Risk Sharing in Long-Term Care

Realistic Solution or Marketing Ploy?

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October 2002. The state of Hawaii finds a nursing home operator guilty of manslaughter. A 79-year-old woman in the care of a nursing home providing basic care for a small number of residents died as a result of massive infection caused by pressure ulcers.

This is just one example of the liability crisis that is sweeping the long-term care arena. Juries across the country are awarding hundreds of thousands of dollars in settlements linked to pressure ulcers, falls, wandering and elopement, abuse and neglect, and medication and treatment errors. The blame, according to juries, is on the facilities for negligence. With this drastic increase in litigation, facilities are forced to find ways to protect themselves by identifying exposure and finding solutions.

Aggressive pressure ulcer prevention programs are one means of lessening the pressure ulcer litigation burden. In a study published in the April 2002 issue of the peer-reviewed journal *Ostomy/Wound Management*, Yale School of Nursing (YSN) researchers reported that a comprehensive prevention program significantly reduced the incidence of pressure ulcers. In the clinical study, "A Comprehensive Program to Prevent Pressure Ulcers in Long Term Care: Exploring Costs and Outcomes," the Yale School of Nursing investigators discovered that using specially formulated skin care products with Solutions, standardized protocols of care, reduced the incidence of pressure ulcers by up to 87 percent. The long-term care facilities in the study implemented rigorous skin care prevention systems that included a skin cleanser, moisturizer, and moisture barrier as well as staff education, repositioning, support surfaces, and standardizing nutrition. ConvaTec and Mead Johnson, Bristol-Myers Squibb companies, funded the study with in-kind support from Kinetic Concepts, Inc.

Lead study investigator, Dr. Courtney Lyder, Director of the YSN Adult, Family Gerontological and Women's Health Specialty, says cost-effective pressure ulcer prevention remains a challenge for most long-term care facilities. With increasing scrutiny from state and federal agencies and the risk of litigation, long-term care facilities are beginning to implement aggressive pressure ulcer prevention programs.

According to Dr. Lyder, chronic wounds represent a serious threat to patients' quality of life and a loss of income. An estimated two million adult workdays are lost each year because of chronic ulcers. The cost to manage these ulcers is excessive. Although the direct cost to heal pressure ulcers is elusive, the national cost is estimated at between $1.68 billion and $6.8 billion annually.

Facilities aren't the only ones noticing the excessive costs of treatment, litigation risk, and damaged reputations resulting from pressure ulcers. Suppliers are beginning to take notice—and take action—as well.

Partnering with your Supplier

As a result of increased litigation, some suppliers are willing to "share" the risk with facilities. Some suppliers are forming programs that are intended to back up their products with a guarantee, which will in turn lead to reduced litigation for the facility. Lexington, Kentucky-based Tempur-Medical has developed one such program designed to drastically cut the incidence of pressure ulcers and eliminate the resultant litigation.

Tempur-Medical developed a skin management system focused on preventing pressure ulcers. The Tempur-Medical Ultimate Skin Management Program (TUSMaP) replaces a nursing facility's existing skin and wound care paradigm and includes a Tempur-Med mattress on every bed, pressure management seat cushions where needed, and a comprehensive formulary of skin and wound care products from a variety of established manufacturers. If necessary, the company also provides a continuum of powered advanced therapy mattresses to care for those at high risk of developing ulcers and for treating existing wounds. In support of the program, Tempur-Medical provides CEU training to their clients' staff and on-going clinical support. Certified wound care specialists, typically certified wound, ostomy, and continence nurses (CWOCNs), regularly review data entered into a Tempur-Medical-supplied database by the client and consult on ways to improve care.

TUSMaP is a deliberate expression by the supplier of the faith it has in its products. The program's foundation is the understanding that the customer will, in fact, achieve sufficiently good outcomes, the facility's liability exposure will be reduced, and the supplier is willing to provide a warranty of sorts to that effect in return for the client's willingness to use the program. But what, exactly, is TUSMaP? According to Joel Guerin, president of Tempur-Medical, three general concepts define TUSMaP. "First, all costs are capped to reflect the capitation of revenue in the industry, yet our supplies are essentially unlimited (including the requirement to supply competitive products where needed), showing our focus on outcomes rather than increased billing. The second concept is the comprehensiveness of the program. TUSMaP provides mattresses, seating, powered surfaces, skin maintenance and wound treatment products, training and education, data management, etc.—in short, everything except prescription drugs. The third concept is risk management. TUSMaP offers a $250,000 indemnity against pressure ulcer-related litigation to show our commitment to helping the industry really address the liability situation, not just sell products despite it."

