A COVID-19 RESOURCE GUIDE

# Protecting Your Organization During the COVID-19 Pandemic

MAGMUTUAL®

**CHECKLIST FOR HEALTHCARE ORGANIZATIONS**

# Highlighting Areas of Potential Liability and Defense Strategies

Physicians and healthcare organizations have been working tirelessly through the coronavirus pandemic, putting their patients first and striving to provide quality care despite the risks. To help protect the healthcare workforce, the federal government and numerous states enacted executive orders and legislation to provide a level of liability immunity during this pandemic. While those immunities will impose additional burdens on potential plaintiffs, we still expect to see claims of negligence and lawsuits stemming from care rendered during this tumultuous time.

The industry anticipates claims of negligence will include allegations such as failure or delay in diagnosis, mistreatment and/or failure to ensure a safe environment. This guide was developed to assist MagMutual PolicyOwners™ with understanding areas of liability and regulatory compliance while documenting loss-prevention strategies that will aid in defending their practices.

## TABLE OF CONTENTS

# Section 1: Checklist

## INFECTION CONTROL AND PREVENTION DOCUMENTATION

It is important to document and maintain evidence of the steps an organization has taken to ensure a safe environment during the COVID-19 pandemic. Retain the documents and photos listed below for at least five years or as directed by federal and state law.

- ☐ **Meeting Minutes**
  Retain minutes or formal notes taken to document the actions or deliberations of workgroups, taskforces, department/division and committee meetings or the like, related to the organization's actions taken to address federal, state and local government/health authority COVID-19 protocols and guidelines, as well as the implementation of internal infection control and prevention measures, controls and guidelines.

- ☐ **Policies and Procedures**
  Maintain policies and procedures implemented or documentation of the changes made to current policies and procedures to address federal, state and local government/health authority COVID-19 protocols and guidelines, as well as the implementation of internal infection control and prevention measures, controls and guidelines.

- ☐ **Operational Modifications**
  Maintain documentation of modifications made to the environment, facilities or organizational operations to address infection control and prevention measures, controls and guidelines related to COVID-19.

- ☐ **Authoritative Guidance and Legal Opinions**
  Retain authoritative guidance and legal opinions consulted or utilized to determine the organization's actions and implementation of internal infection control and prevention measures, controls and guidelines.

- ☐ **Supplies and Purchasing**
  Save manifests and invoices of supplies purchased to support PPE, tools and cleaning products needed to maintain a safe environment and prevent the spread of COVID-19.

- ☐ **Cleaning Logs**
  Given the specific measures outlined in CDC and OSHA guidelines concerning cleaning and disinfection to prevent the spread of COVID-19, maintain and retain all cleaning logs. These logs should include the cleaning products utilized, the name of the staff member charged with each task, and the date and time the cleaning was conducted.

- ☐ **Emergent Credentialing**
  Maintain documentation related to the emergent credentialing of staff and providers to address the organization's human capital needs as it relates to the implementation of internal infection control and prevention measures, controls and guidelines.

# Section 1: Checklist

## INFECTION CONTROL AND PREVENTION DOCUMENTATION

☐ **Staff Schedules and Changes**
Maintain staff schedules as well as documentation to support changes in staff to address measures, controls and guidelines to prevent the spread of COVID-19. This may include documenting the need for additional staff or the reduction of staff due to reduction of patient visits/volume or recommendations to self-isolate due to potential or confirmed exposure.

☐ **Staff Education**
Maintain documentation on all education, guidelines, notices and the like that are provided to staff regarding changes in protocols due to COVID-19. Include details on what information was shared, when it was shared and to whom. Securely store attestations or sign in sheets along with any competency assessments or audits performed following the education.

☐ **Staff Screening, Testing and Results**
Document the screening of staff prior to beginning their shift as well as logs of staff COVID-19 testing, results and appropriate healthcare provider releases. It is also important to document and retain any requests and allowances for duty modifications and sick leaves.

☐ **Visitor and Vendor Procedures**
Document the screening of visitors or vendors, phone calls and notices regarding the organization's policy and procedures, as well as competency assessments, attestations, agreements or consents/waivers related to expectations for infection control and prevention related to COVID-19. Additionally document just-in-time education based upon patient noncompliance and the risks of noncompliance.

