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## System Dangers: How EHRs Can Contribute to Medical Malpractice Claims

by David B. Troxel, MD, Medical Director, The Doctors Company

In 2013, The Doctors Company began coding closed claims using 15 electronic health record (EHR) contributing factor codes (for system and user factors) developed by CRICO Strategies and back-coded all claims to 2007. EHR-related claims frequency is increasing. Twenty-six such claims closed in the first two quarters of 2014, 28 claims closed in 2013, 22 closed in 2012, 19 closed in 2011, and two closed between 2007 and 2010. These 97 EHR-related claims that closed from January 2007 through June 2014 are the subject of this analysis.

User factors contributed to 64 percent of these EHR-related claims, and system factors contributed to 42 percent. The following tables and representative claims illustrate how EHR system and user factors contributed to the 97 closed claims. Some claims contained more than one contributing factor.

### EHR System Factors: Technology, Design, and Security Issues

- 10% Failure of system design
- 9% Electronic systems/technology failure
- 7% Lack of EHR alert/alarm/decision support
- 6% System failure—electronic data routing
- 4% Insufficient scope/area for documentation
- 3% Fragmented EHR

Claim: Lack of EHR Drug Alert

A dialysis patient transferred to a skilled nursing facility. There was an active hospital transfer order for Lovenox. A physician evaluated the patient on admission but made no comment about the Lovenox order. During the first dialysis treatment, there was active bleeding at the fistula site. Heparin (anticoagulant) had not been given. Nursing did not inform the physician of the bleeding. During the second dialysis treatment, there was uncontrolled bleeding from the fistula. The patient exsanguinated and expired. Experts were critical that there was no EHR High-Risk Medication Alert.

### EHR User Factors: EHR-Related Issues Attributable to Users

- 16% Incorrect information in the EHR
- 15% Hybrid health records/EHR conversion
- 13% Prepopulating/copy and paste
- 7% EHR training/education
- 7% EHR user error (other than data entry)
- 3% EHR alert issues/fatigue
- 1% EHR/CPOE workarounds

Claim: Incorrect Information in EHR

A patient was seen by her cardiologist for hypertension. In the written medical record, her blood pressure medication had been increased to 25 mg once a day. Office staff entered the order into the EHR as twice a day. The prescription was filled. The patient missed her follow-up appointment. Seven months later, she went to the ER with numbness and weakness. Her potassium level was low. The cardiologist corrected the prescription error and gave her potassium.

We also analyzed the 97 EHR claims to determine the most common allegations.

### Top Allegations in EHR Claims

- 27% Diagnosis-related (failure, delay, wrong)
- 19% Medication-related:
  - 7% Ordering wrong medication
  - 5% Ordering wrong dose
  - 7% Improper medication management

The 2011 Institute of Medicine report, Health IT and Patient Safety: Building Safer Systems for Better Care, concluded that the information needed to analyze and assess health IT (HIT) safety and use was not available and that our understanding of the benefits and risks of EHRs was anecdotal. The report recommended creating a government agency that would systematically and uniformly collect data to investigate harm and safety events related to HIT. The Office of the National Coordinator for Health Information Technology is now developing a plan to create a Health IT Safety Center.

*Contributed by The Doctors Company. For more patient safety articles and practice tips, visit [www.thedoctors.com/patientsafety](http://www.thedoctors.com/patientsafety).*

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## First Coast Service Options' Medicare Speaks 2015 Jacksonville

July 16-17, 2015, at the Jacksonville Marriott  
[http://medicare.fcso.com/Medicare\\_Speaks/278355.pdf](http://medicare.fcso.com/Medicare_Speaks/278355.pdf)

First Coast Service Options, your Medicare contractor, invites you to join us for this Medicare educational event. Choose from 24 classes designed to reduce documentation and claim errors, minimize payment delays and educate on Medicare payment incentive programs such as PQRS. Topics of interest include incident-to-billing, E/M coding, self-auditing for compliance, meaningful use, Internet-based PECOS, medical documentation, and our new SPOT internet portal.

### A Rising Concern: Why Aren't Adults Getting Vaccines?

All too often, the discussion on vaccines is centered solely on children. Certainly, the importance of childhood immunizations should not be diminished, but what about adults?

