

#### The Third Annual CARe Forum

Massachusetts Medical Society May 19, 2015

# Forum Objectives

- Describe the steps to successfully resolve a case of medical harm using the CARe approach, and the benefits for patients, clinicians and their attorneys.
- Describe the changes to the process of handling adverse events for risk managers in institutions that have adopted the CARe program, some of the challenges they face day-to-day, and ways to overcome those challenges.



#### MACRMI and CARe: What's New Overview, accomplishments and new resources





Alan Woodward, M.D. and Melinda Van Niel, M.B.A.



- Overview of CARe Concept
- Brief History of CARe/CRPs and MACRMI
- Accomplishments in the past year
- New Resources





#### What is CARe and why is it valuable?

# What is Communication, Apology, and Resolution (CARe)?

- **Communicate** with patients and families when unanticipated adverse outcomes occur, and provide for their immediate needs.
- Investigate and explain what happened.
- Implement systems to avoid recurrences of incidents and improve patient safety.
- Where appropriate, apologize and work towards resolution including an offer of fair compensation without the patient having to file a lawsuit.



# **Principles of CARe**

- Compensate patients quickly and fairly when unreasonable medical care caused injury.
- If the care was reasonable or did not adversely affect the clinical outcome, support caregivers and the organization vigorously.
- Reduce patient injuries (and therefore claims) by learning through patients' experiences.

"Nurturing a Culture of Patient Safety and Achieving Lower Malpractice Risk Through Disclosure: Lessons Learned and Future Directions." Boothman, et al; Frontiers of Health Service Management 28:3; study at the University of Michigan Health System



# **Communication is Key**

- The CARe program is first and foremost about communication.
- Communicating with a patient in an ongoing way when something doesn't go as expected, whether or not it was an error, is <u>essential.</u>
- Empathy in the communication is also important we should always say we're sorry when there is a negative outcome for the patient. It is a human reaction and 100% encouraged!



# Advantages (Transformational)

Reactive

Adversarial

Culture of secrecy

Denial

Individual blame

Patient/MD isolation

Fear

**Defensive medicine** 

- Proactive
  - Advocacy
  - Full disclosure / transparency
- Apology (healing)
- System improvement
- Supportive assistance

Trust

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Evidence-based medicine



# Defining a CARe Insurer Case

In CARe, if a Internal Quality Team determines that...

- The standard of care was not met, AND
- The unmet standard of care caused significant harm to the patient

...efforts are made to apologize and resolve, and the case **moves** to the Insurer to for possible compensation.

If it does not meet the criteria, we communicate with the patient about the findings, and may offer service recovery.





#### What helps CARe succeed?

- Leadership buy-in
  - Administration, Medical Staff, and Insurers
- Baseline culture of safety
  - Root cause analysis and safety improvement
- Staff
  - Program manager (if large facility)
  - Commitment from and integration of risk management and patient relations
- Support
  - Clinician Peer Support & Patient resources
  - Larger Community of like-minded institutions





How did we develop CARe and MACRMI?

# CRP History through 2012





### AHRQ Planning Grant - Roadmap

#### Top five significant barriers identified

- 1. Charitable immunity law
- 2. Physician discomfort with disclosure & apology
- 3. Attorneys' interest in maintaining status quo
- 4. Coordination across insurers
- 5. NPDB or state reporting requirements

#### Strategies to overcome barriers

- Enabling legislation
- Education programs
- Leadership
- Best Practices
- Collaborative working groups
- Data collection and dissemination



# **Implementation: Initial Efforts**

- Released Roadmap / Media Campaign
- Enacted Consensus Enabling Legislation
- Assembled our Alliance (MACRMI) & CARe
- Secured local funding
- Established Pilot Programs in varied sites
- Launched Website
- Developed comprehensive resources
- Hosted Annual Forums
- Clarified reporting requirements



#### Liability Reform Provisions of Ch. 224

- Six Month Pre-Litigation Resolution Period\*
- Sharing all Pertinent Medical Records\*
- Apology Protection unless contradictory\*
- Full Disclosure significant complication\*
- Pre-judgment Interest Reduction T+2
- Charitable Immunity Cap Increase 100k