☐ **Consents/Waivers**
Maintain original forms (master copies) of COVID-19 consents and waivers, as well as documentation of any changes made to such documents.

☐ **Patient Procedures**
Document the screening of patients (or patient support persons/guardians), phone calls and notices provided to patients regarding the organization's policy and procedures and expectations for infection control and prevention related to COVID-19, as well as just-in-time education based upon patient noncompliance and the risks of noncompliance.

☐ **Signage**
Maintain original forms (master copies) of signage related to COVID-19 and infection control and prevention procedures/processes, as well as documentation of any changes made to such materials. It is also helpful to note where such signage was posted with dated/timed screen shots and photographs.

☐ **Complaints**
Maintain documentation of complaints received related to COVID-19 infection control and prevention within the organization, as well as the investigation, actions taken to address the complaint, correspondence to the complainant and the outcome.

# Section 2: Article

## COVID-19 SHUTDOWNS AND FEARS FUEL DELAYS IN DIAGNOSIS

By Georgette Samaritan, Senior Risk Management Consultant

**The collateral damage caused by an unknown number of missed or delayed diagnoses for non-COVID conditions is yet to be told, while the country tries to guard against potential transmission rate surges based on location, activity, season, etc.**

**MagMutual suggests that the risks and recommendations discussed in this article be rapidly shared with decision-makers, so that solutions may be quickly devised and implemented in order to help protect patients from preventable diagnosis-related harm.**

At the beginning of the pandemic, the rush to protect people from the COVID-19 outbreak and to preserve limited resources to combat this novel and highly infectious virus resulted in an unprecedented number of evolving public health directives and guidelines, regulatory changes, new legislation, and thousands of executive orders issued at all levels of government, changing the practice of medicine and the ways healthcare is delivered overnight.

To conserve health system resources, and reduce patient contact with healthcare facilities and personnel, some medical services were temporarily suspended, including, but not limited to, cancer screening procedures that require clinic/center visits, elective surgeries, and the deferral of elective cardiac procedures, including coronary angiography and percutaneous coronary intervention for stable coronary artery disease, to name a few.

Doctors scrambled to learn and employ telemedicine technologies in an attempt to provide their patients continued access to care and keep their practices going, but staffing, supplies, equipment, medication and bed shortages, chaotic work environments, and high levels of clinician stress and fatigue, along with fear of sickness and death for themselves, increased the risk of delaying care for non-COVID-19 patients, as well as the risk for making diagnostic errors.

The pandemic also triggered an economic recession, unemployment, and loss of health insurance, causing some patients to avoid seeking medical care altogether. And for many of us, healthcare facilities began to be seen as places of COVID-19 contagion, resulting in patients with potentially serious symptoms choosing to “tough it out” rather than seeking care, leading to delays in diagnosis of heart attacks, strokes and other emergencies. Likewise, the diagnosis of non-COVID-19 patients who do come for services may be compromised due to a number of factors discussed later in this article.

### Where Are All the Patients?

The collateral damage suffered by patients with non-COVID 19 conditions is beginning to emerge. A Washington Post headline reported, "Patients with heart attacks, strokes, and even appendicitis vanish from hospitals."[1] A study from nine high-volume US cardiac catheterization laboratories found a 38% decrease in patients treated for ST-elevation myocardial infarction, considered a life-threatening condition ..."[2]

Hot off the UK press comes a report claiming that for every three UK citizens who died from the coronavirus, two others died from not being able to receive proper medical care thanks to the lockdowns.[3]

Decisions about what to do or what to avoid are not simply rational or irrational. We are just beginning to understand COVID-19; its diagnosis and treatment are evolving daily. It may not be possible to know how much risk is associated with certain choices, which makes the task of reassuring patients and the public that it's safe to "come back" all the more challenging. For hospitals and clinicians trying to reengage with patients and the public, societal fear of COVID-19 complicates the already challenging task of prioritizing and rescheduling delayed care. Rebuilding trust and counteracting the dread people have developed over the past months will take time. Ultimately, it's patients who will have the last word regarding the safety of healthcare going forward.

