



CNA  

Risk Management Strategies for the Outpatient Setting



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Human Capital Risks

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Human Resources

Policies and Procedures

Sound human resource policies are essential to the delivery of quality patient care, helping to ensure that the outpatient health-care setting employs competent staff who provide services within their licensure or certification. These policies also should reflect applicable federal, state and local legal requirements.

Job Description

Prior to hiring a new employee, review the job description for the position to ensure that it is accurate and complete, encompasses the essential duties and physical demands of the position, as well as required education/training, experience, knowledge and skills. Stated requirements should be job-related and reflect actual job responsibilities. If a job description does not exist, one should be drafted.

Application

Applications should not include questions on topics which may elicit information that may be protected and/or lead to allegations of discrimination, such as:

- Maiden or previous name/title.
- Citizenship or birthplace.
- Children or other family commitments.
- Race, religion or ethnicity.
- Date of birth or high school graduation date.
- Physical description or photo.
- Whether English is the primary language.
- Club or union memberships.

Background Check

Background checks should be comprehensively and consistently implemented and documented, verifying education, licensure, credentials and references. Criminal background checks should query both conviction history and sex offender status and should be performed on both a state and national level in accordance with governing laws and regulations.

Exercise caution when screening prospective employees based upon criminal record or credit history. Equal Employment Opportunity Commission (EEOC) [guidance](#) discourages blanket restrictions of applicants with criminal conviction records because they also may have a disparate impact on certain protected classes. Instead, the [EEOC](#) recommends that employers assess each applicant individually to ensure that exclusions are job-related and consistent with business necessity.

Factors such as the age of the offense, the nature of the offense in relation to the job duties of the position, and the degree to which the employee will be supervised by others may be considered in order to determine whether to disqualify an applicant based upon a criminal conviction record.

EEOC guidance also discourages the use of credit information in hiring decisions. Criminal background and credit checks are complex issues which should be discussed with an employment attorney prior to implementation.

Drug Testing

If drug testing is part of the hiring process, establish a policy addressing the following issues:

- Testing timetable.
- Positions to which testing applies.
- Specific "target" substances.
- Testing procedures.
- Consequences of a positive result.

Drug testing should be performed only after a contingent offer of employment has been tendered. As laws vary from state to state, consult with an employment attorney to ensure compliance.

Orientation

Orientation should include basic information about the practice, organizational mission and vision, clinical practice standards, work schedules, emergency protocols and behavioral expectations. It also should address such relevant issues as workplace rules, vacation time and insurance options, as well as staff responsibilities regarding patient safety and incident reporting. Orientation sessions should be tailored to the role and duties of newly hired staff, and should include:

- Review of the job description.
- Description of the performance evaluation process.
- Signed confirmation that the employee understands and accepts his/her responsibilities.

Verification of Skills and Competencies

Delegation of clinical tasks to unlicensed assistive personnel, i.e., medical assistants, technicians, patient care representatives, and others, must be consistent with state regulations, licensing boards and/or certification programs. In situations where state regulations have not been promulgated, delegation of clinical tasks must be consistent with the education, training and demonstrated clinical proficiency of the unlicensed assistive personnel.

Decisions about delegation of clinical tasks should consider whether it is safe and permissible to transfer tasks from a highly trained to a less-trained provider. Healthcare leaders should have a clear understanding of the tasks and activities that may be safely delegated, and those tasks which should not be assigned to others. As a general rule, tasks delegated to unlicensed providers should not require independent assessment or a high degree of problem-solving ability.

The following questions can help enhance the process of determining whether an activity is safe for delegation to unlicensed medical assistive personnel:

- Is there evidence-based literature demonstrating safe delegation of the clinical task?
- Does the staff have the education, training and competence to safely carry out the task?
- Is the task performed on a routine basis within the healthcare setting?
- Can the task be performed safely and guided by standing orders or directions?
- Is the task relatively simple, or does it involve making complex observations, interpretations and/or critical decisions?
- Is the task invasive, creating potentially life-threatening consequences for the patient if performed incorrectly?
- Will a licensed provider be available for consultation while the task is carried out, if applicable?

