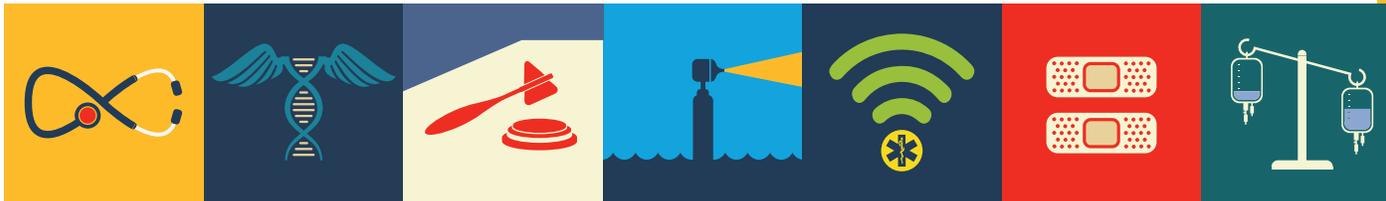


THE DOCTOR'S ADVOCATE



SPECIAL ISSUE: COVID-19

AUGUST 2020

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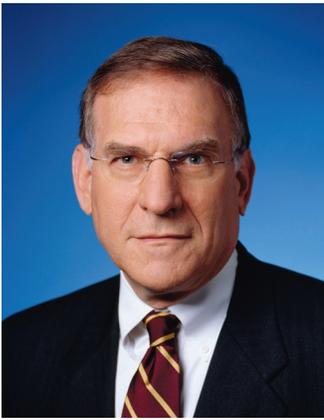
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The Doctors Company will do everything possible to continue providing expert resources and responding to your needs during every stage of the pandemic.

FROM THE CHAIRMAN

UNWAVERING SERVICE TO OUR MEMBERS

“Now this is not the end. It is not even the beginning of the end. But it is, perhaps, the end of the beginning.”

—Sir Winston Churchill

Churchill spoke these words to the House of Commons in late 1942 after the Allies defeated Rommel’s army in Egypt. His words still resonate today in the midst of a different kind of struggle.

The care provided by doctors and hospitals during the pandemic has been delivered under conditions unimaginable in the United States—in many cases, more suited to the battlefield than medical offices. The performance of these heroes has been inspiring. This is mission-based medicine at its finest.

Many physicians are now returning to practice, resuming elective surgeries and procedures, and otherwise getting back to in-office interactions with patients. Some aspects will be familiar, other elements will undoubtedly be different. It is an iterative process. History is a limited guide to contemporary conditions.

It has become clear that the precise shape of the *new normal* is impossible to foresee, and we can be sure there will be no simple return to the *old normal*. The Doctors Company will do everything possible to continue providing expert resources and responding to your needs during every stage of the pandemic. Rest assured that you are protected by the industry’s best coverage.

In This Issue

In the second special issue of *The Doctor’s Advocate* devoted to COVID-19, we answer many of your liability and coverage questions related to reopening your practice and offer expert guidance on steps needed to safely reopen your medical office.

We continue to advocate for broad liability protections on behalf of the medical profession—so those who provide care during the pandemic are free from worrying about the scourge of malpractice litigation. We are grateful for efforts by many of our members in advocating for themselves and their patients in such powerful and effective ways. Trial attorneys reflexly oppose the new provisions and continue to find opportunities to file lawsuits against those providing care. Our battle never ceases.

The *Back Page* highlights a retired member who donated his entire Tribute® Plan award to his medical school alma mater. His purpose was to help medical students caught in a housing crisis as a result of the pandemic—a selfless gesture that represents the best of our profession.

In fact, this quarter witnessed a major milestone in the Tribute Plan’s history: We have distributed \$100 million in Tribute award checks to retired members since the program’s inception in 2007. We are honored to provide rewards on this scale to those who have devoted their careers to service.

We are not yet at the end of the COVID-19 national emergency, but we have reached the end of the beginning. Our mission to advance, protect, and reward the practice of good medicine has never been more important. We are proud and grateful for the care you are providing.