### Returning to the Clinic/Office Setting; Ensure Patients with Chronic Disease are Receiving Care

We must continue to reassure patients and their families of all the safety measures that have been strictly implemented. For example, facility letters that inform patients they are overdue for their mammogram must include patient safety instructions and describe infection prevention measures the staff and facility employ. Experts say it is essential we educate the public to seek medical assistance and not remain home if they are experiencing new, concerning symptoms, whether it's through telehealth or in person. The public must also be made aware through the media and healthcare sources concerning acute and chronic collateral misdiagnoses that are occurring because of COVID 19-related patient reluctance or unwillingness to seek care outside the home.

### Classifying Diagnostic Errors in the Context of COVID-19

Researchers, Tejal Gandhi, MD and Hardeep Singh, MD have developed a user-friendly typology for classifying diagnostic errors in the context of COVID-19 that includes collateral harm as an effect of the pandemic.[4] Each category of error reflects situations related to COVID-19, such as problems with diagnostic testing, lack of knowledge, clinicians and systems stressed by a "surge" of critically ill COVID-19 patients, and preoccupation with the new disease that results in anchoring on that diagnosis. Under "collateral harm," authors include diagnoses missed or delayed because patients are unwilling or unable to access medical attention due to fear of COVID-19.

**Categories of Error:**

1. **Classic:** Missed or delayed COVID-19 diagnosis in patients with respiratory symptoms.
2. **Anomalous:** Missed or delayed COVID-19 diagnosis in patients who do not have respiratory symptoms.
3. **Anchor:** Missed or delayed diagnosis of a different condition because clinicians assume the patient has COVID-19.
4. **Secondary:** Missed or delayed diagnosis of a secondary condition in a patient being treated for COVID-19.
5. **Acute collateral:** Delayed diagnosis of an acute condition because patients are not seeking care due to fear of contracting COVID-19 in a hospital or emergency department.
6. **Chronic collateral:** Delayed diagnosis of ambulatory conditions due to canceled appointments or elective procedures.
7. **Strain:** Missed or delayed diagnosis of a different condition because hospitals are overwhelmed, potentially limiting the time and attention clinicians spend on non-COVID-19 patients.
8. **Unintended:** Missed or delayed diagnosis because clinicians are using telemedicine more instead of interacting with patients in person.

**Gandhi and Singh Propose these Strategies to Minimize Diagnostic Errors:**

- **Technology for Cognitive Support:** Use up-to-date technology that helps healthcare providers make better decisions and scale safety practices to address possible risks to patients.
- **Optimized Work Flow and Communications**: Address communication issues by encouraging patients to discuss any concerns they might have and by ensuring follow-up appointments via telehealth visits. Both patients and providers are trying to adjust to telehealth and video conferencing visits. It may be helpful to involve appropriate family members in these video visits when practical, and to be patient with oneself in adjusting to adapted office/clinic routines.
- **People-Focused Intervention:** (a) Use buddy systems in the hospital or clinic, especially for less experienced physicians or healthcare workers, so that they can easily ask for advice. (b) Minimize stress and anxiety in the workplace by offering counseling and peer support. Encourage staff to ask questions, seek help and report concerns.
- **Fundamental Organizational Strategies:** Create learning systems and networks by sharing data and knowledge surrounding newly discovered risks so that errors can be minimized.


1. Berstein, Sellers FS. 2020. "Patients with Heart Attacks, Strokes and Even Appendicitis Vanish from Hospitals." *The Washington Post.* April 19. Accessed August 7, 2020.
2. Garcia S, Albaghdadi MS, Merai, PM, et al. 2020. "Reduction in ST segment elevation cardiac catheterization laboratory activations in the United States during COVID 19 pandemic." Journal of the American College of Cardiology 75 (22): 2871-2872. Accessed August 2, 2020. doi:doi:10.1016/j.jacc.2020.04.011.
3. Hussain, Danyal. 2020. "Lockdown 'killed two people for every three that died of coronavirus': 16,000 people in the UK died in five weeks as hospitals shut down to deal with COVID while 25,000 died from the virus" DailyMail.com. August 7. Accessed August 9, 2020.
4. Gandhi, T.K and Singh, H. 2020. "Reducing the Risk of Diagnostic Error in the COVID-19 Era." Journal of Hospital Medicine 15 (6): 363-366. doi:https://doi.org/10.12788/jhm.3461.

