

Operating Your Medical Practice in the COVID-19 Era

May 5, 2020

Fairfield County Medical Association

Hartford County Medical Association

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THE COVID-19 PANDEMIC

- The COVID-1 Virus.
- Employee terminations and furloughs.
- Significant reduction in services.
- Use of telehealth.
- Practice closures.
- Families First Coronavirus Response Act (FFCRA).
- CARES Act and Paycheck Protection Program (PPP).
- EEOC and ADA issues.
- Enforceability of contracts.

PROTECT, PREPARE AND PROVIDE

- **Protect** your workforce.
- **Protect** your patients.
- **Prepare** for a surge.
- **Prepare** for PPE and staffing shortages.
- **Provide** appropriate medical care.

YOUR PLAN FOR OPERATING YOUR PRACTICE

- Financial.
- Operational.
- Cultural.
- Human Resources.

FINANCIAL PLANNING

- Assess your cash flow.
 - A/R, stimulus monies, loans (forgiven v. unforgiven), patient volume, financial hardship patients, payment obligations
- Create a financial forecast.
- Develop a budget.
- Access to start-up monies; loans.
- Renegotiate your contracts.
- Collection activities.
- Employee compensation.
- Phased opening.

OPERATIONAL ISSUES

- PPE use and conservation.
- Waiting and exam rooms.
- Sanitary/hygiene.
- Equipment, supplies and medications.
- Training staff.
- Protecting your patients.
- Protecting your employees.

PROTECTING YOUR PATIENTS

- Scheduling options.
- Offer telehealth services.
- Screen patients (remote and on-site).
- Symptomatic patients.
- Prioritize services.
- Designated rooms/bathrooms.
- Sufficient supplies of PPE and medications.
- Follow-up.
- Non-patient visitors.
- Remain informed about COVID-19 and communicate with health department.

PROTECTING YOUR EMPLOYEES

- Stagger and rotate shifts, reduce hours.
- Screen; send symptomatic patients home.
- Telecommute?
- Special accommodations.
- Social distancing.
- Monitor and manage ill/exposed employees; limit exposure.
- Use designated exam rooms.
- Maintain records of staff contact with COVID-19 patients.
- Limit visitors.
- Limit travel between offices.
- Enforce sanitary measures.
- Communicate with your employees.

OVERALL CULTURE OF PRACTICE GOING FORWARD

- Physical distancing.
- Wearing masks.
- Screening patients.
- Separation of high risk patients.
- Monitoring patients and employees.
- Special accommodations.
- Frequent cleaning and sanitation.
- Telehealth.
- Patient and staff education.
- Communicating with local health department.

CAN I REFUSE TO TREAT COVID-19 POSITIVE PATIENT?

- **NO**, outright refusal likely violates ADA, and state law.
- Can screen patients (both before and at arrival) to determine COVID-19 status to provide appropriate treatment.
- Can take reasonable steps to isolate potentially positive COVID-19 patients (telehealth, separate waiting area, special PPE, *etc.*).
- In many cases, able to ban COVID-19 positive non-patient visitors.

WHAT IS THE FIRST EMPLOYEE DECISION I NEED TO MAKE?

- Your employees all meet the health care provider definition under Federal law.
- Are you going to exempt your employees from paid emergency sick leave benefits and/or emergency extended family and medical leave benefits under the Families First Coronavirus Relief Act?
- If you exempt your employees, no obligation to pay these benefits.
- If you do not exempt your employees, will have payroll tax credits to pay for benefits.

FEDERAL EMERGENCY PAID SICK LEAVE (CONT'D)

- 80 hours of leave at full pay (capped at \$511 per day) if employee unable to work or telework because:
 - under a COVID-19-related quarantine order,
 - has been asked to self-quarantine due to COVID-19 by health care provider,
 - or employee experiencing COVID-19 symptoms and seeking medical diagnosis.

