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Much of the ethical discussion to date regarding medical mistakes or errors has focused on questions related to disclosure to patients or their families.

This issue continues to need attention.

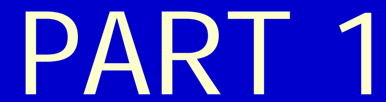
Recent developments have highlighted the need to give ethical consideration as well to the question of whether and/or when it is appropriate to bill for or receive payment for treatment required because of medical error.

INTRODUCTION

To talk about “ethics” is not to add another consideration to medical, business, and legal concerns. It is, rather, an effort to clarify the full range of responsibilities and to establish priorities among them.

The practical ethical question is always:

What is the right or best thing to do in these circumstances, all relevant responsibilities considered?



DISCLOSING ERRORS TO PATIENTS

When I was first involved in an Ethics Committee case discussion some 20 years ago about revealing a major medical error to the patient's family, the prevailing concern expressed was that such disclosure was "just asking for a lawsuit" – and would not do anything to help the patient.

DISCLOSING ERRORS

Perspectives have changed. Now:

1. Efforts to reduce error and improve quality have stressed the importance of identifying and reporting mistakes so that the root causes can be addressed.

DISCLOSING ERRORS

Now:

2. The current understanding of the doctor-patient relationship and of medical professionalism emphasizes the importance of physician honesty to patients.

DISCLOSING ERRORS

Now:

3. There is a wide-spread conviction that patients/families are more likely to sue if they think that mistakes are being covered up than if they are told of such mistakes quickly and apologetically.

Now:

The Joint Commission standards require that hospitals inform patients of unanticipated outcomes.

DISCLOSING ERRORS

Now:

The Charter on Medical Professionalism states:

"Whenever patients are injured as a consequence of medical care, patients should be informed promptly because failure to do so seriously compromises patient and societal trust."

DISCLOSING ERRORS

The recognition of the responsibility to inform patients or families of serious errors is, I think, a clear improvement in healthcare ethics from 20 years ago.

DISCLOSING ERRORS

And I would hope that, if new research would suggest that disclosure increases – rather than decreases – risk of law suits, disclosure of errors would still be seen as a necessary component of professional patient care.

But questions remain:

Which errors are too insignificant to be disclosed?

How should the disclosure be done?

DISCLOSING ERRORS

Questions remain:

Is anything else owed to the harmed patient besides disclosure and an apology? (E. g. Should there be an offer of speedy compensation for injuries resulting from substandard care?)

PAYMENT FOR ERROR-RELATED TREATMENT

PAYMENT AND ERRORS

The Leapfrog Group sample hospital policy on “never events” includes this statement:

“We will waive all costs directly related to a serious reportable event (‘never event’) and will refrain from seeking reimbursement from the patient or a third party payer for costs related to it.”

PAYMENT AND ERRORS

CMS and other insurers are instituting policies of non-reimbursement for the increased costs associated with specified preventable conditions that occurred after the patient was admitted.

PAYMENT AND ERRORS

- In general, this makes good ethical sense.
- It is difficult to make a strong justice argument that treatment resulting from harmful and avoidable errors should be paid for by those harmed or their insurers.

PAYMENT AND ERRORS

Being paid for services required because of a failure to provide minimally competent treatment might well be considered a perverse incentive, a payment system that rewards unacceptable practices.

PAYMENT AND ERRORS

However:

Policies and practices that make good sense in principle can sometimes lead to unintended and undesirable consequences.

Good organizational ethics requires careful attention to potential unintended consequences.

PAYMENT AND ERRORS

The concept of “never events” could be expanded.

It is possible that the non-reimbursed list will include adverse events that are not always preventable, even with excellent care.

PAYMENT AND ERRORS

It is one thing not to pay for treatment resulting from "never events," events that can be prevented. It is something else not to pay for the treatment of complications that occur even when there is no problem in individual performance or in the healthcare facility's systems.

PAYMENT AND ERRORS

Efforts to reduce medical errors have recognized the importance of reporting. The goal of reporting is to identify the reasons for errors, not to place blame on individuals.

PAYMENT AND ERRORS

It could become more difficult to maintain a non-punitive environment when certain errors cost the organization money. One of the fears about the new payment practices is that they might lead to less openness about medical errors.

PAYMENT AND ERRORS

Another concern is that patient care may suffer, despite the goal of the payment scheme to improve care.

The non-payment policies may lead to avoiding or delaying some needed treatment.

PAYMENT AND ERRORS

If experience shows or suggests that certain kinds of treatment are most commonly associated with the errors that result in non-payment, there may be a reluctance to provide these treatments.

PAYMENT AND ERRORS

Since the non-payment relates to specified preventable conditions that occur after the patient is admitted, there may be a tendency on the part of individuals or the organization to protect itself (its revenue) by trying to establish that certain conditions were present at admission.

PAYMENT AND ERRORS

If such testing is not indicated by the patient's symptoms and by medical standards, it is subjecting the patient to testing simply for the purpose protecting against possible revenue loss.

PAYMENT AND ERRORS

The potential for harmful unintended consequences does NOT NECESSARILY mean that the non-payment policies are wrong-headed.

PAYMENT AND ERRORS

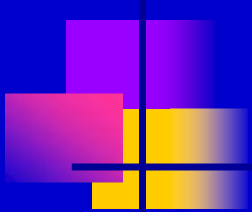
It means that the organization must be concerned about the ways in which people respond to changing policies and take the steps necessary to prevent harmful consequences.

PAYMENT AND ERRORS

Healthcare organizations have a responsibility to work for reimbursement policies that are fair and that promote effective and safe healthcare. They need to review payment policies carefully and challenge them when appropriate.

PAYMENT AND ERRORS

Working for fairness and high quality patient care is not, of course, exactly the same as working to maximize reimbursement.



CONCLUDING COMMENTS

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James Sabin notes that the discipline of ethics requires attention to three different components:

1. analysis ("What is the right thing to do")

CONCLUDING COMMENTS

2. advocacy (“Do the right thing!”)

3. administration (“Let’s run things so we reliably do the right thing in the right way”).

CONCLUDING COMMENTS

This is a useful way of identifying the necessary components of efforts to implement best ethical practices related hospital policy/practice and medical errors.

CONCLUDING COMMENTS

Without ethics advocacy, ethics can be mostly reflection or talk, with no real commitment to making a difference.

CONCLUDING COMMENTS

Without ethics administration, a commitment to implement a needed practice is not likely to lead to that practice becoming standard behavior in the organization

CONCLUDING COMMENTS

And without the component of ethics analysis, the determination of what is best ethical practice may be premature, mistaken, or incomplete.