# Section 3: Checklist

## TELEHEALTH PRACTICES

As healthcare practices are grappling with the spread of the coronavirus, telehealth is stepping in as a key means for maintaining patient access to care. Telehealth provides a way for patients to receive care without exposing them or their providers to the highly contagious virus. Below are some of the top concerns that physicians have cited when conducting telehealth visits, along with MagMutual's recommendations and best practice guidance for reducing your risk.

- ☐ **Utilize a HIPAA-Compliant Telehealth Platform**
  Ensure that your practice uses a secure, HIPAA-compliant video conference tool to conduct telehealth visits. Use an automatic log-off feature when the system is not in use for a period of time. If you're messaging a patient, use a secure messaging system.

- ☐ **Address Any Privacy Concerns**
  Discuss HIPAA with your patients and remind them that the visit remains subject to the HIPAA Privacy Rule. The patient can affirmatively consent to the provider that they would like a family member present during the telehealth visit.

- ☐ **Protect Against Cybercrime Vulnerabilities**
  Ensure that the vendor you choose to work with maintains a sound security posture to limit vulnerabilities in the host system and other interconnected systems and has signed a Business Associate Agreement (BAA). Implement protocols in case of a breach and have a backup plan if technology fails.

- ☐ **Implement Device Protections**
  Use secure login protections, such as multi-factor authentication or a security question requirement, on both patient and provider devices to decrease the risk of improper access. Consider securing telehealth devices by installing firewalls or intrusion detection systems on all provider-owned telehealth devices.

- ☐ **Be Aware of Regulations**
  When using telehealth, it is important to stay informed of the frequent regulatory changes due to COVID-19. Keep in mind that variations from state to state can increase your risk.

- ☐ **Use Care When Treating New Patients**
  Check your state's requirements before offering telehealth services to a new patient. There may be different requirements for offering telehealth services to new versus established patients.

# Section 3: Checklist

## TELEHEALTH PRACTICES

☐ **Use Appropriate Modalities**
Ensure you are using appropriate modalities to conduct telehealth visits, as some states restrict which modalities can be used to establish a patient-physician relationship (e.g., telephone versus two-way audio and video technology).

☐ **Check Licensing Requirements**
In general, providers must be licensed in the state where the patient resides. Although certain states are providing limited waivers to obtaining a state license, these waivers are limited and each state has specific eligibility requirements. Therefore, we advise you to be licensed in each state in which you provide telehealth. Relying on waivers increases risk.

☐ **Don't Treat International Patients**
Ensure your practice is not providing telemedicine services to patients living outside the USA, because every country has a different "licensure and credentialing" system and different requirements for applicable "liability coverage."

☐ **Ensure Proper Submission of Bills**
Each quarter, ensure that your healthcare organization has submitted bills that satisfy each payor's telehealth requirements. These requirements change frequently, so it is important to stay up to date to ensure your claims are submitted correctly and reimbursed appropriately.

☐ **Verify Billing and Insurance**
Ensure that the CPT code billed is an allowed code per state telehealth policy, and ensure your coding properly reflects the place of service. Before beginning a telehealth visit, verify the patient's insurance covers telemedicine.

☐ **APRN Agreements**
Make sure any Advanced Practice Registered Nurse agreements have addendums with regards to providing telemedicine services, and ensure those agreements are submitted as required to the medical and/or nursing boards.

☐ **Use Proper Documentation**
Establish documentation protocols so that consistency is maintained. Document the same information you would for a face-to-face visit. Ensure you document that the service was provided through telehealth, and document the start and end time of each visit.

# Section 3: Checklist

## TELEHEALTH PRACTICES

☐ **Obtain Informed Consent**
Similar to an in-person visit, ensure you are obtaining the patient's informed consent before engaging in a telehealth visit. If you're using a form, make sure it includes details about services provided via telehealth. Also, be aware that the same standard of care applies to telehealth visits as in-person visits.

