



## REGULATORY RISKS & CONSIDERATIONS FOR HEALTHCARE PROVIDERS RE-OPENING IN A COVID-19 WORLD



### INTRODUCTION

In early March, U.S. Surgeon General Jerome Adams announced that hospitals and healthcare systems should consider stopping elective procedures amid the COVID-19 outbreak. Following that statement, a number of state officials provided directives and guidance regarding the cancellation and postponement of elective procedures. As states now move forward with phased re-openings, many medical offices and hospitals are resuming ordinary patient care, including elective procedures and routine medical appointments. The return to normal patient care is a welcome change presenting both a revenue opportunity for providers and access to necessary care for patients, though as providers look to re-open, they must remain mindful of the looming threat of COVID-19 and the associated challenges.



Healthcare providers must implement new policies and procedures to identify risk levels, as well as appropriate mitigation measures, in order to address and adapt to varying COVID-19 outbreak conditions in accordance with regulatory guidance and industry best practices. For example, the Centers for Disease Control (CDC), as well as Federal and State-level Occupational Safety and Health Administration (OSHA) have issued standards on infection control, which must be adhered to in order to mitigate healthcare provider re-opening risk related to transmission of COVID-19 infection and its associated consequences, as well as to help earn the confidence of their patients and staff. The Marwood Group believes that failure to assess, address, and mitigate challenges faced by healthcare providers in protecting their patients and staff from the COVID-19 virus, as well as areas of related exposure, could result in significant human, financial, and reputational risks.

## KEY FACTORS TO MITIGATE RE-OPENING RISK

The Occupational Safety and Health Act of 1970 (OSHA) was enacted to ensure safe and healthful working conditions for working men and women by authorizing enforcement of the standards developed under the act. The Act's General Duty Clause requires employer to provide their employees with a workplace free from recognized hazards likely to cause death or serious physical harm. In light of the COVID-19 pandemic, OSHA recently issued a new publication *GUIDANCE ON PREPARING WORKPLACES FOR COVID-19*, which is based on traditional infection prevention and industrial hygiene practices. Marwood believes the interpretation and application of this guidance will be essential to the management of COVID-19-related healthcare provider re-opening risk. While the specific actions required to meet these compliance challenges will vary with the types of clinical services provided, practice location & physical plant, and levels of potential exposure to COVID-19, there are certain factors that all providers should consider as they look to re-open.

To manage regulatory risk associated with re-opening, Marwood recommends that healthcare providers conduct a COVID-19 Risk Reduction Analysis, considering the following factors:

### FACTOR 1 – Respiratory Infectious Disease Preparedness and Response Plan

**Has your company developed a respiratory infectious disease preparedness and response plan to protect against COVID-19?**

*Marwood Consideration:* The development of a Respiratory Infectious Disease Preparedness and Response Plan should take into consideration workers' individual risk factors such as age and the presence of chronic medical conditions.

### FACTOR 2 – Basic Respiratory Infection Prevention Measures

**Is your company prepared to implement basic respiratory infection prevention measures to protect against COVID-19?**

*Marwood Consideration:* For most employers, protecting workers will depend on emphasizing appropriate infection prevention measures.



### FACTOR 3 – Prompt Identification and Isolation of Sick People

**Has your company developed policies and procedures for prompt identification and isolation of sick people, if appropriate to protect against COVID-19?**

*Marwood Consideration:* Prompt identification and isolation of potentially infectious individuals is a critical step in protecting workers, customers, visitors, and others at a worksite.

### FACTOR 4 – Workplace Flexibilities and Protections

**Does your company develop, implement, and communicate about workplace flexibilities and protections to protect against COVID-19?**

*Marwood Consideration:* A flexible workplace, providing appropriate PPE and other equipment, as well as being sensitive and responsive to staff concerns, will help the team feel more comfortable and secure in the workplace.

### FACTOR 5 – Workplace Controls

**Does your company utilize engineering controls to protect against COVID-19?**

*Marwood Consideration:* In workplaces where they are appropriate, Engineering Controls may reduce exposure to hazards without relying on worker behavior and can be the most cost-effective solution to implement.

**Does your company utilize administrative controls to protect against COVID-19?**

*Marwood Consideration:* Administrative Controls require action by the worker or employer. Typically, these are changes in work practices, policy or procedures to reduce or minimize exposure to a hazard and require action by the worker or the employer.

**Does your company utilize safe work practices to protect against COVID-19?**

*Marwood Consideration:* Safe work practices are types of Administrative Controls that include procedures for safe and proper work used to reduce the duration, frequency, or intensity of exposure to a hazard.

**Does your company utilize personal protective equipment (PPE) to protect against COVID-19?**

*Marwood Consideration:* Correctly using PPE (e.g., gloves, goggles, face shields, face masks, respiratory protection) may help prevent some exposures, however it should not take the place of other prevention strategies. PPE may be needed to prevent certain exposures.



## CLOSING REMARKS

While it can be a complex endeavor to sufficiently address these factors, a thorough analysis is essential to ensure adequate workplace safety and limited regulatory risk exposure. A successful response will entail not only an accurate interpretation of OSHA guidance, but also the correct application of that guidance to a specific healthcare provider through thoroughly documented policies & procedures that are implemented to reduce the risk of COVID-19 exposure in the workplace. As a leading healthcare-focused advisory firm, the Marwood Group has been engaged in hundreds of healthcare provider compliance reviews, leveraging its knowledge & insights of healthcare regulations and policies to help our clients effectively navigate their most challenging compliance issues.

### About the Author

**David Alben** is a senior member of the Marwood team and leads the Clinical Compliance practice. Before joining the Marwood Group, he served as a Founder/Principal Consultant at Genco Healthcare Management where he focused on Regulatory Compliance, Business Process Improvement, RCM/Medical Billing and Collections, and Credentialing and Contract negotiations. Prior to his tenure at Genco Healthcare Management, Mr. Alben held senior positions at two publicly traded healthcare companies. As an entrepreneur, he built and successfully operated a number of healthcare companies in the Medicare Part B space

Marwood Group is a healthcare advisory firm offering strategic consulting services, with expertise in assessing how well a Company operates from a clinical quality and compliance perspective, assessing risks and providing advice on areas in need of improvement

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