



# Stanford's PEARL






## The Process for Early Assessment and Resolution of Loss

Jeffrey Driver, Esq.  
Chief Executive Officer



RISK AUTHORITY

## Learning Objectives

-  PEARL and the History of the PEARL Program
-  PEARL Program Design
-  PEARL Enhancements
-  PEARL Outcomes and Measures
-  Impact of CMS Requirements for Medicare Beneficiary related Medical Malpractice Claims

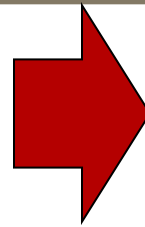
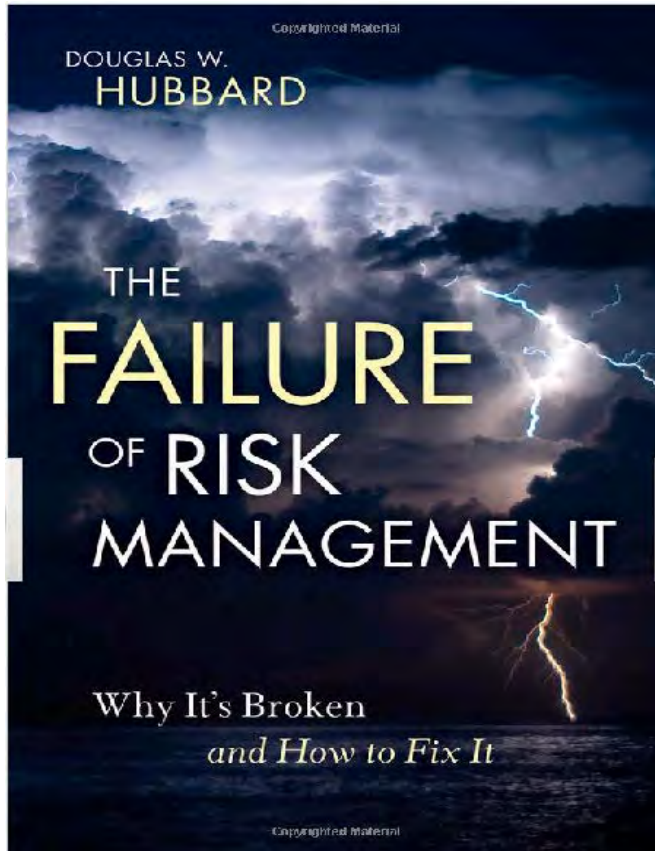
## The Disclosure and Resolution Program of the Stanford University Medical Network

# What is PEARL?

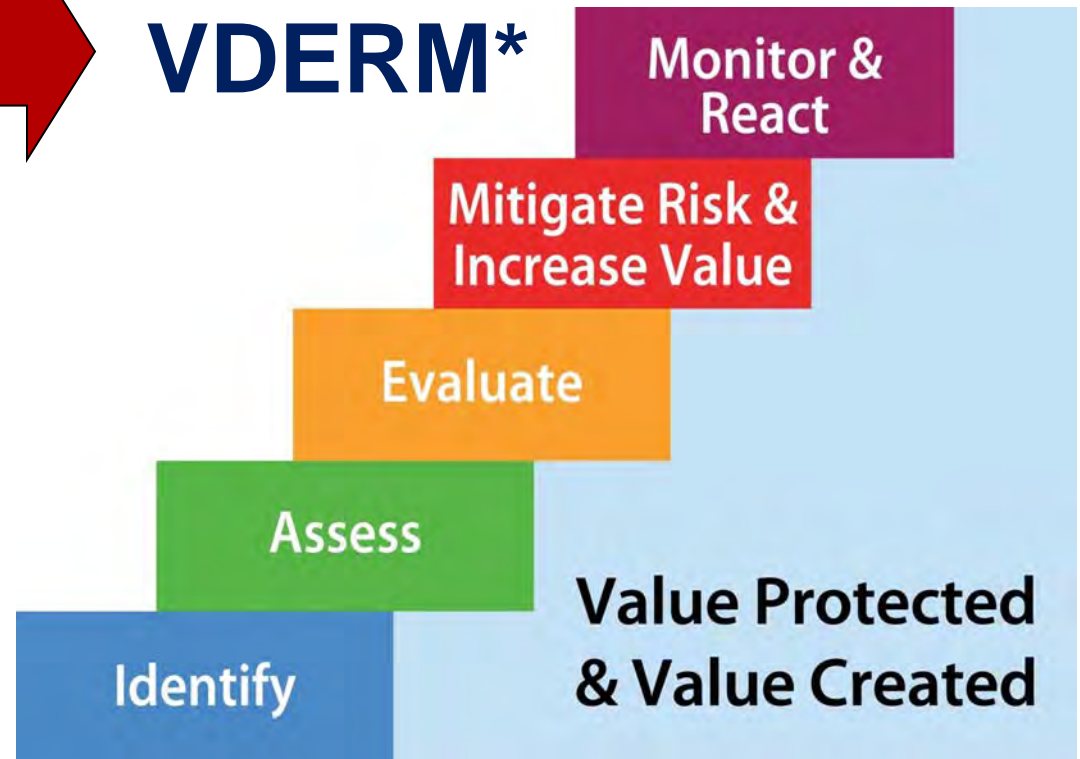
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# History of the PEARL Program

**PEARL is a Cornerstone of an Overarching Strategic Risk Management Practice**



**VDERM\***



\* VDERM = Value Driven Enterprise Risk Management  
ISO 31000 + Decision Analysis Science

## Stanford's Journey Into "Disclosure and Resolution"

- "Discreet and selective practice" began with in-house claims management (September 2005)
- Successes and failures analyzed
- Pioneering programs, observations, and peer reviewed research studied (VA, UM, COPIC, Harvard)
- SWOT assuming fully instituting a "full disclosure" approach
- Formal program launched along side of on-going Stanford and University of Washington research project (September 2007)
- Recent PEARL enhancements in 2012 (PEARL Patient and Family Site, Patient Advocate, Caring Conversations Simulation)



## Entering a Controversial & Pioneering Space

### MARKET WATCH

#### **Disclosure Of Medical Injury To Patients: An Improbable Risk Management Strategy**

Movement toward full disclosure should proceed with a realistic expectation of the financial implications and prudent planning to meet them.

