Legal Issues in Case Management

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Case Management NUR 4030

May 6, 2020

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**Introduction**

The legal aspect became integral part in complex health care system. The case manager nurse today must be proficient not only in clinical aspects of health delivery but need to carry administrative tasks and be advocate for patients. Such expanding of scope of practice and responsibility placed burden on nurses to be proficient in legal aspects of medicine. For last few decades healthcare system embraced variety of changes such as patient confidentiality act, larger focus on patient’s rights, higher need for personal health record protection and new standards of practice for nurses across all specialties. Moreover, advancement in technologies create additional legal challenges for case managers such as cybersecurity, hacking, and breach of personal medical records. Case managers nurses, in addition to clinical skills, must have full legal literacy to stay on top of their practice.

**Confidentiality**

Confidentiality is key element of building trust between nurse and patient and enable meaningful nurse -patient relation. Adopting digital technology such as Electronic Health Record (EHR) makes patient’s personal information vulnerable to criminal activity such as theft and hacking. Healthcare industry often listed as one of the most likely suffer from personal information theft. According the data from Office for Civil Rights, Department of Health and Human Services (HHS) “over half of the population in the USA might have been affected by security breaches since Oct 2009” , moreover, “ medical records of at least 173 million of people, gathered since Oct 2009, have been breached and might have adversely influenced over half of the population in the USA” (Koczkodaj, W., et al, 2019). Health information breach is one of most concerning for patient and health care organization. Health data is usually very personal and often contain information patient wants to keep confidential, for instance mental health record, or potentially can affect patient’s job prospects or insurance coverage such as family history or chronic condition. Also, health information is a lifelong unlike stolen credit or debit card where individual can call bank and deactivated it, medical history stays with patient for lifetime. Health record is comprehensive, health organization often collect not only medical data but also financial information, insurance, social security number, personal home address, phone numbers, and names of family members which can be easily monetized by cybercriminals in multiple ways.

The Health Insurance Portability and Accountability Act (HIPAA) signed into law in 1996 by President Bill Clinton establishes federal protection of personal information and provide guidance of how Personal Identifiable information (PII) should be protected by healthcare workers and healthcare organizations. The privacy rule under HIPAA provide protection of personal health information and balanced to avoid potential interruption in delivery of quality care (HHS, 2013). Any spoken, written, and digital health information that potentially able to identify individual and related to patient’s past or present medical information, health coverage policy, current or future payments for health services and personal financial information are covered under Privacy Rule. All members of healthcare team members, health organizations and business involved in providing care require to protect patient’s Personal Health Information (PHI). Case manager nurses have obligation to protect patient private information, explain to patient his or her rights for confidentiality and clarify circumstances when patient’s Protective Health Information (PHI) can be released to third party. In order to provide quality care case manager nurse as a part of multidisciplinary team requires accesses patient’s private information such as medical and family history, labs and diagnostics results, social security and insurance policy. All this information in one way or another important to provide continuity of care and patient who feel confident about safety of his or her PHI more likely will share it with provider. Case manager on a frontline of protecting individual’s data and must implanted best practice to safely hold PHI. There are some examples of effective and appropriate techniques case manager can adopt in own practice. For instance, case manager as any other member in health team should not share his or her passwords with any third party include other members of the team. Also, nurse must always log out from patient’s EHR if leave computer station and use only protected software approved by health organizations where case manager works. The usage of protected software includes not only EHR but personal communication with other team members about patient. Besides digital protection, case manager nurse must avoid discussion about patient in public places such as hall, elevator, cafeterias, and public transportation to prevent exposure of PHI to third party not involved in patient care. Nurse case manger should obtain patient’s consent before release any information related to patient to any third party include patient’s family.

Cultural competence is important part for nurse case manager to implement for providing quality care. The way how people communicate with each other and willing to share personal information are largely determined by individual’s culture. Some cultures are more open and usually promote freely share information among family members, others prefer keep information and not involved even close members of family in a process. Even though case manager must follow laws and practice guidelines, patient’s culture must be taken to account when discussing boundaries of sharing patient’s PHI. For instance, among Hispanic culture family is heavily involved in decision making and often paly as important social support. While discussing confidentiality rights, it is smart idea for nurse to identify beforehand which family members will allowed to access personal information and be involved in continuity of care.