Skill competency of all healthcare staff (nurses, technicians, physical therapists, aides, and others) should be demonstrated upon hire, annually and when new tasks are added to a provider's role. Competencies should be documented in hiring records, personnel files and job performance reviews, including primary credentials, continuing education courses and the dates and results of competency testing.

Competency evaluations should focus on the following performance indicators, at a minimum:

- Basic skills and level of competence.
- Proficiency in completing the delegated task.
- Compliance with practice protocols.
- Urgency of response to unexpected situations.
- Openness of communication with the delegating provider.
- Accuracy of documentation.
- Timeliness of progress reports.
- Transparency in error reporting.
- Overall reliability and professionalism.

Continuing Education and Performance Review

Continuing education (CE) and other ongoing training opportunities should be aligned with licensure/certification requirements. CE should include relevant topics relating to patient safety i.e., professional boundary violations, sexual abuse prevention, adverse event and medical device reporting, and medical error mitigation. CE credits, annual performance appraisals and training programs should be documented and stored in personnel files.

Employee Termination

Terminating employees is a challenging component of human capital management. Disciplinary actions or termination may be necessary when employees are not complying with policies relating to conduct, clinical practice guidelines, and/or deficient performance. In order to preclude legal ramifications emanating from terminations, including violations of local, state or federal laws and regulations, healthcare organizational leaders must follow appropriate steps and comprehensively document all performance issues, disciplinary actions, and other steps taken prior to terminating an employee. Managers and clinical leaders tasked with employment matters should work closely with their human resources manager, compliance officer and/or legal counsel when addressing disciplinary or employee termination cases.

The organization should have a written policy outlining the necessary steps and required documentation for employee termination. The policy should be reviewed by legal counsel on an annual basis to ensure that it is in compliance with state and federal employment laws. [The American Society for Health Care Human Resources Administration \(ASHHRA\)](#) provides additional information.

Credentialing Healthcare Providers

Healthcare organizations have traditionally been held legally responsible for granting staff privileges only to competent physicians and advanced practice providers.

The need for greater organizational accountability of provider credentialing is recognized from various perspectives. The federal Medicare Conditions of Participation require healthcare organizations to examine credentials of all eligible candidates and conduct periodic appraisals of performance. State regulations also require medical staffs to verify that applicants can demonstrate their ability to perform surgical, treatment and/or other procedures competently at the time of application, and at least bi-annually thereafter.

The credentialing process consists of two phases: verification of primary qualifications pursuant to medical staff application, and the granting of specific clinical privileges based upon evaluation of competence. Successful credentialing thus requires sound initial assessment procedures, as well as access to comprehensive, reliable and practitioner-specific performance data.

The following strategies can help healthcare organizations protect patients and reduce liability risk by enhancing both major phases of the medical staff credentialing process.

1. Identify red flags when reviewing applicants' history.

- **No response to reference inquiry** from a prior medical staff, medical group, healthcare entity, training program or professional society with which the applicant has been affiliated.
- **Difficulty in verifying** general requirements, including training and education, professional liability insurance coverage and past employment.
- **Gaps in education** and/or work history.
- **Discrepancies in applicant responses** and information received from primary verification sources.
- **History of disciplinary actions** by medical staff organizations, healthcare entities, state medical boards or professional societies.
- **Non-voluntary resignation from a medical staff** at any time in the applicant's career.
- **Credible reports of problems** in the applicant's professional practice.
- **Past or pending investigative proceedings** by a state licensing board, medical staff organization or professional society.
- **Claims or investigations** of fraud, abuse and/or physician misconduct by professional review organizations or private and third-party payors, such as Medicare and Medicaid.
- **Criminal investigations, charges and/or actual convictions** of a misdemeanor or felony.
- **Jury verdicts and settlements** of professional liability claims within the past five years.

