



# ANTICIPATING HEALTHCARE RISKS IN 2019



CREATING A RISK LIST AND IDENTIFYING  
RESOURCES

It is wise to consider the changes of the past year, anticipate those of the upcoming year, and set a strategy for managing them. The complexity of these issues requires an enterprise-wide approach, and the development of successful management strategies calls for collaboration across many risk domains. Risk managers or chief risk officers must develop a prioritization system (risk matrix) to focus their efforts on the risks most likely to impact their organization. Evaluating both the likelihood of occurrence and the impact can help staff know where to focus their efforts and can assist organizations in deciding where to invest their limited resources.

The following article details risks that may be on your risk list and provides valuable resources to assist your organization in managing them. Also provided is a table identifying the risk domains that may be impacted by the various risks presented. When creating policies and procedures to proactively manage these risks, it is recommended to include staff from the departments primarily responsible for the risk domains in the discussion.

### COMPLIANCE ISSUES: FRAUD AND ABUSE

Many risk managers, particularly those working in smaller organizations or in physician practices, are asked to also serve as compliance officers or to assist other departments (finance, legal / regulatory) in managing the compliance function. The laws governing billing, reporting of adverse or never events, research activities, privacy, and access can be complex and confusing. It is strongly recommended that only professionals with specific skills and training in compliance manage the compliance department. Even risk managers who are attorneys may find the depth of their knowledge lacking when it comes to the specific laws governing reimbursement and regulated operations. The finance / billing department will need to be involved in the planning of all functions related to coding changes in federal and state government insurance plans, and IT department will need to be involved in responding to evolving threats including privacy breaches and ransomware attacks, which can result in costly fines and penalties.

Monitor important US government settlements at <https://oig.hhs.gov/>. This site describes recent settlements and enforcement actions taken and provides insight as to where your organization may be most vulnerable.

### MANAGING THE CARE CONTINUUM

Many risk managers and hospital providers recognize the risks associated with discharging patients after in-patient stays. Though the goal is to help patients seamlessly transition from in-patient to out-patient, rehabilitation, or home, organizations often find it difficult largely because the services needed by many patients following a complicated in-patient stay may not be available in the community. If available, they may not be integrated in a way that records progress, physician orders, and care plans in a way that can be readily shared or transferred. Additionally, some in-patient facilities may not be part of fully integrated E-Systems, capable of managing patients across the continuum of care. As the risk manager you may wish to work with the discharge planning department, finance department, and quality department to determine the financial loss to the organization when a patient cannot be transferred to a more appropriate level of care.

You may also wish to track claims where patients suffered adverse outcomes due to lack of appropriate care or monitoring. This information can help to identify potential partners for the organization so you can create a seamless transition for patients moving from one level of care to another. Once those partners have been identified, a broader team of providers and administrators should develop a plan for transitioning patients and sharing information between providers and organizations.

## ISSUES ASSOCIATED WITH OPIOIDS

The opioid crisis remains a challenge for providers, provider organizations, pharmacies, and pharmaceutical companies. Different strategies are necessary to manage each of these risk exposures. As reported in article, “Managing the Opioid Crisis,” (<https://www.beechercarlson.com/company-news/managing-the-opioid-crisis/>) opioids continue to form the basis for liability against drug manufacturers, providers, and provider organizations.

Over the past few years, we have learned much about the impact of specific prescribing conventions and the link between the number of days an individual is prescribed opioids and the likelihood of addiction. Evidence-based guidelines have been developed for managing acute pain in Emergency Departments, for dispensing these powerful drugs to patients, and for identifying alternative methods to manage pain. It should be noted that these guidelines often specifically mention that they are not intended to be used for Oncology patients, so risk managers and providers will need to watch for those specific guidelines.

## MEDICAL MARIJUANA USE

Medical and recreational marijuana use has been the subject of many articles, lawsuits, and discussions. As related to the healthcare industry, discussions often surround the prescribing and dispensing of medical marijuana to patients who are using it legally (under their state laws) to treat approved conditions. Concerns surround the dispensing of medical marijuana from a hospital pharmacy and possible drug interactions when medicinal marijuana is used with other conventional drug therapies.