☐ **Patient Encounter and Examination**
Think proactively about the information you would like to obtain from a virtual examination. Ensure that you have the required information for an appropriate evaluation to help treat the patient's symptoms, and if not, ask the patient for more help. Consider asking the patient to move the camera to give you a better view of problematic areas (e.g., eyes, hands, throat, etc.). When the visit is complete, be sure you end the call and that your microphone and camera are no longer transmitting.

☐ **Follow Up on Treatment Plans**
If a follow-up appointment is necessary, schedule the appointment during the telehealth visit. Ensure follow-up appointments are properly documented in the patient's medical record. Implement a method to electronically send patients the details of their follow-up appointment (date, time, whether it's in person or via telehealth).

☐ **Encourage In-Person Visits When Necessary**
It is recommended from a risk management perspective to take a cautious and conservative approach when determining whether to schedule an in-person appointment for a patient. Ask the patient detailed questions to ensure you gather the proper information in case an in-person visit is necessary.

# Section 4: Article

## "WEBSIDE" IS THE NEW BEDSIDE

By Asha Patel Shah, MD, FAAD

**Bedside manner is truly an art, and its success is rooted in the personal interaction and rapport that is built between patient and physician. With telemedicine being pushed to the forefront, "webside manner" is emerging as the virtual analog and becoming an important skill to create and maintain a trusting patient relationship.**

Developing a webside manner, or online personality, is a challenge for nearly one-third of physicians.[1] With the rapid incorporation of telemedicine into healthcare, your webside manner is the only representation you have to properly communicate with patients. Optimizing your virtual presence creates assurance in clear communication – one of the key factors in reducing litigation risk and increasing patient safety.[2]

Webside manner encompasses a large breadth of communication that may include: e-mail, texting, portal/medical record messaging, audio calls, and video calls. Trying to translate a human touch over technology is a learning curve but is important for patient outcomes and patient satisfaction.

**Lights, Camera, Action**

Appropriate lighting is essential to put your best face forward. Face your brightest source of light in the room – using natural or artificial lighting directly facing you will decrease the chance of shadows.

The camera's height on your device should also be on level with your central face. You will most likely have to raise the height of your device so you don't create an unflattering angle of yourself.

Whether we like it or not, your credibility as a physician also hinges on your attire. As such, opting to wear professional clothing sets the tone for the visit and helps the patient garner a positive impression of your abilities and communicate your authority.

Ensure your background is de-cluttered, professional, and simple. Avoiding doors in the video frame or distracting objects in the background will ensure a private environment that will create trust between you and the patient.

The room itself should be enclosed as much as possible to reduce noise pollution and echo. Wearing headphones will increase your patient's privacy and help secure the environment in a HIPAA-compliant manner.

Finally, checking your tech before you go live ensures there are no hiccups in communication. Testing your internet connection, microphone, and the camera function beforehand decreases the chance of frustration and lost communication.

**Getting Started**

Just like an in-person encounter, your virtual introduction is your first impression. A friendly greeting that confirms your name, your role, and the patient's name helps set a warm and professional tone. Even though you are virtual and it might be easier "to get down to business," take a pause to invoke some social pleasantries. Doing this brief introduction will not only convey politeness and replicate an in-person visit, but also concurrently check the patient's connection and audio-visual equipment to ensure that both parties are properly set-up for the call and are comfortable. It is also advised to ask the patient if there is anyone else within hearing distance on their end to ensure that you are abiding by privacy laws and HIPAA compliance.

In addition, eye contact is now the new handshake. Practice getting your eyes on the camera lens, as opposed to the patient's face somewhere on your screen, to help command your virtual presence.

Be aware of your body language during the encounter – don't slouch, cover your mouth, cross your arms, or lean back. These motions can be misconstrued as unprofessional or uninterested towards your patient. Best practices include an upright posture, open chest, leaning forward, nodding periodically, keeping your face forward and free of obstruction, staying seated, and keeping any hand motions within full view of the camera.

**On Screen**

Try to avoid fidgeting! Sometimes we subconsciously tap our foot or click a pen. Keep in mind two things: the patient can't see what you are doing and device microphones are highly sensitive. Not only is extraneous movement distracting to the patient, it can also hinder advice given and thus decrease the perceived quality of your medical visit.

