EXPANDING THE PRACTICE SPECTRUM

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Risk Management in Alternative Practice Models

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Topics

• Preliminary considerations
• Reviewing contracts
• Ethics and risk management
• Insurance
Preliminary Considerations

• What is the practice model?
  – Co-location
  – Independent Practice Organization (IPA)
  – Management Services Organization (MSO)
  – Patient-Centered Medical Home (PCMH)
  – Accountable Care Organization (ACO)
Preliminary Considerations

• What is my role?
  – Independent contractor vs. employee
  – Level of autonomy
Preliminary Considerations

- Impact of integration on clinical care
  - Potential advantages
    - Additional resources for patients and providers
    - Integrated approach to care
    - Efficiency
    - Improved quality
Preliminary Considerations

– Potential disadvantages
  • Less privacy
  • Less professional autonomy
Preliminary Considerations

• Impact of integration on risk to practitioner
  – Potential *increased risk* for independent practitioner (e.g., IPA, MSO)
  • More complex cases
  • Vicarious liability
Preliminary Considerations

– Potential *decreased risk* for independent practitioner
  • Improved access to medical services, crisis and emergency care
– Potential *decreased risk* for employees (e.g., ACO)
  • Can ask supervisor for advice in difficult situations
  • Can consult with institution’s attorney
Preliminary Considerations

- Independent contractor or employee?
  - Independent contractor vs. employee a key factor in managing risk
  - IRS guidance on proper classification, applicable laws and rules, as well as consequences of misclassification
Preliminary Considerations

– Misclassification a significant risk for employers
– Employees may be better protected in the event of a malpractice lawsuit
Reviewing Contracts

• Carefully review all contracts
• Pay particular attention to
  – Services you are agreeing to provide
  – Financial terms
  – Other documents incorporated by reference
  – Term and termination
  – Recordkeeping and audits
Reviewing Contracts

- Advisable to consult an attorney before signing
- Keep copies of all signed contracts
Reviewing Contracts

• Hold harmless agreements
  – “Hold harmless” contracts or contract provisions state that if a company is sued by a patient for the provider’s actions, the provider will indemnify the company
  – Do not sign an agreement that makes you responsible for actions of anyone other than yourself or your employees
  – Professional liability insurance will not protect you for claims arising from actions of non-employees
Ethics & Risk Management

• Competence
  – Ethics Standard 2.01: “Psychologists provide services...with populations and in areas only within the boundaries of their competence, based on their education, training, supervised experience, consultation, study or professional experience.”

• Competencies for psychology practice in primary care described in detail in McDaniel, et al. (2014)

• New skills may be needed to work in some alternative practice models
Ethics & Risk Management

• Informed consent
  – Ethics Standard 3.10 and risk management principles require meaningful and thorough informed consent
  – Ethics Standard 4.02 requires psychologists to discuss relevant limits of confidentiality
• If practice model allows access to PHI by other professionals or for healthcare operations purposes, informed consent forms should state this
Ethics & Risk Management

• Documentation
  – Careful recordkeeping is an important factor in good risk management
  – Be mindful of potential uses of/access to records

• Recordkeeping guidance
  – Institutional requirements
  – State law requirements
  – Contractual agreements
  – APA Recordkeeping Guidelines
Ethics & Risk Management

- Changes in documentation projected as mental health becomes more integrated with medical systems include
  - Increased need to communicate effectively with healthcare providers who may have limited knowledge about mental health
  - May be cultural norms about what shouldn’t be written down
  - Increased use of electronic health records (EHRs)
  - Increased need to measure, describe and demonstrate functional behavioral progress and effectiveness of treatment
Ethics & Risk Management

• Conflicts & risk management in institutional settings
  – If you work for an institution or organization that takes actions that may be contrary to the Ethics Code or patient welfare
  – If you disagree with decisions made by your colleagues/supervisor
  – Then, take steps to reduce liability
    • Try to protect the welfare of the patients as much as possible
    • Bring the problem to the attention of supervisor/administrators
    • Document your actions
Ethics & Risk Management

- Conflicts & risk management in institutional settings
  - Ethics Code 1.03 Conflicts Between Ethics and Organizational Demands.

  “If the demands of an organization with which psychologists are affiliated or for whom they are working are in conflict with this Ethics Code, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code and take reasonable steps to resolve the conflict consistent with the General Principles and Ethical Standards of the Ethics Code. Under no circumstances may this standard be used to justify or defend violating human rights.”
Ethics & Risk Management

- A lawsuit resulting from the negligence of one member of a group may name all members as defendants as well as the corporation or partnership.

- Even when psychologists share office space and other office services without creating a legal entity, patients may sue all members of the informal group.
Ethics & Risk Management

- Reducing risk of “vicarious liability” in group practices or other loosely organized groups
  - Informed consent indicates your services are being provided as an independent professional
  - Official communications indicate you are an independent practitioner and you are solely responsible for clinical care
Ethics & Risk Management

– Advertising, websites are accurate
– Trust sample language to use in informed consents and official communications to consumers

(http://www.trustinsurance.com/resources/articles/minimizing-vicarious-liability-exposure-for-loosely-organized-groups-and-certain-mso-arrangements)
Insurance

- Independent practitioners, group practices or other loosely organized groups
  - Discuss with your insurance carrier how best to insure your practice and minimize vicarious liability
  - Consider need for business, income protection or other insurance in addition to professional liability coverage
Insurance

• Agency or other institutional setting
  – Many psychologists employed in agencies do not have their own professional liability coverage
  – Agencies will not defend psychologists for activities outside of their employment contract
  – Agencies may not cover the costs of defending against a licensing board complaint
Tips to remember

• Understand your role in any new business model
• Review all business contracts and agreements
• Review your informed consent and descriptions of your practice
• Understand limits to patient confidentiality
• Protect yourself and your patients when making changes to the way you practice
• Focus on patient welfare is always a good guiding principle
Resources

Resources


Resources

- The Trust, Practice Tip on Hold Harmless Agreements. Available at http://www.trustinsurance.com/resources/education-center.

Risk management consultations available to Trust policyholders by calling the Advocate 800 Service (1-800-477-1200).