**by David M. Studdert, Michelle M. Mello, Atul A. Gawande, Troyen A. Brennan, and Y. Claire Wang**

**ABSTRACT:** Pressure mounts on physicians and hospitals to disclose adverse outcomes of care to patients. Although such transparency diverges from traditional risk management strategy, recent commentary has suggested that disclosure will actually reduce providers' liability exposure. We tested this theory by modeling the litigation consequences of disclosure. We found that forecasts of reduced litigation volume or cost do not withstand close scrutiny. A policy question more pressing than whether moving toward routine disclosure will expand litigation is the question of how large such an expansion might be. [*Health Affairs* 26, no. 1 (2007): 215–226; 10.1377/hlthaff.26.1.215]



## Entering a Controversial & Pioneering Space

### MALPRACTICE

By Lindsey Murtagh, Thomas H. Gallagher, Penny Andrew, and Michelle M. Mello

# Disclosure-And-Resolution Programs That Include Generous Compensation Offers May Prompt A Complex Patient Response

DOI: 10.1377/hlthaff.2012.0185  
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The People-to-People Health  
Foundation, Inc.

**ABSTRACT** Under “disclosure-and-resolution” programs, health systems disclose adverse events to affected patients and their families; apologize; and, where appropriate, offer compensation. Early adopters of this approach have reported reduced liability costs, but the extent to which these results stem from effective disclosure and apology practices, versus compensation offers, is unknown. Using survey vignettes, we examined the effects of different compensation offers on individuals’ responses to disclosures of medical errors compared to explanation and apology alone. Our results show that although two-thirds of these individuals desired compensation offers, increasing the offer amount did not improve key outcomes. Full-compensation offers did not decrease the likelihood of seeking legal advice and increased the likelihood that people perceived the disclosure and apology as motivated by providers’ desire to avoid litigation. Hospitals, physicians, and malpractice insurers should consider this complex interplay as they implement similar initiatives. They may benefit from separating disclosure conversations and compensation offers and from excluding physicians from compensation discussions.

**Lindsey Murtagh** is an associate at the law firm Hogan Lovells, in Washington, D.C.





**Thomas H. Gallagher** is a professor in the Department of Medicine and the Department of Bioethics and Humanities at the University of Washington, in Seattle.

**Penny Andrew** is the clinical lead for quality at the Waitemata District Health Board, in New Zealand.

**Michelle M. Mello** (mmello@hph.harvard.edu) is a professor of law and public health in the Department of Health Policy and Management and director of the Program in Law and Public Health at the Harvard School of Public Health, in Boston, Massachusetts.



## Overview of the Stanford Approach in the Disclosure and Resolution Space

-  Once Optimistic and Cautious, now Convinced and Careful
-  Heavily influenced by the Stanford research mission
-  Quest to isolate and determine individual and overall *PEARL* outcomes and their success drivers
-  Annual independent actuarial monitoring and outcomes studies

The Disclosure and Resolution Program of the Stanford University Medical Network






# PEARL Program Design

## How we Describe PEARL: A Hybrid Values & Claims Centric Model






- *PEARL* is values and principles based – as well as smart business practice
- *PEARL* promotes transparency, integrity, fairness, and healing
- *PEARL* is consistent with insurance company stewardship principles
- *PEARL* distinguishes between anticipated outcomes, unanticipated outcomes, and *preventable* unanticipated outcomes (PUO's)








## How does *PEARL* work?

-  *PEARL* provides around-the-clock telephonic consultation for “*concerning outcomes*”
-  Consultation is provided by trained “*PEARL Risk & Claims Advisors*” acting within approved insurance company protocol
-  *PEARL* embraces and builds upon any disclosure policy
-  *PEARL* utilizes “*Just-In-Time*” expert coaching
-  *PEARL* is always initially focused on “*assessment*” to determine if the medical outcome is a PUO




## How does *PEARL* approach a PUO?

-  Once a PUO is established, the *PEARL Risk & Claims Advisor* will coach selected spokesperson (hospital and/or physician) on:
  -  Full disclosure
  -  Communicating lessons learned
  -  Approaching needs assessment
  -  Listening









## Five *PEARL* Instructions

-  Stabilize patient
-  Take all necessary actions to promote patient safety
-  Call *PEARL Risk & Claims Advisor* ASAP, but < 4 hours after PUO
-  Proceed with documenting the patient's care after speaking to your *PEARL Risk & Claims Advisor*
-  Record *PEARL Risk & Claims Advisor* name and phone number as exclusive contact regarding PUO, unless instructed otherwise

