

ECRI's *Strategic Insights for Ambulatory Care* newsletter is being offered to CAPIC insureds at no cost. If you are interested in visiting any of the links in this edition, please contact Brad Dunkin, Assistant Vice President, at BDunkin@CAPphysicians.com.



Learn More about Your Membership

Attend a live demo **December 21, 2023, 1:00 PM EST**, or **contact us** to schedule an individualized demo for your team.

October 10, 2023

Strategic Insights for Ambulatory Care is a biweekly service provided by ECRI. We welcome your comments; please send them to [**AmbulatoryCareRM@ecri.org**](mailto:AmbulatoryCareRM@ecri.org).

- Taking Action: Erasing Race-Based Disparities in Cancer Care [**view**](#)

Spotlight on Health Literacy

October marks Health Literacy Month! When patients or family members have trouble understanding health information, healthcare organizations and their staff may share in the fallout. Examples of negative effects on both organizations and patients include adverse events, substandard care, inefficient use of healthcare, barriers to patients' self-determination, and difficulty fulfilling the organization's mission.

- Guidance: [**Health Literacy**](#)
- Tools
 - [**Health Literacy: Checklist for Creating or Evaluating Materials**](#)

- [Health Literacy: Handout for In-Person Communication](#)
- [Resource Collection: Patient and Public Relations](#)



Patient Safety & Relations

COVID-19 Pandemic Worsened Mental Health among Secondary School Students

What's the news. The COVID-19 pandemic was associated with worse outcomes in mental health for secondary school students, including greater risk of depression; social, behavioral, and emotional difficulties; and deterioration in mental well-being, according to a [study published September 21, 2023, in *JAMA Network Open*](#). Greater mental health deteriorations were associated with female gender and initial low risk for mental health difficulties.

Why it matters. Young people's mental health was a concern before the COVID-19 pandemic, but the upheaval created by the pandemic has worsened the situation. The rate of youth ages 11 to 21 seeking care in the emergency department for suicide ideation and attempts was [higher during the initial months](#) of the COVID-19 pandemic in 2020 as compared with the same months in 2019.

How ECRI can help. ECRI named [The Pediatric Mental Health Crisis](#) the number one patient safety concern in 2023.

Diagnostic Imaging Interpretation by Nonphysician Practitioners Significantly Increases

What's the news. Diagnostic imaging interpretation is more frequently being performed by nonphysician practitioners, an increase driven by metropolitan areas in states with less restrictive scope-of-practice regulations, according to a [study in the September/October 2023 issue](#) of *Current Problems in Diagnostic Radiology*. Researchers find that nonphysician practitioners interpreted 2.6% and 3.3% of imaging studies in 2016 and 2020, respectively, demonstrating a 26.9% increase.

Why it matters. Nonphysician practitioners' scope of practice is largely dictated by state laws and regulations and is also impacted by other factors such as employment agreements, practice setting, and billing requirements of Medicare and other payers. Solid working knowledge of the statutes and regulations for each state in which the clinician

practices is the essential first step in a successful working relationship between physicians and nonphysician practitioners.

How ECRI can help. The guidance article [Scope of Practice Laws for Nurse Practitioners and Physician Assistants](#) discusses state regulations, professional liability issues, and strategies for oversight and communication.

Legal & Regulatory

Nurse Convicted in \$200M Scheme to Defraud Medicare

What's the news. A Florida nurse practitioner has been convicted of one count of conspiracy to commit healthcare fraud and wire fraud, four counts of healthcare fraud, and three counts of making false statements relating to healthcare matters for her role in a scheme to defraud Medicare by submitting more than \$200 million in false and fraudulent claims for genetic testing and medical equipment that the Medicare beneficiaries did not need, according to a [September 21, 2023, announcement from the U.S. Department of Justice](#). The convicted nurse personally pocketed approximately \$1.6 million in the scheme, which she used to purchase cars, jewelry, home renovations, and travel.

Why it matters. Federal and state governments have aggressively pursued fraud and abuse of the Medicare and Medicaid programs. To avoid allegations of fraud, healthcare providers and organizations need to create a culture of legal compliance by becoming familiar with fraud and abuse laws, implementing a compliance program, conducting periodic staff training, and performing audits.

How ECRI can help. The guidance article [Creating and Maintaining an Effective Compliance and Ethics Program](#) discusses important provisions of fraud and abuse laws and may help organizations develop and implement compliance programs.

