Communication is key to malpractice reform

Pilot program is used at six Mass. hospitals

**ECONOMIC DRIVER**

Dr. Robin Richman and Dr. Michael Kelleher from Reliant Medical Group in Worcester sit next to a computer screen displaying the website for the Massachusetts Alliance for Communication and Resolution following Medical Injury. (T&G Staff/CHRISTINE PETERSON)

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Want to avoid malpractice lawsuits?

It turns out that television’s fictitious Dr. Gregory House, whose abrasive, unorthodox style rubbed some the wrong way, is the wrong fake doctor to emulate.

Dr. Marcus Welby, the kindly and honest — and equally fictitious — television character of yore was on the right track, as far as reducing medical malpractice litigation is concerned.

A new coalition, the Massachusetts Alliance for Communication and Resolution following Medical Injury, recently
launched a pilot program to demonstrate how the medical malpractice system can be reformed statewide, through open communication rather than the threat of lawsuits.

The project’s CARE program, which stands for “communication, apology and resolution,” is based on local and national studies of similar “disclose, apologize and offer” initiatives that significantly reduced costs, improved timely payment to patients who suffered an adverse event and prompted changes in the health care system to reduce future errors.

It works when a health care provider acknowledges what went wrong, investigates and explains what happened, apologizes where appropriate, offers fair compensation and works to make sure the problem doesn’t reoccur.

According to the Massachusetts Medical Society, defensive medicine — unnecessary tests and procedures ordered by doctors to prevent lawsuits or limit damages — adds $1.4 billion a year to health care costs in the state. National studies have estimated defensive medicine accounts for 10 percent to 15 percent of the total bill, and as much as 20 percent to 30 percent in high-risk specialties like orthopedics.

"It became very apparent, people sue because they’re angry," said Dr. Robin S. Richman, chief medical officer and executive vice president of medical affairs at Reliant Medical Group in Worcester. "No one’s ever told them what went on. No one’s ever apologized or (said) what have you (the provider) learned from this that’s going to make you change your practice to make sure this doesn’t happen to anyone else."

MACRMI has unveiled a website, macrmi.org, to guide patients, physicians and health care administrators through the CARE model.

According to the website, the CARE initiative’s goals are to improve communication and transparency about adverse outcomes; support patients and families to help achieve a fair, timely and healing resolution to medical harm; support clinicians in disclosing unexpected outcomes to patients; improve patient safety by learning from errors and near misses and preventing future harm; and provide an alternative to lawsuits and their unnecessary costs by meeting the financial needs of injured patients and their families quickly in the aftermath of an injury, without resorting to litigation.

The CARE model is being evaluated in a pilot project at six hospitals encompassing academic and community medical centers. Baystate Medical Center in Springfield, Baystate Mary Lane in Ware and Baystate Franklin Medical Center in Greenfield represent Central and Western Massachusetts in the pilot. Greater Boston hospitals include Beth Israel-Deaconess Medical Center in Boston, Beth Israel-Deaconess Hospital — Needham, and Beth Israel-Deaconess Hospital — Milton.

Dr. Evan M. Benjamin, senior vice president for health care quality and chief medical officer for Baystate Health, said the organization started a disclosure and apology program, now CARE, about five years ago. Some 450 physicians are employed through Baystate’s subsidiaries and are in a self-insured liability plan.

"The medical staff was at first very anxious about it because of years of thinking that we should keep mistakes quiet," Dr. Benjamin said. "When we rolled all this out, we actually saw almost a bit of relief: 'Now I can begin healing.'"

Reliant, formerly the Fallon Clinic, has used the CARE model for the past 10 years. During that time, the multispecialty group practice, which is self-insured, has seen its malpractice losses decrease by 80 percent, according to Dr. Michael Kelleher, medical director for quality and patient safety.

"We realized it’s critically important to fine-tune the communication skills of how our physicians interact with patients," Dr. Kelleher said.

The medical group also launched a comprehensive risk management program that includes intensive chart reviews and analysis of adverse events.

As a result of these reviews, for example, Reliant created a unit of nurses that manages people taking the blood thinner Warfarin, a powerful but potentially dangerous drug. Other high-risk patients are tracked vigilantly through dedicated teams of care coordinators and disease managers.

"We’re keeping them out of trouble," Dr. Kelleher said. "All of these are in part because we saw patients who fell..."
through the cracks."

Dr. Kelleher said that since October 2006, the medical group has had 104 disclosure meetings, or about 15 a year, with patients, families and sometimes their lawyers about adverse medical occurrences. More than half of those cases didn't involve substandard care, but because of some unknown factor or simply bad luck, something went wrong.

"Those are the ones that are hardest to understand," Dr. Kelleher said.

Two of the 104 cases continued to legal action, one of those involving a non-employee consulting physician. Dr. Kelleher said this was a substantial improvement from the past.

When payment was offered for medical harm, the patient got the money more quickly than the typical four- or five-year time frame for compensation under traditional litigation.

Dr. Alan Woodward, a former emergency physician, past president of the medical society and chairman of its committee on professional liability, said that despite decades of tort reform to limit malpractice suits, the system was flawed.

He said the CARe model was "driven by a growing frustration and a recognition that the current system was driving costs, particularly defensive medicine."

"We recognized that the current system didn't serve patients well; it didn't serve providers well or the health care system well."

Tort reform could attenuate the rise of liability insurance premiums, Dr. Woodward said, but it didn't remove the fear of litigation that drives defensive medicine.

The move toward the CARe model got a boost with provisions in the Massachusetts Payment Reform bill enacted last year, which require a six-month pre-litigation resolution period, sharing of all pertinent medical records, protection for providers so their good-faith apologies won't be used against them, and full disclosure to patients.

The payment reform bill received support from the Massachusetts Bar Association and the Massachusetts Academy of Trial Lawyers.

Under the CARe initiative, patients are encouraged to have legal representation in disclosure meetings with doctors so that compensation, if warranted, will be fair.

Dr. Woodward said that liability reform is critical to containing costs, a remaining challenge since enactment in Massachusetts of health care reform in 2006.

"I do think it's a win-win," said Dr. Benjamin. "And as a physician, I think this is the brightest opportunity we have to improve a broken malpractice system."

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