**Standards of care and Practice**

Standard of practice can be divided by individual level and organizational. On individual level case manager nurse make decisions about own practice standards based on his or her educational, cultural, and ethical background. Personal ethical principles arise from education, life experience, societal influence and culture are primary tools in decision making process. Understanding own culture, identify potential biases, acceptance of diversity, and general culture competence are necessary for case manager nurse to provide quality care and build trust with patient. The high level of subjectivity, lack of standard organization, and difference in understanding and interpretation of ethical principles among different cultural groups make necessary for professional governing bodies create organizational standards of practice. For instance, the American Nursing Association (ANA) defines standards of practice for register nurses, identify scope of practice, and describe competences nurses must perform (Brunt, B., 2019). The organization serves as a guideline for register nurses, describe role of nurses in healthcare team and enable nurses ‘practice of full extent of their license and education. In same way as register nurses, case mangers created own governing body to establish standard of practice for case managers professionals. The Case Management Society of America (CMSA) is governing organization to determine standard of practice for case professionals. In 2016 CMSA released guidelines for case management industry which “identify and address important foundational knowledge, skills, and competencies for the professional case manager within a spectrum of case management practice settings, specialties, and health and human service disciplines” (Case Management Society of America,2016). Main roles of organization to navigate case manager professionals to deliver quality care and protect professional role of case managers. The standards reflect current challenges in industry which interfere with nurse case manager practice and provide future solution to improve delivery of care. Some of these solutions are: “Minimizing fragmentation in the health care system, application of evidence-based guidelines in practice to promote collaborative care coordination, navigating transitions of care, and incorporating adherence guidelines and other standardized practice tools”, moreover, “Expanding and maximizing the contribution of the interprofessional collaborative health care team to planning care and services for individuals, improving the experience of those who are the recipients of professional case management services, and ensuring safe, quality and cost-effective outcomes” ((Case Management Society of America,2016).

**Informed consent and patient’s rights**

The idea of informed consent to protect patient from harm and provide necessary information about procedure or plan of treatment patient require to make informed decision. The informed consent is a form of communication between patient and provider. During this communication process physician and nurse must assess patient’s ability to make informed decisions, understand relevant medical information, and present information accurately and sensitively. Information needs to be included in inform consent are diagnosis, origins and goals of recommended intervention, and relation of burden, risks, and benefits from recommended treatment (American Medical Association, n.d). Patient must approve any new treatment such as medication regiment, surgery, interventional procedures either diagnostic or therapeutic. Case management nurse responsibility is to act as patient advocate and make sure all actions perform for patient’s benefit. Nurse clarify patient’s understanding of procedure, assess if additional information, clarification, and alternative options require, and witness patient signature. Patient has right to ask any additional question about treatment, request second opinion, and change his or her decision any time even after sign consent.

The informed consent is fundamental part of patient rights. The concept of patient rights was formally authorized in 1948 by Universal Declaration of Human Rights which recognizes dignity and equal rights of all humans across the globe (World Health Organization, 2010). Patients have right to be inform about their conditions and all available treatment options, moreover, any options provided to patient must be exclusively for patient benefits. In addition, patient has right to refuse any intervention or request second opinion, leave or transfer to another facility. Accesses to patient’s personal information requires permission and such information protected by confidentially law. Patient has right to obtain copy of his or her medical record and choose person responsible for medical decisions in the moment patient would not be able to do it himself. The role of case manager to inform patient about his or her rights, clarify misconceptions and serve as patient advocate to promote patient’s autonomy. Nurse monitor that patient receive care which is free of any discrimination and with dignity and respect for personal religious and cultural beliefs. All information provided to patient must be done with respect to patient culture and in language understandable to patient. Case manger nurse must be culturally competent because “Cultural and linguistic differences may impede access to health care, accurate diagnosis, and effective treatment”, moreover, “ The culturally competent nursing approach was suggested as the most appropriate way to minimize these difficulties” (Berenson, A., & Khalaila, R.,2014). The responsibility of nurse to make sure patient understand his or her rights and provide translational services if language barriers exists.

