



LAW ALERT

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GUIDANCE FOR REOPENING HEALTH CARE PRACTICES DURING COVID-19

Many healthcare offices have been closed for many weeks due to the “sheltering in place”, “pause” and “social distancing” directives in most jurisdictions caused by the Covid-19 pandemic. Even though many healthcare providers (HCPs), including doctors, dentists, therapists and others, were permitted to keep their offices open since they were deemed to be “essential”, their services were often “elective” in nature or patients feared coming to their offices even for essential care. Thus, HCP offices were either closed or unable to provide office-based services to patients during the Covid-19 public health emergency.

PLANNING FOR REOPENING

Now as more and more jurisdictions are phasing out the “pause” or “sheltering” restrictions, HCPs and their staff and patients are looking forward to the reopening of health care practices, albeit with some reservations and concerns about health and safety. As HCPs prepare to reopen their practices, it is critical for them to formulate a plan for a safe and effective opening so that potential infections of Covid-19 are avoided. This will help both patients and staff to feel more secure about returning to the office. Providers should communicate with their staff and patients about when the office will reopen, the expected schedule, and the procedures and changes that will be implemented to protect them. Reopening the office has been characterized as slowly lifting a “dimmer switch” rather than flipping on a light switch. A phased-in approach is recommended so that there is an opportunity to work out problems and make necessary changes as the provider monitors whether any cases of Covid-19 develop among staff or patients. This article will suggest some key steps that HCPs should take to properly prepare for and implement a safe reopening.

The plan prepared by the HCP must be based on orders, directives and guidelines issued by applicable governmental agencies, e.g., state and local health departments, the Center for Disease Control (CDC), and the Occupational Safety and Health Administration (OSHA), so the HCP has “homework” to do. The following is an overview of some of the steps the HCP should take in formulating the reopening plan and preparing to conduct ongoing operations of the healthcare practice.

STAFF AND ADMINISTRATIVE CONSIDERATIONS

Preliminarily, the HCP should address the following with regard to the practice’s staff and administrative operations.



- Review and implement the latest orders and guidelines from governmental authorities, e.g., state and local health departments, CDC, and OSHA. The New York State Department of Health (NYSDOH) has mandated that every business, including those deemed “essential”, must develop a written “Safety Plan” outlining how it will prevent the spread of Covid-19. The HCP can either use the template supplied by the NYSDOH (available [here](#)) or develop its own written plan. NYSDOH has also issued mandatory Office-Based Guidelines for Employers and Employees (available [here](#)) that must be followed by offices that are reopening as well as those that were previously permitted to operate as essential. Directives and guidelines from the CDC (some of which are available [here](#)) and OSHA (available [here](#)) should also be followed. Providers should continue to check all directives and guidelines on a regular basis as changes may be instituted. The HCP’s plan does not need to be submitted to the NYSDOH, but retained on site in the HCP’s office in case of an inspection.
- Obtain a supply of appropriate personal protective equipment (“PPE”) following the guidance issued by CDC (available [here](#)), OSHA (available [here](#) at page 14) and the NYSDOH.
- Arrange office-staffing schedule to meet patient volume needs. In some practices, patient volume may ramp-up slowly and be uneven; in others, there may be an initial overload from patients who deferred care for many weeks.
- Consider bringing staff back in staggered or adjusted schedules.
- Develop policies and procedures for identifying and managing staff members who have symptoms of, or test positive for Covid-19, or who had close contact with someone who tested positive or had symptoms for Covid-19 (e.g., isolation/quarantine, contact tracing, notifications/reporting, return to work guidelines) in accordance with regulatory requirements and guidelines. The foregoing is required as part of the safety plan by NYSDOH. Follow reporting requirements of state and local health departments, OSHA, and CDC. Failure to maintain an effective plan could result in complaints by staff to OSHA, the NYSDOH, or local departments of health.
- Develop daily screening or self-evaluation protocol for staff (follow Department of Health and CDC requirements and guidelines). Health screening assessment is another requirement of the plan mandated by NYSDOH, but HCP can customize the plan.
 - Policy of not reporting to work if feeling ill, experiencing fever or other Covid-19 symptoms.
 - Designate and train staff member(s) to be office screeners to check temperature and ask about symptoms of every staff person upon arrival – consider using no-contact or disposable device for temperature checking.
 - Alternatively, consider requiring each staff member to check own temperature daily and complete and sign a daily questionnaire regarding presence of Covid-19 symptoms prior to entering office. Such self-certification may also include statement that employee has not recently been in contact with person with Covid-19, and has not been advised to self-isolate or quarantine.