While state laws vary, federal law still considers using or dispensing of marijuana illegal and further believes that marijuana has no medicinal value. The FDA will also not institute regulations given the illegal status of the drug<sup>i</sup> and has addressed various synthetic options that may meet the needs of medical marijuana users, which are legal under federal law<sup>ii</sup>. Since minimal research has been done on medicinal marijuana, pharmacists may be unwilling to opine on its safety – especially when used with other, more conventional drug therapies.

The use of medical or recreational marijuana can also pose a significant risk to healthcare organizations. Physicians and medical personnel may ingest marijuana for a medical condition or use it for recreational purposes in compliance with their state laws. Existing policies related to substance use and abuse likely cover the use of medicinal and recreational marijuana in the workplace. When evaluating substance abuse, an employee using marijuana should be held to the same standards as an employee using any drug or substance that may impair his or her judgement.

Healthcare organizations must also consider issues related to patients' use of marijuana. Will patients be allowed to bring their own medicinal marijuana into the hospital in the form of edibles? How and where are the edibles to be stored? How will they be dispensed? Will patients have to sign releases if they bring edibles into a hospital?

## DISASTER PREPAREDNESS: FACILITY ISSUES

Natural disasters continued to make the news in 2018 and promise to remain a challenge for 2019 and beyond. As we learned during Hurricane (or Super storm) Sandy, which pummeled the East Coast in 2012, aging infrastructure and design decisions made years ago are insufficient to protect against storm surges, catastrophic winds, and torrential rains. Physical plants operating with generators and other essential mechanical components on the ground level and essential departments operating in basements or below grade have recognized the significant associated risks. As climate scientists predict stronger and more frequent storms, many organizations (such as the Joint Commission) and agencies of the federal government have stressed the need for disaster planning. Multi-disciplinary teams must develop and execute disaster plans and table top exercises, which includes coordination with local, state, and national agencies.

Preparing for natural disasters may be like the planning for man-made disasters – those that stress the system with mass casualties. Assuring that all necessary staff are available and protected can be challenging particularly when those same individuals may have suffered devastating losses.

## ADVANCED PRACTICE PROVIDERS

There continues to be a need for advanced care practitioners (nurse practitioners and physician assistants) to not only fill gaps in primary care but to also be vital partners in the provision of care to patients. The licensure of advanced care practitioners is generally dictated by various state licensing agencies, but all too often organizations do not credential these individuals or delineate their privileges in a consistent manner that is aligned with state licensure agencies and supports acceptable standards of practice. Organizations or physician practices that employ advanced practice providers should review relevant state laws governing practice and draft clear policies for credentialing these providers, which includes scope of practice parameters. Scope of practice varies widely from state to state; for example, some states (often those with more rural areas where there may be critical shortages of primary care physicians) allow nurse practitioners to run independent practices while others only allow nurse practitioners to practice under the direct supervision of physicians. Legal and risk management staff must first discern the legal scope of practice and then draft policies and procedures that maximizes the value of these care providers while assuring they do not exceed their training or scope of practice.

## MENTAL HEALTH ISSUES

Throughout the United States, there are stories about the increased number of individuals with severe mental illness crowding our prisons and living in deplorable conditions on the streets or in poorly run shelters. Limited access to adequate nutrition or compromised life styles often creates health challenges that are further compounded by limited access to healthcare services. Already overcrowded emergency departments become the primary points of entry into hospitals where these

patients are frequently misdiagnosed or discharged prior to their medical or psychiatric conditions being fully understood or treated. In busy emergency departments, patients with erratic or chaotic behavior are often diagnosed with substance abuse or other medical problems, and psychiatric conditions are overlooked. Screening exams by a psychiatrist, social worker, or crises intervention worker should be mandatory for any patient whose behavior cannot be fully explained.

### TRANSGENDER RISK CONCERNS

A significant and quickly developing area of concern in risk management, patient safety, and quality assurance is the care of transgender individuals. A study in 2016 estimated the population of transgender individuals in the United States as 1.4 million people; this number is double a previous estimate made in 2011<sup>iii</sup>. Failing to adopt policies that ensure proper treatment of transgender individuals could leave a healthcare provider on the wrong side of legislation. Further, it could also result in negative patient experiences leading to a loss of potential future patients. In-patient safety and quality of care issues can additionally be impacted due to a failure to understand the complicated series of factors that have been addressed proactively by advocacy organizations.

