



HPSO Physical Therapy Spotlight: Home Care

Healthcare Providers Service Organization (HPSO), in collaboration with CNA, has published our *Physical Therapy Professional Liability Exposure Claim Report: 4th Edition*. It includes statistical data and case scenarios from CNA claim files, as well as risk management recommendations designed to help physical therapists and physical therapist assistants reduce their malpractice exposures and improve patient safety.

You may access the complete report, and additional Risk Control Spotlights, at: hpso.com/ptclaimreport.

This Physical Therapy Spotlight focuses on our analysis and risk recommendations regarding one of the most significant topics in the report: providing physical therapy services in the home health care setting.

Physical therapy practices may be considering expanding service offerings to include physical therapy in the home health care setting due to increased consumer demand for in-home services. When considering providing physical therapy services in the home health care setting, it is important to consider how new liability exposures may arise from both a regulatory and professional liability perspective. According to the CNA/HPSO publication, [Physical Therapy Professional Liability Exposure Claim Report: 4th Edition](#), 5.1 percent of physical therapy closed claims with paid indemnity \geq \$10,000 occurred in the patient's home, with an average total incurred of \$128,558. The home care environment presents a wide array of injury and liability concerns for patients, physical therapists, and employers of physical therapists, as exemplified by the following case study:

The insured physical therapist (PT) had been providing in-home physical therapy sessions to a patient in her mid-70s following knee replacement surgery. The patient was doing an exercise which involved a three-inch step stool, placed between a kitchen island and the refrigerator, and the patient would hold on to both the counter and the refrigerator when doing the exercise. The patient had already completed one set when the PT noticed that the patient was using a different muscle than what he had informed her to use. The PT tried to correct her, but the patient continued to use the incorrect muscle. The PT proceeded to walk to the front of the patient and kneel down while she completed the exercise. The patient did a few more repetitions of the exercise, then fell backwards, hitting her shoulder on a corner of the kitchen island. The PT called 911 and the patient was taken to the hospital via ambulance, where the patient had to have shoulder surgery. The claim resolved with a total incurred greater than \$130,000.

Risk Management Recommendations: Home Care

A comprehensive risk control program that identifies and addresses common exposures is essential to enhance worker and patient safety and minimize potential loss. The following guidance is designed to assist physical therapy professionals and their employers in evaluating risk control exposures associated with their practice in home health care settings. For additional risk control tools, or to download the [Physical Therapy Professional Liability Exposure Claim Report: 4th Edition](#), visit [Healthcare Providers Service Organization](#) or [CNA Healthcare](#).

Establishing Home Care Services

To diminish potential risk exposures, physical therapy providers must ensure that therapy provided in the patient's home comport with state practice regulations, as well as the rules and regulations of applicable state licensing or certification boards. In addition, physical therapists should thoroughly evaluate prospective patients for their care requirements and prepare detailed service plans based upon their medical condition, degree of orientation and functional capability. Comprehensive guidelines for client screening, assessment and service planning help ensure that personal and home care organizations comply with statutory and regulatory mandates, while also demonstrating their capability to provide the necessary physical and human resources, staff expertise and range of services that clients require. For more detailed information specific to providing physical therapy in the home care setting, please refer to the American Physical Therapy Association (APTA) Home Health Section: www.homehealthsection.org.

Policies and procedures. Written employment policies are intended to establish behavioral expectations and delineate the consequences of noncompliance. Employment policies should address the following areas, among others:



- **Delegation and supervision:** Special attention should be given to delegation of duties by licensed physical therapy staff, in order to ensure that physical therapy assistants do not provide clinical care beyond their training or regulatory limits.
- **Monitoring:** Supervisors should make periodic unannounced telephone calls to patient homes and conduct documented in-person interviews with patients and family members. Questions should focus on care issues, finances, and evidence of undue provider influence or inappropriate actions.
- **Boundaries:** Physical therapists should be educated about professional boundary issues and should avoid any activities with patients that fall outside of accepted medical practices. Physical therapy should be conducted in an open and straightforward manner, and providers should avoid multiple relationships with patients, their significant others and their family members. Both providers and business owners should be alert to the following red flags:
 - Assuming the role of providing services, which are social support in nature, in addition to home health care services which have been ordered and established. Examples of some social support services which should be avoided include activities such as running errands, driving a patient to appointments, or taking care of pets.
 - Extracting inappropriate fees.
 - Engaging in inappropriate activities with a patient.
 - Accepting gifts, tips, or valuables from patients, or giving gifts to a patient.
 - Becoming business partners with a patient.
 - Connecting inappropriately with a patient on social media.

