

# CORONAVIRUS INFORMATION & UPDATES

April 23, 2020

## CMS Recommendations on Reopening Facilities to Provide Non-Emergent, In-Person Health Care

On April 19, 2020, the Centers for Medicare & Medicaid Services (“CMS”) released [new guidance](#) in connection with President Trump’s push to reopen the economy. The guidance provides recommendations for health care facilities located in states and regions with relatively low and stable incidence of COVID-19 to begin providing in-person, non-emergent, non-COVID-19 services. The guidance emphasizes that reintroducing such services should be done in collaboration with state and local officials. Thus, the process of reincorporating non-emergent services to facility operations will be state- and region-specific. Nonetheless, this guidance serves as a useful starting point for providers to begin planning for a gradual rollout of previously limited services.

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### Eligibility for Reopening Health Care Facilities under President Trump’s “Guidelines for Opening Up America Again”

The new recommendations from CMS would apply to providers located in states or regions that have satisfied the gating criteria specified in President Trump’s April 16, 2020 [Guidelines for Opening Up America Again](#) (the “Guidelines”). The Guidelines suggest a three-phased approach that state and local officials may take to reopen their economies. Governors have discretion regarding implementation of the Guidelines and may do so on a statewide or county-by-county basis. To enter the first of the three phases (“Phase 1”), the Guidelines propose that a state or region satisfy the following gating criteria:

- **Symptoms.** Downward trajectory of (1) influenza-like illnesses and (2) COVID-like syndromic cases reported within a 14-day period; and
- **Cases.** Downward trajectory of (1) documented cases or (2) positive tests as a percent of total tests (flat or increasing volume of tests) within a 14-day period; and
- **Hospitals.** Treat all patients without crisis care and have a robust testing program in place for at-risk health care workers, including emerging antibody testing.

The recent CMS guidance, as described in more detail below, focuses on health care facilities located in Phase 1 areas that seek to provide in-person, non-emergent services, in collaboration with state and local public health officials.

### Reopening Health Care Facilities to Provide Non-Emergent, Non-COVID-19 Care

The CMS guidance recognizes that areas with a relatively low and stable incidence of COVID-19 may be in a position to begin providing in-person, non-emergent, non-COVID-19 care that was deferred pursuant to CMS’s March 18, 2020 recommendation that non-essential care be limited. According to the CMS guidance, the following recommendations are intended to give health care providers flexibility in providing “essential non-COVID-19 care” to patients without

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symptoms of COVID-19 and to resume “clinically necessary care for patients with non-COVID-19 needs or complex chronic disease management requirements.”

- **General Considerations**

- Coordinate with state and local public health officials to evaluate the incidence of and trends for COVID-19 in the area where the in-person care is being considered.
- Evaluate the necessity of the care, based on clinical needs. Priority should be given to surgical or procedural care and management of high-complexity chronic diseases. Certain preventive services may also be considered highly necessary.
- Establish non-COVID care (“NCC”) areas at which the non-emergent, non-COVID-19 care may be furnished. Such areas should have controls in place to reduce the risk of COVID-19 exposure, such as patient screening for COVID-19 symptoms and routine screening of staff who would enter the area.
- Ensure the availability of sufficient resources (*e.g.*, Personal Protective Equipment (“PPE”), workforce, facilities, supplies, testing, post-acute care) across phases of care, such that the provision of non-emergent care does not jeopardize surge capacity.

- **Personal Protective Equipment**

- Health care providers and staff should wear surgical face masks at all times, consistent with the Centers for Disease Control and Prevention (“CDC”) recommendations for universal source control. Staff involved in procedures involving increased risk of aerosol transmission should use appropriate respiratory protection. Facilities should make every effort to conserve PPE.
- Require patients to wear a cloth face covering or surgical mask.

- **Workforce Availability**

- Routinely screen staff for COVID-19 symptoms. Symptomatic individuals should be tested and quarantined.
- Staff working in NCC areas should not rotate into zones that treat COVID-19 patients.
- Maintain staffing levels in the community that are sufficient to cover a potential surge in COVID-19 cases.

- **Facility Considerations**

- Before providing in-person, non-emergent care, facilities should establish NCC areas. Such areas should be separated from others, to the extent possible, and have controls in place to reduce the risk of COVID-19 exposure. For example, a facility could set up an NCC zone in a separate building or designate certain rooms/floors as NCC areas with an entrance separate from other COVID-19 areas to minimize crossover.

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- Implement administrative and engineering controls to facilitate social distancing. For example, facilities could maintain low patient volumes and ensure that time spent in waiting areas is minimized to prevent transmission of the virus.
- Prohibit visitors unless necessary for patient care. If essential for patient care, visitors should be screened for symptoms of COVID-19 in the same way as patients.
- **Sanitation Protocols**
  - Facilities should establish a plan to sanitize and disinfect spaces and facilities prior to use by patients with non-COVID-19 care needs.
  - Decontaminate equipment used for COVID-19 patients, in accordance with CDC guidelines.
- **Supplies**
  - Ensure adequate supplies of equipment, medication, and supplies, such that the provision of non-emergent services does not detract from the ability to respond to a potential surge.
- **Testing Capacity**
  - Screen all patients for symptoms of COVID-19 prior to entering NCC areas. Routinely screen staff for potential symptoms.
  - When testing capability reaches adequate levels, screen patients (before providing care) and staff (on a regular basis) using laboratory testing.

Ropes & Gray has launched a [COVID-19](#) online hub for resources related to the outbreak. Please visit this site frequently for up-to-date insights on legal considerations in connection to the coronavirus, business continuity best practices, and maintaining the health and safety of your people.