

Guiding principles for CARE Support

COMMUNICATION, APOLOGY AND RESOLUTION (CARE)

DEFINITION

CARE Support¹ is assistance for a patient who has experienced an unanticipated adverse event that requires immediate or near-term attention. It is designed to cover items that would not have been needed if the adverse event had not occurred. CARE Support is not compensation for the injury that was sustained, and should not be given in exchange for a release of the patient or family's right to pursue a claim or lawsuit. Compensation is part of the CARE resolution and occurs through a provider's malpractice insurer.

In response to an adverse event, a health care organization — separate from insurer(s) — may choose to make payment(s) or give other assistance to the involved patients or family members to support them in the short term.

FUNDING CARE SUPPORT

CARE Support undertaken by the facility itself² will require a budget. The organization should allocate funds that can be used by health care quality staff and/or those working directly with patients.

Typically the amount of such payments and the time period over which they are offered are limited in scope, but specific guidelines are lacking. A survey of CARE institutions in Massachusetts found that CARE Support ranged from \$10-\$3,000 with a time period of up to three months from the date of injury.

TYPES OF CARE SUPPORT

CARE Support aims to cover at least some portion of the incremental cost incurred by the patient or family members as a result of the adverse event. Such payments are made without respect to preventability and may reimburse for expenses already incurred or anticipated expenses. Examples include:

- Transportation to medical visits, including parking fees
- Medical visit charges
- Meals (at the hospital or in the community)
- Fees to obtain their medical records
- Childcare expenses to enable the patient to attend treatment sessions or other appointments
- Medical devices that help the patient maintain their treatment plan outside of the facility (i.e., CPM machine, fitness watch)

Non-financial CARE Support can also be used, and can be very valuable to assist patients who have experienced adverse events. This could include:

- Facilitating appointments with difficult-to-access specialists and community-based health related services
- Offering patient-family engagement opportunities (if and when they are ready to do so)

¹ The use of "CARE Support" was developed by the Betsy Lehman Center to replace the concept of "service recovery" as a more patient-centered activity that encompasses all that can be done to support patients after adverse events.

² Some insurers have separate no-fault "support" programs which can be used as CARE Support; see [Coverys's REACT Program](#).

OTHER IMPORTANT CONSIDERATIONS

Documentation

It is important to document the reasons for providing CARE Support in the patient's risk/safety file. Doing so will protect against any suspicion that the patient is being offered support as an inducement. Any payments made to facilitate access to care are part of a safe harbor permitted under relevant laws. The rationale for the payment should be written in your Patient Safety Evaluation System using language such as "we provided transportation for the patient so that he was able to have easier access to the care he needed following his adverse event."

Legal concerns

Organizations need to ensure that they are following all relevant laws and regulations about such payments. CMS guidelines and state regulations designed as anti-kickback provisions will need to be navigated.³ If there is any perception that payments have been made in part to induce or reward referrals of items or services reimbursable by a federal health care program, it could violate anti-kickback statutes. Having clear and transparent internal guidelines for how and when CARE Support is offered, and documenting why that support was given, can help mitigate this risk by making it clear that you are responding to injury and not inducing referrals.

Equity

Organizations should develop and follow explicit processes to guide such payments to ensure they are offering them equitably and consistently. In particular, it is important for organizations to decide whether they will offer such payments in all serious adverse event situations, only those that exceed a certain threshold of injury, or according to some other criteria that is appropriate given the CARE process algorithms. Achieving equity with such payments is particularly challenging because of the fact that when such expenses are most likely to be incurred, the facts of the case and the issues of the standard of care and causality are often not yet known with certainty.

Clarity around compensation for injury

In some cases, large payments made by organizations to patients or family members could be perceived as compensation for injury. Such payments could be perceived as evidence an error occurred and that the organization was liable. For example, this may be the case in situations where the amount of money is more than is reasonable for interim expenses or longer than the typical timeline for recovery from the specific injury. Receipts or estimates for purchases should also be obtained when possible.

Having clear and transparent guidelines about when and how such payments are made may help mitigate this risk, as can clearly documenting and stating the purpose of the CARE Support when offering it to the patient. It is also important that organizations have clarity around when to involve their insurer(s), and that they discuss the process of CARE Support with their insurer(s) before implementing it to ensure clear roles and responsibilities.

³ [Comparison of the Anti-Kickback Statute and Stark Law](#), Office of the Inspector General