



## Risk Control

# Preparing for COVID-19 Claims

## Tracking and Maintaining Information

*This self-assessment tool serves as a reference for healthcare outpatient office settings seeking to evaluate risk exposures associated with COVID-19. The content is intended to apply to outpatient healthcare office settings, such as office-based practices of nurse practitioners and counselors, and physical therapy private offices/clinics (non-hospital). This tool is not intended to represent a comprehensive listing of all actions needed to address the subject matter, but rather is a means of initiating internal discussion and self-examination. Your organization and risk may be different from those addressed herein, and you may wish to modify the questions to suit your individual organizational needs. The information contained herein is not intended to establish any standard of care, or address the circumstances of any specific healthcare organization. It also does not represent a binding contract. It is not intended to serve as legal advice appropriate for any particular factual situations, or to provide an acknowledgement that any given factual situation is covered under any CNA insurance policy. These statements do not constitute a risk management directive from CNA, NSO or HPSO. No organization or individual should act upon this information without appropriate professional advice, including advice of legal counsel, given after a thorough examination of the individual situation, encompassing a review of relevant facts, laws and regulations. CNA, NSO and HPSO assumes no responsibility for the consequences of the use or nonuse of this information.*

### Preparing for COVID-19 Claims

#### Strategies for Tracking and Maintaining Information

One of the essential questions in medical malpractice lawsuits is whether the healthcare providers acted in a way that a reasonably prudent provider would have under the same or similar circumstances. However, the novel coronavirus (COVID-19) pandemic has created a set of circumstances unlike any encountered by healthcare providers in modern times. This uncertainty makes it challenging for healthcare providers and practices to know how to protect themselves from COVID-19-related claims.

Establishing a timeline of events, policies and procedures, as well as implementation of sound record retention and maintenance practices are critical to the defense of any liability claim. The following checklist outlines how healthcare practices may use these key principles to collect and maintain key information that will aid in the defense of COVID-19 claims.

The listing provided in this resource addressing preparation for COVID-19 claims is not intended to be exhaustive or represent all information that may be relevant to help strengthen the defense of a claim. It is intended to aid in compiling information during the rapidly evolving environment of the pandemic and should not be viewed as a substitute for the guidance and recommendations of an attorney or other professional advisor. Healthcare practices should, of course, consider and evaluate the strategies noted herein and determine those that are appropriate to their environment of care.

Your policy explains when you must provide notice to your professional liability insurer. These circumstances may include, without limitation, if you:

- Become aware of a filed or potential professional liability claim against you or your business;
- Receive a subpoena to testify in a deposition or trial; and
- Believe that there may be a potential professional liability threat to your practice.

The following activities are presented for your consideration and are intended to assist in guiding this assessment. It also should be adapted to the circumstances presented by your practice.

**COVID-19 Timeline**

Collect information from: Emergency response leader, practice administrator, risk manager or owner.

<b>A. Identify Key Personnel and Establish Local Timeline</b>	<b>Yes/No (if applicable)</b>	<b>Comments</b>
<b>Who are the personnel responsible for the coordination of the practice's COVID-19 response?</b>		
<b>Create the COVID-19 response timeline:</b>		
When did the practice have its first symptomatic patient?		
Was the patient/client confirmed by laboratory testing to have COVID-19? – If "Yes," was testing pre- or post-mortem?		
If not confirmed by laboratory testing, was the patient/client diagnosed by a healthcare provider based solely upon symptoms?		
Who was notified about that patient? How? When?		
Upon notification, did the practice notify state/local health department officials? If so, document any instructions provided and subsequent actions taken.		
Be sure to determine when precisely: – The practice was mandated to close for emergency procedures only, per state/local authority guidance. – Visitors were restricted from the practice. – Practice events open to the public were canceled. – Additional cleaning procedures were implemented. – When state/local authorities permitted non-emergency care to resume.		
<b>Was additional PPE requested?</b>		
When was the PPE requested, and from whom?		
When was PPE received?		
<b>B. New Policies and Procedures Adopted</b>	<b>Yes/No (if applicable)</b>	<b>Comments</b>
<b>Did the practice modify its existing policies and procedures to address COVID-19?</b> – If so, which policies, and when? – What circumstances necessitated the revisions? – Were staff trained on the policy modifications and is training documented?		
<b>C. Instructions and Guidance Received from Federal and State Government</b>	<b>Yes/No (if applicable)</b>	<b>Comments</b>
<b>Did the practice receive any specific instructions or guidance</b> from local, state, or federal governmental agencies or public health authorities? – If so, describe the circumstances.		
<b>D. Communications Regarding Response and Suspected and Confirmed Cases</b>	<b>Yes/No (if applicable)</b>	<b>Comments</b>
<b>Did the practice follow its communications plan</b> as set forth in the communications policies and procedures? If no internal communications policy exists, did the practice follow a plan recommended by an external organization or expert (e.g., CDC)?		
<b>Did the practice maintain copies of any written internal and external communications</b> with patients, family members, any governmental entities, or the public, and contemporaneous notes regarding verbal communications, to the extent such exist?		
<b>E. Patient Information and Record Collection</b>	<b>Yes/No (if applicable)</b>	<b>Comments</b>
<b>Collect information about each patient who tested positive for COVID-19:</b>		
When did the patient/client believe that COVID-19 was contracted?		
When was the patient/client tested for COVID-19?		
What procedures were implemented upon diagnosis?		
What treatment plan was implemented (review the patient's healthcare information record)?		
Are there any possible theories of exposure?		
Did the patient have any co-morbidities?		