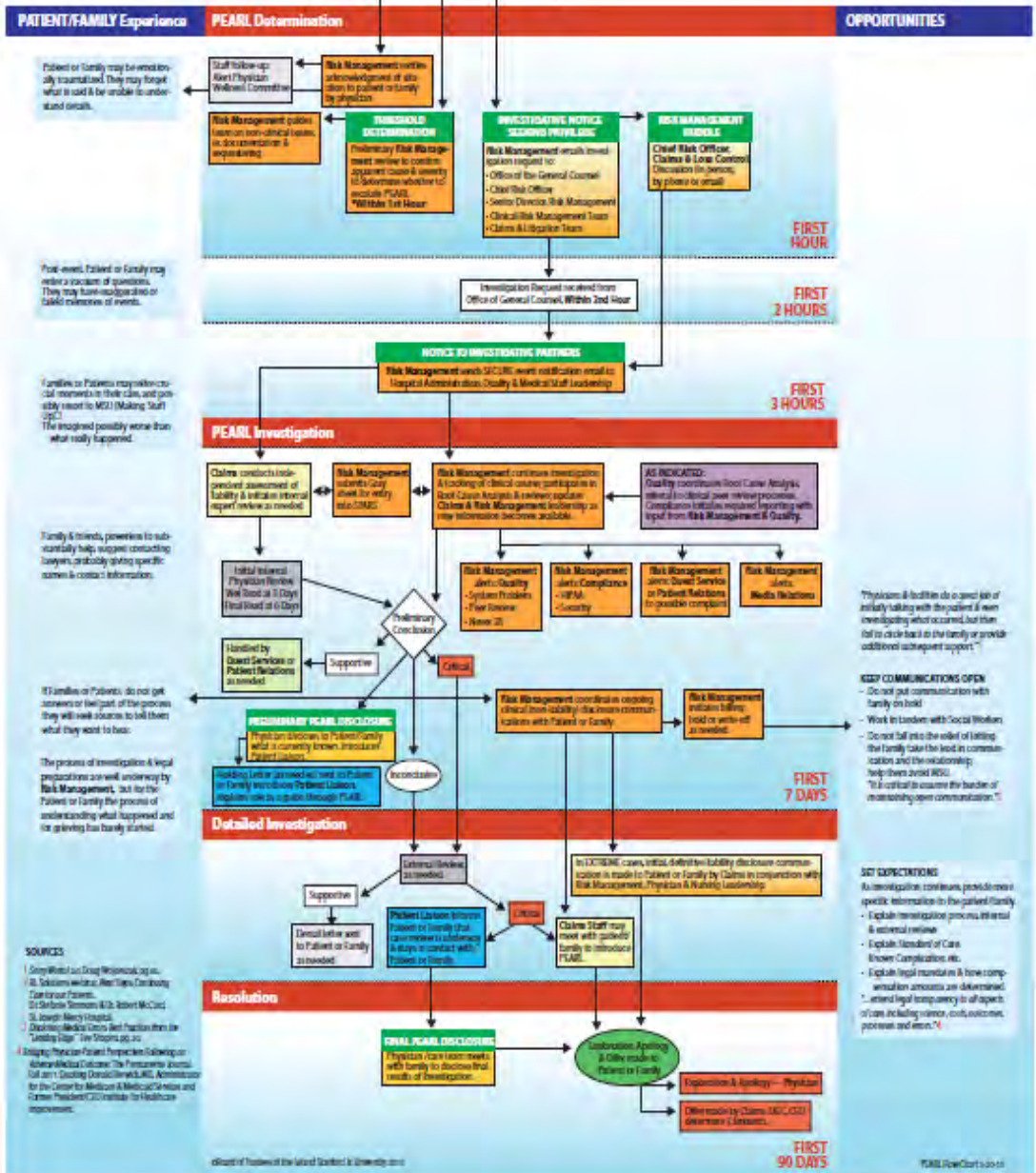
## Three *PEARL* Cautions

-  Do not jump to conclusions
-  Do not blame or accuse others
-  Never make promises or offer to waive bills or make offer of compensation without express approval of *PEARL Risk & Claims Advisor*

## PEARL 7- Day Investigatory Process Flow

-  Threshold Determination
-  Investigative Notice
-  Risk Management Huddle
-  Notice to Investigative Partners
-  Concurrent Quality, Risk and Claims Investigation
-  3-Day “Wet-Read”
-  6-Day “Final-Read”
-  Pearl Conclusion and Follow-up



