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## Updates from **Benesch's Healthcare+** Practice Group

### COVID-19: Health and Legal Considerations Convene<sup>1</sup>



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Human coronaviruses are not uncommon; however, the novel and highly transmissible coronavirus SARS-CoV-2, which causes coronavirus disease 2019 (COVID-19), has rightly triggered a multitude of concerns and questions related to its impact on individual and economic health. Experts agree that certain steps can make a meaningful difference in COVID-19's effect. Due to the ever-changing status of exposure and global response to COVID-19, including the World Health Organization elevating the risk level of spreading to "very high," we have teamed up with Dr. Kris Brickman, an emergency department physician and professor, and the Director of the Office of Global Health at the University of Toledo, to create a list of top considerations related to COVID-19 and its mitigation.

**1. Contagion and Transmission.** According to Dr. Brickman, COVID-19 being "very contagious is what makes this different." Early indicators show that COVID-19 poses the greatest threat to the elderly, those with poor health, and healthcare workers. Transmission of COVID-19 occurs "mainly person-to-person...in close contact...(within

about 6 feet)" and from contact with infected surfaces or objects." While "[p]eople are thought to be most contagious when they are most symptomatic," there have been reports of asymptomatic spread.<sup>2</sup> Dr. Brickman notes that "asymptomatic transmission...can occur up to two weeks before illness starts," which is what makes "COVID-19 so contagious compared to SARS or MERS and particularly so difficult to manage [and] control once new cases are found in a new region or country." Due to limited testing capacity, the data has been slow to reflect exposure. On March 1, 2020, the Secretary of Health and Human Services stated that "we're ramping up testing" and that "over the next week that will expand radically."

**2. Reliable Resources.** The amount of coverage on COVID-19 is vast and wide, therefore, following reliable sources in real-time is paramount. For example, the Centers for Disease Control and Prevention (CDC) continues to monitor and provide COVID-19 [updates](#), with specific guidance for [businesses](#), [healthcare providers](#), [long-term care facilities](#), [schools](#), and [travelers](#), including those that may have been [affected by the virus in China](#). Additionally, tracking of [local health departments](#) and local news is vital to appropriate and timely action.

**3. All (Clean) Hands on Deck.** A future vaccine is probable; however, officials agree that it is unlikely that a commercial

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vaccine will be widely available before 2021. In the short term, the best shot at managing COVID-19 outbreaks is to reduce the probability of exposure and transmission. Clear and continuous communication that the responsibility to act and respond to COVID-19 resides with each entity and individual is crucial. This can be accomplished by promoting the following practices:

- **Wash It Off:** Practice frequent [handwashing](#), disinfect phones and devices, and limit mouth, eye, and nose touching.
- **Six Feet of Separation:** Limit handshaking, maintain personal space, and practice social distancing, as practicable, and especially when symptoms are observed; avoid public areas when symptomatic.
- **Stop Sharing:** Avoid sharing common objects (e.g., towels, serving utensils, food spreads), as practicable, and make use of hand-sanitizer dispensers at entrance and exit points of common areas.
- **No More Tough Guys:** Avoid “working through it,” by staying home from work and away from outside activities if you have a sore throat, runny nose, fever, cough, or other symptoms.
- **Masking the Problem:** While surgical masks offer a marginal physical barrier and discourage mouth and nose touching, Dr. Brickman notes that N95 respirator masks can be a “big neutralizer and protector” against the virus. The U.S. Surgeon General recently tweeted for people to stop buying masks, to ensure healthcare workers are able to be adequately supplied, along with a link to CDC’s website. Notably, CDC recommends that those with symptoms wear a mask when around other people until symptoms are gone.<sup>3</sup>

**4. Flexible Policies.** Paid time off and sick leave policies should be flexible and non-punitive in order to provide a practical response to COVID-19. Such flexibility supports CDC’s recommendations that employers (a) “[a]ctively encourage sick employees to stay home; (b) immediately separate and send home employees with a cough or shortness of breath or who “become sick during the day”; and (c) “emphasize staying home when sick, cough/sneeze etiquette, and hand hygiene.”<sup>4</sup> Encouraging the practices listed herein, telecommuting, and travel rearrangement are also key to keeping a workplace healthy and safe.

**5. Assess and React.** Entities should watch for flu-like symptoms and levels of sickness, and monitor absenteeism. If levels appear to exceed sporadic increases, closure or alternative work plans should be strongly considered. CDC specifically recommends setting up “authorities, triggers, and procedures for activating and terminating...a response plan [and working] closely with [local] health officials to identify these triggers.”<sup>5</sup> Because certain populations are at higher risk, such as nursing home residents and schools, increased vigilance is required. For example, Dr. Brickman notes that within a long-term care facility, it is prudent to adopt more aggressive testing, quarantine requirements, and visitor restrictions. Rapid response and reporting are necessary, as hesitation can result in a significant spread within a confined facility.

**6. Protecting Privacy.** State and federal data privacy laws provide certain protections of personally identifiable information, like that which may be collected related to symptoms and existing conditions. Additionally, healthcare providers and group health plans are generally bound by HIPAA, which limits the use of protected health information, including disclosures to an employer. Although some privacy laws provide for public health and disaster exceptions, using de-identified information, restricting access, and communicating confidentially, where appropriate, is recommended.

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**7. Logistics and Supply.** CDC has found no evidence of contamination on products shipped from China. However, the nature of COVID-19's local and global reach poses risks to manufacturer output and supply chain systems. It has been reported that there were nearly 600 mentions of the virus in companies' security filings last week alone.<sup>6</sup> Suppliers should communicate potential delays and realistic deliveries and timing, and entities should scrutinize the necessity of any invoked Force Majeure provisions. Planning and contingencies are necessary to mitigate interruptions in operations. Managing the supply chain may include avoiding the temptation to stockpile, to allow customers or suppliers to meet other demands. For instance, where life-saving drugs and personal protection equipment are being ordered, suppliers may deny larger-than-normal orders to ensure proper national/global disbursement and manufacturer capabilities.

Benesch Law, including the **Benesch Healthcare+** Practice Group, stands ready to assist with any questions as we closely follow COVID-19 developments and support clients' response efforts.

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- 1 Please note that this information is current as of the date of this Client Alert, based on the available data. However, because COVID-19's status and updates related to the same are ongoing, we recommend real-time review of guidance distributed by CDC and local officials.
  - 2 CDC: Coronavirus Disease 2019 (COVID-19), What You Should Know, available at <https://www.cdc.gov/coronavirus/2019-ncov/about/transmission.html>.
  - 3 CDC: Coronavirus Disease 2019 (COVID-19), What You Should Know, available at <https://www.cdc.gov/coronavirus/2019-ncov/about/steps-when-sick.html>.
  - 4 CDC: Coronavirus Disease 2019 (COVID-19), Information for Specific Groups, available at <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/guidance-business-response.html>.
  - 5 Id.
  - 6 The Wall Street Journal, Coronavirus Is Different. It's Rapidly Hitting Supply and Demand (March 1, 2020) available at <https://www.wsj.com/articles/coronavirus-is-different-almost-no-company-is-safe-11583064000>.

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