Stanford’s PEARL
The Process for Early Assessment and Resolution of Loss

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Chief Executive Officer
Learning Objectives

PEARL and the History of the PEARL Program
PEARL Program Design
PEARL Enhancements
PEARL Outcomes and Measures
Impact of CMS Requirements for Medicare Beneficiary related Medical Malpractice Claims
What is PEARL?
History of the PEARL Program
PEARL is a Cornerstone of an Overarching Strategic Risk Management Practice

* VDERM = Value Driven Enterprise Risk Management
ISO 31000 + Decision Analysis Science
“Discreet and selective practice” began with in-house claims management (September 2005)

Successes and failures analyzed

Pioneering programs, observations, and peer reviewed research studied (VA, UM, COPIC, Harvard)

SWOT assuming fully instituting a “full disclosure” approach

Formal program launched along side of on-going Stanford and University of Washington research project (September 2007)

Recent PEARL enhancements in 2012 (PEARL Patient and Family Site, Patient Advocate, Caring Conversations Simulation)
Entering a Controversial & Pioneering Space

MarketWatch

Disclosure Of Medical Injury To Patients: An Improbable Risk Management Strategy

Movement toward full disclosure should proceed with a realistic expectation of the financial implications and prudent planning to meet them.

by David M. Studdert, Michelle M. Mello, Atul A. Gawande, Troyen A. Brennan, and Y. Claire Wang

ABSTRACT: Pressure mounts on physicians and hospitals to disclose adverse outcomes of care to patients. Although such transparency diverges from traditional risk management strategy, recent commentary has suggested that disclosure will actually reduce providers' liability exposure. We tested this theory by modeling the litigation consequences of disclosure. We found that forecasts of reduced litigation volume or cost do not withstand close scrutiny. A policy question more pressing than whether moving toward routine disclosure will expand litigation is the question of how large such an expansion might be. [Health Affairs 26, no. 1 (2007): 215–226; 10.1377/hithaff.26.1.215]
Entering a Controversial & Pioneering Space

MALPRACTICE

Disclosure-And-Resolution Programs That Include Generous Compensation Offers May Prompt A Complex Patient Response

ABSTRACT Under “disclosure-and-resolution” programs, health systems disclose adverse events to affected patients and their families; apologize; and, where appropriate, offer compensation. Early adopters of this approach have reported reduced liability costs, but the extent to which these results stem from effective disclosure and apology practices, versus compensation offers, is unknown. Using survey vignettes, we examined the effects of different compensation offers on individuals’ responses to disclosures of medical errors compared to explanation and apology alone. Our results show that although two-thirds of these individuals desired compensation offers, increasing the offer amount did not improve key outcomes. Full-compensation offers did not decrease the likelihood of seeking legal advice and increased the likelihood that people perceived the disclosure and apology as motivated by providers’ desire to avoid litigation. Hospitals, physicians, and malpractice insurers should consider this complex interplay as they implement similar initiatives. They may benefit from separating disclosure conversations and compensation offers and from excluding physicians from compensation discussions.
Overview of the Stanford Approach in the Disclosure and Resolution Space

- Once Optimistic and Cautious, now Convinced and Careful
- Heavily influenced by the Stanford research mission
- Quest to isolate and determine individual and overall PEARL outcomes and their success drivers
- Annual independent actuarial monitoring and outcomes studies
PEARL Program Design
How we Describe PEARL: A Hybrid Values & Claims Centric Model

- **PEARL** is values and principles based – as well as smart business practice
- **PEARL** promotes transparency, integrity, fairness, and healing
- **PEARL** is consistent with insurance company stewardship principles
- **PEARL** distinguishes between anticipated outcomes, unanticipated outcomes, and *preventable* unanticipated outcomes (PUO’s)
How does PEARL work?