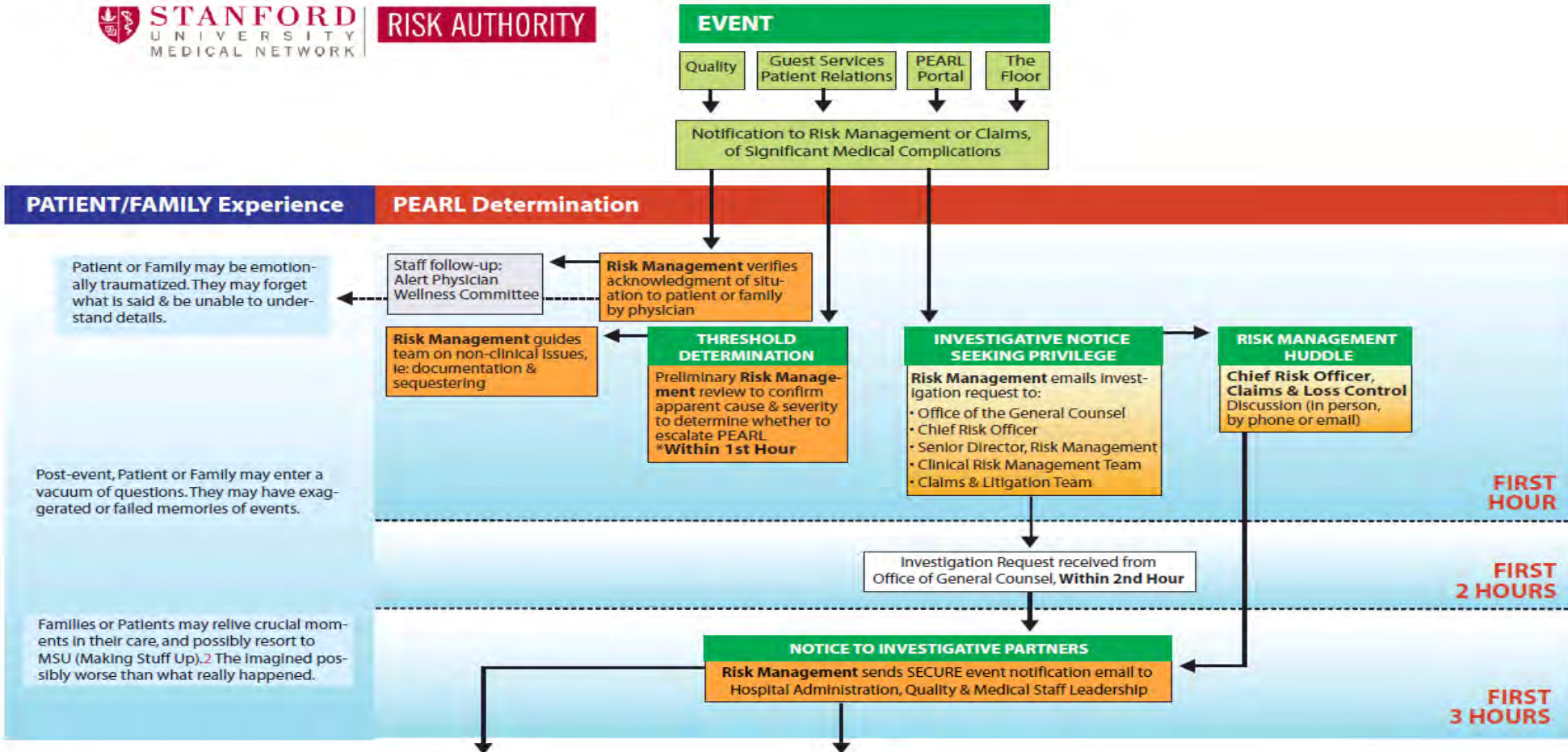


## PEARL Process

To receive a copy of the PEARL process diagram, please contact: [riskmanagement@stanfordmed.org](mailto:riskmanagement@stanfordmed.org)



The PEARL Process





The PEARL Process

**PATIENT/FAMILY Experience**

Family & friends, powerless to substantially help, suggest contacting lawyers, probably giving specific names & contact information.

*"Physicians & facilities do a great job of initially talking with the patient & even investigating what occurred, but then fail to circle back to the family or provide additional subsequent support."*<sup>1</sup>

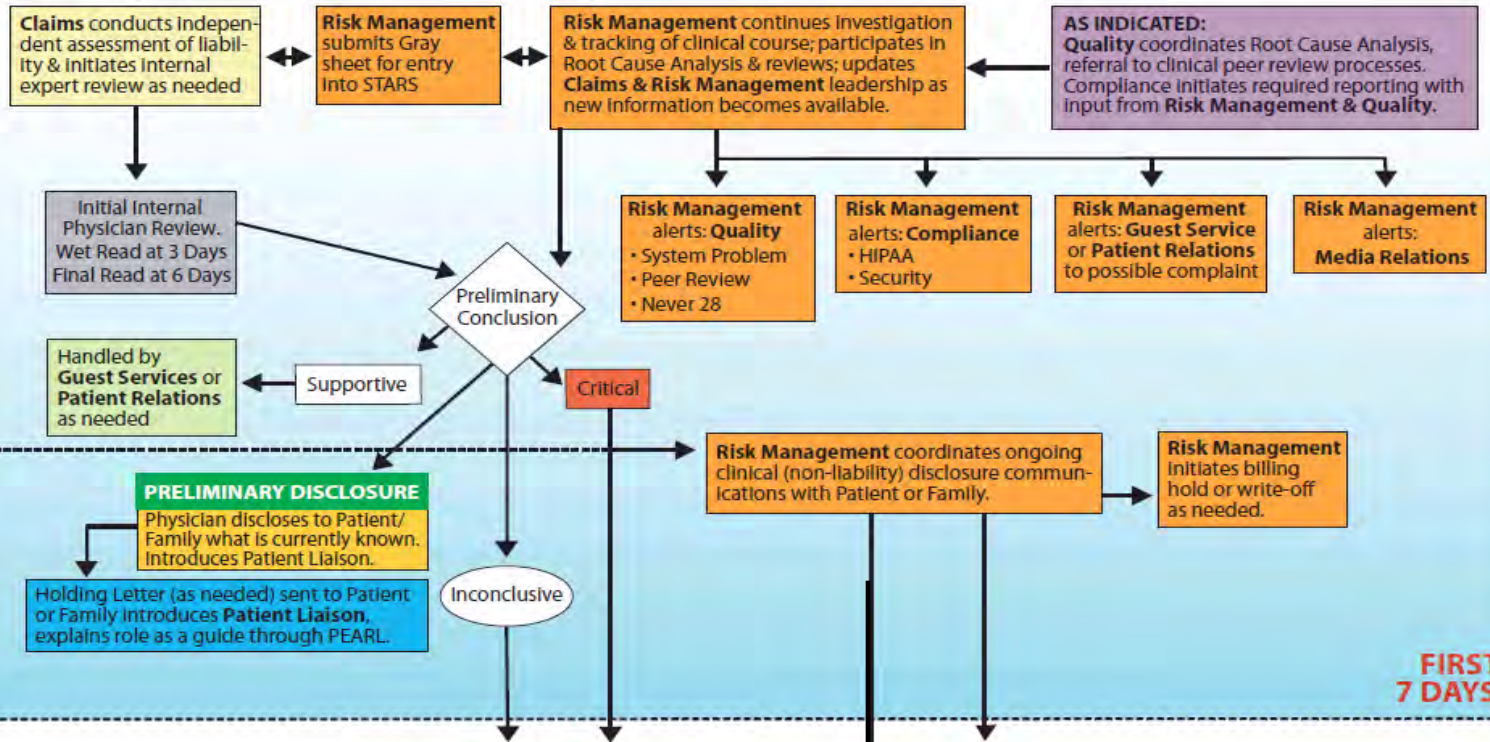
**KEEP COMMUNICATIONS OPEN**

- Do not put communication with family on hold
  - Work in tandem with Social Workers
  - Do not fall into the relief of letting the Family take the lead in communication & the relationship; help them avoid MSU.
- "It is critical to assume the burden of maintaining open communication."*<sup>3</sup>