**Theories of negligence**

Negligence is an act of omission of a nurse to perform his or her duty and usually happens when nurse fails to provide expected care for patient. There are four elements must be present in negligence with following consequences, first nurse must own professional duty to provide care for patient. When nurse fails to perform professional duty, it is considered breach of duty. Breach of duty need to result in injury and injury results in causing health damages or death. The ANA thorough policy development and action implement code of ethics for nurse and this code is central foundation which guide nurses to make professional decisions by performing their professional duty (Jacoby, S., & Scruth, E.,2017). The example of professional negligence in nursing practice is malpractice. The standard definition of malpractice is failure to provide care what reasonably have been done by another nurse under same circumstances (Jacoby, S., & Scruth, E.,2017). According code of ethics professional negligence include failure to recognize incompetent, unethical, illegal, or impaired practice that places patient at risk (Jacoby, S., & Scruth, E.,2017). For instance, while providing instructions about medication regimen to patient from different culture, nurse failed to identify language barriers and did not provide translation services for patient. Unable to properly understand instructions patient failed to follow therapy and was readmitted to facility in next 48 hours. Nurse’s responsibility to provide culture competent care for patient and eliminate barriers which can prevent recovery or can potentially harm patient.

**Legal issues in nursing case management**

Case Study:

“Angelica Heavner, 41, went to the hospital emergency room for treatment of jaw and head pain. A hospital employee placed an IV into Heavner’s metacarpal vein on her right hand. The insertion of the IV caused her to develop a blister at that site, plus burning and stinging pain. The IV was not removed immediately. Heavner developed complications and was later diagnosed with having complex regional pain syndrome (CRPS) of the right hand, which necessitated medication and a spinal cord stimulator. CRPS, or reflex sympathetic dystrophy syndrome, causes chronic pain in patients who have contracted it. The cause of CRPS is varied. In some cases, the cause of CRPS is the dysfunction in the central or peripheral nervous system. Heavner filed a lawsuit against the hospital, alleging its employee negligently inserted the IV, which resulted in nerve contact and thus was the cause of the CRPS. The lawsuit also maintained that the defendant’s failure to promptly identify the problem and remove the IV led to the chronic pain syndrome.” (Kreisman, R.,2016).

This example of professional negligence needs to be examined form few prospective and legal implications. First if IV insertion by nurse was done in negligent way and second if nurse failed to identify and address problem in timely manner. Form the information presented in the case there are no evidence nurse inserted IV improperly. Even though patient developed pain and other complications on insertion site, it is not necessary nurse’s fall. The IV complications such as infiltration and phlebitis may developed even after using correct technique of IV insertion and care. For instance, IV infiltration might be caused by patient move her hand and incidentally remove IV from vein into tissue space which could cause pain. The case does not provide enough information to determine if malpractice during IV placement was done.

Second part of the claim can be considered as professional negligence or malpractice. In this nurse failed to examine site of insertion and identify problem in timely manner which caused harm. According the protocol nurse must regular monitor insertion site for any signs of phlebitis or infiltration. When nurse identify signs of complications in this case pain and burning sensation, nurse had to asses patient conditions, stop therapy, and removed IV immediately. The inaction by a nurse caused delay of care which caused injury and complications. Such action is a form of breach of professional duty therefore match under definition of negligence.

**Conclusion**

For last few decades healthcare delivery system embraced by fundamental changes to transform the way medicine is practice and deliver. For the same period the role of case manger nurses drastically expanded and include clinical, administrative and legal responsivities. Today case managers serve not only as clinician, but they are in frontline to advocate for patient’s rights, safety and dignity. Technological development creates more demand for patient’s personal information protection and understanding legal risk management. These challenges require nurses proficiency and understanding of legal aspects of health care in order to practice on the top of their license and deliver quality care.

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