### ACTIVE SHOOTER SITUATIONS

In the last past weeks, two active shooter events have occurred in urban hospitals. As much as hospitals train for these events, the general feeling is that “an event like that will not happen here...” until it does. Hospitals remain the **number one target** for events like these. Despite policies and practice drills, they are often unprepared when these events occur. These events are frequently related to domestic disputes or situations where there is known conflict or anger between the shooter and the hospital employee. Staff should be reminded to work with the hospital HR department if they have a restraining order against an individual, if they are fearful that a patient’s family may seek retribution, or if former patient has threatened harm to them or others in the organization. Practicing response drills in coordination with local police will additionally reinforce proper behaviors should shots be fired in or around a healthcare organization.

## RESOURCES AVAILABLE

Provided below are resources that can be used to assist your organization in managing risks.

- ▶ Compliance Issues: Fraud and Abuse
  - <https://risk.thomsonreuters.com/content/dam/openweb/documents/pdf/risk/infographic/ten-priorities-for-compliance-officers-in-2018-infographic.pdf>
  - <https://www.barclaysimpson.us/blogs/what-key-risks-do-internal-auditors-face-in-2019-82672493106>
- ▶ Managing the Care Continuum
  - <https://innovations.ahrq.gov/perspectives/state-accountable-care-organizations>
  - <https://www.federalregister.gov/documents/2017/01/13/2017-00283/medicare-and-medicaid-program-conditions-of-participation-for-home-health-agencies>
- ▶ Issues Associated with Opioids
  - <http://www.ihl.org/resources/Pages/ImprovementStories/FiveRightsofMedicationAdministration.aspx>
  - <https://psnet.ahrq.gov/resources/resource/31475>
  - [https://cha.com/wp-content/uploads/2018/01/CHA.090-Opioid-SummitReport\\_FINAL.pdf](https://cha.com/wp-content/uploads/2018/01/CHA.090-Opioid-SummitReport_FINAL.pdf)
- ▶ Medical Marijuana
  - <https://www.marketwatch.com/press-release/medical-marijuana-market-global-industry-trends-market-size-leading-players-and-forecast-2018-2026-2018-12-13>
  - <https://www.nj.gov/health/medicalmarijuana/patients/guidelines/>
  - <https://www.fda.gov/NewsEvents/PublicHealthFocus/ucm421168.htm>
- ▶ Disaster Preparedness: Facility Issues
  - <https://emergency.cdc.gov/planning/index.asp>
  - <https://emergency.cdc.gov/planning/responseguide.asp>
  - <https://www.osha.gov/SLTC/emergencypreparedness/>
- ▶ Advanced Practice Providers
  - <http://scopeofpracticepolicy.org/practitioners/nurse-practitioners/>
  - <https://www.bartonassociates.com/locum-tenens-resources/nurse-practitioner-scope-of-practice-laws/>
  - <http://scopeofpracticepolicy.org/practitioners/physician-assistants/>
- ▶ Mental Health Issues (Patients and Providers)
  - <https://www.compass-clinical.com/treatment-psych-patients-ed-need-know-part-1/>
  - <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4786237/>
  - <https://www.psychiatry.org/psychiatrists/practice/clinical-practice-guidelines>
- ▶ Transgender Risk Concerns
  - <http://transhealth.ucsf.edu/protocols>,
  - <https://www.wpath.org/publications/soc>
  - <https://nurse.org/articles/nursing-care-for-transgender-patients/>

## RISK DOMAINS

	Operational	Clinical / Patient Safety	Financial	Strategic	Human Capital (HR)	Legal / Regulatory	Technology	Hazard
Active Shooter Situation	X	X	X		X		X	X
Compliance	X		X		X	X		
Managing Care Across the Continuum	X	X	X	X	X		X	
Transgender Issues		X			X	X		
Disaster Planning	X	X	X	X	X			X
Mental Health Issues	X	X			X	X		
Advanced Practice Providers	X	X		X	X	X		
Opioid Use	X	X			X			
Marijuana Use	X	X		X	X			

- i. FDA and Marijuana, U.S. Food & Drug Administration, last updated 6/2018 <https://www.fda.gov/newsevents/publichealthfocus/ucm421163.htm>.
- ii. Id.
- iii. ANDREW R. FLORES ET AL., HOW MANY ADULTS IDENTIFY AS TRANSGENDER IN THE UNITED STATES? 2 (2016).