For more information regarding managing professional boundaries and addressing boundary violations, refer to the CNA and HPSO Healthcare Perspective, [Professional Boundaries: Drawing Lines That Cannot Be Crossed.](#)

- **Incident response:** Policies and procedures should address expected staff response to medical emergencies, falls or other injuries, and allegations of theft or abuse. An incident report should be filed whenever an unexpected event occurs. The rule of thumb is that any time a patient makes a complaint, an error occurs, a device or equipment malfunctions, or anyone—patient, staff member, or visitor/family member—is injured or involved in a situation with the potential for injury, an incident report is required.
- **Non-owned vehicles:** Providers should be prohibited from transporting patients in their personal vehicles. To help further minimize driving-related risks, only authorized drivers should be allowed to use personal vehicles for

business purposes. Require proof of personal automobile insurance, and ensure that insurance policy limits meet state coverage requirements.

To promote compliance with evolving rules, regulations and laws, staff should undergo a refresher course on policy and procedure annually, or more frequently if indicated. Promptly alert staff to all new or revised policies, procedures and protocols, and answer any questions that arise.

Standard of care. Home care providers must render care that meets applicable standards and licensure requirements and is commensurate with care provided by other similarly trained and credentialed providers, regardless of setting. Satisfying the standard of care involves adhering to the following laws, regulations and expectations:

- Professional licensure requirements.
- Federal and state statutes.
- Medicare regulations.
- Professional association standards, including those of the American Physical Therapy Association.
- Other applicable regulations and standards used to determine negligence in the event of litigation.

Scope of practice. Note that state practice acts and regulations vary from state to state and may evolve over time. To maximize compliance, physical therapists must be aware of and regularly review applicable regulations and state practice acts, as well as organizational policies governing delegation and scope of practice. All staff should receive extensive and documented training on standard of care and scope of practice issues.

Patient Screening and Assessment

Comprehensive guidelines for patient screening, assessment and care/service planning help ensure that personal and home care organizations comply with statutory and regulatory mandates, while also demonstrating their capability to provide the necessary physical and human resources, staff expertise and range of services that patients require.

Patient Screening. An effective screening procedure reduces the risk of inappropriate patient selections by ensuring that prospective patients are suited for personal or home care services and that their needs do not transcend the services, capabilities and resources of the organization. The goals of a pre-admission screening are threefold: 1) To determine an applicant's medical and non-medical service needs, 2) assess their suitability for the home care/personal care setting and 3) initiate the care-planning process.

The screening process commences with an interview of the prospective patient and the family or primary provider(s). An experienced staff member who is knowledgeable about the services the organization is capable of providing should conduct the interview prior to contracting for services. The screening process should focus on the following areas, among others:

- **Medical and cognitive status**, including medical diagnoses, allergies, presence and stage of Alzheimer's disease/ dementia, behavioral patterns, recent surgeries/

hospitalizations, presence of indwelling devices (e.g., catheters and endotracheal tubes), standing physician orders, ability to comprehend information and instructions, and existence and level of pain.

- **Fall risk and fall history**, including near falls and those with and without injury.
- **Physical limitations**, including limits on activities of daily living, bladder and bowel continence, toileting assistance requirements, ambulation/transfer needs, assistive devices and tele-monitoring equipment used, extremity weaknesses and deficits to vision, hearing or speech.
- **Medications**, including the current drug regimen.
- **Skin integrity**, including a detailed description of wounds or other skin-related issues and notation of any specific wound care needs.
- **Safety of the home environment** and necessary modifications for patient safety and functionality.
- **Presence of other occupants in the patient's dwelling**, including their relationship to the patient and whether or not they are caregivers to the patient. Exercise caution when providing care instructions to family caregivers until a level of confidence is ascertained. Document your instructions and education, educational materials, resources, or references provided, as well as the caregiver's questions, returned demonstration, and comfort level with the instructions. For more information on educating family caregivers, please refer to the [AARP Public Policy Institute: Home Alone AllianceSM](#)

Patient assessments. After screening but prior to commencement of services, assign a qualified staff member to visit the patient's home in order to complete a comprehensive initial assessment, determine care needs, identify home environment limitations and concerns, verify the patient's suitability for services and obtain information necessary for developing an individualized service plan. **This is critical as not all patients who wish to have home care, or for whom it is ordered, are appropriate for home care services.** A reassessment should occur at least every six months or anytime that the patient's condition or needs change. All assessments and reassessments must be documented, including the names of the assessor and individuals participating in the screening/assessment process, as well as the date of completion.