Eating and drinking on camera is not well received by patients. Not only does the sound of it get amplified by the microphone, it makes the visit appear too casual as this behavior would not normally be done if it was an in-person encounter. It is best to avoid this all together, though if you must, offer a quick excuse then eat or drink with your camera/microphone turned off.

Despite the fastest and strongest internet connection, there can be delays in receiving audio/video input. This can create frustration, especially when it results in a natural conversation between both parties becoming choppy. The best practice is to listen with intent to get the full story from the patient and prepare to paraphrase in your words and repeat back, allowing for a pause that might be more than you

would allow in-person. Due to technology lag, it is also best to avoid long-winded sentences. Practice succinct medical counseling and leave room for frequent pauses to get patient feedback.

Decreasing medical jargon usage can also help decrease confusion and unnecessary back-and-forth questions. Ensure that you have circled back to the patient's reason for the visit to convey thoroughness. Allowing for the patient's expectations to align with yours is key for a positive partnership.

If you plan to use the same device to video conference with the patient and look up medical information during the visit, be sure to tell the patient what you are doing. Your eyes and attention will be elsewhere while the patient is still seeing you – a brief explanation on the front-end can help reduce their concern and keep them in the loop.

**It's a Wrap!**

Once the call is winding down, you should summarize the treatment plan and next steps. It is advised to keep track of your time on the call to avoid the trap of falling behind. This requires a pre-planned strategy as most in-person visits are shuttled along with the help of your medical staff. With telemedicine, the onus is typically on the physician to stay on track and be fair to your next patient. Most find a timer that rings five minutes before the close of the visit is a helpful tool to both patient and physician to signal a conclusion.

Leaving time for patient questions is a must, just like you would allow during an in-person visit. Instructions regarding any after-visit paperwork can be given at this time, as well as a courteous goodbye as a signal to end the visit. Be sure to know where the appropriate button is to officially end the visit. Sometimes, just closing out the screen may not end the encounter and your camera and microphone might still be rolling!

With adoption of an effective webside manner, you can greatly enhance your virtual presence and start to take command of telemedicine. As telemedicine becomes assimilated into routine healthcare, the benefits of presenting your best virtual self will certainly pay-off!

1. Drees, Jackie. "Nearly one-third of physicians say developing an online personality, 'webside manner' is a top challenge for telehealth." Becker's Hospital Review; 2020
2. Lester GW, Smith SG. "Listening and talking to patients. A remedy for malpractice suits?" West J Med. 1993 Mar; 158(3): 268–272.

# Section 5: Additional Support and Resources

**MagMutual is here to support you.**
**For additional risk management assistance, please email us at questions@magmutual.com or call 800-282-4882.**

**Infection Control and Prevention**

- Center for Disease Control (CDC) – For Healthcare Professionals about Coronavirus (COVID-19)
- EPA – List of Disinfectants for Use Against SARS-CoV-2
- Occupational Safety and Health Administration (OSHA) – Safety and Health Topic for COVID-19
- MagMutual Learning Center – Checklist for Medical Practices: Reopening and Resuming Activities

**Delays in Diagnosis**

- American Medical Association – Pandemic fear: Ensure patients with chronic disease receive care
- Association of American Medical Colleges – COVID-19 disrupted health care for other serious conditions
- Journal of Hospital Medicine – Reducing the Risk of Diagnostic Error in the COVID-19 Era

**Telehealth Practices**

- AMA – 50-state survey: Establishment of a patient-physician relationship via telemedicine
- MagMutual Learning Center – Choosing a HIPAA-Compliant Telehealth Service
- MagMutual Learning Center – Telehealth Practices during Coronavirus (COVID-19) Outbreak
- HIPAA Journal – HIPAA Guidelines on Telemedicine
- MagMutual Learning Center – Cyberthreats during the Coronavirus (COVID-19) Pandemic
- Health IT Consultant – Telehealth and Cybersecurity: What You Should Know
- Telehealth.hhs.gov – Billing and reimbursement during the COVID-19 Public Health Emergency