- Staff screening information must be kept confidential and maintained in separate administrative employee file, not co-mingled with personnel file.
- All positive screening results should be reviewed by medical leadership daily and records should be kept of such review and actions taken. Employees with Covid-19 symptoms should not be permitted to work but should be instructed to contact their health care provider for assessment and testing.
- Perform screening only – no physical exam of staff, but provider may have a policy requiring testing of staff for Covid-19.
- Formulate and implement policy for staff members who refuse to follow provider's screening protocol (e.g., deny work entry, discipline, or possible termination). Seek advice of counsel on appropriate action.
- If employee tests positive for Covid-19:
 - Immediately notify NYSDOH and local health department of any worker who tests positive for Covid-19 and cooperate with contact tracing efforts.
 - No disclosure of employee's identity. Must keep confidential, but general notice to other staff or other exposed individuals should be given of potential exposure without identifying source.
 - Notice may be required to regulatory agencies or applicable department of health. (Consult counsel on reporting requirements. Notice to NYSDOH is required).
 - Develop a plan to comply with contact tracing requirements of NYSDOH and maintain a log of individuals entering the worksite.
- Before reopening, consider providing and documenting training to staff on staff screening, patient screening and triage, infection control practices, protocols to be followed in the office, use of PPE, patient communications, cybersecurity issues and avoidance of phishing scams, changes in policies, special cleaning and disinfection procedures, etc.
- Consider developing social media policy for staff (avoid staff sharing information about provider's practice operations on social media).
- Develop policies for staff work assignments:



- If provider is faced with high-risk or vulnerable employee, consult legal counsel to determine to what extent a reasonable accommodation will need to be made and what constitutes a reasonable accommodation. Comply with requirements under the Families First Coronavirus Response Act (FFCRA).
- Consider possibility of remote working for certain staff.
- Develop Telework Policy (as appropriate).
- Develop or modify sick leave policy as necessary.
 - Paid Sick Leave Policy must comply with requirements of the FFCRA. Effective as of April 1, 2020 through December 31, 2020, the FFCRA applies to employers with fewer than 500 employees, but HCPs can elect to exclude certain employees from coverage under the FFCRA requirements. (See prior Alerts from this firm on leave requirements available [here](#), [here](#) and [here](#).)
 - Providers must also comply with the federal Family Medical Leave Act and Expanded Family Medical Leave Act and applicable state and local sick leave requirements. Providers should consult knowledgeable counsel on sick leave requirements to ensure compliance. Prior policies and employee manuals may need to be revised or updated.
- Consult legal counsel on how to handle an employee who refuses to return to work when office reopens.
 - Provide offer to return to work to employee in writing with a specified date.
 - Require employee to reply to offer in writing within a limited time frame, citing reason for refusal to return.
 - Advise employee that a failure to reply in writing by a specified date, will be considered a voluntary resignation.
 - Fear to return to work or earning more money on unemployment benefits, are not scenarios that entitle employee to receive unemployment benefits.
 - Other Covid-19 related reasons for refusal to return to work may be legitimate basis. Consult counsel to clarify this on a case-by-case basis.
- Designate site safety monitor to be responsible for compliance with all aspects for safety plan.
- Consider conducting daily end-of day debriefing meetings with staff to identify issues and concerns, and address problems identified.