Richard E. Anderson, MD, FACP
Chairman and CEO

TOP 7 INSURANCE AND LEGAL QUESTIONS FOR RESUMING MEDICAL PRACTICE DURING COVID-19

Todd Zeiter, Senior Vice President, National Underwriting

We have heard from physicians that they are concerned about the risks involved in reopening their practices, resuming elective procedures, or otherwise resuming something closer to their usual patient interactions. In response to these concerns, we are providing answers to common insurance coverage questions to help physicians anticipate issues before they become problems.

First and foremost, we urge physicians to check daily for updates from the Centers for Disease Control and Prevention (CDC), local medical societies, and local health departments. We also urge physicians to have a plan for how to communicate changes to staff and to document that they are doing so—if only by jotting quick notes in an electronic calendar.

Q: Am I covered for employee claims involving COVID-19?

A: If an employee of yours makes the claim that you failed to provide a safe work environment—for instance, that you did not provide personal protective equipment (PPE), and they subsequently contracted COVID-19—that claim would fall outside of your medical professional liability coverage. In those instances, your agent can advise you regarding whether the claim is covered by your employment practices liability insurance.

Q: Am I covered if a patient alleges they contracted COVID-19 in my office?

A: If you are covered by The Doctors Company, the short answer is yes. The longer answer involves separating what physicians can't control from what they can: Of course, you cannot guarantee that any given patient will not contract COVID-19. However, you can perform daily reviews of any new CDC guidelines, train your staff, and maintain infection control standards—and document that you are doing those things. In case of a lawsuit, your good-faith effort to maintain the standard of care as it evolves is in your favor.

Q: Can I continue my practice contrary to state recommendations?

A: We will rely on your professional judgment relative to your practice and your patients' best interests. That said, as you evaluate your patients' needs against your local backdrop of infection risks and legal changes, realize that mandates are stronger than recommendations. We encourage you to follow all state mandates, laws, bulletins, and orders.

For example, if a state has opened the door for elective procedures but not cosmetic procedures, and a physician is performing cosmetic procedures, this makes it almost impossible for us to successfully defend that physician in court because they have knowingly violated a state requirement or the law. Therefore, reduce liability by following your local health authority's recommendations and abiding by the local current standard of care.

Q: If I cannot yet resume my usual level of patient interaction, can I adjust my coverage to reduce my premium?

A: Many practices have experienced a significant reduction in patient encounters and therefore revenue. Talk to your agent or underwriter about adjusting your service. The Doctors Company offers two types of coverage adjustments: reduction in time (full-time to part-time practice) and/or reduction in the nature of procedures performed (surgical to office-based practice). Either or both would reduce premium. In case of temporary practice closure, we can temporarily suspend coverage.

Remember to work with your agent or underwriter to reinstate your customary level of coverage upon reopening or resuming your customary level of patient interaction.

Q: Am I covered if I provide services outside the scope of my specialty?

A: Check with your agent or underwriter. If you're being requested to provide services outside of the scope of your specialty, such as assisting with triage in an emergency department (ED), whether being remunerated or not, your coverage with The Doctors Company will not be impacted. We will rely upon your professional judgment. If you have the necessary training and are comfortable performing in that particular capacity, your coverage will follow you.

The same holds true for your nonphysician staff when acting under your scope and direction: If they are requested or

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ARTICLE AT A GLANCE

Answers to top questions from our members and doctors around the country.

COVID-19 HIGHLIGHTS REGULATORY IMPACT ON PRACTICE OF MEDICINE

Elizabeth Y. Healy, Assistant Vice President, Government and Community Relations

Practically overnight, the practice of medicine was dramatically changed, both by the exigencies imposed by the COVID-19 global pandemic and by the governmental response to the medical crisis. In the first few weeks of the pandemic, federal, state, and local governments responded with rapidly evolving guidelines, new and revised regulations, and new legislation. Thousands of executive orders have been issued, laws passed, and regulatory changes made at both the federal and state level have affected the practice of medicine and how healthcare is delivered. These policy responses highlight the degree to which government regulates the delivery of healthcare services.

