Preventing allegations of abuse

Safeguarding your organization and community

As an introduction to this topic, the references made to "direct caregiver(s) or caregivers, care team" will refer to any employee or associate, including those working in senior living, or colleagues, physicians or providers in general health care settings for purposes of this article. When service lines or sites are mentioned (physician practices, hospitals, senior living), references will include senior communities, health systems, physician practices and ambulatory settings.

It is a Monday morning and Jane, a long-standing member of the care team, is on shift today. On what started out as an ordinary busy workday, Jane is notified by a supervisor that law enforcement is waiting in the lobby to speak with her about one of the patients she recently worked with. What is later learned is that the patient has alleged that they were assaulted during an encounter with Jane.

Although this example highlights the experience of a direct caregiver, any member of the care team in any care setting inclusive of acute care, a physician practice or a senior living facility could be faced with the same situation. An allegation of abuse can be unsettling, disruptive and costly for the person making the allegation, the care team member and the organization.

Many times, these cases can arise from misunderstandings or poor communication. For the vulnerable person in care, how they interpret their environment and how they are being engaged with by their caregivers is the reality they come to know. What was intended by the care team may result in confusion for the patient.

According to Joint Commission Standard LD.01.03.01, the organization's governing body is ultimately responsible for the safety and quality of care, treatment and services provided to patients.

No matter the accreditation requirement, liability for patient safety rests with the organization.

What is abuse?

The definition of abuse may vary by state, CMS or other regulatory/accreditation bodies. An allegation of abuse directed against the members of the care team may include such concerns as:

- Rough handling
- Physical injury
- Neglect
- Verbal or emotional abuse
- Sexual abuse/assault
- Sexual harassment
- Bullying
- Intimidation
- Financial misappropriation
- Inappropriate contact after discharge

An allegation of abuse could result in negative regulatory findings, facility licensing issues, professional board involvement, criminal charges, media attention, civil litigation, as well as loss of reputation in the community served.

Prevention efforts and a robust organizational response may mitigate the impact of an allegation of abuse.

The National Center on Elder Abuse reports the most common types of abuse include physical 29%, psychological 21%, gross neglect 14% financial exploitation 14% and sexual abuse at 7% (2022).

Why do allegations occur?

Some common reasons allegations of harm or negligence may be made against the care team by a patient/resident include:

- Inadequate training for staff working with high-risk or vulnerable patient populations
- Scheduling and available resources resulting in shortages
- Rushing or careless encounters when working with vulnerable patient populations
- Ineffective communications strategies used in every-day situations with high-risk or vulnerable populations
- One-time background checks (a background check made in 2011 and found to be clear may not have remained that way)
- Predators may also come in the form of a visitor, volunteers or vendor.
- The employee/associate may not be situationally aware or have a clear understanding of professional boundaries with their patients/residents.
- Sexual harassment may occur between the patient and a member of the care team.
- History of a failure to act on prior complaints from patients

Prevention program

What can be done to prevent such allegations?

The following guideline represents preventative steps for consideration.

Code of conduct

The prevention plan should also include a code of conduct for all care team members including checks and balances to ensure that the prevention program is effective:

- Seek feedback from those in care about their experiences.
- Advise patients and employees alike that any concerning or problematic issues will be acknowledged, investigated and addressed.
- Monitor trending data received from satisfaction surveys, complaints and reported grievances.
- Watch for patterns of problematic behavior from specific providers, care team members or departments.
- Create a safe reporting environment where any concerns can be raised in a confidential manner: “See something, say something.”
- Ensure background checks have been done at hire and a system is in place to periodically check throughout employment.
- Raise awareness and look for signs of neglect and abuse to include skin tears, multiple fractures and inability to explain bruising. Bruising of the chest, breast, genital regions, a sexually transmitted disease, bloody discharge and unusually stained underwear are signs of sexual abuse.

Ongoing training

From the initial orientation of a new employee to ongoing annual training, the topic of abuse should be kept fresh and discussed openly among the team, including physicians and other advanced practitioners. The objectives of such training would include staff’s ability to identify care situations and personal behaviors when engaging the patient that may be construed as abuse.

Training may include:

- Enhancing communication skills
- Patient/resident rights
- Conflict resolution
- Use of chaperones

- Proficiency in working with those who have behavioral health history or have demonstrated acting out behavior
- Insight on working with the patient who lacks decisional capacity or is cognitively diverse (Such training is routinely provided in the senior living setting but can be beneficial in all patient care settings).

