Sample CARe Procedure

Title: Communication, Apology and Resolution (CARe) Procedure for Determination and Use

Purpose: The Communication, Apology, and Resolution Program ("CARe") is an alternative mechanism of dispute resolution to be used in adverse event situations. The goals of the program are to:

- **Encourage transparency**
  Communication between and among patients and providers after adverse events will help all involved parties to feel supported and in control.
- **Improve patient safety**
  By taking steps to repair errors soon after they occur, and explaining to the patient the steps that will be taken to prevent the error in the future, patient safety outcomes can be vastly improved.
- **Increase patient and provider satisfaction with the process of resolving medical injury disputes**
  The current tort system causes fear and distress for both physicians and patients, and ill effects such as anxiety and depression are common among those involved in a lawsuit. CARe hopes to prevent these negative consequences through a collaborative system that addresses systemic problems and resolves disputes quickly, allowing for natural human reactions, such as empathy.
- **Reduce medical liability costs and malpractice claims**
  As a result of the current system, costs to resolve medical disputes are extremely high. There are not only direct attorney fees associated with a lawsuit, but as a result of malpractice suits (or their potential) defensive medicine expenditures are also high. CARe provides fair financial compensation that will make the patient whole, so that litigation a true last resort. This will reduce legal fees and defensive medicine tendencies, shrinking overall costs and claims.

Definitions:

Adverse Event: An injury that was caused by medical management rather than patient's underlying disease. An adverse event may or may not result from an error.

Service recovery: Minor measures taken by the hospital to resolve a patient's dissatisfaction with medical care received. Service recovery efforts include paying for patient parking stickers, paying out-of-pocket fees, waiving billed charges, etc. Service recovery should *not* be used as a form of compensation for significant harm.

Significant harm: An injury with lasting effects. Significant harm includes prolonged hospitalization, negatively impacted livelihood, lost work time, lost wages, need for

© 2013 Massachusetts Alliance for Communication and Resolution following Medical Injury

additional services post-discharge, additional family responsibilities post-discharge, permanent or sustained injury, disability, disfigurement, dismemberment, death, and other consequences of this nature and severity.

Procedure Statement: This procedure is to be used to determine whether an adverse event qualifies for CARe, and to outline the steps that follow if such a determination is made. All documents generated in the performance of risk management related activities are subject to the protection of all applicable peer review statutes and regulations. However, documents to be used in CARe process are not subject to peer review and are discoverable.

Procedure for Implementation:

1. **Objectives:** The objectives of the CARe Procedure are to set guidelines for the application of the CARe algorithms which will determine the events that are the best fit for the program, and to outline responsibilities of providers and Department of Patient Safety ("DPS") staff involved in adverse events that are selected for CARe.

2. **Scope:** The following procedure applies to the DPS (including Patient Relations) with regard to selecting cases for CARe and implementing the CARe process for such cases. Adverse events used in this procedure are care quality events only and not events such as product or premises liability.

3. **Procedure:** The DPS is responsible for the selection of cases for and the use of the CARe procedures in adverse event situations.

   DPS staff responsibilities immediately following the report of an adverse event that requires a communication of the event to the patient:

   1. Determine whether the provider(s) is/are able, under the circumstances, to conduct an appropriate initial communication, and designate an alternate person to conduct the discussion if he/she finds that the provider(s) is/are unable to do so.
   2. Assign involved provider(s) a communication coach (can be patient safety staff member) who will review content and steps to be taken during the initial communication with the patient. (See Communicating in the Aftermath of an Adverse Event.)
   3. Initiate support services for the patient, family, and patient's health care team. A Patient Safety Coordinator should be assigned to the event and will be responsible for maintaining contact with the providers involved. A Patient Relations Representative will be assigned to the event and will be responsible for maintaining contact with the patient and family. Resource

© 2013 Massachusetts Alliance for Communication and Resolution following Medical Injury

sheets should be distributed to both providers and patients; providers when the event is reported, and patients after the communication of the event. For guidance on continued contact with patients and providers, see Appendix A: "Keeping Providers and Patients in the Loop."

4. Report confirmed adverse event to the hospital's insurer(s) as required.
5. Launch investigation and Root Cause Analysis ("RCA") based on Just Culture principles.
6. Make a decision whether the incident qualifies for the CARe Protocol based on the RCA.

Qualification for CARe Resolution

The DPS, working with involved health care providers, conducts a Root Cause Analysis of the adverse event to determine if:

A. The standard of care was not met, and;

B. There was **significant harm** to the patient **due to** the unmet standard of care.

If **both** A and B have been satisfied, the DPS will recommend the case undergo the CARe Protocol.