Some examples of the response to the COVID-19 pandemic by federal, state, and local governments included the following actions:

- ▶ Allowing unlicensed medical school graduates to provide care in a supervised setting.
- ▶ Allowing pharmacists to administer COVID-19 tests.
- ▶ Allowing ambulatory surgery centers to provide hospital services, such as cancer procedures, trauma surgeries, and other essential surgeries.
- ▶ Requiring suspension of in-person treatment for nonemergency healthcare.
- ▶ Expanding the scope of practice for many practitioners and allowing them to practice outside of their specialty.
- ▶ Reinstating active license status for inactive, retired, and volunteer healthcare professionals.
- ▶ Increasing supervision ratios for advanced practice registered nurses and physician assistants.
- ▶ Increasing nurse staffing ratios.
- ▶ Shifting treatment to telemedicine and expanding allowable telemedicine services and reimbursements.
- ▶ Prohibiting elective surgeries in order to preserve resources to treat COVID-19 and emergent cases.
- ▶ Allowing medical residents to provide services under direct supervision and via telehealth.
- ▶ Allowing wider use of verbal orders rather than written orders by hospital doctors.
- ▶ Allowing hospitals to transfer patients to outside facilities—such as ambulatory surgery centers, inpatient rehabilitation hospitals, hotels, and dormitories—while still receiving hospital payments under Medicare.
- ▶ Expanding locations to which ambulances can transport patients.
- ▶ Allowing healthcare systems, hospitals, and communities to set up testing and screening sites for COVID-19.
- ▶ Permitting doctor-owned hospitals to increase the number of beds in their facilities without incurring sanctions.
- ▶ Easing requirements for providers to enroll in Medicare.
- ▶ Expanding Medicare telehealth visit reimbursement and allowing telehealth visits for both new and established patients.



Every executive order and every piece of legislation that has been enacted in support of healthcare providers and their patients involved active advocacy efforts.

- ▶ Allowing Medicare patients broader access to respiratory devices and equipment.
- ▶ Allowing deferment of court depositions of healthcare providers.
- ▶ Allowing the provision of telemedicine by out-of-state providers.
- ▶ Declaring the provision of healthcare as an essential service.
- ▶ Allowing recognition of healthcare provider licensure across state lines.
- ▶ Granting healthcare providers and facilities limited temporary protections from liability for treatment provided in relation to the public health emergency.
- ▶ Expanding volunteer liability protections when treating COVID-19 patients.

ARTICLE AT A GLANCE

Federal, state, and local governments have responded to the COVID-19 pandemic with a wide range of guidelines, regulations, and legislation.

Doctors, nurses, and hospitals have been dealing with unprecedented shortages of the supplies, equipment, medications, and beds needed to care for patients as well as the need for more medical personnel. Nonemergency healthcare services have been postponed or shifted to telemedicine. In response to personnel shortages, some medical practitioners have been providing healthcare services outside of their specialty areas. Retired practitioners have been called back to active duty. Healthcare providers in the hardest hit areas have been forced to make difficult triage decisions that were heretofore unheard of on this scale. The response to the pandemic and the difficult choices it has required have altered the standards of care for healthcare services.

Practicing in harrowing conditions with the constant underlying fear of sickness and death for themselves, their patients, and their families has meant that doctors, nurses, and hospital staff have had to cope with the additional worry of increased liability. Personal injury trial lawyers immediately began advertising for litigation against healthcare providers and have been lobbying in earnest against any medical liability protection provisions for healthcare providers at state and national levels. The Doctors Company and other healthcare advocates fought for provisions in federal law to successfully enact liability protections for volunteer providers, and we have continued to advocate for broader federal protections. This advocacy has resulted in the introduction of HR 7059, the “Coronavirus Provider Protection Act,” by Representatives Lou Correa (D-CA) and Phil Roe, MD (R-TN). The trial attorneys’ national trade association has resisted these provisions every step of the way, even during this time of dire need to increase access to healthcare and bring more providers back into the workforce to care for patients.

Many state policymakers have risen to the occasion and issued emergency orders to provide some level of protection to healthcare providers responding to the pandemic. At the urging of the healthcare community and The Doctors Company,

New York’s governor took the lead by issuing an order that quickly became the model for the country. In areas where protections were not quickly enacted, however, clinicians are facing lawsuits for following the guidance and protocols required by state and federal governments.

