U.S. Department of Veterans Affairs

Risk Management

Geriatric Psychiatry Service

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RISK MANAGEMENT

- Documentation
- Forensic Opinions Verses Treatment
- Release of Information (ROI)
- Federal Tort Claims Act (FTCA)
- Consent, and Patients' right to refuse
- Disclosure and Patient Safety Reporting

WHY DO WE DOCUMENT?

- Protection of Patients & Continuity of Care
- Protection of Health Care Practitioners
- Required by Law
- Required by Professional Ethics
- Required by VHA
- Required by The Joint Commission (TJC)
- Required by VASDHS Policy

RISK MANAGEMENT: CHARTING MISTAKES TO AVOID

- Some of the most common charting errors affecting Tort Claims or Lawsuits:
  - Failing to record pertinent health or medication information
  - Failing to document actions
  - Failing to document medication administered, or documenting in the incorrect patient chart
  - Failing to record medication reactions, allergies or changes in condition
  - Failing to document in a timely manner

IMPORTANCE OF DOCUMENTATION

- The Medical Record is a legal document which shows type of care, quality of care, patient health status and progress.
- Essential component of a complete diagnostic and therapeutic process and serves as a communication tool.
- Poor documentation or omission of important information may mislead a provider when forming a diagnosis or prescribing treatment.
- In conjunction with good hand-off communication for Care Transitions and Continuity of Care.

GOOD DOCUMENTATION GUIDELINES

- **DO** document conversations with patients and or staff, including using chain of command.
- **DO** include specific, factual, objective information; use time and date, include relevant test results.
- **DO** use standard abbreviations only.
- **DO** document symptoms in patient's own words, patient's actions and statements, **use quotations** when appropriate.
- **DO** document patient's response to medications and treatments.
- **DO** document the care you provided, the actions you took, including safety actions (education, risks, benefits, noncompliance, etc.).
- ***DO** document all incidents when they occur, and disclosure of them*.
- **DO** document in a **timely** manner.
- **DO** document discussions of disclosure to patient and family.

GOOD DOCUMENTATION CONTINUED

- Avoid Claims: Document patients' refusal of treatment, the reason why, the education you provided, and ensure that informed consent principles are followed.
- When you are intervening in the Veterans care, you need to document.
  - Discussions with family, or coordinating care with physicians, Nurses, Social Work etc.
  - Discussions with Veterans.
- Always document factual objective information.
  - Never chastise, or criticizes others in the chart
    - Remember, the veteran/ patient can read these to! This documentation looks more poorly on the individual writing the statement as it appears unprofessional.
    - Address the concerns using the appropriate methods.
    - It is a Legal Liability to show strife in a department.

GOOD DOCUMENTATION GUIDELINES

- Do NOT cut and paste (wrong information can be inadvertently included, plus “note bloat”)

- DO NOT document staffing problems in the medical record. If staffing impacts care, please complete a Patient Safety Report (JPSR) and discuss with your supervisor, and use the chain of command.

- DO NOT use the medical record for self serving notes; the medical record is not appropriate the appropriate venue for criticizing colleagues or making unnecessary comments regarding the patient.

FORENSIC OPINIONS

From the Office of General Counsel (OGC):

- Those requesting the testimony of VA employees in their official capacity need to receive approval from the Office of General Counsel (through Risk Management).

Per VHA Directive 1134:

- "VA providers can assist "in completion of VA and non-VA medical forms and provide medical statements with respect to the patient's medical condition and functionality." However, completing a form or providing statements about a patient's medical condition or function is different from rendering an opinion related to a potential legal matter (i.e. write a "To whom it may concern" letter or a letter to the patient's attorney), which is inappropriate and can create significant liability for the VA and the provider. Federal regulations prohibit any government employee from rendering expert or opinion testimony unless they are doing so on behalf of the United States or the Department of Justice.
  See 38 C.F.R. § 14.808."

- Release of information VHA Directive 1605.01

POLICY

  - It is VHA policy to conform to the legal requirements for using and disclosing individually-identifiable information and the appropriate handling of individuals' privacy rights regarding individually-identifiable information.

RELEASE OF INFORMATION CONTINUED (VHA 1605.01)

- ## Right of Access and/or Review of Records.

