

Enterprise Risk Management for Hospital Systems: What Counsel Needs to Know

Leveraging ERM as a Strategic Business Tool

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ERM: General Overview for Health Law Attorneys

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WHY.....



DEFINITION and DECISION MAKING

- **ENTERPRISE RISK MANAGEMENT** – an ongoing business decision making process instituted and supported by the healthcare organization’s board of directors, executive administration, and medical staff leadership.
- **DECISION MAKING TOOL** - ERM recognizes the synergistic effect of risks across the continuum of care, and has as its goals to assist the organization reduce uncertainty and process variability, promote patient safety and maximize the return on investment through asset protection, and the recognition of actionable risk opportunities.

INSURANCE INSTITUTE OF AMERICA

RISK MANAGEMENT PROCESS

- 1. IDENTIFY RISK AND ANALYZE AN ORGANIZATIONS EXPOSURE TO LOSS
- 2. EXAM ALTERNATE RISK TECHNIQUES
- 3. SELECT THE BEST TECHNIQUE(S)
- 4. IMPLEMENT THE TECHNIQUE(S) CHOSEN
- 5. MONITOR AND MAKE CHANGES AS APPROPRIATE

RISK DOMAINS

- OPERATIONAL
- FINANCIAL
- HUMAN CAPITAL
- STRATEGIC
- LEGAL REGULATORY
- TECHNOLOGY
- HAZARD

RISK RELATIONSHIPS

- Pure Risk – implies no possibility of gain. Either a loss is realized or the status quo is maintained.
- Speculative Risk – there is a possibility of gain/profit or loss.

RISK IDENTIFICATION AND ANALYSIS

TYPES

- INTERNAL RISKS
- EXTERNAL RISKS

TIMING OF IDENTIFICATION

- RETROSPECTIVELY
- CONCURRENTLY
- PRE-INTERVENTIONAL
- PROSPECTIVELY

Sample Areas of Risk Assessment

- Insurance and Risk Financing
- Claims Management
- Contracts
- Volume
- Capital
- Payment/Reimbursement Threats
- Tax Reporting
- Maintaining Tax Exempt Status
- Use of Property by Tax-Exempt Bonds
- Energy Management
- Environmental Compliance

Sample Areas of Risk Assessment

- Employment Relationships and Regulation
- OSHA and other regulatory exposures
- Adverse Event Reporting
- Human Research and IRB's
- Compliance
- Clinical Issues
- Peer Review and Credentialing
- Medical Staff Exposures
- Quality Issues
- Patient Experience
- Public Relations and Marketing