Unvaccinated adults are not only at risk themselves, but they also pose a threat to those more vulnerable for infection, such as the elderly and children. Despite this ripple-effect threat, adult vaccination rates remain dismally low, according to data from National Health Interview Survey (NHIS). The barrier to higher vaccination use among adults centers on education; physicians are often unsure how to best purchase vaccines, and have a difficult time tracking their patients' immunization schedules, and patients, similarly, are confused as to why it matters, what they need to do, and when they need to do it.

The numbers tell a troubling story. According to NHIS data from 2013, adoption of most vaccines for adults above the age of 19 remained flat, as much improvement is needed. Modest gains were seen for the Tdap, Shingles, and HPV vaccines. However, even with the gains, fewer than 18% of adults ages 19 to 64 received the Tdap vaccine, less than 25% of adults ages 60 and above received Shingles vaccination, and only 40% of women and 6% of males between ages 19 to 26 reported at least one dose of the HPV vaccine. Given the advancements and innovations in our nation's healthcare system, these are particularly alarming figures.

The message from this data is that better practices are necessary to ensure adult patients are receiving the appropriate vaccinations, and physicians must play an integral role in helping us get there. Overcoming the large gap in adult vaccine coverage will not be an easy task, but there are

meaningful tactics that can be implemented immediately:

- ◆ Stay Up-to-Date – Recommended vaccination schedules continue to evolve as medicine advances. The CDC's website provides an easy-to-read version updated to include the most recent schedule released in February 2015.
- ◆ Participate in a Vaccine Buying Group – In many cases, physicians are not confident that they can efficiently, effectively and profitably provide immunizations to their adult patients. Such practices would benefit by joining a buying group that has expertise working with Family Physicians, Internists, and Women's Health Providers.
- ◆ Communicate – Why shouldn't asking about vaccines be as common as checking a patient's blood pressure or discussing their medications? Start today and ask your patients about the vaccines they have received, consult patient records, educate them on the approved vaccine schedule, and, together, determine whether they are appropriate for certain immunizations.

As healthcare shifts from focusing on curing sick patients to keeping people healthy, physicians can strengthen their practices and lead the way by proactively managing their patients' vaccination needs.



**Atlantic Health  
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## Employing Advanced Practice Providers: Balancing Benefits and Potential Malpractice Risks

by Kathleen Moon, ARNP, LHRM, Patient Safety Risk Manager, The Doctors Company

Practices and hospitals that employ advanced practice providers (APPs), including nurse practitioners and physician assistants, can experience many benefits, such as lower operating overhead, increased physician time with patients, and improved patient education and satisfaction. However, employers of APPs should consider implementing effective risk management measures to help ensure that the benefits of using APPs are not at the expense of increased liability exposure.

An APP is often covered under the physician's or hospital's malpractice insurance policy under vicarious liability coverage. APPs can be held directly liable for their own acts or omissions, but, in addition, under the legal theory of vicarious liability, physicians and hospitals can also be held liable for the actions of their employees, including APPs. Therefore, the physician or hospital is often named in malpractice claims involving their APPs.

To help decrease liability risks, the employing physician or hospital should have a written policy outlining the APP's scope of practice. This policy should be signed by the APP and other staff members annually. In putting together this policy, it is important to know the laws in your state that govern the scope of practice of APPs. Other suggestions to decrease liability risks include:

- Ensure that all newly hired APPs undergo orientation with the practice or hospital.
- When scheduling appointments, staff should inform patients when they are being scheduled with an APP. If that patient requests to see his or her physician, the staff should provide the patient with that option.
- Make certain APPs wear identification that indicates their name and their job title.
- Develop treatment guidelines and clinical triggers for physician consultation. Meet with the APPs regularly to discuss their roles and expectations within the practice, and document these meetings.
- Regularly review the charts, including prescription monitoring, of patients seen by the APPs.
- Make sure that all staff members, including APPs, have adequate professional liability coverage. For nonemployed APPs, liability coverage should be equal to what the physician or practice carries.

To read case studies about employing APPs and for detailed risk management checklists, download The Doctors Company's guide to an APP preventive action and loss prevention plan at <http://ow.ly/OxqBm>.

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