Never say “never events”

By Alan Lembert, MD

Can we reframe them to support patient safety?

Confusion persists about the conditions commonly referred to as “never events” and those deemed as “nonreimbursable serious hospital-acquired conditions” (HACs) by the Centers for Medicare & Medicaid Services (CMS).

Despite the widespread use and significant appeal of the phrase “never events” in the public arena, the obvious unacceptable errors, such as wrong site/wrong side surgery and discharge of an infant to the wrong person, Table 1 shows the specific conditions defined by the NQF as SREs.

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<th>What is a nonreimbursable HAC?</th>
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<td>CMS adopted the nonreimbursement policy for certain HACs to motivate hospitals to accelerate improvements in patient safety and to limit hospitals’ ability to bill Medicare for complications. The nonreimbursable conditions apply only to those HACs deemed “reasonably preventable” through the use of evidence-based guidelines (Table 1).</td>
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<td>According to Arnold Milstein, MD, a member of the Medicare Payment Advisory Commission (MedPAC), “The new payment approach is actually a relatively small step in a cautious, intermittent, 50-year effort by payors to stimulate U.S. hospitals and clinicians to accelerate improvement in the quality of care and reductions of wasted spending.”</td>
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<td>He also notes that Kenneth Kizer, who coined the term “never events,” believes that using the negative term carries an extra psychological charge. Research on “negative framing” suggests that humans are more strongly inclined to take action when the actions in question are labeled so as to convey the loss avoided (rather than the benefit gained) and when the consequences of failing to act are mentally vivid.</td>
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Table 1: Events identified as SREs by the NQF and/or nonreimbursable HACs by CMS

Included solely on the NQF’s list of SREs
- Postoperative death in normal health patient
- Implantation of wrong egg
- Death/disability associated with use of contaminated drugs, devices, or biologics
- Death/disability associated with use of device other than as intended
- Infant discharged to wrong person
- Death/disability due to patient elopement
- Patient suicide or attempted suicide resulting in disability
- Death/disability associated with medication error
- Maternal death/disability associated with low-risk delivery
- Death/disability associated with hyperbilirubinemia in neonates
- Death/disability due to spinal manipulative therapy
- Incident due to wrong oxygen or other gas
- Death/disability associated with use of restraints within facility
- Impersonating a healthcare provider (ie, physician, nurse)
- Abduction of a patient
- Sexual assault of a patient within or on facility grounds
- Death/disability resulting from physical assault within/on facility grounds

Included on both the NQF and CMS lists
- Surgery on the wrong body part
- Surgery on the wrong patient
- Wrong surgery on a patient
- Foreign object left in patient after surgery
- Death/disability associated with intravascular air embolism
- Death/disability associated with incompatible blood
- Stage 3 or 4 pressure ulcers after admission
- Death/disability associated with hypoglycemia
- Death/disability associated with electric shock
- Death/disability associated with a burn incurred within facility
- Death/disability associated with a fall within facility

Included only on the CMS list of nonreimbursable HACs
- Falls leading to traumatic injuries, including fractures, dislocations, intracranial injuries, crushing injuries
- Catheter-associated urinary tract infection
- Vascular catheter-associated infection
- Surgical site infection following coronary artery bypass graft (CABG)—mediastinitis
- Surgical site infection following bariatric surgery (laparoscopic gastric bypass, gastroenterostomy, laparoscopic gastric restrictive surgery)
- Surgical site infection following orthopaedic procedures (spine, neck, shoulder, elbow)
- Deep vein thrombosis (DVT)/pulmonary embolism (PE) in total knee replacement and hip replacement
- Death/disability associated with diabetic ketoacidosis, nonketotic hyperosmolar coma, hypoglycemic coma, secondary diabetes with ketoacidosis, secondary diabetes with hyperosmolarity

Conditions on the CMS nonreimbursable HACs list may not be completely preventable and may occur even when the standard of care was met. A case-by-case analysis should determine the preventability, and systems can be improved to reduce the frequency of such events, but it is unlikely that the incidence can be zero.

Liability concerns and negligence claims

One concern faced by orthopaedic surgeons and their medical liability insurers is the public confusion between the NQF’s list of SREs and the CMS list of nonreimbursable HACs. Most of the events on the NQF’s SRE list will likely result in a medical liability payment. Although establishing the amount of compensation may be difficult, few will argue against just compensation for injuries that result from preventable harmful errors as a result of medical care.

Many of the nonreimbursable HACs, however, are not completely preventable, even with the best practice of evidence-based treatment. Patients who experience complications listed as nonreimbursable HACs will be inaccurately told that negligence exists because these complications are “never” events. Soon, trial lawyers will be advertising and openly soliciting patients with conditions deemed “never” and “nonreimbursable.”