One key consideration for long-term care providers is the cost of the TUSMaP program. "Nursing facilities already spend money on wound prevention and treatment," says Guerin. "The only way to understand the true cost of a comprehensive program like TUSMaP is to subtract from the program cost all of the current expenses that will no longer be required. We believe—and I think our experience now with approaching 2 million resident days covered by the program indicates—that in most instances, the program is cash-flow neutral for the average facility. That is, the eliminated expenses roughly approximate the costs of the program. TUSMaP is not about spending more money to improve wound prevention and treatment capabilities. It's about spending money more wisely."

Tempur-Medical has been pursuing the concept of supplier risk sharing for several years now. But what is the general response to the concept of risk sharing and the TUSMaP program in particular?

Guerin notes, "Clients and potential clients are responding very favorably. They love both the concept and the fact that someone's willing to share in the liability problems they're facing, as well as risk sharing with regard to costs associated with clinical and financial performance. Many of our clients, even in Florida, are now admitting residents with pressure ulcers that they would have been afraid to admit prior to implementing TUSMaP. Also, some of our clients tell us they are already pressuring other vendors to accept more risk regarding the delivery of clinical and financial claims as well as liability associated with the use of their products."

Does the risk-sharing approach work? According to Jeff Ferguson, CEO of Marriott Senior Living Services, an operator of 69 healthcare units within its 156 senior communities nationwide, "A linchpin of quality care is prevention. After careful study and a thorough evaluation period, we saw this important preventative care initiative [TUSMaP] as a key component of maintaining the highest possible standard of care for our residents in Florida and across the country."

Scott Bell, president of Delta Health Group, one of the largest independent nursing home operators in Florida, says he's satisfied with the results as well. "This [TUSMaP] is a breakthrough not just for long-term care in Florida but for long-term care in America. We will continue working to forge partnerships that improve the quality of care, keep the focus on achieving the best possible patient outcomes, and safeguard the dignity of seniors." Bell highlighted another resident and staffing benefit for providers through the TUSMaP program. "Since there has been this significant reduction of in-house acquired decubitus ulcers, my residents are in less pain. Consequently, my staff can enjoy these residents who used to throw things or curse at them when they were physically hurting."

Tempur-Medical is doing its part to encourage others to reward long-term care providers that are doing a good job of maintaining their residents' skin. In recognition of the success of outcomes attained by early adopters, some insurers are already providing discounts to facilities that utilize TUSMaP. In an effort to make a more tangible statement, Tempur-Medical, citing the potential to reduce costs associated with complications, is encouraging the US Department of Health and Human Services to consider incentives for facilities with less than two-percent pressure ulcer incidence.

"Our latest milestone," Guerin added, "has been the incorporation of a state-of-the-art fall monitoring system into TUSMaP. Although pressure ulcers are the number one liability problem facing the industry, a lot of people believe preventable falls is number two. Theoretically, there are enough savings to be derived from reducing liability exposure to fund continued improvements in quality of care for some time to come!"

The Insurance Perspective

In September of this year, the Managed Insurance Programs Division of Arrowhead General Insurance Agency, Inc. launched a new nursing home insurance and risk-management program called Silver Lining℠.

The Silver Lining program was developed over the past year in response to the growing nursing home insurance crisis facing the industry. The program's recommendations and requirements are based upon quantifiable research done by Arrowhead and its risk management partners, which include Tempur-Medical.

The Silver Lining program will partner with select insureds who will work with Arrowhead's risk-management group to better their risk profile and ultimately lower their insurance through risk participation. Silver Lining insureds will retain a $50,000 self-insured retention, while Arrowhead offers the expertise to minimize loss potential.

Arrowhead's Managed Insurance Programs Division will underwrite Silver Lining's nursing home risks on behalf of Lloyd's of London. General liability and medical malpractice coverage through Lloyd's is provided with limits of $1 million/$3 million aggregate. The program is initially available only in California with plans to expand nationally based on the success of the program. Silver Lining's minimum premium is $50,000.

The primary feature of the Silver Lining program is the use of research on an ongoing basis combined with innovative risk management techniques. The Silver Lining program depends on programs, such as TUSMaP, to manage liability exposure as a condition of the insurance. Tempur-Medical will be responsible for the risk management of all pressure ulcer issues, while national loss control consultant, the Worksafe Group, will handle all other risk management issues.