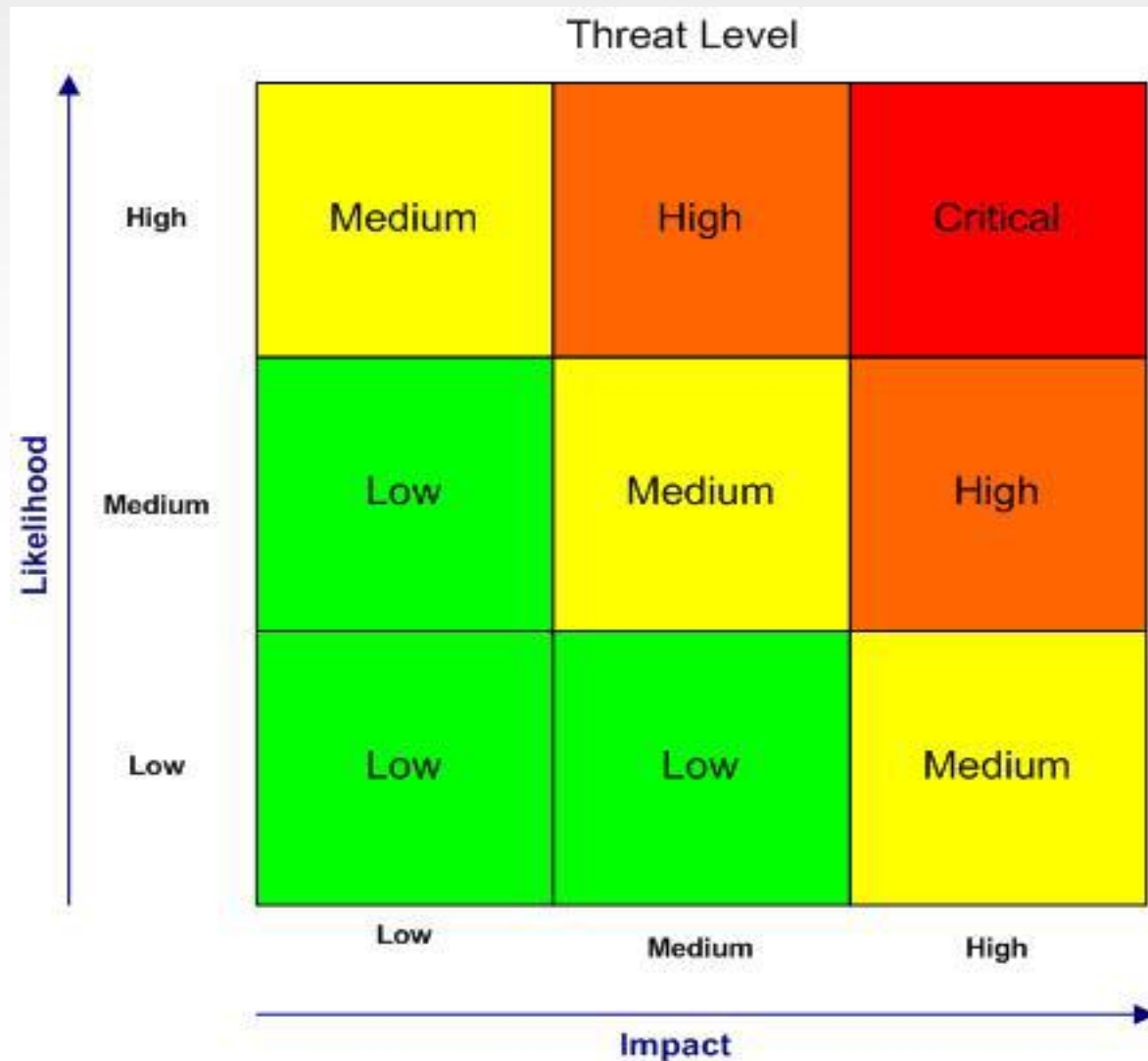
Sample Areas of Risk Assessment

- Managed Care
- Medical Tourism
- Electronic Health Records
- Radio Frequency Identification/Interference
- Rising Violence Rates
- AND SO ON

SAMPLE RISK FORMULA

**(PROBABILITY + TIME TO IMPACT) X SEVERITY = RISK
SCORE**

HEAT RISK MAP



SAMPLE FEMA RISK MAP



Health Attorney - Areas of Influence

Mediation of claims vs. litigation or no alternative to claim/complaint resolution

Board's fiduciary duty to protect organization's assets - adopt an ERM approach

Identification and removal or mitigation of legal/regulatory/compliance and other risks that expose the health system to avoidable or series risks

Active Participation in ERM process (from identification and contracting of consultants to taking place in the process.)

Support and encourage entities commitment to the ERM process

Help garner support of other leaders

ERM SUCCESS FACTORS

LEADERSHIP SUPPORT AND POSITIVE CULTURE

BROAD-BASED EMPLOYEE INVOLVEMENT

CONSISTENCY

QUANTIFYING AND BENCHMARKING RESULTS

DECREASED VARIABILITY THROUGH EVIDENCED
BASED PRACTICES

ONGOING MONITORING AND EVALUATION

INTERNAL AND EXTERNAL

Supplier Transaction Risk Management: A Key But Often Overlooked Component of Enterprise Risk Management

