CSHRM Fall 2009 Newsletter

Message from the Board

Your CSHRM Board has been busy since the new board year coordinating new educational opportunities, annual conference planning as well as choosing a new CSHRM Organization logo to go along with a new website, soon to be unveiled. CSHRM partnered with Monster Design Company to re-brand the organization's image for today's risk management professional. The new website is formatted to be navigational friendly while providing more resources to members. Paypal has been added (on existing site)0 among other key features that make being a current or prospective member more convenient and fulfilling.
Another addition to CSHRM is the implementation of Webinar's for educational programs that occur throughout the year before our annual conference held in March. By adopting this method of education, more members and non-members have the opportunity to participate while maintaining the networking ability that has been cherished through our audio-conferences.

In keeping with the theme of updating our look, CSHRM's logo represents the organization's mission. The image displays overlapping and interconnecting lines that act like "arteries" or "intersections". This represents a communication and networking exchange while fulfilling educational needs to promote safe, proactive and innovative healthcare risk management. Check it out below!

CSHRM
CALIFORNIA SOCIETY *for*
HEALTHCARE RISK MANAGEMENT

We are excited to unveil this new look for CSHRM! An e-blast will go out when the new website is launched. The site will maintain the same web name, www.cshrmca.org, but with a great new look and functionality.

2010 Annual Conference

After years of holding our annual conference at the Walnut Creek Marriott, we are excited to announce that CSHRM's 2010 Annual Conference will be held at the Westin on Market in San Francisco on March 3-5. Save the date! Go to our website for a printable Save the Date card.

Member Survey Results

Many of you participated in our member survey on Survey Monkey a few months ago. We are excited to share the results of the survey with you!

The majority of members prefer email for communication (98%), work in an acute care hospital setting (60%), plan to attend CSHRM's 2010 Annual Conference (71%) and would still attend the annual conference if the number of days were reduced (61.5%). When asked what type of education session they were more likely to participate in, members were equally split between webinars and live presentations (64% each). The most popular topics for inclusion in CSHRM education seminars were regulatory and legal updates; ostensible agency; high risk services risk assessments; obstetrics-related issues; surgery specific issues; regulatory and accreditory compliance issues; current claims and trends; and electronic record-keeping issues. CSHRM has compiled the educational topics of interest submitted to use for educational programs throughout the year.

CSHRM members were also almost equally split on whether or not they already receive healthcare legislation updates routinely, although the majority (93%) would like CSHRM to share legislative updates with them via email. Although most members don't routinely "twitter" (85.5%), they were equally split on whether or not they would participate in a blog on CSHRM's website, if

offered. And, saving the best for last, over 96% of CSHRM members would recommend membership to a colleagues.

CSHRM Committee Updates

Communication Committee

As mentioned above, the Communication Committee has been hard at work on CSRHM's new website and logo. Additionally, CSHRM newsletters will continue to be generated as we've assigned a committee member to take the lead on this process to ensure timely publication for our members. E-blasts will continue to be used for Just In Time (JIT) and hot topic communication to our members.

In an effort to streamline incoming emails, we have created a general inbox for all incoming emails to the CSHRM Board: info@cshrmca.org. Please notify us if you change your email address so that we can ensure that you continue to receive CSHRM generated communication in a timely manner.

Conference/Education Committee

The 2010 CSHRM Annual Conference will be held on March 3-5, 2010 at the Westin on Market in beautiful San Francisco.

The education section will be holding 4 Web-Ex seminars between August 2009 and January 2010. These webinars will be free to our members with a small fee for non-members. Our first webinar, "Healthcare Privacy Update: New Exposures, New Laws, and Recent Examples of Suits, Losses and Brand Damage" was held on August 27th and was led by Arturo Perez-Reyes, a risk consultant and insurance broker at Saylor & Hill. This webinar had a great turnout and garnered lots of positive feedback from the attendees.

Our second webinar, entitled "When Bad Things Happen: TJC Sentinel Event – Reporting Guidelines and Root Cause Analysis: will be presented by Susan Shepard, MSN, RN, CPHRM, who is currently the Director of Patient Safety Education at The Doctor's Company and was formerly

a Joint Commission Surveyor. This webinar is scheduled for October 6th from 10am-11:15 a.m. Put it on your calendars now! More information about this webinar will be emailed to you shortly.

Membership

The committee sent out letters in April to get old members to re-join CSHRM and to recruit new members as well. Additionally, the committee is planning on going through the ASHRM member and attendee lists to look for potential new CSHRM members. If you know of anyone who is interested in joining CSHRM please send an email to info@cshrmca.org.

Healthcare Legislative Committee

There have been two recent legislative changes. First, the red flag rule has again been postponed for implementation. The FTC will provide more education about compliance and additional resources and guidance to clarify whether businesses are covered by the Rule and what they must do to comply. Secondly, CMS has given California an exemption to the federal requirement for physician supervision of CRNAs, making it possible for hospitals to receive Medicare reimbursement for CRNA services.

Article of the Month:

California Enacts Stricter Privacy Laws – Broader Scope and More Fines

By Phyllis Drummond, Risk Management Specialist, NORCAL Mutual Insurance Company

After some high profile cases involving unauthorized access to medical record information, California enacted two new bills that became law on January 1, 2009. The laws provide new oversight, stricter requirements and increased penalties for breaches of medical information. They hold providers, community clinics, hospitals and other healthcare organizations accountable for unauthorized access to medical information.

Here is a brief look at the new laws, followed by several risk-management recommendations.

Unauthorized access is considered the inappropriate review or viewing of patient medical information without a direct need for diagnosis, treatment or other lawful use as permitted by the California Medical Information Act (CMIA).

