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COVER STORY

Modern issues call for adaptability in handling claims

Headlines about the malpractice liability system tell us it costs too much, that we can't rely on it for fair outcomes. While tort reform may cap the total losses, it still leaves discontent with the system on all sides. Yet how can it be improved? First, we must decide what it should look like. Next we must decide how to get there.

What should the claims system look like?

An answer to that question comes from both Institute of Medicine's *Crossing the Quality Chasm* report and from [Don Berwick](#). The IOM identified six aims for the improvement of health care and Berwick crystallized their meaning in a 2001 speech. To adapt them further:

- Safety: not harming patients; or, in the claims vernacular, the system shouldn't make anyone worse
- Effectiveness: stopping poor practices and reliably using good ones
- Patient-centeredness: offering patients the keys and, if they want, letting them drive
- Timeliness: stopping all unnecessary waiting
- Efficiency: avoiding waste
- Equity: sowing justice.

The IOM recommends dramatic change for health care, and perhaps a similar sea change for claims should be considered. Aren't these valid goals for health care itself also pertinent to cleaning up clinical and emotional messes that result from care?

A critical look at the claims system does not reveal a pretty picture. It can hurt patients – many people who need and deserve payment don't get it and response is based on the rules of an old English legal system, not their needs. The system still often relies on questionably effective claim management practices and strategies, most based on strict control. The lawyers, the courts and the insurance people drive the system – not the patients and not even the providers.

Claims managers don't intend to do bad things, any more than health care providers intend to provide the less-than-ideal care described by the IOM. But for many of the same reasons, some common practices just don't work very well.

Long-term solution: complex adaptive systems

The Institute of Medicine also suggests a concept that may provide a solution. In Appendix B to the *Chasm* report, Paul Plsek describes complex adaptive systems (CAS), and suggests that they represent a good model for modeling and changing health care. The model also works well to describe both the macro claims system (the industry) and the microsystems that arise around each potential claim.

A "system" is the coming together of parts, interconnections and purpose. In complex adaptive systems, "the parts of the system have the freedom and ability to respond to stimuli in many different and fundamentally unpredictable ways." The system and its agents generate emergent behavior: creative and often surprising behavior that cannot be predicted. The emergent reality can be viewed as good or bad, as innovation or error. Not all creativity is productive, and the occasional surprise outcome is a risk.

Outcomes in a CAS are also unpredictable because events in the system do not lead to linear responses. A small thing can have a very large impact, beyond any predictable effect. This is observed in the macro med mal system when one or two large verdicts lead to subtle but real changes in claim management, reserving and pricing practices throughout the industry. Realistically, a huge nursing home verdict in Arkansas probably doesn't actuarially affect the true risk of all long-term care facilities. But each carrier or self-insured entity (agents in the CAS) responds by altering estimates and practices, thereby affecting the industry as a whole. Actuaries respond by increasing estimates of losses further exaggerating the effect. A disproportionate response in a single-claim microsystem would be a comment by a party that dramatically alters the position of the other.

Survival in a complex world

Successful operation in a CAS environment requires different leadership and management techniques than operation in a linear or mechanistic world. The connections and responses in a CAS are *not* predictable, and structures must account for that. A non-adaptive management style calls people who act unpredictably "unreasonable" or their behavior "inappropriate." Juries are "out of control."

Viewing claims, at both the micro and macro levels, as complex adaptive systems, one looks at the agents (players) as independent and the process accounts for that. A claims program that operates as a CAS would not expect a small range of responses from claimants, but would accept their actual broader range of responses and work toward accomplishing its goals through adaptation to those responses. The system may respond, for example, with efforts to minimize the role of the plaintiff attorneys (who are also

agents) by working toward early relationships and trust with patients. [COPIC](#) has incorporated this solution in its [3-Rs program](#).