Eric Esperne, Counsel, Dell Healthcare & Life Sciences

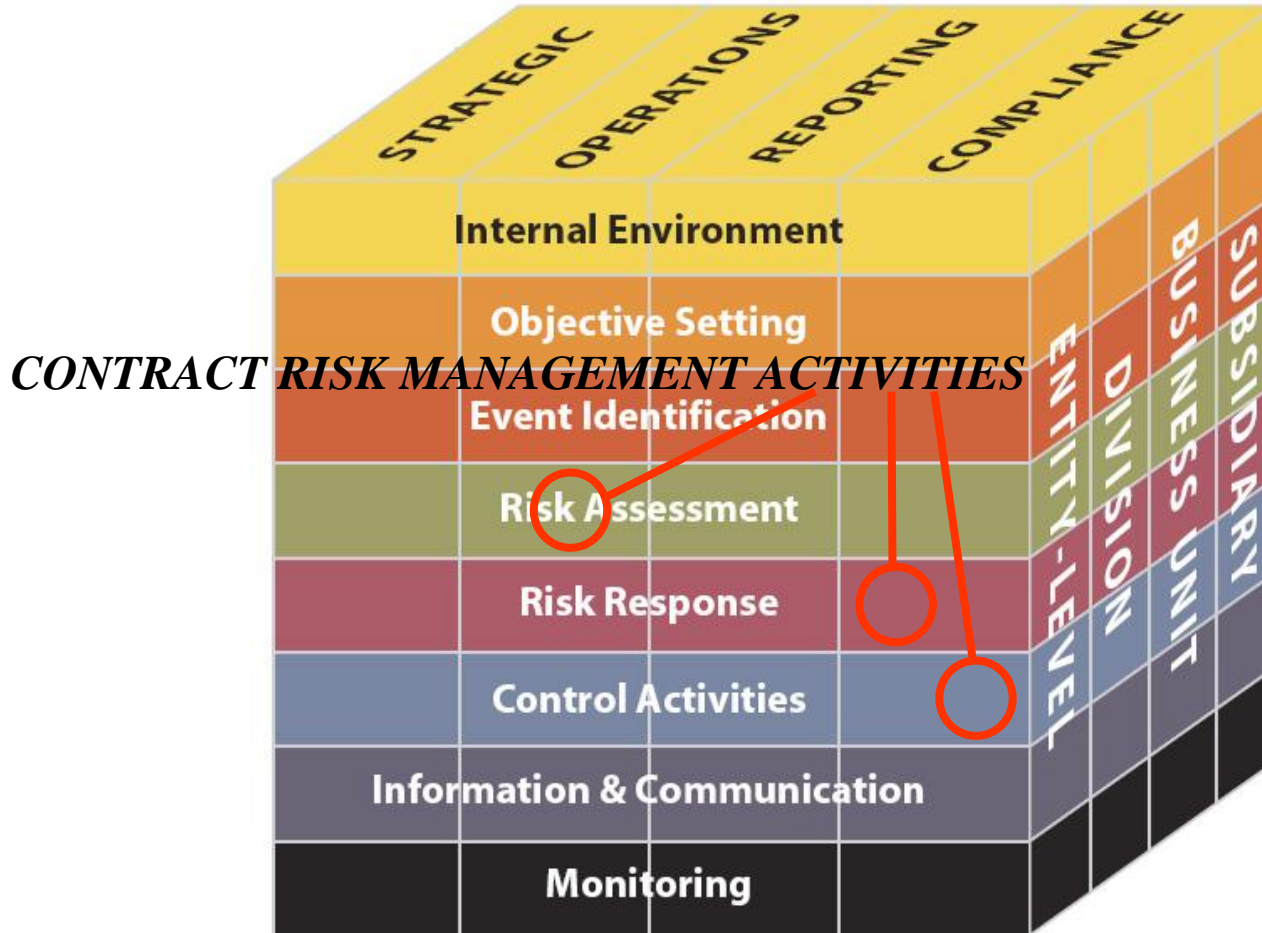
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Enterprise Risk Management (ERM) Frameworks

- ▶ Committee of Sponsoring Organizations of the Treadway Commission (COSO) Enterprise Risk Management – Integrated Framework
- ▶ American Health Lawyers Association (AHLA) Risk Management Handbook for Healthcare Entities
- ▶ American Society for Healthcare Risk Management (ASHRM) Risk Management Handbook for Healthcare Organizations

COSO ENTERPRISE RISK MANAGEMENT FRAMEWORK



Based on COSO “Guidance on Monitoring Internal Control Systems, Volume III—Application Techniques,” June, 2008

Risk Management Principles of *Objectives*

Risk is the probable occurrence of a future event with either negative or positive impact on organization goals and objectives.

Risk Management Principle of *Cause*

Risks have a root cause and can come from many sources. Major risk domains include:

Technical

Managerial

Financial

Legal

Here we are discussing risks that occur within supplier transactions.

Risk Management Principle of *Impact*

Individual risks are qualified by multiplying likelihood of a risk event occurring x impact of the occurrence on an objective(s).