If either A or B was not satisfied, only a disclosure and apology will take place. DPS will disclose all findings gleaned from the investigation to the patient and family (with providers as appropriate), offer an empathetic statement of regret (not of fault), and, particularly in cases of minor harm or inconvenience due to unmet standard of care, consider **service recovery.** [This situation will be algorithm Outcome F.] See also Appendix B: "Defining a CARe Case."

CARe Resolution Protocol

If a case is determined by the DPS to be a candidate for CARe, the following steps will take place (see also Appendix C: "Potential Early Resolution Protocol," Appendix D: "CARe Actions and Responsibilities" and Appendix E "CARe Procedure Timeline" for further explanation of the stages, responsibilities, and timelines in the CARe process):

1. The process begins with the Initial CARe Communication between the DPS and the patient. The communication should convey *that the case is being recommended for insurer review to see if there is anything further we can do to make the person whole.* This initial conversation should include a discussion about obtaining consent for the Insurer(s) to review the patient's records so that the evaluation can take place. If an authorization is not signed by the patient, inform the Insurer to make a

© 2013 Massachusetts Alliance for Communication and Resolution following Medical Injury

decision about whether the case can move forward without the consent. Please see Appendix F: “Insurer Referral Communication Guide” for a detailed strategy for the communication.

2. Upon receipt of the authorization, the Insurer(s) will review the medical records and the findings of the hospital’s internal investigation, and evaluate the case for compensation. During this time, the DPS will remain in contact with the patient and the involved providers to update them on the status of the investigation and answer any questions necessary. The recommended contact frequency is at least once every two weeks.

3. Once the Insurer(s) has analyzed the case, they will inform DPS of their decision.

   At this juncture, it is crucial that the DPS, the Insurer(s) and the health care providers are unified in their decision to move forward.

   a. If the Insurer(s) does not agree with the health system’s assessment that the standard of care was unmet, further discussion between DPS and the Insurer(s) takes place. **If it is decided that the case is inappropriate for an offer, or if there is an impasse and no agreement can be reached, only the disclosure and apology (empathetic) portions of the Initial DA&O meeting will take place.**

   b. If the health care providers disagree with the allocation of fault (or the progression of the case to CARe), the method of allocation will be further explained (ie. the substitution test) and every effort to come to an agreement that satisfies all parties will be made.

   If the Insurer(s) has confirmed the internal findings that the case should progress to the offer stage, they will also allocate percentage of fault to the system, the providers, or both, based on Just Culture Principles. Once this analysis is complete, the Insurer(s) will inform DPS, and will also contact the patient to set up an initial CARe meeting to discuss the event. At this time the Insurer(s) will advise the patient of the right to counsel, and recommend that the patient bring counsel to all meetings.

4. Prior to the initial meeting, lessons learned from the adverse event should be disseminated to the appropriate departmental leaders and staff at the hospital by DPS, and recommended process improvements should begin.

5. At the initial CARe meeting, a disclosure, apology and offer take place (unless previously determined that only the disclosure will occur; see step 3). Hospital representatives, Insurers, patient, family, and attorney should be present. DPS will assist in gathering materials for the meeting, and

© 2013 Massachusetts Alliance for Communication and Resolution following Medical Injury

representatives from DPS may or may not be present. Providers may be present for this meeting and may participate in the CARe elements as much as is determined to be helpful by all parties involved. If a patient does not wish a provider to be present, then the provider will not attend the meeting. At the meeting, the following should occur:

a. A full disclosure of the error(s), cause(s), responsible provider(s), system failures(s), and *corrective action(s)* should occur at the beginning of the meeting.

b. Following the disclosure, an apology for the error and the harm it caused should occur. If possible, this apology should come from the provider(s) responsible for the error(s).

c. Then, a discussion of a financial offer that will make the patient whole will take place.

For more detailed guidance on the first meeting, please see Appendix G: "Guidelines for Initial CARe Meeting."

6. Discussions will continue until such time that the parties determine that further discussions will not be fruitful.

7. If patient accepts an offer, paperwork releasing the hospital and involved provider(s) from further action will be required (distributed by Insurer). The process should typically be completed within six months. See Appendix E for more detailed information on the timeline.

ATTACHMENT:
Appendix A: "Keeping Providers and Patients in the Loop" and support sheet.
Appendix B: "Defining a Potential CARe Case."
Appendix C: "CARe Protocol"
Appendix D: "CARe Actions and Responsibilities"
Appendix E: "CARe Procedure Timeline"
Appendix F: "Insurer Referral Communication Guide"
Appendix G: "Guidelines for Initial CARe Meeting"

© 2013 Massachusetts Alliance for Communication and Resolution following Medical Injury

© 2013 Massachusetts Alliance for Communication and Resolution following Medical Injury