Every executive order and every piece of legislation that has been enacted in support of healthcare providers and their patients involved active advocacy efforts by state and national organizations—including medical and specialty societies, hospital associations, and The Doctors Company. Healthcare providers advocated for themselves and their patients by responding to our calls to action and telling many compelling stories. Our collective advocacy efforts have been critical to helping policymakers understand the current practice environment and the consequent increased liability exposure that providers are currently facing.

Every aspect of the practice of medicine is subject to state and federal government oversight and regulation. In response to COVID-19, this oversight and regulation has mandated swift and dramatic changes to the practice of medicine—which has, in turn, given personal injury trial lawyers new opportunities to file suits against the nation’s medical providers. These same providers have risen to the challenge of continuing to provide high-quality care, despite losing colleagues, family members, friends, and patients to this unrelenting public health crisis.

Every one of us must continue to advocate for liability protections and the regulatory changes needed to care for our colleagues, friends, neighbors, and loved ones now and in the future. Please continue to advocate for yourself and your patients by sharing your frontline experiences with your friends, family, media representatives, and your local, state, and national elected representatives. 

Visit our Legislative, Regulatory, and Judicial Advocacy page for an interactive map that lets you track legislation in your state. Learn more at thedoctors.com/advocacy.

ADVOCACY UPDATE: COVID-19

During the COVID-19 crisis, The Doctors Company has continued to advocate broadly for comprehensive liability protections for healthcare providers and facilities. Our advocacy efforts include protections for healthcare providers treating COVID-19 patients (or suspected COVID-19 patients) and for providers who have had to change the way they practice in response to emergency orders. Required practice changes have included actions such as suspending or delaying treatment for other patients, shifting to or increasing telehealth services, and triaging non-COVID-19 patients differently during emergencies in areas hit hard by the pandemic. Healthcare providers are facing a backlog of patient needs as states begin easing restrictions on non-emergency care.

We and our allies worked to include the Good Samaritan Health Professionals Act in the federal emergency response bill recently signed into law, and we are continuing our efforts to enact broader protections at the federal level with the introduction of HR 7059, the “Coronavirus Provider Protection Act.” Please contact your member of Congress today to request support for HR 7059.

We are also continuing our advocacy efforts at the state level to secure bipartisan legislation that would apply needed liability protections to all healthcare providers responding to this public health emergency and have been successful in securing medical liability protections in 28 states.

TOP 10 TIPS FOR REOPENING YOUR MEDICAL OFFICE DURING COVID-19

Kerin Torpey Bashaw, MPH, RN, Senior Vice President, Patient Safety and Risk Management, and Debbie K. Hill, MBA, RN, Senior Patient Safety Risk Manager

We have heard from physicians that they are concerned about the risks involved in reopening their practices. In response to these concerns, we offer the following 10 recommendations:

1. Provide refresher training for all staff on triage, infection control, use of personal protective equipment (PPE), and patient communication. See resources from the Centers for Disease Control and Prevention (CDC) and the Occupational Safety and Health Administration (OSHA).
2. Determine staff needs for PPE based on levels of infection in the community, types of patients seen, and types of patient care procedures performed. See OSHA's *Guidance on Preparing Workplaces for COVID-19*.
3. Confirm that coverage has been reinstated at the desired level if you have requested adjustments in your professional liability coverage during the crisis. Contact Member Services at 800.421.2368 or your insurance agent.
4. Schedule in-person visits according to medical priority. Consider continued telehealth visits for patients at high risk for COVID-19 who don't need to be seen in person.
5. Follow guidelines from the CDC for patient COVID-19 screening upon appointment scheduling and on the day of appointment.
6. Avoid patient-to-patient contact by considering separate entrance and exit doors, limiting capacity, asking patients to wait in the car, and allowing only one-patient visits. If the patient must be accompanied, screen the chaperone for COVID-19 symptoms. See the CDC's Symptoms of Coronavirus page.
7. Assess whether public, work, and treatment areas are equipped to reduce the spread of COVID-19. For example, use Environmental Protection Agency (EPA)-approved cleaning chemicals with label claims against the coronavirus. For more information, see OSHA's *Ten Steps All Workplaces Can Take to Reduce Risk of Exposure to Coronavirus*. For information about disinfection products effective against coronavirus, see the EPA's *List N: Disinfectants for Use Against SARS-CoV2 (COVID-19)*.
8. Screen healthcare personnel daily for symptoms/travel/contacts relevant to COVID-19. Any unprotected occupational exposure by staff members should be assessed and monitored. See the CDC's Interim U.S. Guidance for Risk Assessment and Public Health Management of Healthcare Personnel with Potential Exposure in a Healthcare Setting to Patients with Coronavirus Disease 2019 (COVID-19).
9. Follow the CDC's return-to-work guidelines for healthcare workers with confirmed or suspected COVID-19.
10. Maintain an open line of communication with all vendors and supply chains for infection control purposes and access to available resources.

