

REPORTING TO HOPA

The HOPA liability policy creates an obligation to report in writing to HOPA as soon as our Subscriber becomes aware of a **claim** or circumstances which “could reasonably be expected to give rise to a **claim**”.

What is a Claim

The definition of “**claim**” in the insurance policy includes any written or oral notice alleging that the Subscriber is liable for damages.

The following events create an obligation to report to HOPA as soon as you learn of them:

1. Receipt of court documents in which our Subscriber is sued for monetary compensation;
2. An explicit demand for compensation from a patient, or someone acting on their behalf;
or
3. An allegation that our Subscriber has caused injury or loss that entitles the claimant to compensation, even if there is no specific demand quantified.

In each of these instances, the obligation to report is automatic. There is no assessment of any other factors, such as whether the claim has merit or whether the claim may be resolved directly with the claimant without involving HOPA.

Circumstances that Could Reasonably be Expected to Give Rise to a Claim

An obligation to report to HOPA may also arise even when no “**claim**” has been articulated. This obligation arises from circumstances that could reasonably be expected to give rise to a claim.

Assessing whether an incident or event should be reported requires an objective assessment of a number of factors to determine whether a claim might reasonably be expected.

Potential claims are often reported as a result of an adverse event.

The potential for a claim is recognized when a patient suffers an injury while receiving care, such as an inpatient fall, or experiences an unexpected outcome from treatment, such as death during surgery. Without even considering or knowing whether there has been any breach of the standard of care, a serious unexpected outcome for a patient should be reported to HOPA.

Other adverse events that should be reported to HOPA include known breaches of the standard of care, even if you don't yet know of any patient harm. For example, a medication error may be discovered as soon as it occurs. You may be unaware if there will be an adverse impact upon the patient but you are aware that it is a possibility. Knowing that there has been a breach of the standard of care, you should consider the likelihood of patient harm, and the severity of that possible harm in determining whether the incident should be reported to HOPA.

Another example is that of known equipment malfunction or misuse. For example, you discover that your drug refrigerator hasn't been calibrated to the correct temperature for some time, or that your sterilization equipment has malfunctioned. You don't know yet whether any patient has suffered harm, but you recognize that possibility. These types of events should be reported to HOPA.

*The HOPA policy creates an obligation to report in writing to HOPA as soon as our member becomes aware of a **claim** or circumstances which "could reasonably be expected to give rise to a **claim**".*

A patient complaint may also trigger a reporting obligation. That complaint may be made to the Patient Representative or hospital administration. In responding to the complaint, it may become apparent that an error was, or may have been, made. You may also conclude that no error was made, however, the complainant may not accept that explanation and indicate an intention to pursue a claim. The fact the patient's complaint may have no merit does not mean you can forego reporting.

The question to ask is whether it is reasonably expected these circumstances may lead to a claim.

That requires an objective assessment of a number of factors:

- Has a patient experienced an injury or unexpected outcome;
- How serious was the outcome;
- Was there a breach, or possible breach, of the standard of care, regardless of any known patient harm;
- Can the effect on the patient be easily corrected;
- Even if the immediate impact on the patient can be corrected, is there any potential lasting effect;

- Has the patient suffered any financial or other measurable loss (e.g. loss of income, out of pocket expenses for follow-up treatment);
- Has there been communication with the patient or the patient's family since the incident;
- What was the nature and tone of that communication;
- Has the patient or patient's family indicated an acceptance and understanding of the information provided and that all their questions have been answered; and
- Has the patient or patient's family indicated an intention to present a claim, including consulting with legal counsel?

Why Timely Reporting is Critical

Timely reporting of a claim, or circumstances which could reasonably be expected to give rise to a claim, serves our Subscriber's interests in a number of ways.

Early investigation of an event allows for the best preservation of evidence. It also allows for the identification of potential witnesses. It is important to interview witnesses while the events are still fresh in their minds. Their fresh recollection may lead to other avenues of investigation that may not otherwise be identified – years down the road, they may forget that another employee was standing beside them when a particular event happened, or that they took a particular action but didn't chart it. If an event is not reported in a timely manner, witnesses may have forgotten crucial details, the witnesses may not be easily found, or they may even be deceased by the time an actual claim is advanced.

Timely reporting also allows for the preservation of physical evidence such as equipment which might otherwise be repaired, altered and even destroyed without being examined and tested. The physical location of an event may be changed by the time an actual claim is advanced, so it is critical to take appropriate photos and measurements. Valuable physical records may no longer be available. Even when charts have been preserved in another format, such as scanned and archived, there may be value in examining the original, for example, to determine whether entries were made contemporaneously. This may be lost with copies.

The time, energy and resources that must be invested to investigate, document and report a claim or potential claim in the early stages are often much less than would be required at a later time to regenerate or replicate evidence and to refresh memories.

One of the greatest benefits to timely reporting is that early involvement by HOPA may create an opportunity for direct discussion with the claimant, before they have retained legal counsel. Experience has shown that early, direct contact with a claimant can lead to early resolution of a claim, including mitigating the effects of the event.

In the event that litigation is eventually initiated, early reporting to HOPA will have laid the best foundation to defend our Subscriber's interests.

HOPA welcomes your inquiries about claims, or potential claims, at any time. We encourage you to call us whenever you are faced with the question of whether to report a claim.

If you have questions, or would like additional information please contact:

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