2. Thoroughly document initial findings regarding professional competence. Organizations must demonstrate through scrupulous documentation that they have objectively and thoroughly assessed practitioners' overall professional competency.

3. Implement a consistent, evidence-based evaluation program. The following measures help ensure that privileging criteria are clear, applied in a fair and non-discriminatory manner, and accommodate changes in both practice and technology:

- **Apply criteria uniformly and document all decisions.**
- **Define the practice of "core privileging" in the medical staff bylaws** – i.e. evaluation of applicants based upon a preselected group of procedures or treatments relevant to the medical specialty – and evaluate all skills independently, even if they are grouped together.
- **Draft a written protocol to guide the development of new criteria**, and require the approval of the medical executive committee and governing board before granting the privilege.
- **Document exceptions to adopted criteria**, noting the consensus of organizational leadership and the medical staff.
- **Convene an interdisciplinary team** to review any contested privileging-related decisions.

4. Collect performance data on an ongoing basis including a process to identify, investigate and address clinical practice concerns throughout the privilege period. Organizations should require a detailed assessment of practitioner-specific data, as provided by the system known as ongoing professional practice evaluation (OPPE). Incorporating such activities as periodic chart reviews, direct observation, monitoring of diagnostic and treatment techniques, and discussions with peers, OPPE provides an opportunity to obtain a more balanced view of the practitioner's strengths and weaknesses. Major OPPE criteria include:

- Involvement in adverse events and sentinel events
- Appropriateness of operations and other procedures
- Medical assessment and treatment methods
- Timeliness and accuracy of assessment and treatment
- Test and procedure request/handling

Data should be collected and analyzed systematically during quarterly reviews. This process can be performed internally, or, in cases of potential conflict, outsourced to an external peer review organization.

5. Establish and enforce evaluation parameters to protect patients and avoid the appearance of a failure to take indicated action by implementing a practitioner review system known as focused professional practice evaluation (FPPE). This process requires a delineation of both the events that trigger monitoring and the period of observation, consisting of either an established timeframe or a specified number of procedures. In addition, documentation should outline how monitoring will be performed, information compiled and evaluated, and performance issues resolved. Common assessment methods include retrospective chart reviews, simulations, external peer reviews, proctoring, and discussions with colleagues and others.

6. Ensure leadership oversight of the credentialing process.

- **Thoroughly investigate the qualifications of medical staff applicants**, focusing on education, board certification, training, licensure and medical malpractice history.
- **Review grandfathering provisions and other organizational practices** related to credentialing and appointment, and codify them in medical staff bylaws.
- **Establish an oversight committee** to ensure compliance with the process.

Resources

Medical Staff Credentialing: Eight Strategies for Safer Physician and Provider Privileging, CNA Vantage Point® 2019.

Scope of Practice and Supervision

The integration of advanced practice providers (APPs), such as nurse practitioners (NP) and physician assistants (PA), into a variety of outpatient settings has enhanced efficiency and increased patient access to care. Depending upon state scope of practice regulations and position descriptions, these roles often include prescribing medications, ordering diagnostic tests and taking after-hours calls. However, the relationship between physicians and APPs presents certain complexities, and establishing a safe and effective collaboration requires careful attention to such issues as communication, documentation and scope of practice.

Depending upon state practice regulations, both NPs and PAs may be permitted to diagnose clinical conditions and prescribe medications. Due to evolving state laws, APPs may have independent practice authority under state law. A number of states also require a practice agreement between the physician and the APP.

Resources

National Conference of state Legislatures (NCSL) Scope of Practice Policy.

Practice Agreements

Practice agreements are intended to clarify and strengthen the collaborative working relationship between the collaborating or supervising physician and APP. Prior to hiring, the physician should have clear criteria for duties and procedures that may be delegated, and avoid the temptation of altering a job description to suit a candidate's limitations. In an outpatient context, practice guidelines should consider the size and complexity of the patient population and the availability of a provider.

