

## **Proposed Best Practice Standard: Nonpayment for Egregious Medical Errors**

A number of years have passed since the Institute of Medicine's landmark study, "To Err is Human," which found that nearly 100,000 patients die each year as the result of medical errors. Even when mistakes are not fatal, they can still lead to injury, disability, extended hospital stays, or lengthy recoveries. Historically, patients and insurers have generally paid twice when errors occur - once for the mistake and again to correct it. The Boston Globe reports that, nationwide, the cost of preventable medical errors, lost income, and lost productivity is estimated at \$17 billion to \$29 billion a year. As might be expected, in a system in which most individuals access coverage through employer-sponsored health plans, employers – including public sector employers - bear a substantial portion of that expense.

As part of the burgeoning national movement to align patient safety and payment, hospitals and payers are joining together and reaching agreement on the principle that payment should not be issued for so-called never events - serious reportable events such as wrong-site surgery, that are clearly egregious medical errors. For example:

- *The American Hospital Association Board of Trustees has adopted a set of principles articulating when hospitals would not expect payment from patients or their insurers or employers for care related to preventable serious, adverse events and has asked member hospitals to implement a no-charge policy for patients and insurers for serious, adverse events that is appropriate for their communities and the patients they serve.*
- *The Michigan Health & Hospital Association has adopted policies to stop billing patients for certain serious preventable errors, formalizing a policy whereby its member hospitals will not bill patients for 11 conditions including wrong-site, wrong-patient and wrong-procedure surgeries.*
- *Pennsylvania's hospitals have gone on record as implementing a non-payment policy for care related to serious medical mistakes that occur during an inpatient stay at an acute care hospital, such as wrong-body-part surgery and substantial medication errors.*
- *The Tennessee Hospital Association has approved a policy recommending that hospitals in the state not seek payment for care related to certain serious adverse events; similar policies have been adopted in Vermont, Minnesota, Massachusetts and Colorado.*
- *Although the Ohio Hospital Association has adopted a policy on on-payment for certain adverse events, the state remains one in which patients, or their insurer, may be billed for egregious errors.*
- *Anthem Blue Cross Blue Shield in Missouri will not pay for certain mistakes, including when a surgery is performed on a wrong body part or patient.*
- *The nation's 39 Blue Cross and Blue Shield plans have stated that they will not issue payment for serious errors and "never events" like wrong surgical procedures and leaving foreign objects in the body after surgeries. WellPoint,*

*the nation's largest health insurer with nearly 35 million members, has announced it will not cover costs resulting from certain major medical errors like surgery on the wrong body part.*

- *Public payers have also taken the position that certain medical errors should not be billed or paid. Beginning October 1, Medicare is refusing to pay hospitals for certain medical mistakes, including providing the wrong blood in a transfusion or the leaving of a surgical instrument in a patient. States which advise hospitals not to charge for serious, preventable errors include Delaware, Georgia, Indiana, Maine, Massachusetts, Minnesota, New York, Oregon, Pennsylvania, South Carolina, Vermont and Washington.*

There seems to be little dispute that nonpayment for egregious medical errors is good policy; the thorny questions arise when attempting to determine which of the so-called "adverse events" are clearly preventable, within the control of the hospital, the result of a mistake made in the hospital and result in significant harm. For example, the exact source of an infection can be difficult to pinpoint. Patient falls may occur even though the hospital takes all reasonable precautions. Alabama hospitals will not charge patients or insurers for what they believe to be eleven 'preventable' errors; that number changes to nine in Delaware, ten in Georgia, twelve in Indiana, seven in Kansas, fourteen in Kentucky and twenty-eight in Maine.

A review of current literature suggests that there are six 'adverse events' which can be easily and quickly identified as unambiguously resulting from preventable error. These would be:

- *Surgery performed on the wrong body part;*
- *Surgery performed on the wrong patient;*
- *Wrong surgical procedure on a patient;*
- *Retention of a foreign object in a patient after surgery or other procedure;*
- *Patient death or serious disability associated with a medication error;*
- *Patient death or serious disability associated with incompatible blood or blood products.*

These six adverse events appear in every list of preventable errors, both state and federal. They are clearly preventable, solely within the control of the hospital, and can be only the result of a mistake of the hospital, and cause significant harm. It is, therefore, recommended that the Board adopt as a best practice that health plans providing coverage to public school employees and their dependents not be required to issue payment for charges attributable to surgery performed on the wrong body part, surgery performed on the wrong patient, performing the wrong surgical procedure on a patient or the retention of a foreign object in a patient after surgery or other procedure.

## **Proposed Rules**

1. No health care plan offered to employees by a school district and subject to ORC 9.901 shall be required to issue payment to a hospital for charges arising out of surgery performed on the wrong body part.
2. No health care plan offered to employees by a school district and subject to ORC 9.901 shall be required to issue payment to a hospital for charges arising out of surgery performed on the wrong patient.
3. No health care plan offered to employees by a school district and subject to ORC 9.901 shall be required to issue payment to a hospital for charges arising out of the performance of the wrong surgical procedure on a patient.
4. No health care plan offered to employees by a school district and subject to ORC 9.901 shall be required to issue payment to a hospital for charges arising out of the unintended retention of a foreign object in the body after surgery or any other procedure.
5. No health care plan offered to employees by a school district and subject to ORC 9.901 shall be required to issue payment to a hospital for charges arising out of a medication error which causes patient death or injury.
6. No health care plan offered to employees by a school district and subject to ORC 9.901 shall be required to issue payment to a hospital for charges arising out of the administration of incompatible blood or blood products which causes patient death or injury.