There can be more rigid components of a complex environment. Examples here might include regular reporting requirements and customer service expectations. But those don't mandate linear management for the whole system. The highly structured and hierarchical processes often found in the claims arena reduce the ability of agents to adapt and create. Attempts to define an acceptable "range" of settlement for similar cases are an artificial structure that may increase long-run losses. Quarterly claims committees that approve reserves and settlements invariably reduce flexibility and speed. No guidelines can account for the extremely variable needs and responses of either claimants or covered providers (especially physicians). Usual decision-making structures are buried in committees and upper levels of management, so far removed from the front line that they cannot respond to the independent and unpredictable actions of the other agents in the CAS. Losing the ability to adapt, we may cost opportunities for resolution that could represent better long-term outcomes.

The rules that govern

Complexity is *not* chaos. Complexity science assumes that complex systems will be orderly *without* central control of details, relying instead on self-organization that follows simple rules. Establishing the simple rules constitutes one of the major challenges of management in complex environments. As stated in the book [Edgewise: Insights From Complexity Science for Health Care Leaders](#), they should represent the absolute minimum specifications to meet the system's ultimate objectives.

In the claims world, what are the objectives, and how would the rules look? The legal system sets some parameters. One possible rule would be to avoid violating the law. For other objectives, the goals of the *Chasm* report would apply:

- Help patients, both those who have been injured or irritated, and those yet to come
- Use the knowledge gained to improve care and claim processes
- Allow patients to control the process. (Do written disclosure and claim procedures directly address the physical, psychological and emotional needs of the patient or the family?)
- Act timely
- Eliminate waste
- Maximize justice, which can be defined (simply) by the organization.

One could argue for fewer or more rules; there is no right answer. Many current rules, though, would be subsets of those listed above. With a broad view of "justice," there probably is no need to specify that payments will be minimized. Maximizing justice means behaving fairly to everyone and that means not giving away too much, leaving money for the next claimant and to run the hospital. But the CAS will have to decide as part of its adaptive process how to apply that rule. And its response will look different in different situations.

Information and transparency

To operate effectively, all the agents operating in the system need full and accurate information. Confidential settlements block information about the value of other cases, but in a complex and adaptive claims world, information about other cases has less value. As health care professionals improve communication with patients and families through disclosure and patient-centered care, perhaps they will also be more forthcoming with the information needed to evaluate their claims. This is a challenge, not an obstacle.

For decades, attorneys have advised parties on both sides to avoid sharing any information that might prove detrimental to their case. Unfortunately, that also shields much information that is necessary to resolve claims in a CAS. Both sides find themselves unable to adapt, and they wind up in litigation. Fear of losing a case in the rigid world of lawsuits can mean ignoring the benefits of a model that depends on openness and flexibility.

Emergence happens at the fringe

Information moves at the edges of a system. People react at the edges of a system. The ability to decide and move quickly in response will determine the level of emergence and creativity the system can produce. Decision-making structures must enable responsiveness at the front. Mediation provides a perfect example. Often, a claims adjuster learns things in mediation that affect his or her valuation of the case. But the claims committee is scattered, and the supervisor who could grant additional authority is on vacation or has left for the day. The possible positive emergence from that interaction can be lost because the system cannot respond.

CONCLUSION

The overall discontent with the medical malpractice system can sometimes arise from efforts to force an inherently complex, non-linear process (dispute resolution) into a highly controlled and rigid framework like civil litigation. Frustration within the claims industry grows when its structures interfere with its ability to *resolve* claims because health care professionals are too busy *managing* them. But emergence is happening: Programs at COPIC, Drexler, the University of Michigan or the Kentucky VA are proceeding with great interest. Health care professionals must cross a chasm, and these pioneers, together with the lessons of complexity science, can help.

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There are many other resources on complexity theory and science. Plsek, with Brenda Zimmerman and Curt Lindberg, wrote *Edgeware: Insights From Complexity Science for Health Care Leaders* (VHA, Inc. 2001), a great starting point for students of complexity. Many other resources are listed at www.plexusinstitute.org.

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