Agreements should be reviewed annually, dated and signed by both parties, and made easily accessible to the healthcare team in the event that questions arise requiring clarification

Resources

Nonphysician Providers: A Guide to Safer Delegation, CNA Vantage Point® 2019.

Considerations for Delegating the Authority to Prescribe Medications

Parameters for prescribing different categories of drugs – such as antibiotics, antivirals, diabetic drugs, hormones, antiasthmatics and antihypertensives – should be carefully delineated. Collaborating and/or supervising physicians should maintain a current record of the medication prescription authority delegated to APPs. Likewise, any prescription authority delegated for medical devices, diagnostic tests and procedures should be expressly noted.

For additional information on safe delegation practices please review the CNA Vantage Point® Scope of Practice Changes: Ten Keys to Safer Delegation.

Performance Evaluation

Annual performance review of all providers promotes quality of care and helps ensure that these providers function within the permitted scope of practice. The evaluation process should minimally cover clinical performance, documentation, patient satisfaction, patient safety and risk management awareness, as well as compliance with patient assessment and management protocols.

The following two components play an integral part in successful performance evaluation of APPs:

Performance review. A supervising or collaborating physician should be assigned to evaluate in a methodical, ongoing manner the outcomes of services provided by an APP, as well as their skill, knowledge and ethical standards. Written supervisory guidelines should focus on the following criteria, among others:

- Compliance with scope of practice, as delineated in applicable regulations, privileges granted by the organization, position descriptions and/or contracts.
- Basic skills and professional competence, which should be reviewed upon hire, at six months and annually thereafter.
- Management of patients with complex problems, including case referrals made or consultations requested with other professionals.
- Response to urgent situations, including compliance with approved emergency care guidelines.
- Narcotic/controlled substance prescribing, if applicable, and adherence to the organizational formulary.
- Compliance with the organization's policies and procedures, as well as medical staff bylaws, rules and regulations, and documentation requirements.
- Continuous availability during assigned work times, either in person or via reliable communications technology.

PA competencies are available from the [National Commission on Certification of Physician Assistants](#). In addition, the [National Organization of Nurse Practitioner Faculties](#) outlines NP core competencies.

Resources

[American Academy of Physician Assistants \(AAPA\)](#)
[American Association of Nurse Practitioners™ \(AANP\)](#)

Patient healthcare information record reviews. As appropriate, supervising or collaborating physicians may be expected to review selected patient care records for compliance with practice directives and standards of care. In some jurisdictions, frequency of quality reviews is specified by state law. Otherwise, as a general guideline, reviews should be conducted during the probationary period, every six months afterwards, and as part of the annual review or re-credentialing process.

Record review techniques will vary depending upon the practitioner's scope of delegated duties, degree of experience and training, and assigned patient load. At a minimum, chart reviews should assess the following competencies:

- Diagnostic descriptions.
- Application of routine standing orders.
- Compliance with clinical guidelines and documentation policies and procedures.
- Explanations for any deviations from clinical guidelines or established policies and procedures.
- Issues and/or concerns including differential diagnosis, plan and disposition, as well as discussion with patient, physicians and other members of the healthcare team.
- Explanation for referrals to outside healthcare providers.
- Recommendations for care improvement.
- Discussion with the patient and significant others, including documentation of educational efforts made and indication that the patient or the patient's healthcare decision-making surrogate understands the suggested care plan.
- Timely and legible documentation.
- Entry of signatures and dates.

When necessary, record reviews should be supplemented by face-to-face discussion between reviewing physicians and APPs. APPs are anticipated to assume an increasingly meaningful role within the healthcare delivery system of the future. By specifying their range of duties, fostering a collaborative work environment, and carefully conducting and documenting performance and record reviews, organizations can obtain the full benefit of their knowledge and skills, while minimizing associated liability risk exposure.

