

LEGAL CONSIDERATIONS FOR MEDICAL FACILITIES FACING A CORONAVIRUS DISEASE 2019 (COVID-19) OUTBREAK

MARCH 2020

The medical community's understanding and information about the threats posed by the current novel coronavirus (COVID-19) outbreak are continually evolving. Health care providers on the front lines of battling the disease face a unique set of challenges, not the least of which is meeting their legal obligations while dealing with the crisis. Amidst the ongoing uncertainty, health care providers—from nursing homes to hospitals, doctors' offices to dialysis centers—can take steps to prepare themselves for responding to this historic event. Outlined below are some of the key issues that health care providers should be addressing.

IMMEDIATE CONSIDERATIONS

- **Do you have a plan?** Review and evaluate your existing disaster plan, infection control protocols, and all relevant policies and procedures, and update them if they fall short of providing the guidance needed in responding to the coronavirus threat. Be ready for an enhanced focus on these issues by any CMS, Joint Commission, or state survey that arises.
- **Is your workforce prepared?** Now is the time to conduct disaster drills and train your employees on those policies and procedures, as well as on the guidance being issued by the Centers for Disease Control and Prevention (CDC). Don't forget to create staffing contingency plans in the event a sizeable number of your employees are too sick to come to work.
- **What are your strengths and weaknesses in responding to a potential outbreak?** Now would be a good time to conduct a risk assessment and develop and implement a plan to rectify any shortcomings identified.
- **Do you know where to go for relevant information?** The CDC and local health departments are key sources for the latest updates on the coronavirus situation. Make sure you consult them often and know how to reach key officials.
- **Are you aware of what your patients' rights are?** The spread of COVID-19 may necessitate prohibiting visitors, locking down units, barring new admissions, and taking other restrictive measures. Make sure you know how to handle a patient's request (or a request of the patient's family) to transfer out if an infection is confirmed at your facility.
- **What is your communication strategy?** Make sure you have a plan for getting information to and from your staff, patients, families, health officials, and the public in an organized and efficient manner.

IN THE EVENT OF AN OUTBREAK AT YOUR FACILITY

- **Put your plan into action.** This is what you were preparing for. Make sure everyone at your facility knows who the decision-makers are and the chain of command.
- **Know and follow the law.** It sounds simple, but an outbreak will entail mandatory screening and reporting requirements with multiple levels of government—federal, state, and local. Make sure all quarantine regulations and directives are followed.
- **Keep the lines of communication open.** Make sure your staff, patients, families, and the public are appropriately informed of events. Consider creating a hotline or information center. Be strategic in your messaging and mindful of your obligations under patient privacy laws.
- **Maintain good documentation.** This will go a long way not only toward caring for your patients in the short term, but also toward demonstrating that you took all the proper measures in the event regulatory investigations or legal actions materialize in the future.

The only thing certain about the ensuing months is that they will be unpredictable. By taking proactive steps such as these, health care providers will be better prepared for the unknown and better positioned to do what they do best: care for their patients.

ADDITIONAL INFORMATION

The Tucker Ellis Health Care and Medical & Pharmaceutical Liability groups are closely monitoring updates and guidance on COVID-19. For more information or assistance in managing health care provider/facility issues related to COVID-19, please contact:

- **[Victoria Vance](mailto:victoria.vance@tuckerellis.com)** | 216.696.3360 | victoria.vance@tuckerellis.com
- **[Raymond Krncevic](mailto:raymond.krncevic@tuckerellis.com)** | 216.696.5498 | raymond.krncevic@tuckerellis.com
- **[Erica James](mailto:erica.james@tuckerellis.com)** | 216.696.4661 | erica.james@tuckerellis.com
- **[Jane Warner](mailto:jane.warner@tuckerellis.com)** | 216.696.4559 | jane.warner@tuckerellis.com
- **[Ernie Auciello](mailto:ernie.auciello@tuckerellis.com)** | 216.696.4780 | ernie.auciello@tuckerellis.com
- **[Rita Maimbourg](mailto:rita.maimbourg@tuckerellis.com)** | 216.696.3219 | rita.maimbourg@tuckerellis.com
- **[Mollie Benedict](mailto:mollie.benedict@tuckerellis.com)** | 213.430.3399 | mollie.benedict@tuckerellis.com
- **[Edward Taber](mailto:edward.taber@tuckerellis.com)** | 216.696.2365 | edward.taber@tuckerellis.com

This Client Alert has been prepared by Tucker Ellis LLP for the use of our clients. Although prepared by professionals, it should not be used as a substitute for legal counseling in specific situations. Readers should not act upon the information contained herein without professional guidance.