Risk Statement



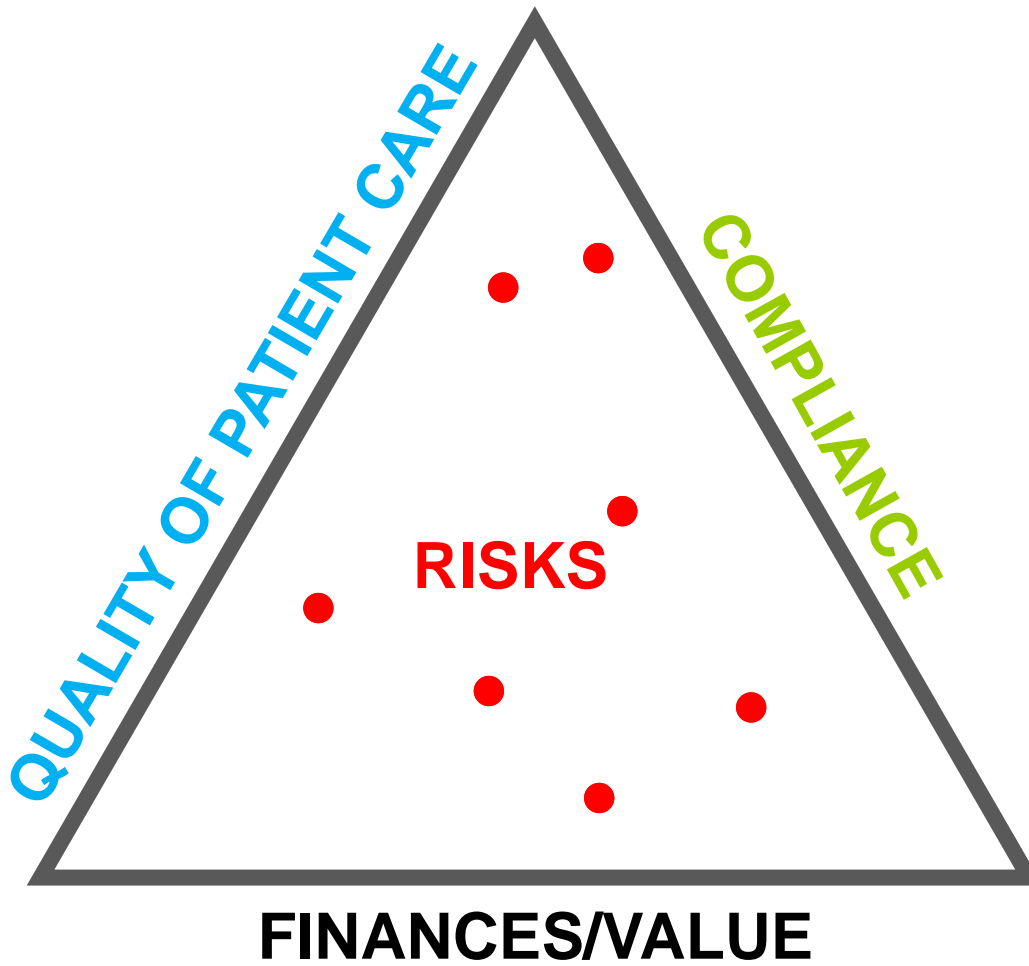
No Guidance on Confidentiality	Confidentiality Breach	Loss of Intellectual Property
Unrealistic Price (Low Ball)	Non-Performance	Higher Effective Price
Change in Laws	Violation	Penalty, Bad Record

Strategic Objectives in Healthcare

Three Overarching Strategic Objectives for Healthcare Providers:

1. Quality of Patient Care
2. Compliance with Laws and Accreditation
3. Financial Stewardship and Value in Services

What risks in supplier transactions negatively impact these objectives?



Patient Care and Supplier Risks

Objectives: Patient safety. Access to medical records. Clean hospital facilities and medical equipment in good working order.

Supplier Risks: Threats and moral hazards from supplier personnel with access to hospital facilities and systems. No contractual service levels.

Subcontracted services. Thin warranties and lack of technical competency. Technological obsolescence.

Compliance and Supplier Risks

Objectives: Compliance with The Joint Commission accreditation standards, Medicare regulations, HIPAA/HITECH , and hospital employee policies.

Supplier Risks: No contractual adoption of or training in hospital safeguards and standards by suppliers. No certifications or auditing of supplier by third parties.

Finances/Value and Supplier Risks

Objectives: Completion of projects within budget. Fulfillment of requirements. Demonstration of value for money from projects (lower costs, improved performance).

Supplier Risks: Poor project management. Moral hazards of overly narrow interpretation of project scope and hidden cost cutting by supplier.