If Families or Patients do not get answers or feel part of the process they will seek sources to tell them what they want to hear.

The process of Investigation & legal preparations are well underway by Risk Management, but for the Patient or Family the process of understanding what happened and or grieving has barely started.

**PEARL Investigation**



**FIRST 7 DAYS**

The PEARL Process

**PATIENT/FAMILY Experience**

**Detailed Investigation**

**SET EXPECTATIONS**

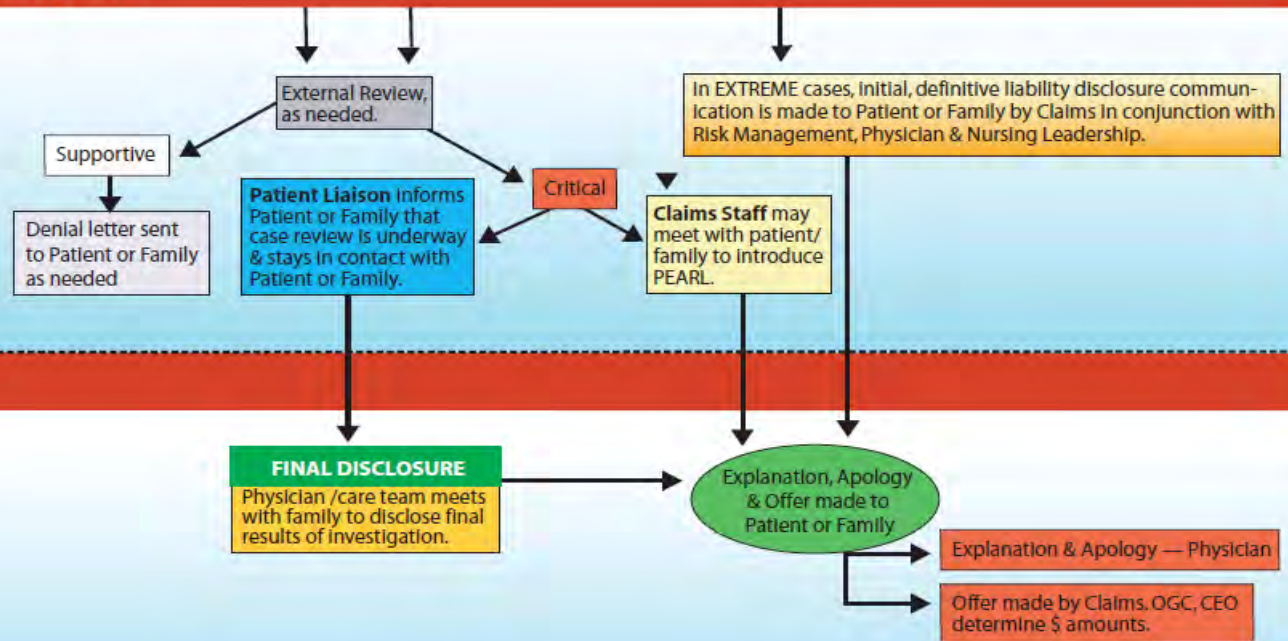
As Investigation continues, provide more specific information to the patient/family.

- Explain investigation process, internal & external reviews
  - Explain *Standard of Care*, *Known Complication*, etc.
  - Explain legal mandates & how compensation amounts are determined.
- "...extend legal transparency to all aspects of care, including science, costs, outcomes, processes and errors."<sup>4</sup>

**SOURCES**

- 1 *Sorry Works! 2.0*, Doug Wojcieszak, pg 40.
- 2 RL Solutions webinar, *Next Steps: Continuing Care for our Patients*. Dr. Stefanie Simmons & Dr. Robert McCurd, St. Joseph Mercy Hospital.
- 3 *Disclosing Medical Errors: Best Practices from the "Leading Edge."* Eve Shapiro, pg. 20.
- 4 *Bridging Physician-Patient Perspectives Following an Adverse Medical Outcome*. The Permanente Journal, Fall 2011. Quoting Donald Berwick, MD, Administrator for the Center for Medicare & Medicaid Services and Former President/CEO Institute for Healthcare Improvement.

