

COVID-19: How Medical Providers Should Be Responding

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Covid-19: Tips for Mitigating Risk

- Look to CDC guidelines for patients and staff
 - guidelines are not requirements
 - standard of care
- Prescreen over the phone
- Spread out patient appointments (waiting room)
- Limit office occupancy
- Dedicated times for seniors and those at high risk
- Protective gear for staff

Emergency Requirements

- Follow updated state, county, town restrictions
 - hour restrictions for offices
 - non-essential medical service restrictions
 - definitions vary
 - certain municipalities have closed chiropractic care, PT, dentistry to prevent transmission

Elective and Nonessential Services

- AMA recommendations for elective procedures are to minimize, postpone, and cancel where appropriate
- Why?
 - use of resources
 - asymptomatic patients and doctors
- Minimize use of needed items
 - ICU beds
 - personal protective gear
 - ventilators
 - terminal cleaning supplies

Additional Guidance

- CDC posted additional infection control guidance
 - Facemasks are acceptable alternative when respirators cannot meet demand
 - Patients with known COVID-19 – care in single person room with door closed
 - If possible, avoid procedures inducing coughing (sputum induction, open suctioning of airways)
- Monitor FDA website for drug shortages
 - Avoid throwing out unavailable expired drugs
- <https://www.cdc.gov/coronavirus/2019-ncov/infection-control/control-recommendations.html>

Initiate Telemedicine

- Observe NJ state law
 - confirm licensure requirements
 - understand local regulations
- Technology partner and EHR provider
- Confirm malpractice coverage for telehealth
- Make office space available
- Use initial patient interviews to triage

Telehealth and Vendor Considerations

- Videoconferencing vendor
 - user-friendly system
 - must be secure video (no Skype or FaceTime)
 - HIPAA leniency for crisis – nonenforcement
 - Business Associate Agreement
 - control of data
 - monthly fees vs. per session fees

Telemedicine Reimbursement and Billing

- Properly document the visit in chart
- Billing – note CPT codes and modifiers (-GT)
- Insurance carrier policy guidelines
- COVID-19 cost-sharing waivers
 - Horizon - waiving in network cost share
 - Amerihealth – waiving cost share – 90 days
 - Aetna/CVS – no copay for telehealth – 90 days
 - Medicare – geographic restrictions waived

Telemedicine NJ Requirements

- NJ Statute – NJSA 45:1-61, et seq.
 - Same standard of care for in-person exam
 - Must be licensed in NJ
 - No Schedule II CDS via telehealth
- NJ Regulations – NJAC 13:35-8.21, et seq.
 - Establish licensee-patient relationship
 - Waiver emergency/disaster without compensation
 - providing on-call or cross-coverage services
 - Record patient location
- Same reimbursement as in person

Public Readiness and Emergency Preparedness Act (PREP)

- Addresses liability concerns during pandemics pursuant to declaration
- HHS Issued COVID-19 Declaration
- Limited Immunity for medical providers for acts arising out of, relating to, or resulting from the administration or use of a countermeasure by a “Covered Person”
- Covered Person – includes licensed healthcare professionals and agencies, manufacturers, distributors, program planners, and their officials, agents, and employees, as well as certain additional persons connected to the administration of the countermeasures

PREP

- *Countermeasures* — any antiviral, any other drug, any biologic, any diagnostic, any other device, or any vaccine used to treat, diagnose, cure, prevent, or mitigate COVID-19, or the transmission of SARS-CoV-2 or a virus mutating therefrom
 - Act to include personal respiratory gear (N-95 masks)
- *Activities* — manufacture, testing, development, distribution, administration, and use of the covered countermeasures.
- *Population and Geographic Area* — no limits

HIPAA and State of Emergency

- Limited waivers and non-enforcement measures
- Applicable normal waivers
 - treatment purposes
 - public health
 - CDC, state and local health
 - public health authority direction
 - persons at risk of contracting or spreading
 - family and friends involved in care of those ill
 - prevention and reduction of imminent threat
- Minimum necessary

Health Guidance Resources

- <https://www.nj.gov/health/cd/topics/ncov.shtml>
- <https://www.cdc.gov/coronavirus/2019-ncov/index.html>
- <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public>
- <https://www.ama-assn.org/delivering-care/public-health/covid-19-2019-novel-coronavirus-resource-center-physicians>

New Jersey Epidemic and Emergency Relief Employment Fund (Proposed Law)

- Passed the New Jersey Assembly
- Senate passed it today
- Governor expected to sign it into law shortly thereafter

The New Jersey Law, as to Employees, Would:

- Create the “Temporary Lost Wage Unemployment Program”
- Persons can claim from the fund lost wages due to the coronavirus disease equal to the person’s average weekly compensation during the past calendar year
- The fund would compensate persons for lost wages because of any of:
 - Absence from work to care for a family member
 - Absence from work because of his or her own illness
 - Absence from work due to school or childcare facility being closed
 - Other purposes determined by the Commissioner of Labor

The New Jersey Law, as to Employers, Would:

- Make the new fund available to employers for reimbursement of wages the employer paid to workers who are ordered under quarantine by a licensed healthcare practitioner as a result of coronavirus.
- Make it unlawful to terminate or otherwise penalize an employee who requests time off from work based upon the recommendation of a medical professional that the employee has, or is likely to have, an infectious disease, which may infect others in the workplace.
- It would also make it unlawful to refuse to reinstate the employee to his or her position held when the leave commenced.

The President Signed into Law Last Night:

- The “Families First Coronavirus Response Act”
- The new law takes effect in 15 days
- The law amends existing law and creates new law:
 - Amendment to the FMLA
 - Creates Federal Paid Sick Leave program

The Emergency Family Medical Leave Act

- Employers with less than 500 employees are required to provide up to 12 weeks of leave
- The employee only needs to be employed for at least 30 days and:
 - The employee is unable to work (or telework) due to the need to care for the son or daughter whose school or place of care has been closed; or
 - The employee's child care provider is unavailable
- In either case due to a public health emergency with respect to COVID-19 declared by a Federal, state, or local authority

The Emergency Family Medical Leave Act (continued)

- Employers of healthcare providers or emergency responders may exclude these employees from this new leave entitlement.
- The Secretary of Labor may also exempt businesses with fewer than 50 employees when such leave would jeopardize the viability of the business as a going concern.
- The first ten days of this new leave category may be unpaid except that the employee may elect to substitute any accrued vacation, personal, medical, or sick leave in place of the unpaid leave.

The Emergency Family Medical Leave Act (continued)

- For all subsequent days, the employer must provide paid leave equal to at least two-thirds of the employee's regular rate of pay, not to exceed \$200/day and \$10,000 in the aggregate.
- For employers with less than 25 employees, reinstatement will not be required if the position no longer exists due to economic conditions of the employer caused by a public health emergency, and the employer makes reasonable efforts to restore the employee to an equivalent position.

The Emergency Paid Sick Leave Act

- This is a new federal emergency paid leave benefits program similar to what many states (including New Jersey and New York) enacted over the past few years.
- Employers must provide paid sick time to the extent the employee is unable to work (or telework) due to a need for leave because the employee:
 - (1) Is subject to quarantine or isolation order related to Coronavirus;
 - (2) Has been advised by a healthcare provider to self-quarantine due to concerns related to Coronavirus;
 - (3) Is experiencing symptoms related to Coronavirus and is seeking medical diagnosis;

The Emergency Paid Sick Leave Act (continued)

- (4) Is caring for an individual who is subject to a quarantine or isolation order or who has been advised by a healthcare provider to self-quarantine;
- (5) Is caring for a son or daughter if their school or place of care has been closed, or the child care provider is unavailable due to Coronavirus; or
- (6) Is experiencing any substantially similar condition specified by the Secretary of Labor.

The Emergency Paid Sick Leave Act (continued)

- There shall be 80 hours of paid sick time for full-time employees, and, for part-time employees, the average hours worked over a two-week period.
- The paid sick time shall not exceed \$511/day and \$5,110 in the aggregate when the leave is for any of (1), (2), or (3) above; or \$200/day and \$2,000 in the aggregate when the leave is for any of (4), (5), or (6) above.
- Employers of healthcare providers or emergency responders may exclude these employees from this new leave entitlement.
- Employers may *not* require the use of other paid leave before the use of paid sick time.

The Emergency Paid Sick Leave Act (continued)

- It shall be unlawful to discharge, discipline, or otherwise discriminate against any employee who takes leave under this new act.
- The Secretary of Labor may also exempt businesses with fewer than 50 employees when such leave would jeopardize the viability of the business as a going concern
- The law provides tax credits for the paid sick leave and paid family leave mandates placed on employers.
 - Employers would receive a tax credit equal to all paid sick leave wages and paid family medical leave wages against the 6.2% social security tax and the 1.45% Medicare tax on wages paid by the employer as to all employees, refundable in some instances, with some limits based upon the reason for the employee's leave.

Sign Up for Our Healthcare and Labor and Employment Updates

- To sign up for our Healthcare and Labor and Employment email updates on the COVID-19 crisis please visit: bracheichler.com/subscribe-to-insights or email akatz@bracheichler.com.

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