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Recommended Curriculum Guidelines for Family Medicine Residents

# Risk Management and Medical Liability

*This document is endorsed by the American Academy of Family Physicians (AAFP).*

## Introduction

Each family medicine residency program is responsible for its own curriculum. The AAFP Commission on Education's Subcommittee on Graduate Curriculum has created this guide as an outline for curriculum development, and it should be tailored to the needs of the program.

Through a series of structured and/or longitudinal experiences, the curricula below will support the overall achievement of the core educational competencies defined by the Accreditation Council for Graduate Medical Education (ACGME) and provide guideposts to program requirements specific to family medicine. For updates and details, please refer to the ACGME website at [www.acgme.org](http://www.acgme.org). Current AAFP Curriculum Guidelines may be found online at [www.aafp.org/cg](http://www.aafp.org/cg). These guidelines are periodically updated and endorsed by the AAFP and, in many instances, other specialty societies, as indicated on each guideline.

## Preamble

Risk management refers to strategies that reduce the possibility of an adverse outcome, harm, or loss. Systematic gathering and utilization of data are essential to prevent loss and improve outcomes. Good risk management techniques improve the quality of patient care and reduce the probability of an adverse outcome or a medical malpractice claim.

The primary goal of health care risk management is to reduce untoward events for patients and their families. Risk management programs are designed to reduce patients' risk, health care professionals' liability, and the health care system's overall burden. Evidence-based medicine forms the foundation of successful risk management through the establishment of standards of care. The main components of a risk management program are continuous quality assurance and oversight; dedicated patient safety programs; formalized policies for disclosure of adverse events; and support of patients and families. Additionally, robust medical staff credentialing and staff competency training contribute to successful risk management.

Quality assurance involves monitoring and oversight. Quality improvement requires the following: 1) continuously defining clinical standards; 2) collecting outcomes data; 3) analyzing data and systems; 4) monitoring clinical practice; 5) utilizing data and analysis to affirmatively correct problems that have potential or actual risk; and 6) implementing and utilizing evidence-based clinical decision support systems.

Risk management is a three-step process that involves the following: 1) identifying risk; 2) avoiding or minimizing loss; and 3) reducing the impact of loss when it occurs. Health care risk management focuses on risk reduction through improvement of patient care and safety.

Liability (i.e., responsibility) for medical malpractice in patient care is a source of financial and psychosocial risk to clinicians and the health care system. To establish liability, the patient must show that: 1) the physician and their care team have a duty to treat the patient; 2) the physician's interaction with the patient falls outside the accepted standard of care; 3) the patient is harmed because of this interaction; and 4) the patient suffered actual damages. There are several strategies to minimize risk and liability. Practicing medicine within the scope of one's practice and within the standard of care is paramount. Good communication with the patient and the family is fundamental to building a strong physician-patient relationship. This relationship can minimize risk of being named in subsequent legal actions. In addition, having good strategies for minimizing the risk at key points of patient care (e.g., handoffs) and good documentation will also help mitigate risk.

The occurrence of an adverse event, injury, or loss is a stressful situation for physicians, care teams, and patients and their families. Family physicians have a duty to disclose honestly, to communicate with patients and their families, and to develop systems that minimize the risk of recurrence. When appropriate, the physician should inform the patient and family about any changes being implemented in response to the event or situation to prevent future occurrences.

The ACGME and the American Board of Family Medicine (ABFM) have implemented The Family Medicine Milestone Project as a framework for assessing resident physicians' development in key dimensions of physician competency related to risk management and medical liability.

This curriculum guideline provides an outline of the attitudes, knowledge, and skills that should be among the objectives of family medicine training programs so that residents will understand risk management and medical liability in the current health care environment. Implementation of this curriculum is dependent upon a didactic and clinical approach to learning. The didactic aspect addresses ethical and legal obligations, providing residents with knowledge about the law and standards of care. The clinical aspect is an ongoing process to educate residents about the need to document verbal and electronic communications, communicate compassionately when adverse events occur, and have the skill to analyze the amount of risk in the health care system.