**Resolution**



**FIRST  
90 DAYS**

## How does *PEARL* approach a settlement offer?

- Once a family needs assessment is done, the *PEARL Risk & Claims Advisor* will authorize an early offer for discussion with patient and/or family
  - Offers are based on needs assessment
  - Offers are up to full indemnity reserve valuation\*
  - Settlement agreement required and use of counsel encouraged
  - Minors compromise is sought (California)
  - *Sponsored* mediation on case-by-case basis

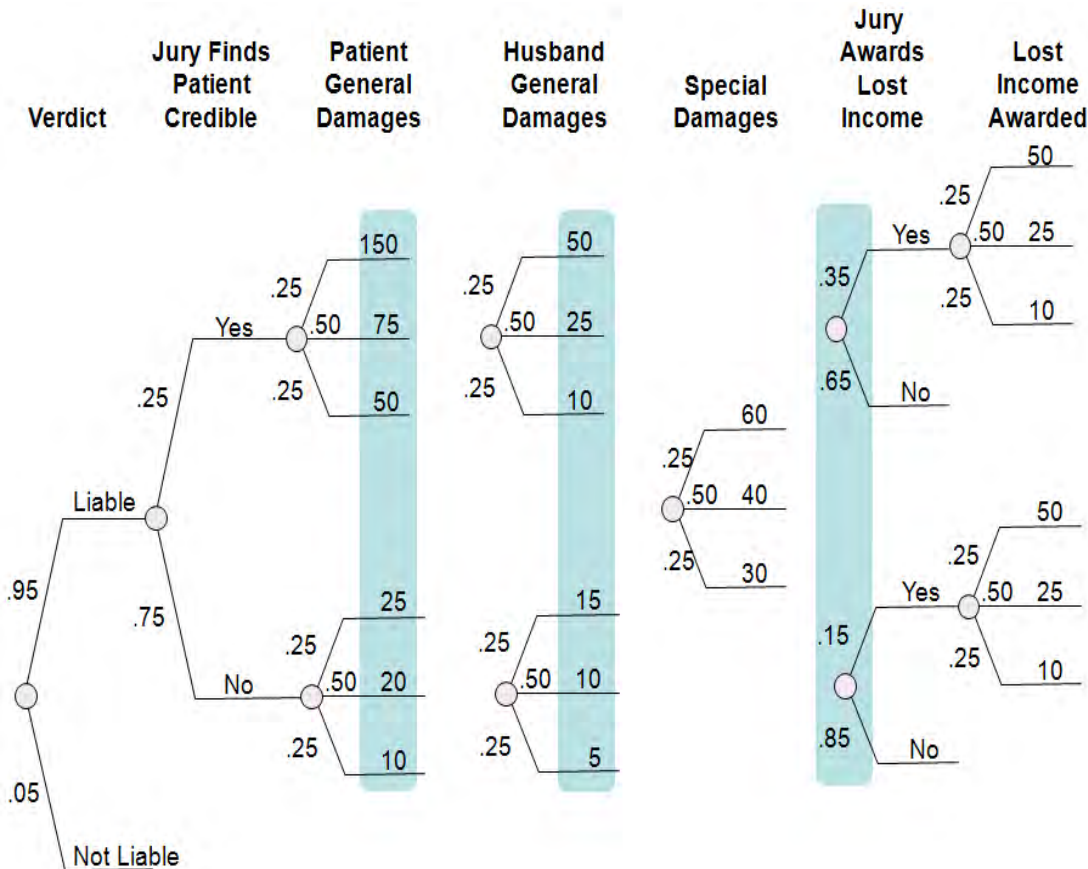
\*Utilizing DART Process

## Decision Analysis Reserve Targeting



Provides a theoretically sound, proven, systematic, transparent and defensible process for setting loss reserves which fully considers the uncertainty inherent in each case and which makes full use of experience and judgment.

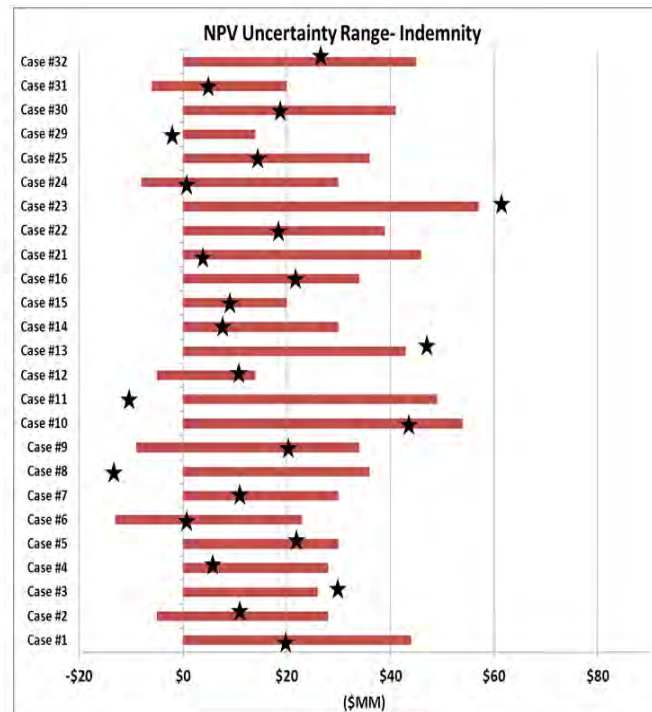
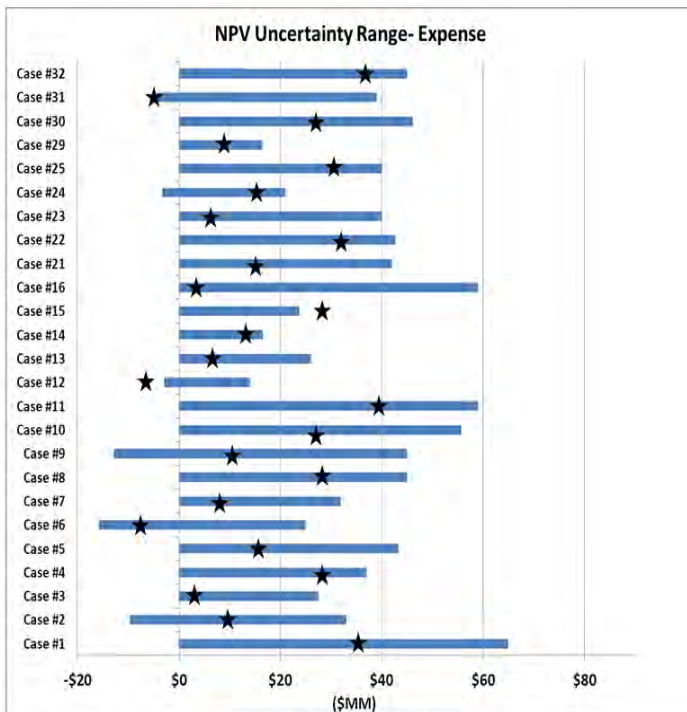
## Decision Analysis Reserve Targeting



