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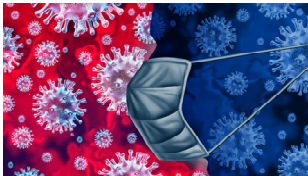
Preparing Your Home Care Agency to Deal with the Coronavirus

Presented by:
Sami Asaad
Chair of the Home Healthcare Practice Group

» March 13, 2020

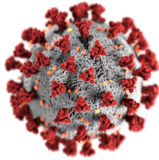
Agenda

- Background – What is COVID-19?
- Legal issues implicated
- How home care agencies can mitigate
 - Office staff
 - Caregivers
- Q&A



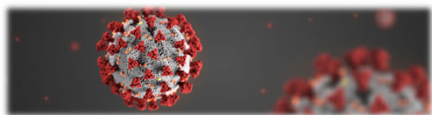
What is COVID-19?

- Coronavirus disease 2019 (COVID-19)
- Symptoms:
 - 90% fever
 - 70% dry cough
 - 30% trouble breathing
- Spreading from person-to-person



Global Outlook COVID-19

- WHO declared Coronavirus a public health emergency of international concern on January 30, 2020
- Currently classified as a pandemic



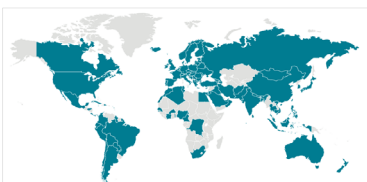
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Coronavirus (COVID-19)

- First identified in Wuhan, China in December 2019
- As of March 12, 2020, more than 125,000 cases have been diagnosed globally (81,000 in China)
- 4,613 people have died – a mortality rate of 3.6%



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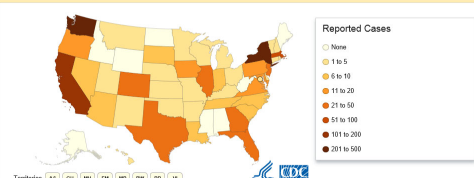
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Coronavirus (COVID-19)

- In the U.S. (as of March 12, 2020)
- 1,215 confirmed cases in 42 states (plus D.C.)
- 36 deaths (3%).

States Reporting Cases of COVID-19 to CDC*



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Coronavirus (COVID-19)

- A flu-like disease such as Coronavirus is difficult to contain
- A major goal is to slow its worldwide spread until a vaccine can be developed – which could take a year or more
- Travel restrictions may slow Coronavirus from spreading
- CDC has issued travel guidance: **Level 3** – China, South Korea, Iran and Europe (except UK)

Coronavirus (COVID-19)

Reports at this stage show the following patterns:

- 80% of cases are mild
- Approximately 15% of cases require hospitalization
- Roughly 3–5% will need intensive care
- Over 3% of cases are fatal

WHO officials have said Coronavirus is much deadlier than seasonal flu but may not spread as easily.



Coronavirus (COVID-19)

- Much remains unknown how the Coronavirus spreads
- Based on similar past viruses, it is believed that Coronavirus is spread from person-to-person among those in close contact (about 6 feet)
- Person-to-person spread is thought to mainly occur via respiratory droplets produced when an infected person coughs or sneezes
- The CDC believes that symptoms may appear in as few as 2 days or as long as 14 days after exposure
- Symptoms of Coronavirus can include fever, cough and shortness of breath

Coronavirus (COVID-19)

- Highest risk: older adults and those with underlying chronic conditions



Coronavirus (COVID-19)

CDC's recommendations of everyday preventive actions to help prevent the spread of respiratory viruses, including Coronavirus:

- Wash your hands often with soap and water for at least 20 seconds (especially after going to the bathroom), before eating, and after blowing your nose, coughing or sneezing
- If soap and water are not available, use an alcohol-based hand sanitizer with at least 60% alcohol
- Avoid touching your eyes, nose and mouth with unwashed hands
- Avoid close contact with people who are sick
- Stay home when you are sick

“Start working on not touching your face, because one main way viruses spread is when you touch your own mouth, nose or eyes.”





Potential Legal Issues

- Two major categories of potential liability:
 1. *Liability to workers*
 2. *Liability to clients/others for workers' negligence*



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Potential Legal Issues

- Americans With Disabilities Act (ADA)
- Occupational Safety and Health Act (OSHA)
- Family and Medical Leave Act (FMLA)
- Title VII of the Civil Rights Act of 1964 (*discrimination based on race or national origin*)



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Potential Legal Issues

- Fair Labor Standards Act (FLSA)
- National Labor Relations Act (NLRA)
- Workers' Compensation
- Contract / Common law claims
- State and local laws regarding leave, wages, etc.



