

RISK MANAGEMENT AND CLINICAL FREQUENTLY ASKED QUESTIONS

July 6, 2020

Patient Safety & Risk Management Department:

24/7 Risk Mgmt. Hotline—For Urgent, After-Hours Calls: (720) 858-6270 or (866) 274-7511

During business hours, please call (720) 858-6396

Guidance to Reopening Practices

COPIC recognizes the continual changing environment surrounding COVID-19. As practices enter various stages of reopening, we continue to support our insureds by providing resources to help navigate these changes. From patient and staff considerations, to practice and operational challenges, we've collected a list of key points to plan for when reopening your practice. See [Guidance to Reopening Practices](#).

Resuming Elective Surgeries and Procedures

COPIC has compiled information about key considerations a medical practice or facility should review as they move forward and schedule elective surgeries or procedures during the COVID-19 pandemic:

1. Review resource links to establish the background data and information needed to ensure that it is safe to proceed with elective surgeries or procedures during the pandemic.
2. Create a “What You Should Know About an Elective Surgery or Procedure During the COVID-19 Pandemic” patient education document.
3. Utilize a “Special Consent Form for An Elective Surgery or Procedure During the COVID-19 Pandemic,” which would be used in addition to normal informed consent forms.

See [Resuming Elective Surgeries and Procedures](#) and [Download sample consent template](#).

Crisis Standards of Care and OCR Laws

The Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (HHS) has issued a bulletin reminding covered entities of the continued applicability of civil rights laws during the COVID-19 public health emergency. The OCR has made clear that covered entities should ensure that persons will not be discriminated against based on disability if providers in the state were to begin triaging life-saving health care services.

OCR has guided states, wherein complaints have been filed, to impose the following guidelines: removing criteria that automatically deprioritized persons on the basis of particular disabilities, requiring individualized assessments based on the best available, relevant, and objective medical evidence to support triaging decisions, and ensuring that no one is denied care based on stereotypes, assessments of quality of life, or judgments about a person’s “worth” based on the presence or absence of disabilities.

The Bulletin may be found at: <https://www.hhs.gov/sites/default/files/ocr-bulletin-3-28-20>.

What are the recommended disclosures when caregivers test positive for COVID-19 exposure?

Special communication plans are critical during the COVID-19 pandemic. Caregivers are especially at risk for contracting and spreading COVID-19. The following summarizes considerations caregivers and administrators should assess in determining whether, and what, to communicate to co-workers, patients, and others who may have been exposed to a confirmed COVID-19 infected caregiver. The plan of communication and the extent of communications in this situation are dependent upon the facts and circumstances, and must be considered with respect to various laws, regulations, and agency directives, such as HIPAA, CDC, OSHA, and state and local health department requirements.

Communication to Other Caregivers and Coworkers

Generally, each employer must furnish employees a place of employment free from recognized hazards that are causing or likely to cause death or serious physical harm to its employees.¹ For health care settings, the federal government has published preparedness and response guidance during a pandemic.² When a caregiver is confirmed to have COVID-19 (“confirmed caregiver”), the confirmed caregiver should notify his or her supervisor or other designated person for such notifications.³ The confirmed caregiver should provide information about individuals, equipment, and locations the person had contact with, and follow federal, state, and local recommendations for addressing his or her condition.⁴ The supervisor or other designated person should notify coworkers who may have had close physical contact with the confirmed caregiver and follow federal, state, and local guidance to monitor the coworker’s condition for the possible spread of the virus.⁵ Any disclosure or communication must make reasonable efforts to limit the information used or disclosed for the public health and to protect the identity of the confirmed caregiver.⁶

Communication to Patients and Others Exposed to a Confirmed Caregiver

In a situation where a patient or other person (e.g., visitors) are at risk of contracting or spreading a disease or condition by being exposed to a confirmed caregiver, the supervisor or other designated person should notify his or her infectious disease response leader. If the patient or others who may have been exposed to a confirmed caregiver has risks from the exposure, the infectious disease response leader will disclose the exposure to the patient and others, and also provide guidance about isolation and monitoring. Any disclosure or communication should use discretion to disclose the minimum necessary information for the public health and to protect the identity of the confirmed caregiver.

The information provided in this section is intended to be used for educational purposes only and should not be considered legal advice. State laws may vary among states and from federal laws. Notably, state privacy laws may be more restrictive than HIPAA. You should check state laws before disclosing information about a patient.