Policies and procedures

Written policies and procedures to consider having in place on the following topics include:

- Responding to an allegation of abuse
- Patient/resident rights
- Care of the neuro diverse
- Conducting an investigation
- Hiring practices
- Background and criminal checks
- Education and training
- Staff competency assessment and credentialing
- Elder abuse
- Boundary setting (specific to romantic or sexual relationships with patients)
- Mandatory state reporting

Patient and resident rights

Elder abuse

- Mandatory reporting requirements exist for those situations where a patient or a resident has experienced abuse or neglect within the facility.
- In some states there are both individual reporting requirements as well as organizational.
- Policies should reflect what your state's mandatory reporting requirements are and who at your organization will make the final decision to file such a report.

Boundary setting

> **"The lines between patient and professional are frequently blurred, especially in Missouri's rural areas, where "the family doctor" can, after knowing a particular family of patients for years or even generations, become just as much "family" as "doctor".**
>
> Tettlebaum and Meyers (2012)

In a professional relationship the lines between patient and caregiver often are not always clearly marked. Casual behavior from the caregiver in the exam or during morning ADL care may be expected from a long-standing patient/resident while another patient/resident may perceive even the most harmless interaction a violation of trust and professionalism. The care team needs to be alert to body language and other cues those in their care are providing. Having situational awareness while keeping personal biases in check is essential for the relationship to thrive and remain safe for all parties involved.

Recommendation – response plan

Ensure your organization has an established process for addressing an allegation promptly when such an allegation occurs. Reporting and response time are critical when abuse is alleged, especially in the case of serious bodily injury.

Steps in the response plan may include the following:

Activation

Upon learning that an allegation of abuse has been made, the staff person shall contact their manager or any other leader for further direction. The leader may identify one person to serve as contact to the patient and family while the investigation is underway. Take immediate steps to ensure for patient protection measures, such as reassignment to a new associate/care team member, assignment of a sitter or a change in room or unit. Patient safety is paramount; render any necessary emergency care promptly.

The designated manager should notify their chain of command that an allegation of abuse has been made against a member of the care team, and together they will determine who will lead the investigation. The manager (or delegate) should visit with the patient (or call if post discharge) to ensure they are safe and to assure the patient (or family) that the allegation is taken seriously and will be reviewed. The manager will also advise the patient as to who will be their primary point of contact through the review.

Collaboration with different roles and departments (e.g., risk management, human resources, security, compliance, in-house counsel, social work, medical chief of staff, supervisors, departmental leaders) is an essential element of an organizational response plan to an allegation of abuse.

In discussion with human resources, the manager may implement actions such as placing the accused party on suspension pending the results of the investigation. The accused party should not be reassigned to another unit/location. Instead, the accused party should leave the premises until the conclusion of the investigation.

Law enforcement notification should be encouraged as an allegation of abuse may result in a criminal finding. Having law enforcement present early will ensure for proper attention. The officers may elect to not pursue an investigation further, but continued investigation by the organization is still warranted.

Rumors and confusion among the care team may also occur while the investigation is underway. The supervisor or administrator may need to diffuse the situation, provide updates when possible and advise of the confidential nature of the investigation. Employee assistance programs or human resources may be of assistance to the care team for emotional support.

Notify the attending and other physicians caring for the patient as they may perform an initial physical assessment if appropriate.

Verify that an event report is submitted; ensure that a thorough and credible documentation trail is created.

Notification

Keep the leadership team looped in from the start of the initial allegation. Provide timely updates until closure of the case.

Notification of marketing and the insurance carrier may also be warranted depending on the situation at hand.

Investigation

Conducting a thorough and credible investigation is essential and needs to begin promptly and as soon as safely possible. The following interviews may be needed depending on the situation:

- Patient, family
- Accused staff member and other identified staff
- Witnesses

The approach for the interviews should be considerate, consistent and fair. Prepare in advance for the interview ensuring that consistent questioning occurs between witnesses. Ideally, it may be best to conduct one-on-one interviews over groups sessions. Sample questions are provided below. In many cases where abuse has been alleged a root cause analysis (RCA) provides for a structured investigative tool and can be considered.

However, if law enforcement has been contacted and on scene (and this route is recommended), law enforcement will take the lead. Do not begin any investigatory steps until cleared by law enforcement to do so.