Health System Settles with California for \$49M For Improper Disposal of Medical Waste, Patient Records

What's the news. A healthcare system based in California has settled with the state for \$49 million to resolve allegations that it improperly disposed of hazardous medical waste and thousands of patients' protected health information (PHI) in dumpsters across multiple facilities, according to an [article published September 11, 2023, in Fierce Healthcare](#). The settlement follows undercover inspections of 16 facilities' dumpsters conducted by various district attorneys' offices, which uncovered hazardous and medical waste including syringes, pharmaceuticals, and medical tubing with body fluids, as well as over 10,000 paper records with PHI of more than 7,700 patients.

Why it matters. Healthcare facilities must incorporate federal and state regulations into their organization's policies and procedures regarding the disposal of both hazardous medical waste and patient records. Organizations should monitor compliance with such regulations on a regular basis.

How ECRI can help. The guidance article [Environmental Safety and Security](#) discusses the environmental health and safety issues that ambulatory care facilities must

address, including state and local regulations, Occupational Safety and Health Administration standards, Centers for Disease Control and Prevention recommendations, and U.S. Food and Drug Administration requirements on worker safety.

Medical Center Must Pay Employee's Wages Stolen by Cybercriminals

A Maine medical center must reimburse an employee for wages that cybercriminals fraudulently redirected to their own bank account, the state supreme court has ruled. The decision affirms a trial court ruling in favor of the employee.

The employee, an anesthesiologist, was paid by direct deposit into a bank account that she designated through an employee self-service payroll system. As an employee of the medical center, the anesthesiologist had signed a computer code of conduct document that specified, in part, that if she shared her username or password with other parties, it would be assumed that she had authorized the third parties to act on her behalf.

In June 2018, the anesthesiologist was a victim of a phishing email; although she did not recall clicking on the fraudulent email, she and other employees were directed to a false payroll system and signed in. The cybercriminals used the illegally obtained information to change the employee's direct deposit information, routing her next paycheck to their own bank account.

The attack was discovered when two other employees reported that they had not received their pay. The medical center investigated and discovered that 11 employees were affected—including the anesthesiologist—and reported the incident to the FBI and its own bank. However, less than \$80.00 of the more than \$8,400 owed to the anesthesiologist was recovered, and the medical center refused to reimburse the anesthesiologist for the balance.

The anesthesiologist sued, arguing that the medical center had failed to meet its statutory obligation to pay her. The medical center argued that at the time it issued the employee's pay it could not have known that it was cybercriminals, and not the anesthesiologist, who changed the direct deposit information, and thus should not be held liable for the lost wages.

Both the trial court and the state supreme court rejected the medical center's argument. According to the plain language of the state's wage payment statute, the medical center is obligated to pay the employee the wages owed, the court ruled. Because the employee herself did not authorize payment to the fraudulent bank account, the medical center cannot say that it met its obligation. The court noted that it does not make any difference how the cybercriminals obtained the anesthesiologist's login credentials, and the medical center did not allege that she was negligent or otherwise at fault. The medical center was ordered to reimburse the employee fully for her unpaid wages. (*Dorsey v. N. Light Health*, 288 A.3d 386 [Me. Dec. 20, 2022])

ECRI Resources:

- [**Infographic: Beware of Bait! How to Spot a Phishing Scam**](#)
- [**The HIPAA Security Rule**](#)

ECRI Commentary: Information security is a shared responsibility of employers, who must provide infrastructure and education to limit risk to the organization as well as to employees, who must vigilantly safeguard their personal information, including usernames and passwords. This obligation extends beyond protecting patients' confidential information and includes employees' own information. However, even in the best designed systems, breaches can still occur, and organizations should have audit and review systems in place to detect and initiate responses. In addition to complying with federal laws and regulations, such as the Health Insurance Portability and Accountability Act (HIPAA) Security Rule, organizations should work with their legal counsel to understand and comply with state laws and regulations.

This abstract is a summary of a recent court decision, verdict, settlement, or other action affecting healthcare organizations and their risk management programs. When reviewing this abstract, keep in mind that laws and court decisions vary among jurisdictions and that decisions of lower courts may be overturned on appeal. For specific legal guidance regarding the significance or applicability of this decision, contact legal counsel.



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