## **Patient Care**

At the completion of residency, a family medicine resident should be able to:

- Clearly, thoroughly, and thoughtfully document the acceptable standard of care provided to the patient
- Effectively communicate risks and benefits of therapy for medical conditions and ensure that informed consent to provide care is obtained
- Evaluate their practice for potential liability risks and develop risk management strategies to mitigate them
- Demonstrate empathy for mistakes and tactfully disclose them to patients and their families
- Foster team members' adherence to patient care protocols that enhance patient safety and prevent medical errors
- Participate in identifying health care system errors and implementing potential systems solutions
- Clearly understand and utilize documented handoff tools to ensure safe and effective continuation of care during treatment transitions
- Devise and effectively utilize systems to track orders that may require additional testing (e.g., labs, imaging, pathology results), especially those for patients at risk of being lost to follow-up

## **Medical Knowledge**

In the appropriate setting, a family medicine resident should demonstrate the ability to apply knowledge of the following:

1. Awareness of potential risk and professional liability from the source of law
  - a. Constitutional law (federal and state)
  - b. Statutory law
  - c. Common law

2. Practice of evidence-based medicine within the standard of care for a competent family physician
3. Understanding of medical malpractice principles and terminology
  - a. Differentiation of claims made versus occurrence medical malpractice policies
  - b. Elements of a malpractice claim
  - c. Pre-suit requirements
  - d. Role of insurance carriers and defense counsel
  - e. Consent and cooperation clauses in insurance policies
  - f. Phases of a malpractice lawsuit
  - g. Settlements and judgments
  - h. Reporting requirements (National Practitioner Data Bank [NPDB] and medical boards)
4. Appreciation of the importance of good communication and rapport
5. Demonstration of humanism and cultural proficiency in clinical practice
6. Appreciation of the importance of timely documentation of all medical actions
7. Application of risk management mitigation principles
  - a. Physician-patient communication
  - b. Appropriate charting
  - c. Timely management of diagnostic tests
  - d. Documentation of all interactions, including face-to-face conversations, phone calls, and electronic communications
  - e. Documentation of patient failure to follow medical advice
  - f. Identification of under-resourced and underserved patients to facilitate appropriate follow-up for medication management specialty care
  - g. Recognition of scenarios with heightened risk for medical errors (e.g., medical team communication during handoffs) and implementation of strategies to reduce risk
  - h. Utilization of peer review protections and risk reporting systems
8. Understanding of the importance of obtaining and documenting informed consent and the application of consent principles
  - a. Privacy
    - i. Laws protecting patient confidentiality, including the Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act
    - ii. Duty to disclose
    - iii. Minors
    - iv. Legal breach of confidentiality (e.g., abuse, reportable diseases)
    - v. Knowledge of and appropriate utilization of secure electronic communication with patients and other physicians and health care professionals
  - b. Consent

- i. Necessity of informed verbal and/or written consent
  - ii. Advanced health care directives
  - iii. Power of attorney
  - iv. Competence to provide consent
    - 1. Minors (e.g., when they can provide consent and when parental consent is required)
    - 2. Incapacity
      - a. Physical
      - b. Mental
- 9. Sensitivity to the roles of federal, state, commercial, and other agencies involved in risk management and medical liability issues
  - a. Physician licensure/state board of medicine
    - i. Regulation through the Medical Practice Act
    - ii. Medical delegation
    - iii. Rules pertaining to treatment of self, family, and employees
    - iv. Professional conduct
    - v. Termination of patients
    - vi. Controlled substance prescribing
    - vii. Physician dispensing/retail product sale
    - viii. Issues related to intrastate care
    - ix. Telemedicine rules and regulations
    - x. Emergency authorization and state-to-state reciprocity pandemic considerations
  - b. Compliance rules and regulations (Stark Law, Anti-Kickback Statute, Sunshine Act, and Emergency Medical Treatment and Labor Act [EMTALA])
    - i. Americans with Disabilities Act (ADA)
    - ii. Sexual harassment
    - iii. Hiring and firing
    - iv. Occupational Safety and Health Administration (OSHA)
    - v. Employment at will
    - vi. Liability insurance
    - vii. Liability related to electronic medical records and data storage
- 10. Self-awareness and incorporation of data, feedback, and experience into ongoing professional improvement and learning