FEDERAL EMERGENCY PAID SICK LEAVE (CONT'D)

- 80 hours of leave, at 2/3rds rate of pay (capped at \$200 per day) if employee unable to work or telework because:
 - Employee caring for an individual subject to COVID-19 quarantine or isolation order, or experiencing COVID-19 symptoms.
 - Employee caring for son or daughter of employee because school closed or child care provider unavailable due to COVID-19

FEDERAL EXTENDED FAMILY & MEDICAL LEAVE

- Took effect April 1, 2020.
- Applies to employers with less than 500 employees.
- Health care providers can be exempted.
- Employee must be employed for 30 calendar days.

EXTENDED FAMILY & MEDICAL LEAVE (CONT'D)

- Employee entitled to leave if unable to work or telework in order to care for son or daughter under 18 years old if elementary or secondary school or place of care has been closed, or child care provider unavailable, due to public health emergency.
- 12 weeks of leave, first two of which are unpaid (but employees can elect to use other paid benefits)
- Remaining 10 weeks are at 2/3rds employee's regular rate of pay, capped at \$200 per day.

CT STATE PAID SICK LEAVE

- Applies only to employers with 50 or more employees.
- Applies only to service workers paid on hourly basis.
- Entitled to 1 hour paid sick leave per 40 hours worked, up to maximum of 40 hours per year.
- Can carry over up to 40 hours per year.
- Can use for own, spouse's, child's injury or illness, seeking medical treatment, or preventative care.

WHAT CAN YOU USE LOAN FOR?

- Payroll costs.
- Group healthcare benefits.
- Insurance premiums.
- Interest, but not principal, on debt incurred before February 15, 2020.
- Rent on any lease in force prior to February 15, 2020.
- Utility payments.

WHAT CAN YOU USE LOAN FOR? (CONT'D)

- Payroll has same definition as in loan amount provisions.
- So, cannot use loan proceeds to pay employees at rate that exceeds \$100,000 per year.
- Cannot use loan proceeds for payroll taxes, income taxes, or compensation of non-US resident employee.
- Cannot use loan proceeds for qualified sick leave or family leave wages for which a credit is allowed under Families First Coronavirus Response Act.

LOAN FORGIVENESS

- Loan recipients eligible for loan forgiveness for 8-week period starting on loan origination.
- Equal to the amount of costs that recipients incur during the period for certain designated categories.
- Includes payroll costs (compensation above \$100,000 rate excluded).
- Payment of interest on mortgage obligations.
- Rent obligations.
- Utility payments.
- Cannot exceed amount borrowed.

LOAN FORGIVENESS REDUCTION/LIMITATION

- Proportionally reduced if average number of employees is less during 8-week forgiveness period as compared to same period in 2019.
- Reduced by amount of reduction in total employee salary during covered period that exceeds 25% as compared to same period in 2019.
- Borrowers who re-hire workers by June 30 won't be penalized for having smaller workforce at beginning of period.
- Due to high subscription, not more than 25% of forgiven amount may be for non-payroll costs.

WHAT CAN I ASK EMPLOYEES ABOUT COVID-19 EXPOSURE/SYMPTOMS?

- Practice can screen employees for COVID-19 exposure/symptoms before starting each workday.
- Can ask employees if they are experiencing symptoms of COVID-19, such as fever, chills, cough, shortness of breath, loss of sense of smell or test, *etc.*
- Can take body temperature of employees.
- Must preserve the confidentiality of this information, including keeping in separate medical files.

CAN I REQUIRE EMPLOYEES WITH COVID-19 SYMPTOMS TO STAY HOME?

- Yes, because they pose a direct threat to fellow employees and patients.
- Employee would be entitled to whatever sick-time benefits they are entitled to under practice policy or the law.
- Can require medical note to establish fitness to return to work.
- Important for returning employees to follow CDC guidelines regarding returning workers exposed to or having been diagnosed with COVID-19

HOW DO I HANDLE FEARFUL EMPLOYEES?

- Many employees may be afraid to return to work, even though never been exposed to COVID-19.
- Two key questions that need to be asked:
 - Is there something in health history that makes you susceptible to COVID-19 or at greater risk for severe consequences if infected with COVID-19?
 - Do job responsibilities permit the employee to telework?
- If job responsibilities allow teleworking, this may be the best outcome.