Investigation outcome

- At the conclusion of the investigation an allegation may be determined to be substantiated, as the findings may provide sufficient evidence to arrive at this conclusion.
- At times the allegation may be found to be unsubstantiated – either proved or not proved as there is insufficient information to identify the alleged offender or any factual evidence.
- There may be times when, through the investigation, it is determined that the allegation was false, or that the allegation was made with malicious intent. Having law enforcement involved may reduce the chance of such a situation.

Reporting requirements

Federal and state lawmakers are emphasizing the role of regulations and public policy to identify and decrease abuse of patients or residents while continuing to improve the quality of care.

There may be some instances where the problematic event whether substantiated or not, may require that reporting obligations be met, such as with a child, vulnerable adult or elder abuse. State laws may differ with regard to mandatory reporting requirements. For example, in 2019, the state of Washington began requiring healthcare providers whom a disciplinary authority had sanctioned for unprofessional conduct involving sexual misconduct to disclose such discipline in advance to new patients, according to a September 2019 news release from the Washington State Hospital Association.

Familiarize the care team with those requirements as to whether a report needs to be made to Department of Health, accreditation body or a licensing board. In the case of a substantiated complaint a report will likely be filed with the licensing board or department of health in accordance with your facility's policy and senior leader's direction.

Ensure your marketing or public relations team is aware of the concern. Typically, senior leadership, such as a CEO, director of nursing or risk manager, will work with the marketing or public relations team to develop a holding statement that may be needed if the media becomes aware of the incident, whether substantiated or not.

Survey readiness

An allegation of abuse is considered a patient rights violation and as such may result in an unannounced survey from licensing and regulatory agencies. Ensure your investigation provides you with a survey-ready strategy. Contemplate the following potential regulatory and other problematic issues that may arise:

- Failure to provide a safe environment for patients
- Criminal charges against the hospital or the staff members
- Allegation of elder abuse; abuse of a vulnerable person
- Office of Civil Rights – allegation of patient rights violation
- Failure to provide a safe environment for employees
- Loss of reputation in the community
- Unsubstantiated or baseless allegations

The following items may be called for by an agency investigating the allegation:

- Documented evidence of a thorough and credible investigation
- Policies and procedures on patient rights
- Complaint and grievance policy
- Employee files

Closure/post-event debrief

Once the investigation has concluded, ensure that there is documented evidence that a review has taken place. Typically, information about the accused employee would remain with human resources while provider details with medical staff leadership. Information on the patient or resident would remain within the incident reporting system.

Insurance implications

A health system's negligence in ensuring that a plan is in place for preventing or responding to allegations of abuse may prompt a civil lawsuit. However, the allegation may also create the perfect storm for the leadership team being held liable for mistakes made by employees. Negligent hiring practices as well as inadequate training for staff can result in additional problems.

Eye catching headlines and significant jury awards relating to abuse have captured the attention of insurance carriers and other risk management professionals. The subsequent impact on coverage is that, while once commonly and broadly included in professional and general liability policies, there is now significant scrutiny on the wording.

The development and inclusion of "batch" language in policies pertaining to the healthcare industry has further exacerbated the impact. "Batch" language in insurance policies was developed to support the manufacturing industry where a single incident on the manufacturing line could impact and potentially damage an entire batch of product. As the concept of "batch" expanded to other industries, including healthcare, systemic abuse allegations by a single provider allowed for resulting claims to be coalesced into a single severity claim.

Today, many carriers are amending wording to limit the breadth of coverage or even exclude it entirely. There is a particular focus and limiting of wording related to sexual abuse/misconduct and the batching of claims.

Similarly, D&O underwriters experienced a surge in abuse allegations related to corporate policies, procedures and response (or lack thereof) to allegations of abuse or hiring practices. Many of these policies now contain a full exclusion for abuse, particularly regarding sexual abuse/misconduct.

Policy language considerations:

- Exclusions may address specific abuse situations such as 'sexual abuse', or may more broadly exclude all abuse
- Coverage may be available for defense costs even if indemnity is excluded
- Policies may include a limitation related to abuse claims for 'negligent hiring'
- Policies may include a limitation related to abuse claims where the insured 'knew or should have known' of the potential for abuse
- Affirmative coverage statements often include a sub-limit lower than the full policy limit, which in turn may eliminate the affirmative coverage offered throughout the rest of an insurance tower

Summary

By implementing a reporting and response plan and abuse prevention strategies, senior care communities, hospitals and other care giving settings can provide for a safe care environment where abuse is an unlikely event. Managing abuse risk is a significant factor in delivering quality healthcare for all healthcare providers.

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