Contractual payment terms without condition on performance

Risk Management Principle of *Treatment*

Risks can be treated in one of four ways:

- ▶ Avoidance—e.g., reduce scope, perform work remotely
- ▶ Acceptance—e.g., determine risk is out of control, make judgment that reward outweighs risk
- ▶ Mitigation—e.g., implement project management, auditing, and training activities
- ▶ Allocation and Transfer—e.g., negotiate terms like shared responsibilities, back-sourcing

Real World Application of Risk Management to Healthcare Supplier Transactions

HIPAA/HITECH: Will the supplier really use or disclose protected health information (PHI)? Can PHI be eliminated from the work? Will PHI be downloaded to supplier systems?

The Joint Commission (TJC) Credentialing: Do supplier personnel need to work on site at the hospital? In patient care areas? Can the supplier's onboarding process or credentialing by other customers be leveraged?

Real World Application of Risk Management to Healthcare Supplier Transactions

Consequential Damage Waivers and Indemnification Clauses for Patient Claims: Do the supplier's services really constitute healthcare delivery? Can pre-production testing and acceptance of deliverables eliminate concerns? Can service levels and post-production maintenance programs treat risks better than retroactive legal remedies?

Medicare Fraud Laws: Is the supplier a health care provider who will submit Medicare claims? Does the law need to apply to the entire supplier entity?

Real World Application of Risk Management to Healthcare Supplier Transactions

Pricing: Does lower price ultimately generate value? Can non-pricing terms like knowledge sharing and end-of-life transition generate value better than lower price?

Future M&A and Accountable Care Organizations (ACO's): Is termination for convenience really necessary due to uncertainty? Is the inclusion of other hospitals and physician practice groups in transaction built into the contract?

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Presented by
Erin L. Muellenberg
April 4, 2012

Leveraging ERM as a Strategic Business Tool



- ▶ Culture Change
 - Leadership committment
- ▶ Alternatives –
 - Risk Oriented Approach
 - What are the most important risks the company faces?
 - Metric Oriented Approach
 - What are the main events or factors that would have the greatest impact on cash flow from operations?
 - Objective–oriented approach
 - What risks or events could cause the organization to *not* meet its goals and objectives?

Leveraging ERM as a Strategic Business Tool

- ▶ Alternatives – *cont'd.*
 - Opportunity-oriented approach
 - If we could eliminate any risks we wanted to, what opportunities could we take that would make us even more successful?
 - Risk-components approach
 - Collect the risk drivers, untangle them, and understand how they impact the top risk.

Key: Communication with the people that own the risk

RISK APPETITES

▶ How much risk can you take?

- Rank the top risks
- Quantify the risks
 - Financial value
 - Likelihood ranking



Risk Appetite is the measure of how much risk the company is willing to take to achieve its goals

Measuring Risk Appetites

- ▶ Stanford University
 - Strategic Decision and Risk Management Program
 - <http://strategicdecisions.stanford.edu/>
 - Risk Mapping
 - Risk Analysis
 - Risk Opportunity



ERM in Hospital Systems

- ▶ Strategic Business Tool
- ▶ University of California
 - COSO framework adopted in 1986
 - Data Driven Program
 - ERMIS – Enterprise Risk Management Information System
 - Cognos web-based Business Intelligence solution customized to the UC



ERMIS Objectives

- ▶ Better quantitative objective analysis
- ▶ Improved analytical and reporting capabilities
- ▶ Support for leading risk governance and compliance processes
- ▶ System wide visibility with local flexibility
- ▶ Scalability without additional burden on UC staff

UC ERM Program

- ▶ How do you know you are doing well?
- ▶ What information do you need to know when you are doing well?
- ▶ What data do you have and how often is/should it be updated?
- ▶ Automation of data to support a risk and opportunity analysis

Business Unit use of ERM

- ▶ Department Role of Risk Assessment
 - System ERM program serves internal clients
 - Appropriate tools developed and available to Departments
- ▶ Data Aggregation
 - Supported by System
- ▶ Using the Data
 - Relating number of claims or payments to
 - insurance costs
 - number of beds
 - revenue
 - types and numbers of physicians

Business Unit use of ERM

- ▶ Retrospective review for root causes of problems
 - Compare Metrics
 - Data re: unit's financial control indicators compared to hazard risk
 - Compare seemingly unrelated problems; e.g., poor financial performance, increased costs, claims increase
 - leadership or management problem?