(1) Requests for access to look at or review copies of individually-identifiable information must be processed in accordance with all Federal laws, including 38 U.S.C. 5701 and 7332, FOIA, Privacy Act, and HIPAA Privacy Rule. Except as otherwise provided by law or regulation, individuals, upon signed written request, may gain access to, or obtain copies of, their individually-identifiable information or any other information pertaining to them that is contained in any system of records or designated record set maintained by VHA. Individuals do not have to state a reason or provide justification for wanting to see or to obtain a copy of their requested information. NOTE: VA Form 10-5345a, Individuals' Request for a Copy of Their Own Health Information, may be used, but is not required, to fulfill the signed written request requirement.

(2) All written requests to review must be received by mail, fax, in person, or by mail referral from another agency or VA office. All requests for access must be delivered to and reviewed by the System Manager for the VHA system of records **(HAS- Health Information Management)** in which the records are maintained, the facility Privacy Officer or the designee of either of those positions.

Overview of the Federal Tort Claims Process

PERSONAL LIABILITY AND VA EMPLOYEES

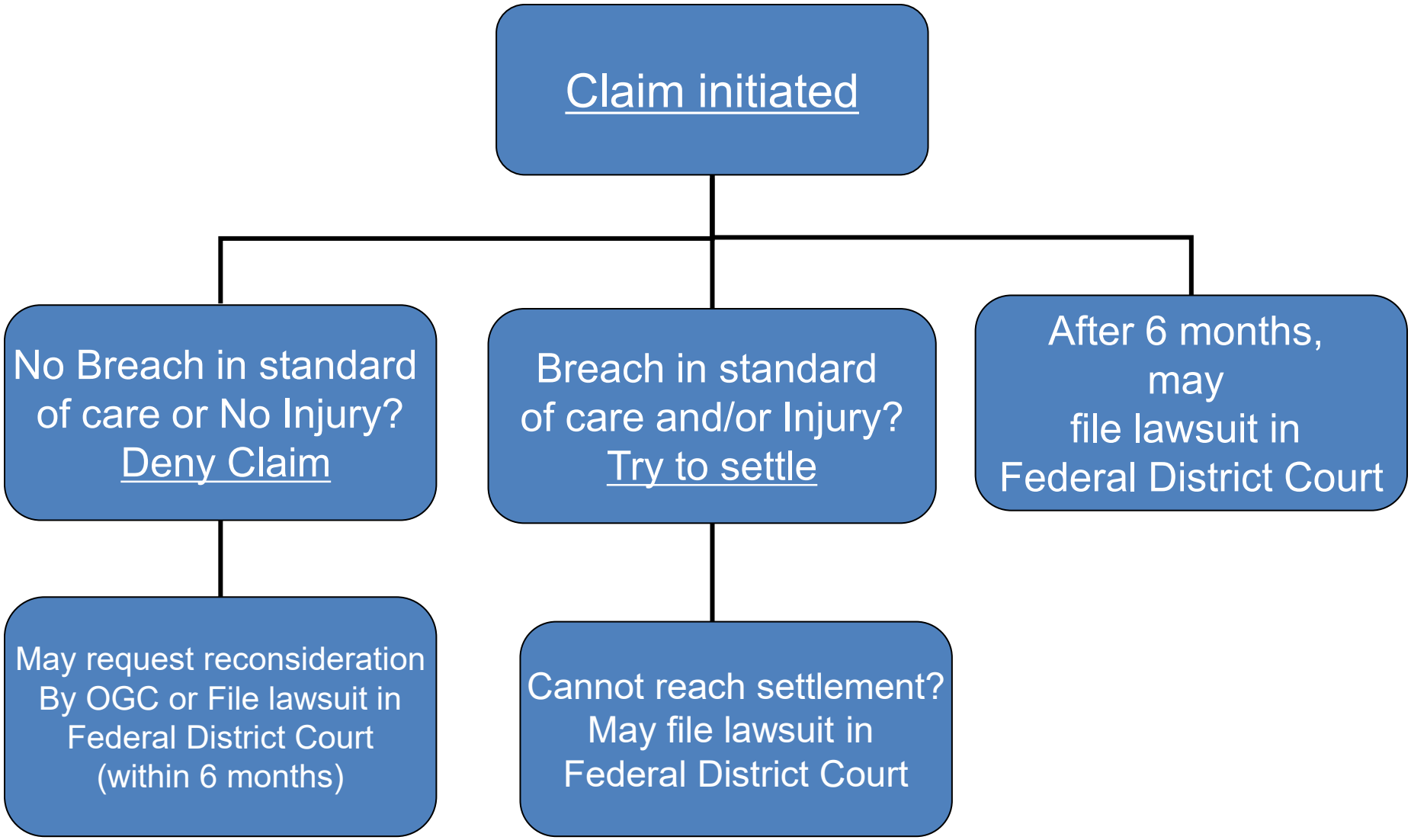
- The United States government and its federal agencies do not carry liability coverage policies but are self-insured.
- Claims for medical malpractice against personnel caring for Veterans at VA Medical Centers are subject to the provisions of the Federal Tort Claims Act (FTCA).
- The FTCA provides that administrative claims must first be filed with the VA for investigation and adjudication by the Office of General Counsel (OGC).