Signed into law as part of Chapter 224 - Payment Reform Legislation; Effective November 5, 2012

\* MMS, MATA & MBA Consensus



Massachusetts Alliance for Communication and Resolution following Medical Injury



# **Funding for Implementation**

- Applied for AHRQ \$3M / 3Yr Demonstration Grant
  - \$50M in ACA no appropriation
- Local sources of funding:
  - CRICO and BHIC (insurers for pilot sites)
  - Blue Cross Blue Shield of MA, Harvard Pilgrim Health Care, Tufts Health Plan
  - Coverys, Mass Medical Society & Reliant



#### **Recent Accomplishments**

What we've been up to since May 2014

#### Accomplishments: Year 3

- Continued working to clarify NPDB reporting criteria
- Work to disseminate the CARe model in MA and nationally
- Continued to collect data for CARe Study on outcomes and implementation
- Facilitated CARe Educational Forum for Attorneys
- Began collecting data for Provider Study on perceptions of the CARe process at pilot sites
- Developed multiple new resources



### **NPDB** Update

#### NPDB Clarification statement by HHS Secretary –

"Only medical malpractice payments resulting from a written demand are required to be reported. If an individual makes a claim or demand for payment only in a non-written form (e.g. phone, interpersonal conversation), any payment made to settle this claim is not reportable to the NPDB"

 For Systems Issues, payments made on behalf of the institution rather than for an individual are likewise not reportable.



# MA dissemination

- Added Sturdy Memorial Hospital and Atrius Health as new official pilot sites
- Interest from many other MA organizations who are in the process of going through our Preparatory Checklist







# National Efforts

- Collaborative for Accountability and Improvement (CAI) has come together to work on National Implementation of CRPs
- National Patient Safety Foundation working to better understand how they can disseminate the model
  - Held exploratory forum in January, and featured CARe Model at their National Conference



### **Recent Media**

- Urgent Matters Podcast; Sands, Woodward
- "The Michigan Model" for Malpractice Reform; Wall Street Journal; Kachalia
- Should Malpractice Settlements Be Secret?; JAMA; Catalano, Mello
- Malpractice Reforms Offer More Open Process in Massachusetts; Kaiser Health News; Andrews
- How Policy Makers Can Smooth The Way For Communication-And-Resolution Programs; Health Affairs; Mello, Sage Woodward





Developed by MACRMI, for you!

#### Resources developed since May 2014

- Best Practices for Patient Representation (for Healthcare Facility use)
- Best Practices for Attorneys Representing Patients
- Best Practices for Attorneys Representing Providers
- Recorded CARe Education Forum for Attorneys
- Comprehensive CARe Implementation Guide
- Handout: Unexpected Medical Outcomes: Information for Patients



### Best Practices for Patient Representation

- Patients are encouraged to seek legal representation during discussions of resolution
  - Resource designed for healthcare facilities with assistance from the HNMCP
- Need Legal Community Buy-in
  - Providing attorneys with information about CARe and its benefits will help resolve cases early and collaboratively





# **CARe Seminar for Attorneys**

- Goal: to educate attorneys about the CARe process
  - Attorneys (for plaintiffs and defense) and healthcare providers were on the panel to discuss the benefits of the program
  - Program was recorded and available free online
  - <u>http://www.massbar.org/cle/mba-on-demand?k=3760&kp=3759</u>







#### Best Practices for Attorneys Representing Patients and Providers

- MBA and MACRMI jointly developed Guidelines for Attorneys representing patients or providers in the CARe process
- Vetted by appropriate section councils of the MBA, panel members, and audience at CARe Seminar for Attorneys

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#### New website section for Attorneys

#### FAQs

- What is CARe?
- What are the advantages of CARe?
- What is evidence that it works?
- What current laws support the CARe approach?