DART applies to all PEARL cases and high-value cases where the amount of indemnity and expense reserves are over \$25,000

## Decision Analysis Reserve Targeting

### “Forecasted vs. Actual” Total Incurred Values



Provides a means of evaluating process validity and quality and assuring both on an ongoing basis.

< Not actual data  
For illustration only



The Full Disclosure Program of the Stanford University Medical Institutions

# PEARL Enhancements



**Stanford's PEARL Patient and Family Portal**

**Website**

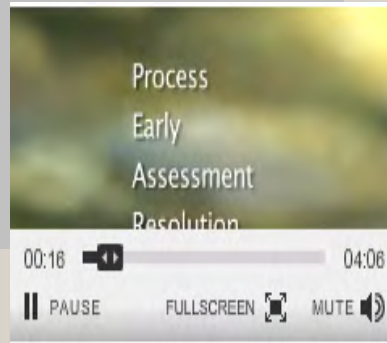


**OVERVIEW AND DESCRIPTION OF PEARL PROCESS**

**WHAT PATIENTS CAN EXPECT**

**HOW TO ACCESS PEARL**

**Video**



**2 MINUTE HIGH-LEVEL OVERVIEW OF PEARL AND HOW TO ACCESS**

**FEATURES PATIENT LIAISON**

**CONNECTS PEARL TO HOSPITAL MISSION AND VISION**

**Assessment**



**ASSESSMENT HELPS PATIENTS DETERMINE IF THEIR CONCERN IS A PEARL**

**IF NOT A PEARL, PATIENTS ARE REFERRED TO GUEST SERVICES FOR TIMELY RESPONSE**

**Brochure**

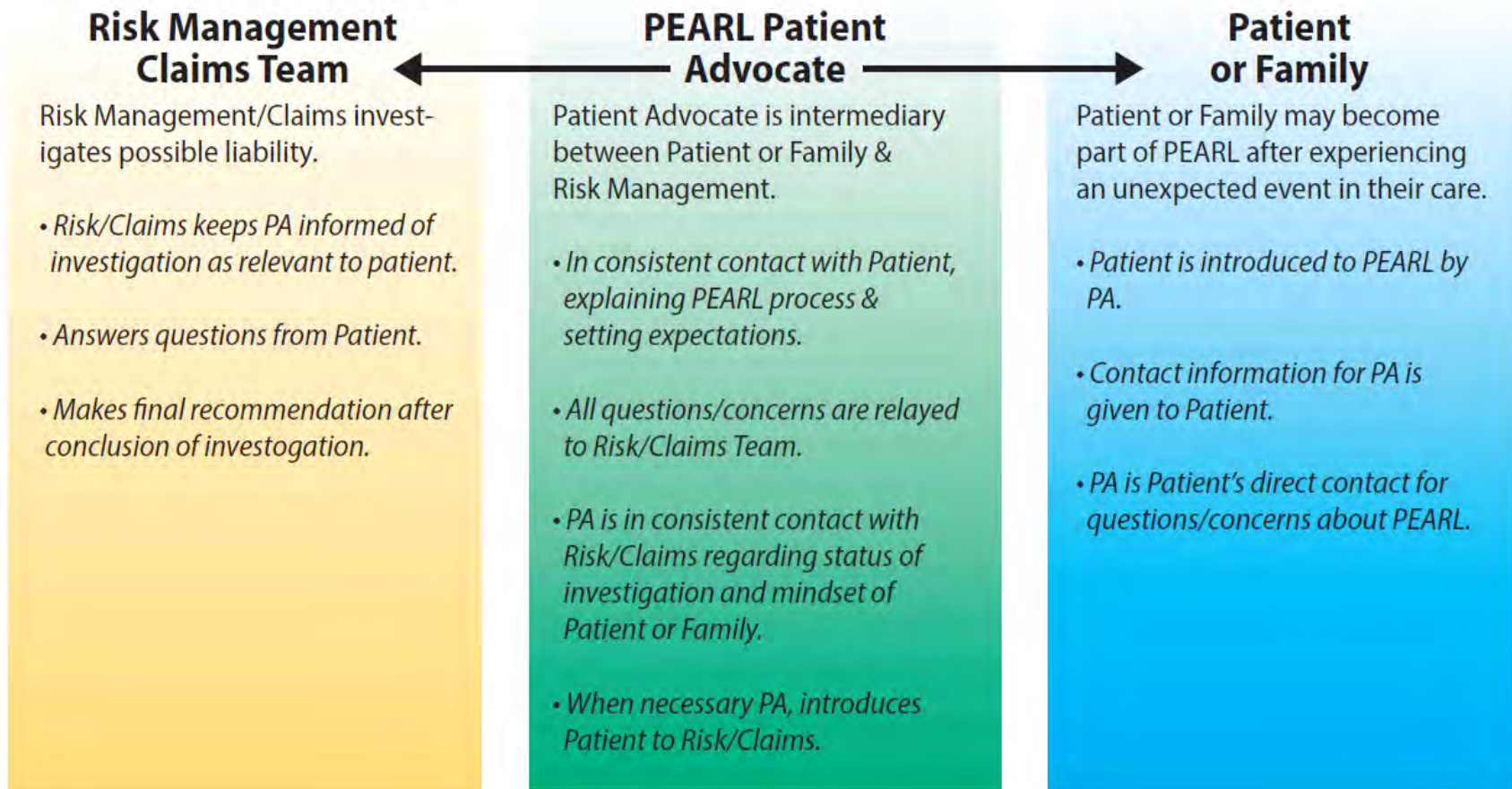


**DESIGNED FOR PATIENTS AND THEIR FAMILIES**

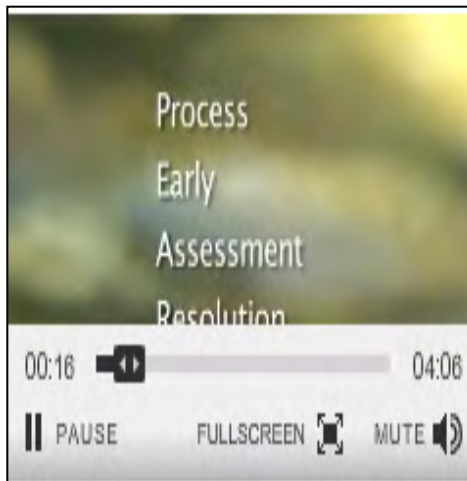
**SUMMARIZES THE PEARL PROCESS**

**DESCRIBES HOW PATIENTS CAN ACCESS**

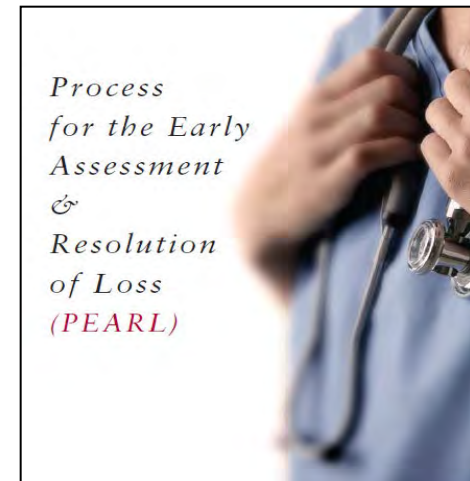
## Emerging PEARL Communication Model



## PEARL Patient and Provider Education



**PEARL Patient  
and Family Video**



**PEARL Physician  
Education Video**

## Caring Conversations Simulation Project



What is the best way to communicate with patients and families after determining a PEARL result?

How can we build an atmosphere of trust with patients after a disclosure?

## Caring Conversations Simulation Project

### **Goal:**

To develop a framework of successful methods for approaching post-disclosure conversations with patients & families through use of fully developed & tested simulations.

### **Process:**

Use actors and scenarios to 'play-out' after disclosure discussions with patients & families to find the responses that are most helpful.

### Two Scenarios:

- Medication allergy procedure is not followed
- Medication allergy is not anticipated

















**Simulation Video**

The Disclosure & Resolution Program of the Stanford University Medical Institutions

# PEARL Outcomes and Measures

## 15+1 *PEARL* Outcomes Measures





-  Expenses paid
-  Indemnity paid
-  Case reserves
-  Comparison of Paid v. Reserved
-  Pending lawsuits
-  Case open time
-  Physician well-being
-  Patient satisfaction/distress
-  Physician satisfaction/distress
-  SUMIT staff satisfaction
-  Patient forgiveness
-  Time of report/recognition
-  Report to NPDB & CMB
-  Corporate morale/Culture