Care planning. Individualized, realistically achievable goals should be established for each patient, supported by thoroughly documented monitoring of the patient's response to treatment and therapy. The prospective patient screening process is an opportune time to initiate care or service planning. Data compiled during the screening and assessment phases serve to identify the specific interventions needed to improve a patient's quality of life. Once selected, the physical therapist can develop a care plan in collaboration with the patient, building on the issues, needs and

goals previously identified. Care planning must comply with regulatory requirements and reflect billed charges.

More specifically, a care/service plan should delineate goals and objectives, services to be provided and patient monitoring guidelines. Changes in a patient's condition should elicit a revision to the service plan. A commitment to ongoing, open communication among all parties helps ensure that patient and supportive individuals are kept informed of the services being provided, as well as any changes in the patient's condition that may necessitate a revision of the service plan.

Documentation. Documentation is a tool for the planning and provision of physical therapy services, communication among providers, and demonstration of compliance with federal, state, third-party payer and other regulations. Inadequate documentation may not only impede the quality of patient care, it can also hinder the physical therapist's legal defense in the event of a malpractice lawsuit and can even lead to a physical therapy board license complaint. Patient care assessments, observations, communications and actions should be documented in an objective, timely, accurate, complete, appropriate and legible manner. Documentation should support the treatment plan and satisfy board regulatory and third-party billing requirements.

For documentation-related risk control recommendations for physical therapists, see HPSO and CNA's publications, [Physical Therapy Spotlight: Documentation](#), and [Home Care Documentation: A Checklist of Essentials](#).

Ongoing monitoring of services provided. Regular reviews should be conducted to monitor staff compliance with service plan elements. Reviews should encompass an evaluation of the service plan as well as supporting care documents. Unannounced visits to the patient's residence by supervisory staff also should be conducted, both during and after personal/home care visits. Inquiries should be posed to the patient and the family related to satisfaction with services being provided and any changes to the patient's condition or needs.

Physical Therapy Spotlight:

For risk control strategies related to:

- [Documentation](#)
- [Protecting Your License](#)
- [Telehealth](#)
- [Falls](#)
- [Liability for Business Owners and Supervisors](#)
- [Burns \(video legal case study\)](#)

Visit hpso.com/ptclaimreport



Reducing Exposure to Common Health and Safety Threats in Home Care

Home care hazards, including hostile animals and potentially violent situations, compromise patient care and subject staff to more frequent and severe injuries, as compared to other physical therapists who work in more controlled healthcare environments. Further, the inability of physical therapists to ensure a healthy and safe environment presents certain risk exposures in the form of physical and structural impediments that can lead to patient falls, equipment malfunction, infectious disease exposures, and physical therapy staff injuries. In an effort to promote the safety and security of physical therapists working in a home care setting, and to promote the health and safety of their patients, here we examine these common hazards and offer strategies to minimize their impact.



FALL PREVENTION. According to the [CDC](#), falls remain a leading cause of bodily injury in older adults. More than one out of four people aged 65 and older fall each year, with one out of five falls causes a serious injury such as broken bones or a head injury. Falls are also a common source of professional liability litigation. Therefore, reducing the incidence and consequences of falls is a risk control priority. The [Physical Therapy Professional Liability Exposure Claim Report: 4th Edition](#) found that the majority of closed claims in the 2020 claim dataset that occurred in the patient's home were associated with injuries that a patient sustained due to a fall, as exemplified by the following case study:

A physical therapist assistant (PTA) was demonstrating how to perform a single step-up and step-down at the patient's home. The patient had recently been discharged from the hospital after a left side cerebrovascular accident. The PTA was standing to the patient's right side when the patient collapsed, sustaining a left-sided femur fracture. The patient alleged that he should have been wearing a gait belt and the PTA should have been standing behind him. The patient testified that all the other treating PTAs had him wear a gait belt and stood behind him during therapy. The claim resolved with a total incurred greater than \$45,000.

