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Hospitals to tear up bills for medical mistakes

By Carol M. Ostrom

Seattle Times health reporter

A horrible mistake on an operating table in Bellingham in 2003 left Dennis "Rocky" Rockenbach with such severe burns to his throat and vocal cords that he spent a month in intensive care.

Later, he got bills for \$66,000.

Now Washington is joining a handful of other states that have cracked down on such indignities. Under an agreement announced today by Gov. Christine Gregoire and leaders of hospitals, doctors and surgery centers on the state, medical providers have pledged to never again bill patients for egregious medical errors known as "never events" — because they should never happen in the first place.

The list includes 28 situations ranging from surgery performed on the wrong body part or the wrong patient to foreign objects left behind in surgery. It also covers death or serious disabilities caused by contaminated drugs or devices, and burns suffered in the hospital.

The resolution by the Washington State Medical Association, the Washington State Hospital Association and the Washington Ambulatory Surgery Center Association is similar to agreements in other states, although some states have adopted a more abbreviated list of events.

"If we can avoid adding insult to injury where patients have been affected by an adverse event, then we're taking a step that is right," said Dr. Brian Wicks, president of the state Medical Association.

The agreement is voluntary. But leaders of the three organizations said they expected hospitals, doctors and surgery centers statewide to comply. And that means not splitting hairs about it.

"It may not always be easy, but all three associations are really encouraging our members to use extreme good faith in this," said Cassie Sauer, the Hospital Association's spokeswoman.

Stop reimbursing

Nationally, the movement to stop paying for serious medical errors can be traced at least to 2006, when a Washington-D.C.-based coalition of large businesses and agencies called the Leapfrog Group started pressing states for policies against it.

Last year, the Centers for Medicare & Medicaid Services, an agency that administers federal insurance programs, announced that Medicare later this year will stop reimbursing medical providers for the extra care that results from some adverse events.

In addition, leaders at the BlueCross BlueShield Association and Aetna, another large insurer, recently said they would also end such payments.

In Washington, Gregoire told the statewide groups that a voluntary agreement would be better than passing a law about it, Wicks said.

Several states, including Washington, already require hospitals to report such serious adverse events to state authorities. They're relatively rare: In 2007, there were 193 adverse events out of 630,000 admissions statewide.

And most hospitals have already stopped charging patients for serious adverse events, Sauer said. But not all organizations were in agreement about which events qualified.

The actions taken by other states "definitely caught our attention," Sauer said. Hospitals wanted clearer guidelines, so "making a clear policy and a very public statement definitely makes sense to us," she said.

In most cases, the mistakes are "things that should not happen in hospitals," Sauer said.

But sometimes, hospitals must make tough choices.

For example, pressure ulcers, by far the most commonly reported error on the list, may be unavoidable if a patient must be immobilized for a long period of time after a traumatic accident.

Although most doctors also forgo payment for care stemming from a preventable error, Wicks said, sometimes a bill is submitted before it's clear there has been a problem.

"That may just be a reflection of the fact that the complication from the adverse events was not recognized until weeks later," he said.

Not recognizing a problem right away was the case for Don Church, for example. It was two months after his 2000 surgery at the University of Washington that he discovered a 13-inch surgical instrument had been left inside his body. The surgeon offered to take it out free of charge, but Church opted to go to another hospital. He later sued and settled with the UW.

For Rockenbach, there was no delay: The fire that erupted in his throat during minor surgery on his vocal cords caused a monthlong stay in an intensive-care unit. He was permanently injured.

His attorney said the bills were more than \$66,000; Rockenbach sued both the doctors and the hospital, and finally settled the case for \$7 million.

Sauer said that in general under the agreement, hospitals will tear up bills for wrong-site or wrong-patient surgeries, surgeries to correct mistakes, and hospital stays for complications from adverse events on the list, while continuing to bill for care that was performed correctly.

Lawyers who represent injured patients say that makes good "risk management" sense.

"Failure to take responsibility for a mistake is really why we're here," said Reed Schifferman, a plaintiff's attorney in Seattle.

If hospitals and doctors always did that, he said, "I wouldn't have a job."

Carol M. Ostrom: 206-464-2249 or costrom@seattletimes.com

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“NEVER EVENTS”

The Washington State Hospital Association, the Washington State Medical Association and the Washington State Ambulatory Surgery Center Association say medical providers will stop billing patients for procedures that result in any of these situations:

Surgical events:

- Surgery on wrong body part
- Surgery on wrong patient
- Wrong surgical procedure
- Unintended retention of foreign object post surgery/procedure
- Postoperative death in ASA Class 1 (healthy) patient

Product or device events:

- Patient death, serious disability from use or function of contaminated drugs, devices, or biologics
- Patient death, serious disability associated with the use or function of a device in patient care in which the device is used or functions other than as intended
- Patient death, serious disability associated with intravascular air embolism

Patient protection events:

- Infant discharged to the wrong person
- Patient death or serious disability associated with patient elopement (disappearance)
- Patient suicide or attempted suicide resulting in serious disability

Care-management events:

- Patient death, serious disability from medication error
- Patient death, serious disability associated with a hemolytic reaction due to administration of ABO/HLA incompatible blood or blood products
- Maternal death, serious disability (low-risk pregnancy)
- Patient death, serious disability associated with hypoglycemia
- Death or serious disability (kernicterus) associated with hyperbilirubinemia
- Stage 3/4 pressure ulcers
- Patient death, serious disability due to spinal manipulative therapy
- Artificial insemination with the wrong donor sperm or wrong egg

Environmental events:

- Patient death, serious disability associated with electric shock
- Any incident in which a line designated for oxygen or other gas to be delivered contains the wrong gas or toxic substances
- Patient death, serious disability associated with a burn incurred while hospitalized
- Patient death, serious disability associated with a fall
- Patient death, serious disability associated with the use of restraints

Criminal events:

- Care ordered by someone impersonating a physician, nurse, pharmacist, or other licensed health-care provider
- Abduction of a patient of any age
- Sexual assault on a patient
- Death, significant injury of patient or staff from physical assault

Source: Washington State Hospital Association