Healthcare Industry Representatives

According to the Association of periOperative Registered Nurses (AORN), "health care industry representatives include employees of health care product companies (e.g., clinical consultants, sales representatives, technicians, repair/maintenance personnel)." Although they have a valuable role in offering technical support for providers, there are limitations to their activities in the outpatient healthcare setting. Strict credentialing guidelines should be established and implemented in order to ensure patient safety and alignment with the facilities that they are entering. While the role of the healthcare representative with specialized training may include calibration of equipment/devices under the supervision of a provider, they should not be providing direct patient care. Irrespective of the level of technical support being offered by the healthcare industry representative, all providers and staff should be trained on the safe and effective use of medical equipment and devices before it is deployed.

A written policy/procedure relating to healthcare industry representatives should be established and implemented, including the following:

- Requirements for informed consent that align with federal, state, and local laws and regulations, relating to the presence of a representative during an operative or other invasive procedure. The informed consent process should include the name of the representative and documentation of consent in the patient's healthcare information record.
- Roles and limitations for their activities while in patient care areas.
- Requirements for patient confidentiality.
- Vendor credentialing and training requirements prior to entry to the outpatient setting including, but not limited to, infection control, fire safety, bloodborne pathogens, and patient privacy and confidentiality rights. The healthcare industry representative must follow the regulations of the federal HIPAA statute and regulations, and OSHA's Bloodborne Pathogens Standards.

Independent Contractors

Determinations about whether providers are employees or independent contractors are complex and regulated by federal and state laws. For example, the Internal Revenue Service (IRS) common-law rules state that "anyone who performs services for you is your employee if you can control what will be done and how it will be done." Hiring practices and classifying staff as employees or independent contractors should be developed in conjunction with legal counsel. Many outpatient healthcare organizations outsource a wide range of clinical, technical and administrative functions through the use of independent contractors to manage the following functions:

- Providers, nurses, technicians, pharmacists and other staff positions.
- Physical, occupational and respiratory staff and other therapists for patient rehabilitation.
- Laboratory, radiology, pharmaceutical and other ancillary services.
- Medical director oversight for aging services and allied health facilities, as well as home healthcare providers and medical group practices.
- Payroll, billing, purchasing, equipment maintenance and information technology support.

Outpatient healthcare organizations also may provide their services to other healthcare facilities in order to fulfill business goals and expand their reach. In either situation, it is important to have unambiguous contract terms clearly outlining services to be provided, mutual obligations under the contract, term of contract, and insurance requirements, as well as indemnification and hold harmless clauses to reduce risk exposures. Contracts with vendors and non-employed personnel often include provisions designed to protect one or both parties in the event a patient is harmed by the negligent actions of one of the parties. In the context of healthcare service contracts, an indemnification provision may refer to an agreement to compensate outside providers and vendors for costs and expenses incurred as a result of their own negligence. In contracts lacking such indemnity language, each party is held responsible for any third party claims associated with its own acts or omissions.

All contract language should be negotiated with independent contractors, drafted in consultation with legal counsel and communicated to insurers. Waiver of subrogation language is typically included in contracts, which is designed to reassure contracting service providers that neither the healthcare organization nor its insurance company will pursue recovery of damages if the contractor is found partially responsible for injury to a patient. Issues may arise if the insured signs a contract that includes a waiver of subrogation and then fails to notify the insurer, as the waiver may affect the subrogation or cooperation clause of the policy. If the outside vendor asks to be granted a subrogation waiver during contract negotiations, always notify the insurance company before complying, and request that the waiver be included in the policy form.

In addition to contractual considerations, leaders who oversee the hiring of independent contractors also must ensure that they are appropriately credentialed for the role they are assuming, carry professional liability coverage and have undergone health screening that aligns with the requirements of the organization.