PEARL provides around-the-clock telephonic consultation for “concerning outcomes”

Consultation is provided by trained “PEARL Risk & Claims Advisors” acting within approved insurance company protocol

PEARL embraces and builds upon any disclosure policy

PEARL utilizes “Just-In-Time” expert coaching

PEARL is always initially focused on “assessment” to determine if the medical outcome is a PUO
Once a PUO is established, the PEARL Risk & Claims Advisor will coach selected spokesperson (hospital and/or physician) on:

- Full disclosure
- Communicating lessons learned
- Approaching needs assessment
- Listening
Five PEARL Instructions

1. Stabilize patient
2. Take all necessary actions to promote patient safety
3. Call PEARL Risk & Claims Advisor ASAP, but < 4 hours after PUO
4. Proceed with documenting the patient’s care after speaking to your PEARL Risk & Claims Advisor
5. Record PEARL Risk & Claims Advisor name and phone number as exclusive contact regarding PUO, unless instructed otherwise
Three PEARL Cautions

- Do not jump to conclusions
- Do not blame or accuse others
- Never make promises or offer to waive bills or make offer of compensation without express approval of PEARL Risk & Claims Advisor
PEARL 7- Day Investigatory Process Flow

- Threshold Determination
- Investigative Notice
- Risk Management Huddle
- Notice to Investigative Partners
- Concurrent Quality, Risk and Claims Investigation
- 3-Day “Wet-Read”
- 6-Day “Final-Read”
- Pearl Conclusion and Follow-up
To receive a copy of the PEARL process diagram, please contact:
riskmanagement@stanfordmed.org
Stanford’s PEARL

The PEARL Process

PATIENT/FAMILY Experience
- Patient or Family may be emotionally traumatized. They may forget what is said and be unable to understand details.
- Post-event, Patient or Family may enter a vacuum of questions. They may have exaggerated or failed memories of events.
- Families or Patients may relive crucial moments in their care, and possibly resort to MSU (Making Stuff Up). The imagined possibly worse than what really happened.

PEARL Determination
- Staff follow-up: Alert Physician Wellness Committee
- Risk Management guides team on non-clinical issues, de-documentation & sequestering
- Risk Management verifies acknowledgment of situation to patient or family by physician

EVENT
- Quality
- Guest Services
- Patient Relations
- PEARL Portal
- The Floor

Notification to Risk Management or Claims of Significant Medical Complications

THRESHOLD DETERMINATION
- Preliminary Risk Management review to confirm apparent cause & severity to determine whether to escalate PEARL "Within 1st Hour"

INVESTIGATIVE NOTICE SEEKING PRIVILEGE
- Risk Management emails investigation request to:
  - Office of the General Counsel
  - Chief Risk Officer
  - Senior Director, Risk Management
  - Clinical Risk Management Team
  - Claims & Litigation Team

RISK MANAGEMENT HUDDLE
- Chief Risk Officer, Claims & Loss Control Discussion (in person, by phone or email)

FIRST HOUR
- Investigation Request received from Office of General Counsel, Within 2nd Hour

FIRST 2 HOURS
- Notice to Investigative Partners
- Risk Management sends secure event notification email to Hospital Administration, Quality & Medical Staff Leadership

FIRST 3 HOURS

http://theriskauthority.com/
The PEARL Process

PATIENT/FAMILY Experience

Family & friends, powerless to substantially help, suggest contacting lawyers, probably giving specific names & contact information.

"Physicians & facilities do a great job of initially talking with the patient & even investigating what occurred, but then fall to circle back to the family or provide additional subsequent support."1

KEEP COMMUNICATIONS OPEN

- Do not put communication with family on hold
- Do not fall into the relish of letting the Family take the lead in communication & the relationship; help them avoid MSU. "it is critical to assume the burden of maintaining open communication."3

If Families or Patients do not get answers or feel part of the process they will seek sources to tell them what they want to hear.

The process of investigation & legal preparations are well underway by Risk Management, but for the Patient or Family the process of understanding what happened and or grieving has barely started.

PEARL Investigation

Claims conducts Independent assessment of liability & initiates Internal expert review as needed

Risk Management submits Gray sheet for entry Into STARS

Risk Management continues investigation & tracking of clinical course participates in Root Cause Analysis & reviews; updates Claims & Risk Management leadership as new information becomes available.

