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Labor & Employment and Health Care ADVISORY ■

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Health Care Providers with Exposure to COVID-19: What You Need to Know

As the COVID-19 pandemic continues to spread, hospitals, clinics, and other types of health care settings are now balancing a new concern with their growing patient count: their own employees' exposure to a positive case of COVID-19. Health care providers can be particularly susceptible to COVID-19 due to their contact with patients who are suspected to have COVID-19 or who have tested positive for COVID-19. What do health care employers need to know about their own employees' exposure and how to help maintain those employees' privacy rights when those employees become patients themselves?

Q. What Assessment Should Be Made of a Health Care Provider Who Has Been Exposed to a Patient Who Has a Confirmed Positive COVID-19 Test?

Assess the health care provider's (HCP) COVID-19 exposure risk level in accordance with the CDC Interim Guidance for Healthcare Personnel with Potential Exposure in a Healthcare Setting to Patients with COVID-19. Exposure risk level is assessed case by case. Factors to evaluate include whether the HCP was in close contact (within 6 feet) with a confirmed or suspected COVID-19 patient, the duration of the close contact, whether the patient was wearing a facemask, the type of personal protective equipment worn by the HCP (if any), and whether the close contact could have exposed the HCP to respiratory or other bodily secretions or involved an aerosol-generating procedure.

Low-risk exposures generally refer to brief interactions with patients with COVID-19 or prolonged close contact with patients who were wearing a facemask while the HCP was wearing a facemask or respirator. The use of eye protection, plus a facemask or respirator, further lowers the risk to the HCP.

Medium-risk exposures generally refer to an HCP who had prolonged close contact with patients with COVID-19 who were wearing a facemask while the HCP's nose and mouth were exposed to potentially infectious materials.

High-risk exposures refer to an HCP who had prolonged close contact with patients with COVID-19 who were not wearing a facemask while the HCP's nose and mouth were exposed to potentially infectious materials. Unprotected direct contact could include being coughed/sneezed on by the patient or touching the patient's used tissues with a bare hand.

Each risk category is *elevated up one level* if the HCP performed or was present for a procedure that is likely to generate higher concentrations of aerosols or respiratory secretions, such as CPR, intubation, extubation, bronchoscopy, nebulizer therapy, or sputum induction.

Q. What Work Restrictions Does the CDC Recommend for Each Exposure Risk Level?

If the exposure risk level is medium or high, the CDC recommends that the HCP be excluded from work for 14 days from the date of the last exposure and actively monitor their symptoms. If the HCP develops any fever (over 100.0˚ F or subjective fever) or respiratory symptoms consistent with COVID-19 (cough, shortness of breath, sore throat), they should immediately self-isolate and notify the local or state public health authority and their employer to coordinate consultation and referral for further evaluation.

If the exposure risk level is low, asymptomatic health care providers are not restricted from work but should perform self-monitoring until 14 days have passed after the date of the last potential exposure. The CDC recommends these HCPs check their temperature twice daily and remain alert for respiratory symptoms consistent with COVID-19. If the HCP develops a fever measuring at or above 100.0˚ F or respiratory symptoms, they should immediately self-isolate and notify their local or state public health authority and their employer to coordinate consultation and referral for further evaluation.

For low-risk exposure level HCPs, the CDC states that employers could consider measuring the HCPs' temperatures and assessing symptoms before they start work that day or having the HCPs self-report temperature and symptoms to occupational health before they start work that day. Please note that as of March 24, 2020, the CDC has not recommended that all health care facilities and clinics implement these measures.

Employers can consider permitting an asymptomatic HCP who had exposure to a patient who tested positive for COVID-19 continue to work, after options to improve staffing have been exhausted and in consultation with their occupational health program. The CDC recommends that the HCP report temperature and absence of symptoms each day before starting work. Employers can have the asymptomatic HCP wear a facemask while at work for 14 days after the date of the last exposure if there is an adequate supply of facemasks. If the HCP develops even mild symptoms consistent with COVID-19, the HCP must cease patient care activities, put on a facemask if they are not wearing one, and notify their supervisor or occupational health services before leaving work.

Q. What if the HCP Was Exposed to a Patient Who Is Suspected to Be, but Has Not Been Confirmed by Test to Be, COVID-19 Positive?

