

DentalNotes

Medical Security Insurance Company, Member Company of The Medical Mutual Group

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Communication Barriers Increase Liability Risks

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In this new era of patient's rights, many federal agencies are creating rules and regulations that require more and more from healthcare providers. As a practitioner, it is important to stay current with these new changes and to make sure that your staff is aware of and complies with these regulations as well. Any time communication barriers exist, the chance for misunderstandings increases sharply, as does your malpractice risk. A basic understanding of the rules can help practitioners meet the needs of their hearing-impaired and Limited English Proficiency (LEP) patients without incurring undue expense and inconvenience.

Since the telephone is usually the first point of contact with the office, staff members, especially the receptionist or appointment personnel, should be familiar with all Americans with Disabilities Act (ADA) requirements. They should be prepared to handle phone calls where the patient or family member demands interpretive services for a patient with a hearing impairment. It is important to recognize that any one of these calls could be from a patient who is specifically looking for any indication of a lack of cooperation on the part of the practice. Such actions can be the grounds for a possible discrimination claim that can be very costly to defend.

The ADA requires that practitioners provide appropriate services or auxiliary aids for hearing-impaired patients. These services serve to facilitate communication between the patient and the practitioner. The patient's preference for communicating may include written notes, lip reading, telecommunications devices for the deaf, or a sign language interpreter. While the ADA clearly requires the provision of translators in some situations, interpreter services are not always required. As a rule of thumb, it is wise to have an inter-

preter present at an initial consultation to determine the best means of communication for dentist and patient and whenever surgery or referral to a specialist is needed. For some deaf patients with high language proficiency, note writing may suffice for routine clinical situations. For others it will not.

Although the provision of a translator is required in some circumstances, case law indicates that dentists do not have to purchase TDD equipment or other technology unless the practice treats a large number of hearing-impaired patients. TDD relay services are available for use by calling (800) 955-8770. This service will relay aural information by TDD to the hearing-impaired patient and interpret TDD transmissions verbally for the dental practice.

The patient's choice of translation services should always be documented in the chart. If a sign language interpreter is required, the following conditions are mandatory: 1) the interpreter must meet certain competency levels and must be qualified for medical terminology, and 2) the dentist must bear the cost of the service and may not charge either the patient or the insurer for the service. For a listing of qualified interpreters, contact the National Registry of Interpreters for the Deaf at (301) 608-0050.

The name and phone number of the interpreter who was used during the dental visit should be documented in the chart notes. The patient's friends or family members who sign but are unfamiliar with dental and medical terminology are not usually adequate substitutes for a qualified interpreter, and their participation may even violate the latest privacy regulations.

It is important to remember that for patients who have been deaf from birth or early childhood, English is a second language. Few will read lips well enough to function in a dental environment. Many will not have sufficient skills at written language to permit writing as a

substitute for talking. The average level of reading comprehension for patients deaf from early childhood is at a second grade level. For these patients, interpreters will be necessary in most clinical situations.

If the patient chooses not to have a sign language interpreter, make an effort to conduct all interactions with the patient in an area free of distractions such as background music, other voices, and/or equipment noise. Remember to remove your facemask, use visual aids, enunciate clearly and verify the patient's comprehension with questions such as "Do you understand what I am explaining?" or "Do you have any questions about this?" It is beneficial to provide the patient with pertinent written materials regarding the proposed treatment and to clearly document which educational materials were used.

Title VI of the Civil Rights Act requires healthcare practitioners to provide interpretive services for LEP patients who are served by federally funded programs. These guidelines permit bilingual dental staff members to be acceptable translators; however, the patient's family members or friends may not meet the criteria because they are not familiar with medical/dental terminology. Remember to document the name and phone number of the interpreter.

If the practice cares for a large number of LEP patients, written educational materials, including informed consents, can be developed in different languages to meet the needs of their patient population. Thorough charting of the informed consent discussion is key and should include the diagnosis, nature of the proposed treatment, the risk, complications, and benefits of the procedure, as well as any alternative treatment options and their associated risks. The patient's option of no treatment, including the possible risks of such a choice, should also be included.

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HIPPA Compliance Seminar

Friday,
December 20, 2002

Learn more about the seminar by visiting
the ADA website at www.ada.org/goto/HIPPA, or
call the ADA at (800) 621-8099

*Sponsored by the ADA, in conjunction with
North Carolina Dental Society and UNC School of Dentistry*

Premiums Increase

For only the third time since the company was formed, Medical Security raised premiums for its insureds. And while additional expenditures for any practice are never easy, the increases are "a direct result of a higher volume of claims and the severity of the claims involving our dental customers," according to Jeff Weigl, Director of Underwriting.

"The medical malpractice crisis for physicians has received a great deal of media attention in the past 12 months," according to Weigl. "However, our dentists are unfortunately dealing with many of the same issues. Not only are they being named in more claims and suits, but they are also facing much more substantial jury verdicts, as we saw in one landmark case earlier this year," Weigl added.

The 16.5 percent increase went into effect on July 21, 2000. The last increase occurred in March of 2000.

If you have questions about your increase, please contact Donna Mack, DDS, Vice President of Operations for Medical Security, or call your underwriter, at (800) 662-7917.

Make Plans to Give Kids a Smile on February 21, 2003

The American Dental Association and local dental societies around the country are teaming up to provide free dental service on February 21, 2003, to children who would not otherwise receive care. In addition, the launch of the nationwide campaign is designed to enhance public awareness as to the extent of access disparities in oral health.

Dentists can choose to participate in the event by providing care to children in need or by making a donation to the ADA Health Foundation's Harris Fund for Children's Dental Health. To learn more, visit the ADA website at www.ada.org.



Communications Continued from Front

With both hearing impaired and LEP patients, the expenses associated with any type of translation service cannot be recouped by increasing the patient's fee. However, these expenses are fully tax-deductible, and possible tax credits are available. It may be most cost effective to treat several LEP or hearing-impaired patients on specific days or to group a series of patients requiring interpretive services in a single block of time. Depending upon the procedure and the patient, it may be possible to save a second visit by the interpreter by thoroughly explaining the procedure and the subsequent post-op visit while the interpreter is present.

The failure to establish good communication between the patient and dentist greatly increases the risk of malpractice litigation. When a communication barrier exists, the malpractice risk increases exponentially. Under the best of circumstances, dental visits are intimidating experiences for most patients. This experience is far more difficult for those who cannot communicate with the dentist directly. Taking the time to ensure that you and your staff understand the need for appropriate interpretive services when treating hearing impaired and LEP patients not only improves the quality of care that you are able to provide to your patients but also reduces your risk.

Risk Management Pearls...

- ❖ Always assess the patient to determine if he/she has realistic expectations of the treatment;
- ❖ Discuss treatment options, as well as the pros and cons of each, in language the patients can understand;
- ❖ Use comprehensive patient information sheets or educational brochures to help describe various proposed treatments, and document the provision of this material;
- ❖ Obtain written informed consent from the patient, parent, or guardian prior to performing any procedure.