-  Resolution method



## PEARL Results

Metric	Desired Result	Observed Result	Comment
Reporting Pattern	Faster	Unchanged	Average incident to report lag is one year
Frequency	Lower	Lower	Annual reported claims dropped from 23 to 15
Closing Pattern	Faster	Inconclusive	Small number of closed claims
Severity	Lower	Inconclusive	Some large post-PEARL closed claims
Overall Cost	Lower	Lower	<b>38% reduction over 5 years</b>

## Lessons Learned

-  Prompt evaluation of patient concerns and appropriate intervention is critical
-  Education and training is an important component to *PEARL* success
-  Information is power
-  Early investigations pay dividends in warding off and defending claims, as well as reducing claims expenses



# **New CMS Requirements for Medicare beneficiary related medical malpractice claims**

## Impact of New CMS Requirements on Disclosure and Resolution Programs

- MMSEA does not change the underlying and already existing responsibility of the patient to pay for any outstanding medical liens at the time of settlement of a claim
- CMS continues to modify their rules, but as written MMSEA only requires the settling party to give formal notice of the settlement
- Current release language should always include a paragraph that states that the patient has sole responsibility for satisfying any liens that may exist, medical or otherwise, whether known or unknown
- Consider including a sentence in settlement releases that informs the plaintiff of MMSEA reporting and reiterate the fact that the patient will have the sole responsibility to satisfy any liens that may exist, now or in the future



## Impact of New CMS Requirements on Disclosure and Resolution Programs

-  Anticipate plaintiffs being much tougher to settle, unless the hospital agrees to pay a specific amount in settlements that represents the value of the medical lien. Plaintiffs already make this argument, but the settling parties rarely respond to such, in part due to the fact that we all know historically that the liens have not been enforced, or have been significantly discounted.
-  If Medicare becomes more serious about enforcing liens, anticipate plaintiffs to become more serious about refusing a settlement that does not satisfy the amount of the lien.



## Tracking Our Progress



**To stay current on PEARL's progress  
and find public information,  
visit our website at:**

**<http://theriskauthority/resources/>**



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## The Process for Early Assessment and Resolution of Loss

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**STANFORD**  
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