AS INDICATED: Quality coordinates Root Cause Analysis, referral to clinical peer review processes, Compliance initiates required reporting with input from Risk Management & Quality.

Initial Internal Physician Review, Wet Read at 3 Days Final Read at 6 Days

Risk Management alerts: Quality • System Problem • Peer Review • Never 28

Risk Management alerts: Compliance • HIPAA • Security

Risk Management alerts: Guest Service or Patient Relations to possible complaint

Risk Management alerts: Media Relations

Preliminary Conclusion

Handled by Guest Services or Patient Relations as needed

Supportive

Critical

Preliminary Disclosure

Physician discloses to Patient/Family what is currently known, Introduces Patient Liaison

Holding Letter (as needed) sent to Patient or Family Introduces Patient Liaison, explains role as a guide through PEARL

Inconclusive

Risk Management coordinates ongoing clinical (non-liability) disclosure communications with Patient or Family.

Risk Management initiates billing hold or write-off as needed.

FIRST 7 DAYS
The PEARL Process

**PATIENT/FAMILY Experience**

- **SET EXPECTATIONS**
  - As investigation continues, provide more specific information to the patient/family.
  - Explain investigation process, internal & external reviews.
  - Explain Standard of Care, Known Complication, etc.
  - Explain legal mandates & how compensation amounts are determined.
  - "...extend legal transparency to all aspects of care, including science, costs, outcomes, processes and errors." 4

- **SOURCES**
  1. Sorry Work! 2.0, Doug Wojcieszak, pg 40.
  2. RL Solutions webinar, Next Steps: Continuing Care for our Patients.
  3. Dr. Stephanie Simmons & Dr. Robert McCurd, St. Joseph Mercy Hospital.
  5. Bridging Physician-Patient Perspectives Following an Adverse Medical Outcome, The Permanente Journal, Fall 2011. Quoting Donald Berwick, MD, Administrator for the Center for Medicare & Medicaid Services and former President/CEO Institute for Healthcare Improvement.

**Detailed Investigation**

- **External Review, as needed.**
  - Supportive
    - Denial letter sent to Patient or Family as needed
  - Critical
    - Patient Liaison informs Patient or Family that case review is underway & stays in contact with Patient or Family.

- **In EXTREME cases, initial, definitive liability disclosure communication is made to Patient or Family by Claims in conjunction with Risk Management, Physician & Nursing Leadership.**

**Resolution**

- **FINAL DISCLOSURE**
  - Physician/Care team meets with family to disclose final results of investigation.

- **EXPLANATION, APOLOGY & OFFER made to Patient or Family**
  - Explanation & Apology — Physician
  - Offer made by Claims, OGC, CEO determine $ amounts.

**FIRST 90 DAYS**
Once a family needs assessment is done, the PEARL Risk & Claims Advisor will authorize an early offer for discussion with patient and/or family.

- Offers are based on needs assessment
- Offers are up to full indemnity reserve valuation*
- Settlement agreement required and use of counsel encouraged
- Minors compromise is sought (California)
- Sponsored mediation on case-by-case basis

*Utilizing DART Process
Provides a theoretically sound, proven, systematic, transparent and defensible process for setting loss reserves which fully considers the uncertainty inherent in each case and which makes full use of experience and judgment.
DART applies to all PEARL cases and high-value cases where the amount of indemnity and expense reserves are over $25,000
Decision Analysis Reserve Targeting

“Forecasted vs. Actual” Total Incurred Values

Provides a means of evaluating process validity and quality and assuring both on an ongoing basis.

< Not actual data
For illustration only
PEARRL Enhancements
OVERVIEW AND DESCRIPTION OF PEARL PROCESS

WHAT PATIENTS CAN EXPECT

HOW TO ACCESS PEARL
Emerging PEARL Communication Model

**Risk Management Claims Team**
- Risk Management/Claims investigates possible liability.
  - *Risk/Claims keeps PA informed of investigation as relevant to patient.*
  - Answers questions from Patient.
  - *Makes final recommendation after conclusion of investigation.*

