of Protected Health Information (PHI)
- Code of Ethics

*Good Rule of Thumb: Utilize the guidance that is the strictest!*

**HPSO/CNA 2016 Study**
- Individually insured PTs experienced a 20% increase in average total incurred compared to 2011.
- PTAs had the highest paid indemnity
  - Allegations included:
    - Failure to monitor a patient during treatment (eg. Home care)
    - Failure to follow a practitioner’s orders (single person assisted transfer rather than following order for 2 person transfer)
    - Failure to use a gait belt despite facility policy.
HPSO/CNA 2016 Study

Vicarious liability: "A legal principle that assigns responsibility for harm not to the person whose negligent act or omission caused an injury (such as a PT, PTA, or physical therapy student or aide), but rather to that person's employer or supervisor if the act or omission occurred during the course and scope of practice."

Note: Not all PTs have liability coverage separate from their employers, but they should!


HPSO

Failure to Supervise or Monitor: Examples

- PTs leaving the department/facility and placing a PTA or aide in charge
- Failure to monitor during treatment leading to falls off equipment; environmental clutter; patient being left alone
- There were two cases of death:
  - Patient fell during ambulation and sustained a TBI
  - Lack of recognition of PE

"Even if the patient's resulting injuries are minor, claims involving disregard of organizational protocols are difficult to defend." (pg.16)
HPSO Notes Future Areas of Concern

**Mergers and acquisitions**
- Fosters lapses in due diligence process
- Medicare records management failures
- Inconsistent quality of care
- Failure to recognize culture differences of institutions and leaders

**IT**
- Inadequate back up
- Data corruption
- Breaches of security and confidentiality
- Inappropriate information in text messages and emails
- Loss of stolen portable equipment
- Patient identity theft

**Social media / Internet use**
- Misrepresentations, false guarantees
- Libel/slander
- Breach of confidentiality of PHI
- Inappropriate behavior by health care professionals or other staff members

**Reduced reimbursements**
- Understaffing
- Poor equipment management

Documentation to Manage Risk

- Documentation issues, failure to cease treatment and improper treatment comprise 80 percent of the license protection claims alleging improper management over the course of treatment. (Documentation issues, failure to cease treatment and improper treatment include:
  - Omission of treatment provided in the health records.
  - Inaccurate recording of treatment times in the health records.
  - Failure to cease treatment when the patient reported excessive and/or unexpected pain, resulting in patient re-injury.
Documentation to Manage Risk

- Most of these allegations could have been prevented by following standard documentation procedures: making the time necessary to record dates, times, and treatment, and obtaining patients’ acknowledgment that they agree to the treatment to be provided and are aware of the expected treatment outcomes.

Best Practices to Reduce Liability Related to Students

- Maintain a clinical agreement that includes roles and responsibilities of preceptor and student
- Professional liability insurance for school and student
- School expectations should be clear
- Criminal background checks
- Education on federal and state regulations
- Review of facilities policies and procedures in advance of any patient care
- Establish clear expectations and boundaries regarding patient care

CNA/HPSO Risk Control Assessment Checklist
Make Documentation a Risk Management Strategy!

Documentation audits
- Do students read and comment on documentation while in school, prior to clinical internships (e.g., case-based courses, simulations)?
- Do students experience "compare and contrast" of documentation while in the clinic?
- Could students reflect on documentation from other professionals that assist with clinical reasoning and decision making?
- Do students apply payer policy and coding language to cases while in school and in clinic?
- Can students recognize "red flags" in the medical record? Do they document "red flags" in the medical record?

C 2018 GW Students were asked:

Did you apply any "risk management" information that you learned in class during your internships?
- "I consistently checked myself to make sure that I treated ethically and safely. I was sure to document everything that I did or noticed and had discussions with the nursing staff before and after every patient encounter. I was also sure to document our conversations to make sure that everything was clearly stated."
- "I made sure that it is okay with the patient to have a family member in the room when discussing their care."
- "I always closed doors when discussing patient care or use non-identifying information if you have to talk in a public area."

Q: What policies and procedures related to risk management did you see during the acute care internship?
- "A system was used to track interdisciplinary efforts to ensure all parties provided input prior to discharge."
- "The EMR required log-on to mitigate HIPAA violations."
- "Facilities had pre-planned responses to events (fires, flooding, missing child etc.)."
- "There were training modules for EMR use, appropriate conduct, policies and procedures."
Q: Did you use documentation during the acute care internship as a risk management tool?

“Yes, the EMR had text-color change and visual tools for flags.”

“Documentation related to gait belts, inappropriate lab-values or vital signs was stressed…”

“I was sure to document everything I did or noticed and had discussions with nursing staff before every encounter. I documented conversations and made sure everything was clearly stated.”

Write Down Two New Teaching Ideas Related to Liability Areas that Impact Risk (next slide)

Consider:
1. Practice communication of informed consent, expected outcomes of care, and any associated risks.
2. Evaluate a peer’s documentation.
3. Assess what clinic equipment should have yearly calibration and safety checks.
4. Perform a risk-analysis of clinic space to minimize patient injury (eg space around equipment, risk of water on the floor, obstacles)
5. Make “use of gait belt” a requirement for testing.
Patient Safety Culture

Is it rewarded, supported, expected, accepted?

“Annie’s story”
• https://www.youtube.com/watch?v=zeldVu-3DpM

Where Are Your Touch Points for This Content?

Shout It Out and Share!
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