Concerns will persist regarding the possibility of COVID-19's resurgence as state and local governments implement the phases of the Opening Up America Again Guidelines. We urge you to:

- ▶ Reference the CDC, your state medical board, professional societies, and federal, state, and local authorities daily for public health guidance and new legislation. The CDC provides public health agency contact information on its National Voluntary Accreditation for Public Health Departments page.
- ▶ Be mindful of expiration dates of executive orders related to licensing, telemedicine, prescribing rules, and regulatory compliance. See COVID-19: Executive Orders by State on Dental, Medical, and Surgical Procedures for a list of state executive orders from the American College of Surgeons.

As always, use your best clinical judgment. Continue to be diligent and proceed with caution as you manage patients within your facility. Stay abreast of community incidence of disease and restructure your approach when needed. ^



FIND LINKS TO RESOURCES

Find links to all of the referenced resources at thedoctors.com/reopeningtips.

ARTICLE AT A GLANCE

Recommendations and resources for reopening your practice safely.

TOP 7 INSURANCE AND LEGAL QUESTIONS

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volunteer to offer services outside of your practice insured with us, coverage under your policy will follow them.

If, however, a nonphysician staff member is stepping outside of your scope and direction, they should seek coverage from the facility or practice with whom they're offering services.

Q: Assuming elective surgeries or procedures are allowed, what special considerations apply during COVID-19?

A: The return to offering procedures will not be like flipping a switch; it will be

a gradual process. Use your best judgment to determine whether you have the capability to safely perform the procedure based on your location, patient population, type of procedure, your assessment of the degree of increased risk, and your evaluation of the risks and benefits to the patient.

Have a heart-to-heart with the patient, a true informed consent process that accounts for the increased risks during COVID-19, not just a form for the patient to sign—and document those conversations. No one knows what things will

look like in a year or two, so documenting clinical reasoning based on conditions right now is critical.

Q: What if I have documented my best clinical judgment, but the insurer disagrees? Will I still be defended in case of a suit?

A: If you are a member of The Doctors Company, you can count on aggressive, effective defense of your claim. We do not cast doubt on our members' clinical judgment. However, we strongly recommend that you document your clinical reasoning in case of a suit. ^

COVID-19 RESOURCES

The Doctors Company is committed to sharing important information and support during this unprecedented time. As the situation evolves, we are adding new articles, resources, tips, FAQs, and telehealth webinars to our online COVID-19 Resource Center for Healthcare Professionals. Here are just a few examples of the essential information you'll find at thedoctors.com/covid19.

CHECKLIST FOR REOPENING

As COVID-19 restrictions ease and practices create strategies for seeing patients again, our "Checklist for Reopening Your Practice During COVID-19" can help you take a systematic approach to preparing your practice. Find steps to help you:

- ▶ Address administrative concerns.
- ▶ Prepare and train your staff.
- ▶ Strengthen environmental safety.
- ▶ Plan for and manage on-site patient arrivals and follow-up care.

Download a printable version at thedoctors.com/reopening.

ACCELERATED TELEMEDICINE USE

While many physicians will welcome the ability to safely see more patients in person, the dramatic increase in telemedicine is here to stay. Chief Medical Officer David L. Feldman, MD, MBA, FACS, discusses the future of telehealth in "How COVID-19 Accelerated Telemedicine Use" at thedoctors.com/acceleratedtelemedicine.