Helpful Resources:

- Interim U.S. Guidance for Risk Assessment and Public Health Management of Healthcare Personnel with Potential Exposure in a Healthcare Setting to Patients with Coronavirus Disease (COVID-19), Department of Health & Human Services, Centers for Medicare & Medicaid Services, March 7, 2020. <https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-risk-assesment-hcp.html>
- OSHA Safety and Health Topics: COVID-19, <https://www.osha.gov/SLTC/covid-19/>.

¹<https://www.osha.gov/laws-regs/oshact/section5-duties>; See also <http://www.callcopic.com/index/coronavirus-hr-and-employer-information>.

²https://www.osha.gov/Publications/OSHA_pandemic_health.pdf

³ Depending on the organizational structure of the health care facility or practice, the responsible employee to whom disclosure should be made may be a supervisor, core leader, human resource professional, designated infection preventionist, patient safety, or medical leadership.

⁴ <https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-risk-assesment-hcp.html>

⁵ https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fguidance-business-response.html

⁶<https://www.hhs.gov/sites/default/files/hipaa-and-covid-19-limited-hipaa-waiver-bulletin-508.pdf>;

See also <http://www.callcopic.com/index/coronavirus-regulatory-and-legal-hipaa>.

- February 2020 Office for Civil Rights, U.S. Department of Health and Human Services, BULLETIN: HIPAA Privacy and Novel Coronavirus, <https://www.hhs.gov/sites/default/files/february-2020-hipaa-and-novel-coronavirus.pdf>

What steps should I take regarding staff exposure?

COPIC encourages you to read and follow the guidance being provided by the CDC:
<https://www.cdc.gov/coronavirus/2019-ncov/hcp/>

Does a clinic have to accept and examine established patients if the patient contacts the clinic and reports symptoms consistent with COVID-19?

- CDC Guidance: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html>
 - Practical guidance for practices that includes visuals: <https://www.cdc.gov/coronavirus/2019-ncov/downloads/Clinic.pdf>
 - Practical guidance for facilities that includes visuals: https://www.cdc.gov/coronavirus/2019-ncov/infection-control/control-recommendations.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fhcp%2Finfection-control.html
- In general, practitioners do need to conduct an appropriate encounter with their established patients; however, “appropriate” is what is current per the CDC guidelines, and their state and local public health authorities. Mild to moderate symptomatic patients should NOT be seen in the office unless one can ensure adequate personal protective equipment for all persons (and that is not considered an inappropriate use of a scarce resource). They should be screened for the severity of their disease and their risk of co-morbid conditions via remote means—phone or telemedicine—and, if consistent with mild to moderate COVID-19, practitioners can advise patients to self-quarantine for 14 days, and on the various symptomatic measures and precautions to take for worsening disease. If the patient is high-risk or has a severe disease, then the practitioner can instruct the patient to be evaluated at an Emergency Department.
- While a constantly changing situation, there currently are not enough testing capabilities at this time at most locations, and they are reserving testing for high-risk patients, hospitalized patients, and health care workers who have been exposed.
- Patient abandonment rules and regulations still apply. Reference your state’s licensing board for additional guidelines.

Telehealth—Is there any risk regarding coding correctly for telehealth given they are rolling this out quickly?

- Centers for Medicare & Medicaid Services Medicare Telemedicine Health Care Provider Fact Sheet: <https://www.cms.gov/newsroom/fact-sheets/medicare-telemedicine-health-care-provider-fact-sheet>
- Email and Text: We recommend referencing the HIPAA guidelines regarding communications: <https://www.hhs.gov/hipaa/for-professionals/special-topics/emergency-preparedness/index.html>

Telehealth—Staff working from home—What security measures do I need for billing and other communications?

- American Academy of Family Physicians COVID-19 resources:
<https://www.aafp.org/patient-care/emergency/2019-coronavirus.html>
- ECRI COVID-19 Resource Center:
https://www.ecri.org/coronavirus-covid-19-outbreak-preparedness-center?utm_campaign=HRC%20Alerts&utm_source=hs_email&utm_medium=email&utm_content=84920073&hsenc=p2ANqtz-84WII8zfPuB08jkh_MTVzVpDcRigBKJSYw4PTtIc4GJEIT0YHeiGeAYP4KGcN9IK59xyCOtL49XEBf63brue9gaPER3w&hsmi=84920073

CDC guidance and information for employers, practices, and facilities:

- This is a general link for employers:
https://www.cdc.gov/coronavirus/2019-ncov/community/guidance-business-response.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fguidance-business-response.html
- This is a general link for health care facilities:
<https://www.cdc.gov/coronavirus/2019-ncov/healthcare-facilities/index.html>
- This is a specific link for practices that includes printable resources you can download:
<https://www.cdc.gov/coronavirus/2019-ncov/healthcare-facilities/practice-preparedness.html>