HOW DO I HANDLE FEARFUL EMPLOYEES (CONT'D)?

- Must distinguish between employees who have a medical or psychiatric basis for their fear and those who do not.
- If they are afraid because of a diagnosable medical or psychiatric condition, have to provide them with reasonable accommodations.
- May be entitled to sick or medical leave benefits.
- If no medical or psychiatric basis, can require employee to come to work.

WHAT HAPPENS IF AN EMPLOYEE HAS COVID-19 OR HAS BEEN EXPOSED?

- Send them home!
- Follow CDC guidelines about returning to work.
- Enter in OSHA log, and follow all reporting requirements.

CAN I LIMIT WHAT EMPLOYEES TO BRING BACK FROM FURLOUGH?

- Yes, to some extent.
- May make sense from social distancing, economic, and workload perspectives.
- If you choose to do this, must have legitimate, non-discriminatory and objective business-related criteria that you use to decide who to bring back first.
- You can also change hours and schedule, as long as does not violate any employment contract.
- Also can consider limiting vacation, PTO, other benefits.

REDUCTION IN HOURS

- For exempt employees, must ensure still earning at least minimum salary threshold under governing statutes to maintain the exemption.
- Employer may consider converting the employee to an hourly non-exempt employee.
- If exempt employee works during a work week must be paid for the full week even if the employee had them stay home for a portion of it.

REDUCTION IN HOURS (CONT'D)

- Employee entitled to UI if works less than amount of hours normally considered full time and did not refuse additional hours.
- For exempt employees, must ensure still earning at least minimum salary threshold under governing statutes to maintain the exemption.
- \$475/week, except physicians and lawyers
- Employer may consider converting the employee to an hourly non-exempt employee.
- If exempt employee works during a work week must be paid for the full week even if the employee had them stay home for a portion of it.

DO I HAVE LIABILITY FOR COVID-19 EXPOSURE?

- Yes, employees could file workers compensation claims claiming that exposed at work.
- Employers also may have OSHA exposure for failing to maintain safe workplace.
- Could also be liable to family members of employees if they are infected with COVID-19 by an employee who contracted COVID-19 at the work place.
- Could also be liable to visitors and patients who contract COVID-19 at practice.

REDUCTION IN HOURS (CONT'D)

- Must give notice to employees with Rate of Pay Change Form.
- Ensure minimum wage satisfied.
- Ensure compliance with employment contracts and collective bargaining agreements.
- Employee cannot fall below required hours threshold in healthcare plan.



QUESTIONS?

ABOUT US



Roy is the co-chair of the Litigation Group at Garfunkel Wild, PC. He uses his 25+ years of civil trial experience to help health care providers to creatively, successfully, and cost-effectively avoid and resolve disputes with managed care companies, employees, business partners, and disability access claims. He frequently writes and lectures on health care and employment law topics.

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Garfunkel Wild, P.C. (GW) was founded over forty years ago with a single purpose in mind—to attend to the specific business and legal needs of its clients in the health care industry and beyond. Our attorneys include physicians, nurses, former prosecutors, technology experts, former government officials and regulators.

ABOUT US



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Barry B. Cepelewicz, M.D. holds dual degrees in law and medicine, providing a unique perspective to providers (including physicians and hospitals) on healthcare related matters. For over three decades, he has represented healthcare related entities in transactional, regulatory, and litigation matters, including creating large single and multi-specialty group practices and other joint ventures, and successfully defending providers in State and Federal investigations. He is also considered an authority in telemedicine. Mr. Cepelewicz has served as General Counsel to medical societies, hospitals' medical staffs, healthcare businesses and start-up companies. He lectures extensively to physicians, including at CME provider seminars.

Garfunkel Wild, P.C. (GW) was founded over forty years ago with a single purpose in mind—to attend to the specific business and legal needs of its clients in the health care industry and beyond. Our attorneys include physicians, nurses, former prosecutors, technology experts, former government officials and regulators.

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