OFFICE ENVIRONMENTAL CONSIDERATIONS

The HCP should also focus on the condition and configuration of the office and how it will operate when it reopens. HCPs should consider implementing the following with respect to the office environment and operations.

- Implement enhanced housekeeping, cleaning, and disinfecting of the office and its equipment, furnishings and supplies, following NYSDOH, CDC and OSHA guidelines. (See Environmental Protection Agency list of disinfection products [here](#).) Helpful guidance is also available from the American Industrial Hygiene Association (AIHA) regarding the reopening of general office settings (available [here](#).)
- Require the use of PPE as recommended by CDC (available [here](#)) and OSHA.
 - Determine the type of PPE needed and ensure adequate supplies of routine PPE (surgical masks and gloves) for all staff and patients, and high-risk PPE (gowns, N95 masks, face shields, and goggles) as needed.
- Evaluate office layout, location of staff, and flow of patients and consider changes that will promote distancing or separation of staff members and patients.
- Consider whether office upgrades will be necessary, e.g. improved HVAC and air filtration, protective compartments to separate staff, or Plexiglas/acrylic barriers at patient reception, discharge or other areas.
- Consider closing common areas and breakrooms.
- Eliminate or decrease the shared usage of equipment, e.g., computers, printers, copiers, phones, PDAs, calculators, etc. If certain equipment needs to be used sequentially on multiple patients, such as an EKG machine, stethoscope, ultrasound, cleanse and disinfect properly between each use, following CDC and OSHA guidelines.
- Remove articles that promote or are subject to touching or handling (e.g., magazines, books, pamphlets, writing utensils, water cooler, coffee maker and cups, snacks/food, toys, etc.) Consider using disposable pens for patient use, that patient can keep.
- Check and document operability of office and patient equipment.
- Check all medications, vaccines and supplies for expiration dates and check and re-stock emergency cart as needed.



- Assess and confirm IT privacy and security. Confirm that all practice devices containing protected health information (PHI) are returned to the office and are secure. Assess whether any personal devices have been used on an emergency basis and need to be wiped clean to remove any PHI. Follow Office of Civil Rights guidance on HIPAA.
- Restrict visits to the office by vendors, supply representatives, salespersons and contractors. Interactions with such persons should be via remote or virtual means. If repairs or maintenance services are necessary, schedule such visits in off hours when no patients and few staff members are in the office. Require such persons to use PPE and complete self-certification questionnaires regarding their Covid-19 exposure and symptoms. A business can deny entry to any individual not wearing a face covering per NYS executive order.
- Require frequent handwashing with soap, and sanitizing of hands with alcohol-based (minimum 60%) sanitizer when soap/water are not available. Post signs to remind about handwashing and sanitizing and ensure that adequate supplies are available.
- Place hand sanitizers in multiple strategic locations to promote good hand hygiene.
- Ensure that adequate supply is available of clinical and office supplies.
- Use door stops to leave doors propped open where possible, to avoid touching doors or knobs.
- Install touch-free and automatic devices where possible, (e.g., dispensers for hand sanitizing, touch-free trashcans, etc.). For buildings that have been shut down for prolonged periods, special considerations may be required for reopening, such as assuring the water system and HVAC are safe (CDC guidance available [here](#)).
- Document steps taken to clean and disinfect office and maintain work areas in case claims for failure to maintain a safe environment are made against HCP in the future.
- Re-instate full insurance coverage if such coverage had been adjusted during the Covid-19 shut down.

Providers should be aware that their failure to properly follow guidelines or requirements of governmental authorities or regulatory agencies may result in enforcement action if the failure comes to the agency's attention. Providers should prepare employees for possible unannounced site visits from these agencies. Reporting and record-keeping requirements by regulatory agencies must also be strictly followed by providers. In addition to regulatory exposure, providers should also be aware of potential exposure to claims of negligence, recklessness, personal injury or other "tort" actions, or possible worker's compensation claims against providers by staff who allege they contracted Covid-19 in the provider's workplace, especially if protocols and guidelines or the HCP's safety plan are not followed. In the event a Covid-19 infection by a staff member is not deemed a "workplace injury" for purposes of worker's compensation, thus removing such claim from the purview of worker's compensation, the provider's failure to implement and follow proper safety protocols in the workplace could lead to costly tort claims by staff against providers.



