

Prepare Now for the Potential COVID-19 Response Claim

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It's difficult to predict the types of medical professional liability claims that could arise from an organization's response to COVID-19. Allegations could include negligent management of chronic or acute medical conditions during the deferment of elective surgeries, procedures, or routine outpatient appointments. Depending on whether legal immunity exists, a patient may allege that an organization's negligent COVID-19 management resulted in contraction of the disease.

Documentation is often the cornerstone to defending a medical professional liability claim. While this will undoubtedly hold true for any COVID-19 claims, there will be more pressure on organizations to produce documentation that reflects how they responded to the pandemic.

Organizational response to the COVID-19 pandemic has varied considerably. Multiple factors have influenced the response. Some of these factors include where you are located, whether or not you experienced a surge, the resources available to you, and when testing became available to you. Given the rapid pace of change and fluctuating mandates/guidance from federal, state, and local agencies, it may be difficult in the future to recollect exactly what you implemented to prevent exposure to COVID-19 and when you implemented it.

In addition to your organizational response to COVID-19, any decisions made to defer treatment due to the pandemic could play a central role in a claim. For example, did you rely on any guidance from a specialty society to help with decisions to defer treatment? Did you assess patients who deferred treatment to determine if deferral was appropriate? If so, how frequently? In some instances, patients elected to defer treatment because of COVID-19. Was the decision to defer treatment documented in the patient's medical record? Is it clear who made the decision? If the decision was the patient's, was there an informed refusal discussion when the patient decided to defer treatment?

Every organization and every practitioner has adjusted their care and treatment of patients because of this pandemic. These adjustments will come with additional scrutiny when there is a medical professional liability claim. Memorializing these adjustments is much easier to do now while they are occurring rather than trying to recollect them months or years later when a claim is filed.

Risk Management Recommendations

Here are some recommendations to help you compile the right documentation:

Create a [COVID-19 Timeline](#). Note all critical dates and any corresponding documentation. Include:

- First COVID-19 case diagnosed at facility.
- Critical communications to staff members and patients.
- Critical communications or guidance released from federal, state, and local agencies.
- Federal, state, and local closures and reopenings.
- All COVID-19 testing.
- All equipment, capacity, and patient care issues encountered.
- All staffing changes.
- The COVID-19 screening questions asked.
- The COVID-19 precautions implemented.

Preserve ALL COVID-19 documentation. In addition to the items listed in the timeline, include:

- Supply information.
- Meeting minutes.
- Training records.
- Signage.
- Social media platform posts.
- Advertisements.
- Marketing materials.
- Voicemail records.
- Complaints from patients, visitors, employees, vendors, and healthcare personnel internal and external to the organization.
- Outbreak investigations.

Document refusal of treatment. When patients decide to defer treatment because of the pandemic, advise them of the associated risks, benefits, and alternatives. If there are significant risks to the patient, consider having the patient sign a refusal of treatment form.

Continue to monitor patients. Set a schedule for checking in with patients. Determine current clinical status of a patient who defers testing or treatment and if the patient's current clinical status increases risk. If risk is increased, relay this to the patient. Ask if the patient still chooses to defer treatment. Document the assessment and the patient's choice.

Take a [COVID-19 Response Self-Assessment](#). Consider reviewing the COVID-19 response documentation you are currently maintaining. Determine if there is additional documentation you could maintain to prepare for a COVID-19 claim.

Collecting and maintaining the right documentation now will help you prepare for potential claims involving your response to COVID-19.

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