For risk control recommendations for physical therapists related to fall prevention, see HPSO and CNA's publication, [Physical Therapy Spotlight: Falls](#).



EQUIPMENT SAFETY. Medical device and equipment errors are a relatively common source of harm for patients and liability for physical therapists and physical therapy

business owners. Many malpractice claims include allegations of mechanical malfunction, as well as failure to properly use, test or maintain equipment. According to the [Physical Therapy Professional Liability Exposure Claim Report](#), physical therapist claims involving equipment-related injuries comprised 4.0 percent of closed claims with paid indemnity \geq \$10,000, and these claims had an average total incurred of \$119,228. Equipment-related injuries also accounted for 12.7 percent of closed claims with paid indemnity $<$ \$10,000 and in the study. Closed claims that included equipment-related allegations often led to a patient suffering a burn, fracture or sprain/strain due to using equipment that malfunctioned. The following measures can help reduce the risk of equipment malfunction or user error:

- **Perform and document preventive maintenance on all equipment**, per manufacturer guidelines.
- **Inspect and/or test equipment prior to patient use**, removing anything that appears to be broken, unreliable or unsafe.
- **Regularly replace items with a short life expectancy**, such as TheraBands™.
- **Ensure that the specific equipment needed for each patient is readily available** and checked before each use.
- **Sequester any equipment involved in patient injury**, treating it as potential legal evidence.



INFECTION PREVENTION. The home care setting presents its own set of infection prevention and other safety challenges for both patients and healthcare professionals. The CDC and the Healthcare Infection Control Practices Advisory Committee (HICPAC) state that "Infection prevention must be made a priority in any setting where healthcare is delivered." Such occupational safety programs involve supplying staff with the tools needed to implement universal precautions, including hand hygiene products and personal protective equipment (PPE), i.e., gloves, gowns, and face and eye protection. For evidence-based resources and recommendations for infection control, visit: www.cdc.gov/infectioncontrol/tools.



HOSTILE ANIMALS. Home healthcare workers often encounter hostile and unrestrained animals. An initial patient screening should specifically inquire about animals in the home that may be prone to hostile tendencies. If threats are detected, expressly state in written service agreements that animals are to be restrained prior to home care visits and to remain restrained for the duration of the care visit, including birds and reptiles. When encountering a hostile animal during a patient visit, providers should:

- **Remain calm and wait outside** the home until the animal is restrained.

- **Reiterate to the patient that all animals are to be safely restrained** during visits.
- **Promptly advise the patient of the inability to provide services if an animal cannot be restrained** and inform the home care employer so that alternate care arrangements can be made.



VIOLENT SITUATIONS. Home health care workers are dependent upon their own skills to safely defend themselves from acts of violence and aggression. Therefore, knowing how to identify and manage unsafe situations is essential:

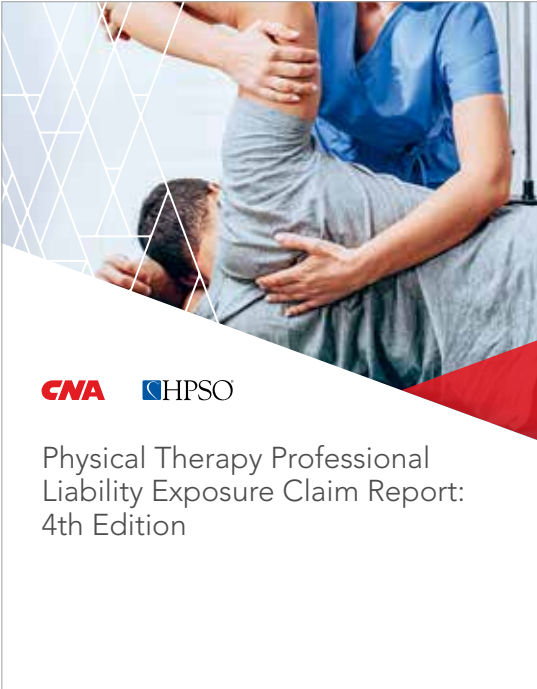
- **Assess the environment for quick egress routes** in case of sudden violence or danger.
- **Remain vigilant to signs of impending violence** exhibited by patients or family members, e.g., verbal aggression, threatening body language, signs of drug or alcohol abuse, and/or the presence of weapons. Physical therapists always should maintain an open pathway for a swift exit, if required.
- **Know how to defuse anger**, including speaking to patients in a calm and respectful manner, avoiding directives or orders, acknowledging feelings of frustration, moving in a slow manner and maintaining a respectful distance.
- **Empathize with the needs and issues of agitated individuals**, invoking de-escalation measures when presented with unusual or disruptive behaviors.
- **Maintain safe boundaries and immediate access to a cell phone**, in order to summon 911 assistance, if necessary.
- **Report violent occurrences and home-related hazards**, such as unsecured weapons, signs of drug/alcohol abuse or other illicit activities.

