

Minimizing Medicolegal Risk in the COVID and Post-COVID Era.

The traditional definition of medical malpractice - medical care that falls below the accepted standards of care by “reasonable physicians” will now be scrutinized more than ever during and the years following the COVID19 pandemic. The pandemic placed enormous strain on our health systems: hospitals were operating at maximum capacity, supply shortages were well-publicized, and healthcare providers were scarce and overworked. In light of these challenges, efforts were made on the federal level to minimize fear of legal repercussions given the challenging healthcare environment.

The US Department of Health and Human Services amended the Public Read and Emergency Preparedness (PREP) Act to offer legal protections to medical providers during COVID to recognize the difficulty of these practice conditions. The Coronavirus Aid Relief And Economic Security (CARES) Act also offered protection against liability for healthcare providers providing volunteer services during the pandemic. These regulations were good news for physicians as they allowed more leeway for trying to deliver care during difficult circumstances that were often out of their direct control. COVID-related lawsuits would be made increasingly difficult to bring forward and would need to provide evidence of gross negligence, bad faith, intentional harm, or reckless misconduct.

Despite these legal protections, a new legal risk has risen to the forefront. One of the ancillary effects already being felt from the pandemic is the increasing complexity of cases due to patients delaying care for chronic conditions. Patients are increasingly presented for medical care in a much sicker condition or at an advanced stage of their disease due to poor control or missed diagnosis. This is particularly felt in emergency departments, where pent-up demand is already leading to a rapid surge in inpatient volumes with higher acuity. This opens up a new level of risk that providers must now account for.

Providers should be mindful of this consequence and now pay particular attention to their medical documentation. Missed or delayed screening appointments due to the pandemic or attempts by providers to have patient follow-up for abnormal tests or routine exams should be meticulously documented. As long as good faith efforts are documented, providers can minimize their legal risk and pass the ‘reasonable

physician' standard, even if patients have medical consequences felt from the pandemic.

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