**PEARL Patient Advocate**
- Patient Advocate is intermediary between Patient or Family & Risk Management.
  - *In consistent contact with Patient, explaining PEARL process & setting expectations.*
  - *All questions/concerns are relayed to Risk/Claims Team.*
  - *PA is in consistent contact with Risk/Claims regarding status of investigation and mindset of Patient or Family.*
  - *When necessary PA, introduces Patient to Risk/Claims.*

**Patient or Family**
- Patient or Family may become part of PEARL after experiencing an unexpected event in their care.
  - *Patient is introduced to PEARL by PA.*
  - Contact information for PA is given to Patient.
  - *PA is Patient’s direct contact for questions/concerns about PEARL.*
PEARL Patient and Provider Education

PEARL Patient and Family Video

PEARL Physician Education Video
What is the best way to communicate with patients and families after determining a PEARL result?

How can we build an atmosphere of trust with patients after a disclosure?
**Goal:**
To develop a framework of successful methods for approaching post-disclosure conversations with patients & families through use of fully developed & tested simulations.

**Process:**
Use actors and scenarios to ‘play-out’ after disclosure discussions with patients & families to find the responses that are most helpful.

**Two Scenarios:**
- Medication allergy procedure is not followed
- Medication allergy is not anticipated
PEARL Outcomes and Measures
15+1 PEARL Outcomes Measures

Expenses paid
Indemnity paid
Case reserves
Comparison of Paid v. Reserved
Pending lawsuits
Case open time
Physician well-being

Patient satisfaction/distress
Physician satisfaction/distress
SUMIT staff satisfaction
Patient forgiveness
Time of report/recognition
Report to NPDB & CMB
Corporate morale/Culture
Resolution method
# PEARL Results

<table>
<thead>
<tr>
<th>Metric</th>
<th>Desired Result</th>
<th>Observed Result</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reporting Pattern</td>
<td>Faster</td>
<td>Unchanged</td>
<td>Average incident to report lag is one year</td>
</tr>
<tr>
<td>Frequency</td>
<td>Lower</td>
<td>Lower</td>
<td>Annual reported claims dropped from 23 to 15</td>
</tr>
<tr>
<td>Closing Pattern</td>
<td>Faster</td>
<td>Inconclusive</td>
<td>Small number of closed claims</td>
</tr>
<tr>
<td>Severity</td>
<td>Lower</td>
<td>Inconclusive</td>
<td>Some large post-PEARL closed claims</td>
</tr>
<tr>
<td>Overall Cost</td>
<td>Lower</td>
<td>Lower</td>
<td>38% reduction over 5 years</td>
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* Reinvestments in Loss Control Programs vs. Premium Rebates and Holidays

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Lessons Learned

- Prompt evaluation of patient concerns and appropriate intervention is critical.
- Education and training is an important component to PEARL success.
- Information is power.
- Early investigations pay dividends in warding off and defending claims, as well as reducing claims expenses.
New CMS Requirements for Medicare beneficiary related medical malpractice claims
MMSEA does not change the underlying and already existing responsibility of the patient to pay for any outstanding medical liens at the time of settlement of a claim.

CMS continues to modify their rules, but as written MMSEA only requires the settling party to give formal notice of the settlement.

Current release language should always include a paragraph that states that the patient has sole responsibility for satisfying any liens that may exist, medical or otherwise, whether known or unknown.

Consider including a sentence in settlement releases that informs the plaintiff of MMSEA reporting and reiterate the fact that the patient will have the sole responsibility to satisfy any liens that may exist, now or in the future.
Impact of New CMS Requirements on Disclosure and Resolution Programs

Anticipate plaintiffs being much tougher to settle, unless the hospital agrees to pay a specific amount in settlements that represents the value of the medical lien. Plaintiffs already make this argument, but the settling parties rarely respond to such, in part due to the fact that we all know historically that the liens have not been enforced, or have been significantly discounted.

If Medicare becomes more serious about enforcing liens, anticipate plaintiffs to become more serious about refusing a settlement that does not satisfy the amount of the lien.
To stay current on PEARL’s progress and find public information, visit our website at:

http://theriskauthority/resources/
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The Process for Early Assessment and Resolution of Loss

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