If the test results for the patient are not expected to be returned for more than 72 hours, then the CDC recommends that employers follow the recommended guidelines for HCPs exposed to confirmed COVID-19 cases. If the test results are expected to be returned within 48 to 72 hours, then the CDC states that an employer could elect to follow the confirmed COVID-19 case guidance. The CDC recommends that employers maintain a record of the HCP exposed to a suspected COVID-19 patient and encourage the HCP to self-monitor until the test results are received.

If an HCP seeks assessment or treatment at his or her employer for possible COVID-19 (such as at a clinic, urgent care center, or emergency room), he or she should self-identify as a health care worker so that appropriate CDC guidance can be followed. Staff who are examining an HCP should be aware that the CDC guidance for signs and symptoms of COVID-19 are broader when assessing exposures in the health care setting. According to the CDC, "healthcare facilities should have a low threshold for evaluating symptoms and testing symptomatic HCP[s], particularly those who fall into the high- and medium-risk categories."

Q. When Should HCPs with Confirmed or Suspected COVID-19 Return to Work?

The CDC advises health care settings to use either a "test-based" strategy or "non-test-based" strategy for determining when an HCP with confirmed or suspected COVID-19 should return to work.

"Test-based" strategy: exclude HCPs from work until:

- Resolution of fever without the use of fever-reducing medications.
- Improved respiratory symptoms (e.g., cough, shortness of breath).
- Negative results from an FDA emergency use authorized molecular assay for COVID-19 with at least two consecutive swab tests collected at least 24 hours apart. **Note**: negative test results should be final before isolation is ended.

"Non-test-based" strategy: exclude HCPs from work until:

- At least three days (72 hours) have passed since recovery—which is defined by the CDC as "resolution of fever without the use of fever-reducing medications and improvement in respiratory symptoms (e.g., cough, shortness of breath)."
- At least seven days have passed since the first sign of symptoms.

If the HCP was never tested for COVID-19 but has an alternative diagnosis (tested positive for influenza), return-to-work criteria should be based on the alternative diagnosis.

Q. Should an Employer Take Any Precautions When HCPs with Suspected or Confirmed COVID-19 Return to Work?

The CDC recommends the following:

- The HCP should wear a facemask at all times while in the health care setting/facility until all symptoms are completely resolved or for 14 days after the onset of the illness, whichever is longer.
- The HCP should have no contact with severely immunocompromised patients (e.g., transplant, hematology, oncology) until 14 days after the onset of the illness.
- The HCP should practice CDC-recommended hand hygiene, respiratory hygiene, and cough etiquette.
- The HCP should self-monitor their symptoms and contact their occupational health department if the symptoms return or worsen.

The CDC notes that its return-to-work guidance may be adapted by local and state public health authorities in order to respond to rapidly changing circumstances. Consequently, employers of HCPs should monitor state and local directives to determine if more restrictive return-to-work criteria have been enacted in their state or locality.

Q. What Are the HIPAA Privacy Rule Considerations for Assessing and Treating HCPs for COVID-19?

When an HCP seeks assessment for symptoms of COVID-19 at their employer hospital, clinic, urgent care center, or emergency room (and not through occupational health), the HCP becomes a patient who is entitled to privacy rights under the HIPAA Privacy Rule.

Whether the HCP is being assessed for possible COVID-19, has a positive test for COVID-19, or has been admitted for inpatient care, the HCP's protected health information (PHI) should be handled in a private and confidential manner under HIPAA—just as would be done for any other patient.

Management at a hospital, clinic, or urgent care center should communicate through appropriate channels (such as through the director of nursing, department heads, charge nurses, and managers) that PHI about HCPs who seek assessment or care for COVID-19 should be used and disclosed only as permitted by the HIPAA Privacy Rule. Employers can consider providing concrete examples, such as do not gossip about the HCP's condition, testing, or treatment; do not inappropriately access the HCP's medical record unless you are participating in the HCP's care; and never mention or share the HCP's PHI on social media.

A HIPAA-covered health care employer could also consider adding "break the glass" protection to a specific employee's chart for added protection, especially for an HCP who has a positive COVID-19 test result or is admitted as an inpatient.

A HIPAA-covered health care employer could consider issuing a general privacy and security reminder to its HIPAA workforce about the employer's HIPAA policies and protections for PHI of all patients with confirmed or suspected COVID-19, including HCPs, and that it will treat all violations in accordance with its disciplinary action policies.

Alston & Bird has formed a multidisciplinary task force to advise clients on the business and legal implications of the coronavirus (COVID-19). You can view all our work on the coronavirus across industries and subscribe to our future webinars and advisories.

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