Self-assessment Checklist: Human Resources Practices

This resource is designed to help leaders in outpatient healthcare settings evaluate their human resources policies and procedures. For additional risk control tools and information, visit www.cna.com.

Risk Control Strategies	Present (Yes/No)	Comments
Behavior-based questions and reliable personality profile assessment tools are used in hiring interviews to determine whether candidates possess the requisite integrity, decision-making ability and communication skills.		
A comprehensive pre-employment screening process is consistently utilized and includes the following elements, among others:		
• Drug screen.		
• Criminal background investigation, encompassing all states where the applicant has lived or worked in conformity with laws and regulations.		
• Review of Office of Inspector General and sex abuse registries.		
• Verification and documentation of references and licensure.		
• Check of credit history, if relevant and legally permissible in the jurisdiction.		
Personnel files are organized, reviewed and maintained to ensure that required documents and records are current and accessible.		
Personnel files, whether electronic or paper, are secured to protect employee privacy.		
Personnel files are continually updated and include the following documents:		
• Current professional licensure/certification.		
• Pre-employment screening documents (e.g., criminal background check, drug screen results, reference verifications).		
• Required employment documents completed by the employee (e.g., application, tax forms, contracts).		
• Position-specific skill certifications (e.g., CPR, ACLS).		
• Professional liability insurance carrier and limits of coverage, if applicable.		
• Professional liability claims history, if applicable, including a list of both pending and closed claims.		
• Reports of disciplinary licensing board actions, if any.		
• Current job description, signed by employer and supervisor.		
• Copy of photo identification card.		
• Emergency contacts.		
• Confidentiality statement, signed by employee.		
• Signed form indicating that the employee has read and understood the employment policies as delineated in the employee handbook.		
• General orientation documentation, with a signed acknowledgement by the employee and a human resources representative or supervisor.		
• Performance evaluations, signed by the employee and his/her supervisor.		

**Present
(Yes/No) Comments**

Risk Control Strategies

Employment policies are clearly conveyed to new staff members during the orientation process and are regularly reviewed by supervisors. Issues to discuss include:		
• Employment at will policy.		
• Code of conduct.		
• Acceptable business and professional practices.		
• Adverse event and near-miss reporting policy and process.		
• Disciplinary policies and procedures.		
• Workplace health and safety issues.		
• Conflict of interest.		
• Whistleblower protections.		
• Employee conflicts with outside employment.		
• Contract worker rules and regulations.		
• Professional boundary violations and associated internal reporting process.		
• Equal employment opportunity and diversity policies.		
• Anti-harassment policy.		
• Dress code.		
• Compensation, benefits, hours of operation, paid time off, holidays, and personal and professional leave policies.		
• Smoking policy.		
• Absenteeism and tardiness rules.		
• Artificial Intelligence, cell phone, internet, email and social media policies.		
• Concealed weapons policy.		
• Drug testing.		
• Exit interviews.		
Performance appraisals are conducted on a consistent basis , with findings acknowledged in writing by the supervisor and employee.		
A "tickler system" is established to track due dates for appraisals and licensure recertification.		
Exit interviews are conducted whenever staff members voluntarily end their employment.		

This tool serves as a reference for organizations seeking to evaluate risk exposures associated with emergency management. The content is not intended to represent a comprehensive listing of all actions needed to address the subject matter, but rather is a means of initiating internal discussion and self-examination. Your clinical procedures and risks may be different from those addressed herein, and you may wish to modify the tool to suit your individual practice and patient needs. The information contained herein is not intended to establish any standard of care, serve as professional advice or address the circumstances of any specific entity. These statements do not constitute a risk management directive from CNA. No organization or individual should act upon this information without appropriate professional advice, including advice of legal counsel, given after a thorough examination of the individual situation, encompassing a review of relevant facts, laws and regulations. CNA assumes no responsibility for the consequences of the use or nonuse of this information.

For more information, please call us at 215-509-5437 or visit www.nso.com or www.hpsso.com.

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