AVOID RISKS WHEN TREATING STRESSED PATIENTS

While most resources are directed at screening for COVID-19 and treating affected patients, there is another important aspect of the pandemic: the impact on your patients' mental health. "Reopening Your Practice: Avoid Risks When Treating Stressed Patients During COVID-19" can help you avoid the potential legal liability that may result from failing to adequately screen patients for suicide risk and take proper steps when needed. Read it at thedoctors.com/patientstress.

PREPARE FOR WIDER ADOPTION OF REMOTE MONITORING

The pressure that COVID-19 has placed on physicians, practices, and hospital systems to ramp up remote monitoring will no doubt accelerate the adoption of wearables into healthcare. At the same time, using data from wearables may bring liability risks. We outline ways to mitigate potential liability in "Wearables Offer Wealth of Data During COVID-19, but Liability Risks Remain" at thedoctors.com/wearables.

COVID-19 MAY CHANGE HEALTHCARE FOREVER

Within the healthcare industry, emergency measures taken during the pandemic are expected to create lasting change. Chief Operating Officer Bill Fleming examines the implications in "How COVID-19 May Change the Face of Healthcare" at thedoctors.com/covid19healthcare. ^

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THE BACK PAGE: INDUSTRY AND COMPANY NEWS

2020 MEMBER DIVIDEND ANNOUNCED

The Board of Governors has declared a 2020 premium dividend of approximately \$5.4 million, bringing the total paid out in dividends to more than \$430 million.

“Rewarding our members with dividends is at the core of our commitment to serve those who provide care—especially so today when our members are on the frontlines of a pandemic,” said Richard E. Anderson, MD, FACP, chairman and CEO.

“Dividends are made possible because of the claims experience of our members and our financial success, which is built upon a conservative business philosophy designed to fully empower our mission to advance, protect, and reward the practice of good medicine—now and always,” Dr. Anderson added.

Dividends of up to 8 percent were approved by The Doctors Company Board of Governors for eligible members in the following states: Colorado, Maryland, Montana, New Mexico, North Carolina, Ohio, Virginia, Washington, and Wyoming.

Members of the American Society of Plastic Surgeons® may also receive a dividend.

Eligible members will receive this year’s dividend on their annual premium for policy renewals on or after July 1, 2020.

Our enduring history of stability and strong performance has been repeatedly recognized by many independent evaluators—including Fitch Ratings and A.M. Best Company. Our prudent, responsible investment strategies ensure

our ongoing ability to meet financial obligations and protect your practice as a strong, reliable partner. We have the financial strength to protect your practice today and in the future.

MEMBER DONATES TRIBUTE AWARD DURING COVID-19 CRISIS

Our commitment to our members is undeniable—so is their commitment to providing superior care and investing in the medical profession.

Richard A. Bond, MD, FAAFM, who recently retired from family practice, donated the entirety of his Tribute Plan award to the emergency fund of his medical school alma mater, California’s Western University of Health Sciences.

Co-founder of a practice in Orange, California, Dr. Bond learned that some students whose studies had been disrupted by COVID-19 needed to find new places to live. These unexpected moving expenses were threatening some students’ ability to stay in school. Dr. Bond called his contribution a “seed donation,” hoping to motivate other physicians to donate to their home institutions.

“I think it’s a great opportunity,” said Dr. Bond. “Medicine has been very good to me.” When he was pursuing his education, “people were very generous with me and gave me opportunities I would not otherwise have had,” he says. “I look at it as a chance to give back.”

We applaud Dr. Bond for his service to the profession and for his generous contribution to those starting their careers.

ABOUT US

The Doctors Company is committed to advancing, protecting, and rewarding the practice of good medicine.

The Doctor’s Advocate is published by The Doctors Company to advise and inform its members about loss prevention and insurance issues.

The guidelines suggested in this newsletter are not rules, do not constitute legal advice, and do not ensure a successful outcome. They attempt to define principles of practice for providing appropriate care. The principles are not inclusive of all proper methods of care nor exclusive of other methods reasonably directed at obtaining the same results.

The ultimate decision regarding the appropriateness of any treatment must be made by each healthcare provider considering the circumstances of the individual situation and in accordance with the laws of the jurisdiction in which the care is rendered.

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