AB 211 (Section 130203 of the Health and Safety Code) requires that health care providers establish safeguards to protect the privacy of confidential patient information from unauthorized access, use or disclosure. This law gives a patient the right to sue over a privacy breach, while the federal HIPAA law does not. SB 541 (Section 1280.15 of the Health and Safety Code) applies the standard of AB 211 to licensed health facilities, including clinics.

The new medical privacy laws mandate confidentiality and safeguards, authorize fines and civil penalties, and establish stricter oversight. Within five days of detecting a breach in your clinic, you must self-report to the California Department of Public Health (CDPH) and to the affected patient(s). Failure to do so results in a $100-per-day fine until the report is made. Other institutional fines include $25,000 (per patient) for the initial violation and $17,500 for each subsequent occurrence, up to a maximum penalty of $250,000. Individuals who violate the laws face fines of $2,500 to $25,000 per violation, with a maximum penalty of $250,000, plus the potential for civil action by the patient.

At least one fine has been assessed under the new legislation. On May 15, 2009, the CDPH announced that Kaiser Permanente Bellflower Hospital became the first facility fined after 21 employees and two physicians improperly accessed a patient's medical record. (Source: CDPH Issues $250,000 Administrative Penalty to Kaiser Permanente Bellflower Hospital in Los Angeles County. California Department of Public Health website accessed June 1, 2009 at http://www.cdph.ca.gov/HealthInfo/news/Pages/NR2009-43-AdministrativePenaltyKaiser.aspx

Risk Management Recommendations

- Create and implement appropriate administrative, technical and physical safeguards to protect the privacy of a patient's medical information from unauthorized access, use or disclosure.

- Conduct confidentiality training for all new hires during orientation and annually for established employees. This training should include a review of policies and procedures related to confidentiality, including: medical records; computer security; release of patient information by telephone, fax, electronic mail and conversations; disciplinary action for violations; and fines associated with violations. Consider utilizing videos, DVDs or CD-ROMs as training tools.
- Ensure employees know that they can be held individually liable for unauthorized access.
- Require all employees who undergo confidentiality training to sign a confidentiality agreement. Place the employee's signed agreement in his or her personnel file.
- Discipline employees who violate confidentiality policies.
- Report any violations made by anyone in the clinic.
- Cooperate with the authorities who investigate the unauthorized access.

Postscript: After the above article was written, Kaiser Bellflower was fined another $187,500 on 7/16/09 arising out of their failure to prevent additional incidents of unauthorized access of confidential patient information.

The CPDH press release can be found at: http://www.cdph.ca.gov/Pages/NR2009-67.aspx

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"Employers Need To Know The Risks And Potential Liabilities In Using And Misclassifying Independent Contractors"

by Andrew R. Shalauta, Esq.
Burnham Brown

During this economic downturn, business are increasingly turning to independent contractors to save on taxes, labor costs, and for the convenience of hiring specialized skilled labor for specific projects on a short-term basis. Unfortunately for employers, the risks and potential liabilities when using independent contractors are not well-known, and plaintiffs' attorneys are catching on. There is a rise in misclassification lawsuits and unemployment claims in California so it is paramount for employers to ensure they are complying with the law.

Before hiring independent contractors, businesses should first be aware of the legal tests and IRS guidelines for maintaining independent contractor status. Just calling a worker an "independent contractor" does not make someone an "independent contractor." Courts and government agencies will look at several factors to determine whether a worker is an independent contractor including the employer's control over the work, whether the contractor can earn a profit or suffer a loss, and, whether the contractor is working for more than one firm. Not all factors, or any one specific factor, needs to be proven to establish a worker was an independent contractor. If a business fails this test, it can be very costly.

The tax costs of misclassifying an employee as an independent contractor are huge. Employers can be ordered to pay a percentage of the compensation paid, the employee's tax withholding for Social Security, Medicare, and disability, plus interest. Employers can be ordered to pay back taxes for unpaid employer contributions for Social Security, Medicare and unemployment insurance. The IRS has additional penalties for failing to file tax returns. Criminal sanctions can include imprisonment up to one year and substantial fines. The Workers Compensation Appeals Board can also issue civil penalties, property liens, and stop orders.

The use of independent contractors can also lead to other unanticipated liabilities. An employer can be liable for harassment by an independent contractor in the workplace. An independent contractor can also sue the employer for harassment. An employer can also be sued for discriminatory conduct by a purported independent contractor under the theory that the independent contractor was acting as the employer's "agent". These scenarios create potential liability through contractors that the company is not even supposed to control.

An independent contractor can also sue the hiring company directly claiming he or she was an employee and entitled to employment benefits. Under the same pretenses, the independent contractor can also bring a workers compensation claim or file for unemployment insurance benefits. An independent contractor can also sue the employer for personal injury on the premises because workers compensation laws do not apply.

Disadvantages for using independent contractors also include losing control over how the work is performed and the right to terminate the worker at will. Independent contractors should not be required to follow training or instructions on how to perform the work. Independent contractors should not be supervised on work performance. Employers generally cannot control the hours of work or other aspects of their day-to-day employment.

To ensure compliance with the law, businesses should conduct audits to ensure that every independent contractor working for the company can meet the legal tests. Requiring a worker to receive training, attend meetings, follow instructions, be accompanied by an experienced employee, or, regularly report to the employer, are all facts that tend to show that individual is an employee, and not an independent contractor. Companies should also review their independent contractor agreements to make sure they include all necessary provisions. Companies should have an invoicing system for paying independent contractors. Companies should also make sure that independent contractors are maintaining proper insurance and paying their required taxes.

Andrew Shalauta is a Partner at Burnham Brown and member of the firm's Employment Practice group. Mr. Shalauta specializes in employment litigation and counseling for businesses. He also conducts seminars on wage and hour, discrimination, sexual harassment, and other employment issues.

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