F. Collect Informational Overview of Practice Staff	Yes/No (if applicable)	Comments
<b>How many office/practice locations?</b>		
<b>For each office/practice location, during the relevant time period:</b>		
– What is the makeup of the staff, by category (i.e., healthcare practitioner, physical therapy assistant, nursing assistant, office manager, front office staff, etc.)?		
– How many employed staff (full-time and part-time)?		
– How many independent contractors? (full-time and part-time)?		
– When were contractors engaged, and when does their contract terminate?		
– When were staff hired, fired, or resigned?		
– How many staff and independent contractors were tested?		
– How many staff and independent contractors tested positive?		
– What were their schedules during the relevant time period?		
– Did they work at multiple facilities/other jobs during the same time period?		
– How many staff and independent contractors were exposed to a known positive patient or staff member/contractor?		
– When were positive staff and contractors tested? By whom?		
– When were positive and exposed staff and contractors permitted to return to work?		
– How many staff and contractors were hospitalized and/or died from COVID-19?		
<b>What is the procedure of the practice for self-reporting of symptoms</b> by staff and contractor personnel?		
<b>How did the practice decide to test</b> certain staff members or contractors?		
<b>What precautions were taken upon return to work for known positive or exposed</b> staff and contractors?		
G. Third Parties with Known COVID-19 Cases	Yes/No (if applicable)	Comments
<b>Did any third party personnel come into contact with patients/clients?</b> Collect any information, including logs, of contractors and visitors (including non-staff providers/personnel who were in contact with patients/clients, e.g., contractors, maintenance/repair personnel, vendors, and environmental services staff).		
<b>Were any third parties positive or symptomatic</b> for COVID-19? If so, when?		
H. Infection Prevention/Control	Yes/No (if applicable)	Comments
<b>Was there evidence that the practice engaged in or promoted the practice of any of the following</b> , and if so, was the use tracked and monitored?		
Use of non-FDA approved medical supplies or devices.		
Use of PPE from outside the supply chain (e.g., homemade masks; PPE from home).		
What is the intake process of the practice for screening potentially infectious persons at initial points of the patient encounter?		
<b>Did the practice adhere to all appropriate infection prevention/control practices? Including:</b> <ul style="list-style-type: none"> <li>– The intake process for screening potentially infectious persons at initial points of the patient encounter;</li> <li>– Creation of a log of all individuals who entered rooms or cared for patients/client with known/suspected infection;</li> <li>– Use of dedicated or disposable non-critical care equipment (e.g., radiographic equipment, blood pressure cuffs, etc.);</li> <li>– Disinfection procedures for care equipment used on multiple patients;</li> <li>– Access to alcohol-based hand sanitizer at each entrance and common areas of the practice;</li> <li>– Access to no-touch receptacles in common areas of the practice;</li> <li>– Access to alcohol-based hand sanitizer in patient care areas;</li> <li>– Auditing compliance with hand hygiene policies;</li> <li>– Cleaning and disinfecting surfaces and equipment in clinical and non-clinical area;</li> <li>– Access to Environmental Protection (EPA) registered and approved emerging viral pathogens claims for use on hard, nonporous surfaces in clinical and non-clinical areas (e.g. offices, break rooms); and</li> <li>– Appropriate management of laundry and medical waste.</li> </ul>		

I. Key Staff and Employee Interviews	Yes/No (if applicable)	Comments
<p><b>Who are the key staff and employees</b> who can provide information regarding the information above and the response of the practice in the following categories?</p> <ul style="list-style-type: none"> <li>– Timeline for COVID-19 response;</li> <li>– Implementation of policies/procedures <i>pre</i>-COVID-19;</li> <li>– Implementation of policies/procedures <i>during</i> COVID-19;</li> <li>– Practice communication with staff about COVID-19 response;</li> <li>– Identification of gaps in the implementation of policies/procedures;</li> <li>– Availability of PPE for staff and patients;</li> <li>– Care of patients during the COVID-19 pandemic;</li> <li>– Contracts with third-parties.</li> </ul>		

### Collect Documents

In the event of a claim and/or lawsuit, the following documents may provide critical evidence to support the actions taken during the relevant time period.

Collect documents from: Human Resources or Compliance and/or Officer, Chief Information Security Officer and/or Chief Technology Officer, Quality Assurance and Assessment Committee or the equivalent.

A. Policies and Procedures	Yes/No (if applicable)	Comments
Collect all practice policies and procedures pertaining to infection control.		
Collect documents evidencing periodic review of the policies/procedure.		
Collect completed COVID-19-related self-assessment tools, if applicable, including the date the tool was completed and subsequent actions taken		
<p>Collect human resources and staffing policies and procedures regarding the following:</p> <ul style="list-style-type: none"> <li>– Emergency preparedness policies and procedures;</li> <li>– Policies and procedures for addressing complaints from patients, family, or staff;</li> <li>– Policies and procedures with respect to communication with media and the use of social media; and</li> <li>– Policies and procedures regarding mandatory reporting of notifiable diseases, healthcare-associated infections, and potential outbreaks.</li> </ul>		
B. Contracts	Yes/No (if applicable)	Comments
<p>Collect and Review the following:</p> <ul style="list-style-type: none"> <li>– Contracts with suppliers;</li> <li>– Contracts for services, including medical waste, laundry, and other services;</li> <li>– Contracts with independent contractors;</li> <li>– Insurance policies;</li> <li>– Contracts with telemedicine providers;</li> <li>– Contracts with cleaning agencies; and</li> <li>– Contracts with other healthcare facilities.</li> </ul>		



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