Patient Considerations

Once HCPs have planned for appropriate arrangements for staff and the office environment, they must consider the steps that should be taken to protect and manage the patients. Providers should consider the following:

- Pre-screen patients telephonically for possible Covid-19 symptoms at time of appointment scheduling, and upon or prior to arrival.
 - A pre-visit screening template or questionnaire may be used like the one proposed by the American Medical Association (available [here](#)), or the CDC (available [here](#)). A provider's safety plan must include a protocol for managing patients with possible symptoms for Covid-19. Any positive responses to screening must be reviewed by medical leadership and a decision regarding patient management (which may include referral to patient's primary physician for assessment, testing and treatment, as appropriate) must be made in accordance with applicable standards. Failure to properly screen and manage symptoms that are identified upon screening could result in claims of negligence by patients and reports to regulatory authorities.
 - Check temperatures upon arrival.
 - Patients experiencing Covid-19 symptoms should be tested before coming into the office, if possible, and if seen in office, they should be segregated.
- Maintain physical distancing for staff and patients.
- Consider arranging for patients to check in by telephone or text upon arrival before entering the office.
- Consider requiring patients to wait in their vehicles upon arrival, where possible, until the patient can be placed in an exam room.
- Restrict patients from bringing "chaperones" to office appointments unless absolutely necessary. Screen all such required chaperones and require face coverings.
- Arrange patient schedule to avoid multiple people in close proximity in the office at the same time.
- Modify patient flow through office to reduce number of patients in waiting room, laboratory, testing areas, check-in and checkout areas. Maintain adequate physical distancing.
- Arrange for patients to enter and exit through separate areas, if possible.
- Consider arranging separate hours for patients who are high risk/vulnerable (e.g., elderly, immunocompromised, suffering from other co-morbidities (heart disease, asthma, kidney disease, etc.)). Consider arranging separate areas for "sick" patients and "well visit" patients.



- Prohibit hand-shaking and unnecessary person-to-person contact.
- Adopt contactless payment system wherever possible.
- Require masks for all people entering office.
 - Advise patients of mask requirement at time of scheduling. (If patient does not have a mask, provide one without charge).
 - Consider special needs for patients with respiratory problems or very young children.
- Consider using telehealth where appropriate for patient services that do not require physical touching or procedures. Schedule in-office visits for patients requiring healthcare services involving physical contact. Practice can operate on a hybrid model with certain patients seen in office and others virtually. Advantages of telehealth include:
 - Reduces exposure to Covid-19 in office.
 - Limits number of office patients.
 - Preserves office time for those who need it.
 - Be mindful of potential changes in payer requirements and rules for telehealth as public health emergency status changes.
- Be mindful of expiration dates of executive orders, temporary waivers of regulatory requirements and temporary interim rules issued by governmental authorities related to licensing, telehealth, prescribing, and regulatory compliance, such as HIPAA and other rules.
- Confirm patient insurance and contact information. Communicate with patients at time of appointment scheduling to ascertain if there have been any changes in the patient's information or insurance status since patient job and life circumstances may have changed.

The process of reopening healthcare practices is a complex one requiring consideration of a multitude of issues and implementation of important protocols and safety measures to protect staff, patients and others. Healthcare providers should carefully plan and implement the re-opening process and stay abreast of developing changes and updates as they move forward. Utilizing guidelines issued by health departments and other regulatory agencies, together with advice from counsel, to develop plans appropriate to their workplaces will help providers achieve a smooth work integration and hopefully avoid the spread of the Covid-19 infection and serious adverse consequences.

If you have any questions, please contact
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