ERM in Planning

- ▶ ERM System Teams Supports Planning
 - Consider data based assessment
 - Potential pitfalls
 - Mitigation strategies
 - Opportunities



UC ERM Tools

- ▶ Risk Services <http://www.ucop.edu/riskmgt>
- ▶ ERM <http://www.ucop.edu/riskmgt/erm>
- ▶ General Risk Review Tool:
<http://www.ucop.edu/riskmgt/erm/riskrevwb.html>
- ▶ Budget Changes Risk Workbook Tool:
<http://www.ucop.edu/riskmgt/erm/budgetwb.html>
- ▶ New Initiative Risk Review Tool:
<http://www.ucop.edu/riskmgt/erm/riskmitwb.html>
- ▶ Risk Program Maturity Tools:
<http://www.ucop.edu/riskmgt/erm/tools.html#framework>

Christus Health ERM

- ▶ Broad Approach

- *What are the issues that the organization has never looked at, but which could threaten its ability to survive or achieve its strategic objectives?*



Christus Health ERM

- ▶ ERM Leadership Team
 - CEO, CFO, COO & CRO
- ▶ Reports to Audit Committee of the Board
- ▶ Process –
 - Develop List of Risks
 - Group Interviews
 - Intranet survey
 - Prioritize
 - Assigned severity
 - Assigned Frequency
 - Assigned dollar values



Christus Health ERM

- ▶ Resources focused on risks with greatest potential for reduction
- ▶ Identified risks
 - Lack of change readiness
 - Lack of leadership
 - Poor physician alignment
 - Misalignment of strategic and business planning processes at the system and local levels
 - Unaddressed infrastructure concerns resulting from pressure to invest in new clinical equipment to the detriment of buildings and other physical components

Christus Health ERM

- ▶ Task Force
 - Assigned to identified Risks
- ▶ Monitoring & Support
 - Board Audit Committee
 - ERM System Reports
 - Task Force Reports
- ▶ Financing Risk
 - Self insured captive
 - Finance losses
 - loss prevention grants



Emory University ERM

- ▶ Premise: Risk is an integral part of productive activity
- ▶ Process – Risk is defined by the operational departments
- ▶ Culture –
 - Early–warning system for adverse occurrences
 - Empowerment to report problems without fear of retribution
 - Prompt response to adverse occurrences
 - Investigations conducted with integrity

Emory University ERM

▶ Culture – *cont'd*

- Information shared with leadership
- Communication pro-active, honest and respectful
- Regular assessment of the effectiveness of the ERM practices

▶ Structure

- Custom designed
- ERM Steering Committee
 - Operational leaders
 - Risk Management Process Owners
 - Responsible to develop plans to deal with risks



Emory University ERM

▶ Process

- Steering Committee identified & prioritized risks
- Risk Management Process Owners accountable to Steering Committee
- On-going monitoring & reassessment
- Meetings of all Risk Management Process Owners
 - Increased communication
 - No over-engineering/no charts & graphs
 - Focus on continued communications and visibility

Adventist Health ERM

- ▶ Establishing an environment that supports and welcomes interdisciplinary input
- ▶ Tools are not the essence of ERM; it is a philosophy
- ▶ ERM is part of management training
- ▶ New programs/services
- ▶ Challenge: establish meaningful metrics
 - Continuously evolving

Sheridan Healthcare ERM

- ▶ Leadership commitment
- ▶ Leadership Transformation Teams
- ▶ Integrated into operations
- ▶ Value stream mapping of processes
- ▶ Collaborative teams
- ▶ Breakthrough transformation (new)
- ▶ Base business transformation (existing)
- ▶ Resulting culture change
- ▶ Transparency
- ▶ On-going value based analysis

Common Factors of Successful ERM Programs

- ▶ ERM Champion
- ▶ Leadership Commitment
- ▶ Culture Change
- ▶ Integration into operations
- ▶ Communication
- ▶ Broad vision
- ▶ Formal tools not necessary
- ▶ Continuous and consistent monitoring, reassessment and feedback



Resources

Enterprise Risk Management for Healthcare:
Where & How to Begin

Kathryn Wire, JD, MBA, FASHRM, CPHRM
American Health Lawyers Association 2011

American Health Lawyers Association
Enterprise Risk Management Task Force
Educational Calls – Second Thursday of each
month (April 12) 11:00 a.m. EST (800) 979–
2504, access code 914728#

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