For **Attorneys** 

- What is my role as an attorney representing a patient in the CARe process?
- What is my role as an attorney representing a healthcare provider in the CARe process?
- What should I expect in a CARe meeting?
- Does participating in the CARe process deny patients the right to bring legal action?



#### **Useful Resources**

#### CARe Education Forum at the Massachusetts Bar Association (MBA)

To learn more about CARe and hear from attorneys who have worked with the program, click <u>here</u> to register and view the webinar for free. (you must register as a non-member of the MBA when you "checkout")

#### **Best Practices**



#### Unexpected Medical Outcomes: Information for Patients

This resource is designed to help those who have had something unexpected happen during care understand what the process is around that event

- How can we assure patients that have experienced an unexpected medical outcome event that the institution will support them?
- How can we inform patients about what to expect from the CARe process?





# **CARe Implementation Guide**

- Designed for institutions interested in implementing the CARe Program
- To be used with personal assistance from our implementation team
- Lays out timeline of important tasks, and links to relevant MACRMI resources for each step in the process

#### Implementation Guide

#### Institutional Preparation

- Use the Pilot Site Readiness checklist to ensure that your institution has the baseline culture and support it needs to make a CARe program successful.
- Create a timeline of the implementation steps in this guide so you can realistically set a target date for official CARe launch.
- Review the <u>CARe policy template</u>, modify it as appropriate for your institution, and take steps to certify this policy in your organization so that it replaces or adds to existing policies about adverse events.
- Urge your supportive leadership to mention the program and its target implementation date at relevant meetings.
- 5) Work with risk management and patient safety to make sure that everyone understands the CARe philosophy and that this effort requires working together as a team to make this cultural change in the institution. Use <u>CARE Best Practices</u> and <u>Best Practices</u> for Patient Interaction.

#### The Daily Work

- 6) Map your current case review process for incidents reported internally and via a patient concern (what groups are involved in decisions about reporting, what are the escalation criteria, etc.) You can see <u>a sample</u> of this from one institution attached.
- 7) Review the CARe Procedure (for Patient Safety/Risk staff) and accompanying documents and see how each of these steps can fit in with your current staff's workflow without much disruption. Discuss with patient safety and risk staff how these elements can best be incorporated into what they are used to doing.
- 8) Incorporate CARe into your case review process at every stage, including CARe in your cause mapping, so that all levels of review focus on communication to the patient, root causes, and what is being done to resolve the situation.
- 9) Ensure that patient safety, risk, and other health care quality leaders are prepared to coach clinicians in conversations with patients about adverse events, and that the coaching is in line



### Website: www.macrmi.info





### **Resource Library**

MACRMI	My Account   Login       SEARCH         Massachusetts Alliance for Communication and Resolution following Medical Injury       USER LOGIN         Home       About       For Patients       For Providers       For Attorneys       Resource Library       Blog & News       Connect       Follow Us:
Our Resource Library	
Library Search Tools:	
VIEW ALL DOCUMENTS	Search by keyword or phrase Search By Category

#### Most Commonly Requested Resources

Document Title	Categories	Source	Link
A Roadmap for Transforming Medical Liability and Improving Patient Safety in Massachusetts (Executive Summary)	General Information, CARe Program (Massachusetts), Healthcare Administrator Information	BIDMC and Massachusetts Medical Society	<u>Download</u>
Best Practices	General Information, CARe Program (Massachusetts), Sample Policies and Procedures	MACRMI	<u>Download</u>
Best Practices for Interfacing with Patients	General Information, CARe Program (Massachusetts), Clinician Education & Training, Patient & Family Support, Healthcare Administrator Information, Sample Policies and Procedures	MACRMI	<u>Download</u>
CARe Forum 2014 - CARe Interim Data Snapshot	General Information, CARe Program (Massachusetts)	Harvard School of Public Health	<u>Download</u>



### Where we're going...

By next year's Forum...

- -Develop a list of attorneys trained in CARe and committed to Best Practices
- -Add additional CARe sites in MA
- -Continue national dissemination efforts
- -Complete data analysis of 3-year pilot study