- **Implement a violence alert flag** in the patient's record and consider modifying staffing to ensure safety.
- **Trust personal judgment** and promptly remove oneself from a potentially dangerous environment. To avoid allegations of patient abandonment, refer to State Practice Act provisions related to abandonment. Often, an individual physical therapist must decide whether or not it is possible to continue providing safe patient care. If not, the physical therapist should notify their supervisor of the decision and document every reason in detail.
- **Regularly review training on de-escalation and avoiding unsafe situations.**

For more information, review OSHA's [Guidelines for Preventing Workplace Violence for Health Care & Social Service Workers](#), which includes the agency's recommendations for reducing the risk of workplace violence to workers in healthcare, including home healthcare.



INCIDENT RESPONSE: Policies and procedures should address expected response to medical emergencies, falls or other injuries, and allegations of theft or abuse. An incident report should be filed whenever an unexpected event occurs. The rule of thumb is that any time a patient makes a complaint, an error occurs, a device or equipment malfunctions, or anyone—patient, staff member, or visitor/family member—is injured or involved in a situation with the potential for injury, an incident report is required.



To download HPSO and CNA's full report, *Physical Therapy Professional Liability Claim Report: 4th Edition*.

www.hpso.com/ptclaimreport



1100 Virginia Drive, Suite 250
Fort Washington, PA 19034
1.800.982.9491 www.hpso.com



333 South Wabash Avenue
Chicago, IL 60604
1.888.600.4776 www.cna.com

In addition to this publication, CNA and Healthcare Providers Service Organization (HPSO) have produced numerous studies and articles that provide useful risk control information on topics relevant to physical therapy professionals, as well as information relating to physical therapy professionals insurance, at www.hpso.com. These publications are also available by contacting CNA at 1.866.262.0540 or at www.cna.com.

The information, examples and suggestions presented in this material have been developed from sources believed to be reliable, but they should not be construed as legal or other professional advice. CNA accepts no responsibility for the accuracy or completeness of this material and recommends the consultation with competent legal counsel and/or other professional advisors before applying this material in any particular factual situations. This material is for illustrative purposes and is not intended to constitute a contract. Please remember that only the relevant insurance policy can provide the actual terms, coverages, amounts, conditions and exclusions for an insured. All products and services may not be available in all states and may be subject to change without notice. "CNA" is a registered trademark of CNA Financial Corporation. Certain CNA Financial Corporation subsidiaries use the "CNA" trademark in connection with insurance underwriting and claims activities. Copyright © 2021 CNA. All rights reserved.

Healthcare Providers Service Organization is a registered trade name of Affinity Insurance Services, Inc.; (TX 13695); (AR 100106022); in CA, MN, AIS Affinity Insurance Agency, Inc. (CA 0795465); in OK, AIS Affinity Insurance Services, Inc.; in CA, Aon Affinity Insurance Services, Inc., (CA 0G94493), Aon Direct Insurance Administrators and Berkely Insurance Agency and in NY, AIS Affinity Insurance Agency.

Healthcare Providers Service Organization (HPSO) is the nation's largest administrator of professional liability insurance coverage to physical therapy professionals. Healthcare Providers Service Organization is a registered trade name of Affinity Insurance Services, Inc., an affiliate of Aon Corporation. For more information about HPSO, or to inquire about professional liability insurance for physical therapy professionals please contact HPSO at 1.800.982.9491 or visit HPSO online at www.hpso.com