"The Tempur-Medical pressure-ulcer and fall program really is an integral part of risk management in the nursing home industry today," says Carole Fleischman, president of the Arrowhead Managed Insurance Programs Division. "Many of the losses that have been incurred are the result of pressure ulcers and Tempur-Medical solves this problem. We have received very favorable feedback from nursing home executives as well as the insurance brokerage community at large."

Additionally, Arrowhead will utilize independent nursing home claims administrator, ProClaims, which maintains over 80 percent of its claims business serving the nursing home industry.

Risk Sharing: A Solution or a Passing Trend?

The ultimate goal is quality care; the responsibility for which can and should be shared by both providers and suppliers. But what impact will risk sharing between supplier and nursing home ultimately have?

According to Keith Becker, a healthcare vice president at Marsh, US, the insurance industry is very attracted to the risk-sharing approach. "Insurance companies are thrilled to see manufacturers and suppliers stepping up to the plate. This means they are fully committed to all of the impact of the sale of their products, not just beating competitors and increasing revenues and/or profits." Marsh is the largest brokerage firm in the world, and one of the largest providers of liability insurance to the healthcare industry in the United States.

"At the very least," Becker continued, "an indemnity reduces the financial exposure of our client, even if the goods or services provided did nothing to improve quality of care but only maintained the status quo. When there are more people paying the bill in terms of judgments and settlements, there is already less exposure to our client. Ultimately, it stands to reason that manufacturers and suppliers will be more serious about actually improving the quality of care if they are willing to offer indemnities along with their warranties.

"But," Becker continued, "perhaps most important of all is to recognize it does no good to just move the costs from one company to another. The same liability-related expenses would need to be paid out of the same cash flow stream funded by limited patient care dollars. But if exposure can actually be reduced through improved outcomes generated by targeted risk-sharing programs…now that's the holy grail of the healthcare insurance industry! We fully support the concepts behind what Tempur-Medical's trying to do and truly hope that more healthcare suppliers will follow suit with this mode. We think the dynamics are much healthier if both sides of the provision of healthcare are on the same page, focusing almost exclusively on accomplishing as much good for as many people as possible, at the lowest possible overall cost. There's no greater incentive to improving care than sharing risk. Risk mitigation itself isn't a new concept. Doing it by risk sharing with your supplier is."

Resources

1. Pressure sores in nursing home patient lead to manslaughter conviction as reported by Lippincott Williams & Wilkins. Business Wire. October 25, 2002.
2. Lyder CH, Shannon R, Empleo-Frazier O, McGeHee D, White C. A comprehensive program to prevent pressure ulcers in long-term care: Exploring costs and outcomes. *Ost/Wound Manag* 2002;48(4):52–62.

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Comments on Risk Sharing from Prominent Nursing Home Litigation Law Firm

The law firm of Wilkes & McHugh, P. A., headquartered in Tampa, Florida, holds the largest verdict ever reached against a Florida nursing home, as well as a significant appellate ruling that redefined the manner in which damages are recovered on behalf of nursing home residents. Wilkes & McHugh also holds the three largest verdicts ever reached against Arkansas nursing homes. Attorney Jim Wilkes is the founding partner of Wilkes & McHugh and a proponent for alternatives to nursing home care.

ECPN called Mr. Wilkes for his comments on the viability of risk sharing with suppliers by nursing home providers. We were directed to Steve Vancore, spokesperson for Wilkes & McHugh.

ECPN: Searching through materials on the Wilkes & McHugh website, it is evident that the firm advocates for home- and community-based care for seniors as opposed to placement in a nursing home. Putting aside that bias, what is Wilkes & McHugh's opinion on the concept of risk sharing by nursing home providers and their vendors in search of quality resident outcomes?

Steve Vancore: Wilkes & McHugh believes that for-profit nursing home providers have an institutional bottom-line bias of putting the needs of their investors over the needs of their residents. That being said, we would view positively any legitimate, outside businesses infusing new ideas to better care for nursing home residents. For example, we are seeing innovative companies, such as Risk Retention Group, coming to Florida to write liability insurance for nursing homes. They are apparently telling providers that if they want insurance, they must provide risk management strategies to properly train staff and maintain adequate staff-to-resident ratios. Without outside influences, some of these for-profit chains simply won't be able to improve care on their own. And improving care is what it's all about.