PERSONAL LIABILITY & VA EMPLOYEES

- Under federal law (FTCA), VA health care employees are protected from personal liability for medical malpractice for actions **within the scope of their federal employment** at a VA facility.

- The exclusive remedy in a lawsuit shall be only against the United States and not against the individual practitioner.

Federal Tort Claims Act



CONSENT AND RIGHT TO REFUSE

- VASDHS MCM 11-43 Informed Consent
  - Describe risks, benefits, alternatives (including no treatment), why the recommended treatment is more beneficial than the alternatives
  - Describe potential emergency responses to known complications (need for blood/blood product transfusion)
  - Documentation is completed in i-Med
  - Assess decision making capacity (Clinical determination) (*note* differs from ***competency*** – Legal determination)

CONSENT AND RIGHT TO REFUSE

- The VHA Handbook and VASDHS MCM specifies who is responsible for obtaining informed consent:
- **VHA Handbook 1004.01: 3. Definitions**
- **j. Practitioner**. A practitioner is defined as any physician, dentist, or health care professional *granted specific clinical privileges to perform the treatment or procedure*. For the purpose of this Handbook, the term practitioner also includes:
- (1) Medical and dental residents, regardless of whether they have been granted specific clinical privileges; and
- (2) Other health care professionals *whose scope of practice agreement or other formal delineation of job responsibility specifically permits them to obtain informed consent, and who are appropriately trained and authorized to perform the procedure or to provide the treatment for which consent is being obtained.*

- **MCM 11-43: 3. Definitions**
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CONSENT AND RIGHT TO REFUSE

- Consent obtained by a practitioner who is not privileged to perform the procedure, is an *Invalid* Consent and will put both practitioners at risk.

- Invalid Consent is NO Consent!

CONSENT AND RIGHT TO REFUSE

- *Rescission of consent must be documented in the patient's electronic health record*. The practitioner who obtained consent or the practitioner responsible for the treatment or procedure for which consent was obtained must certify or verify the patient’s rescission.
- Document refusal in i-Med and/or CPRS
- In life-threatening medical emergencies, consent is implied by law

DISCLOSURE

- Disclosure:
  - Obligation to disclose adverse events to patients who have been harmed in the course of their care, including cases where the harm may not be obvious (potential harm), severe, or where the harm may only be evident in the future.
  - Honest, Ethical, Transparent and consistent with VASDHS Core Values.
  - Not an admission of liability unless the provider acknowledges fault.

Clinical Disclosure:

- Informal, part of routine care.
- Harmful or potentially harmful adverse event.
- May be the 1st step prior to institutional or large-scale disclosure.

Institutional Disclosure:

- Formal, related to an adverse event that is reasonably expected to result in serious injury or death.
- Includes facility leadership.

Remember,
"If it is not
documented,
it was not done."

WHEN UNEXPECTED OR ADVERSE EVENTS OCCUR

- **Do NOT** document that you have completed a Patient Safety Report (or JPSR), but DO complete one! Call the Patient Safety Team for assistance at extensions 3372 or 7504.

https://patientsafety.csd.disa.mil/

- **Do NOT** document that you have spoken to the Risk Manager, but DO call for assistance! Extensions 2882 or 2227
- Please Report Close Calls and Near Misses! Just Culture

Questions?

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