## **Interpersonal and Communication Skills**

At the completion of residency, a family medicine resident should be able to:

- Gain awareness of active and latent failures pertaining to patient care and safety
- Develop and utilize systematic methods to identify situations that expose patients to potential harm and mitigate those risks
- Communicate with patients in a compassionate manner utilizing a method they understand and appropriate language translation tools (e.g., for deaf/hard-of-hearing)

patients, non-native English speakers)

- Communicate with other health care professionals to enhance team-based care
- Create appropriate, timely documentation reflecting an acceptable standard of care
- Interact appropriately with regulatory entities and the legal system
- Maintain competence through continuing medical education
- Obtain informed consent from patients to facilitate intelligent decision-making
- Develop and implement a program of risk management focusing on facility needs, community needs, and services provided

## **Systems-Based Practice**

At the completion of residency, a family medicine resident should be able to:

- Understand key components of complex health care systems and how patients and their families are directly affected by transitions of care
- Identify risks to patients and families at transitions of care, including financial risk
- Understand and comply with requirements for documentation in the medical record for billing and coding and communication with others in health care systems
- Understand how individual practice translates to broader systems, including length of stay, readmission risk, and clinical efficiency
- Engage with patients, families, and the community, including insurance payers, as shared decision-makers
- Demonstrate understanding of contract negotiations, medical malpractice, government regulation, and compliance
- Advocate for patient care needs at individual and community levels to lead meaningful system change
- Recognize that advocacy in family medicine is a professional responsibility and develop relationships with community leaders to promote positive policy change
- Be aware of state laws regarding mandatory reporting, reproductive health, and all other state-specific issues

## **Practice-Based Learning and Improvement**

At the completion of residency, a family medicine resident should be able to:

- Demonstrate a clear understanding of error detection, correction, reporting, and monitoring to participate fully in clinic and hospital quality improvement (QI) efforts
- Participate on clinic and hospital QI committees and task forces

- Learn through the process of mentoring and discussing mistakes in an open forum (e.g., morbidity and mortality rounds that reduce fear of negative effects)
- Identify system factors that lead to patient safety events, and recommend and institute behaviors that mitigate risk
- Design, participate in, and analyze QI initiatives for the patient population to improve outcomes and quality measures
- Lead teams in developing community-wide QI projects at the institutional level
- Disclose patient safety events to patients and families
- Demonstrate to other medical learners how to appropriately, accurately, and safely document risk in the medical record, including informed consent and medical discussions
- Participate in discussions of root cause analysis and model open communication and disclosure, self-analysis, and improvement
- Develop office- and systems-based solutions to mitigate harm, and prevent adverse events utilizing evidence-based clinical decision support systems

## **Professionalism**

At the completion of residency, a family medicine resident should be able to:

- Know and describe professional behavior in self and others, including in routine and complex stressful situations
- Take responsibility for personal lapses in professionalism, including those that happen when stressed or overextended
- Know how and when to report professionalism lapses in self or others
- Analyze straightforward and complex situations using ethical principles (i.e., beneficence, nonmaleficence, autonomy, and justice)
- Demonstrate help-seeking behaviors in difficult situations
- Recognize situations that may trigger lapses in professionalism and develop strategies to mitigate risk
- Develop strategies to intervene when others may be at risk of lapses in professionalism
- Recognize and use appropriate resources to manage and resolve difficult situations as they arise
- Mentor others in professionalism
- Identify and seek to develop systemwide factors that contribute to ethical and professionalism problems and work to improve them

## Resources

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## Website Resources

Accreditation Council for Graduate Medical Education (ACGME). Family Medicine Milestones. [www.acgme.org/specialties/family-medicine/milestones](http://www.acgme.org/specialties/family-medicine/milestones)

American Medical Association (AMA). [www.ama-assn.org](http://www.ama-assn.org)

Medical Group Management Association (MGMA). [www.mgma.com](http://www.mgma.com)

Developed 11/1993 by the Dr. Melvin B. Dyster Family Medicine Residency Program

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