Legal Issues - ADA

- COVID-19 is generally not a "disability" under the ADA, but could lead to or affect disabling conditions
- Beware of potential "regarded as" claims
- Persons with existing disabilities (e.g., compromised immune systems) might request a reasonable accommodation
 - Don't neglect the interactive process



Legal Issues - ADA

- Employers **may** require individuals who take trips to Europe and other Level 3 countries to stay home upon their return during the 14-day incubation period
- It should be clear that this policy is limited to the unusual circumstances of potential Coronavirus exposure



Legal Issues – ADA / Title VII

- Active screening of employees may raise privacy issues (must be job-related and consistent with business necessity)
- Be careful of potential national origin, race, ethnicity discrimination claims

Legal Issues - OSHA

- Requires that employers provide employees with workplace free from “recognized hazards” that cause or are likely to cause death or serious physical harm (general duty clause)
- Tension between OSHA and ADA



Legal Issues - OSHA

- Under OSHA, employees may refuse to work when there is a reasonable belief that there is a risk of imminent death or serious injury
- Retaliation for complaints about workplace safety



Legal Issues – FMLA

- The seasonal flu ordinarily does not qualify
- Can COVID-19 qualify as “serious health condition”?
 - Congress is working on this right now



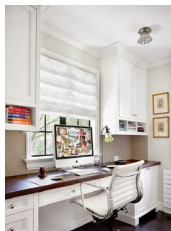
Potential Legal Issues – FLSA

- Changed pay practices due to
 - telework
 - job coverage
- Monitoring/regulating telework
- Impact on exempt/non-exempt status



Potential Legal Issues – FLSA

- Telecommuting recordkeeping and pay issues
- Deductions for voluntary absences (exempt and non-exempt)
- Deductions for involuntary absences (exempt and non-exempt)



Legal Issues – NLRA

- Union contract policies, such as sick leave, loss of seniority
- Unilateral changes
- If a group of employees refuses to work because of concerns about Coronavirus, the refusal may be considered protected concerted activity
- Hiring replacements

Legal Issues – Workers' Comp

- Possible eligibility if employees contract COVID-19 in the workplace or performing company business
- Check whether your insurer needs to be notified if employee reports a possible case of COVID-19




General Workplace Mitigation Measures

- Sick employees stay home
- Employees with sick family member stay home
- Send symptomatic employees home
- Encourage respiratory etiquette
- Encourage good hand hygiene
- Increased cleaning of common surfaces
- Encourage calls to health-care providers



Additional Considerations for Home Care




- (1) Consider enhanced screening of aides before sending them to homes
 - a. Permitted/Prohibited Questions
- (2) Consider screening clients before accepting cases
- (3) Consider providing (or requiring clients to provide) personal protective equipment (gloves and masks)

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Additional Considerations for Home Care

- (4) Consider modified HR policies to be used during the pandemic
 - a. (More on this later)
- (5) Consider remote work arrangements for office staff
- (6) Proactively educate employees and clients



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Educating Employees

- Are employees educated about the signs of infection?
- Are employees educated about transmission?
- Are employees educated regarding sanitation?
- Are employees educated on company directives?



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Developing Plans to Support Work from Home (Office Staff)

- Does company have software or other equipment necessary to enable employees to work from home?
- Explain expectations and obligations as they pertain to working from home
- Evaluate insurance/liability issues
- Evaluate FLSA issues



Identifying Company Policies That Will Be Affected

- Absenteeism
- Sick leave
- Wage payment
- Medical leave/FMLA
- Benefits



Possible New Company Policies and Procedures

- Additional training
- Flex time/telecommuting
- Pay continuation
- Transportation assistance
- Housing or financial assistance



Frequently Asked Questions

Question
Are employers permitted to ask questions about an employee's travel history and/or physical symptoms to determine if the employee can be assigned to a case?

Answer
Generally yes. The degree of specificity may depend on updated information from the CDC

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Frequently Asked Questions

Question
Can employers require employees to come to work, even if they refuse due to fear?

Answer
Generally yes. The degree of specificity may depend on updated information from the CDC

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Frequently Asked Questions

Question
Can employers require employees to come to work, even if they refuse due to fear?

Answer
Yes, if providing a safe workplace (no "imminent danger"), but seek advice if two or more employees refuse

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Frequently Asked Questions

Question
What if a home health aide reports symptoms consistent with COVID-19?

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Frequently Asked Questions

Question
What if a home health aide reports symptoms consistent with COVID-19?

Answer


- Follow CDC guidance (e.g., isolation, send home, and deep cleaning)
- Notify potentially affected parties, but don't disclose identity of worker
- Follow CDC guidance for potentially affected employees
- Seek counsel

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QUESTIONS?

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Thank You!



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