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HEALTH LAW NEWS

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HOW JUDICIOUS FACILITY MANAGEMENT MAY REDUCE COVID-19 LIABILITY RISK

As COVID-19 cases stay relatively low and the number of vaccinated individuals continues to increase, health providers are faced with a new normal for operating medical office space in a safe and sanitary manner. In order to avoid potential liability from tenants, patients and other visitors, medical office landlords should update facility management plans to ensure compliance with the latest guidance.

THE STAKES REMAIN HIGH

In October 2020, a large, for-profit Pennsylvania nursing home was added to the long list of health care facilities facing legal action in response to the deaths of patients allegedly caused by a failure to take proper COVID-19 precautions due to understaffing.

Hospitals and medical office operators have also faced legal action for claims of negligence in responding to COVID-19 physical safety protocols. In August 2020, a large, for-profit health system was sued for alleged "reckless" facilitation of the spread of COVID-19 amongst its workers.

STATE-BY-STATE PROTECTIONS REQUIRE A STANDARD OF REASONABLE CARE

While the federal government has expanded Good Samaritan laws to provide additional liability protection for volunteer health care professionals during the pandemic, Republican lawmakers were unsuccessful in their bid to include nationwide enhanced liability protections for businesses in recent stimulus legislation. As a result, liability protection for health care employers remains a state-by-state issue.

As of March 2021, a majority of states had instituted or were considering legislation or executive orders to protect health care providers, facilities and other businesses from COVID-19 related liability. In order for protection to apply, these directives generally require that facility owners take reasonable measures to comply with relevant federal, state or local guidance and avoid acting recklessly or with gross negligence.

WHICH GUIDANCE TO FOLLOW?

Taking reasonable steps to safeguard against the spread of COVID-19 will vary based on the unique context, and state liability shield laws generally recognize the impracticability of compliance with every guideline and best practice. A recent survey conducted by the American Society for Healthcare Engineering ("ASHE") listed various steps taken by health care facility owners in response to COVID-19. The measures most commonly adopted included the following:

- Adding protective barriers to potential interaction spaces;
- Making patient flow changes to promote social distancing;
- Increasing morgue and telehealth capacities;
- Modifying medical equipment to reduce viral spread;
- Relocating large furniture and patient equipment outside of patient rooms;
- Reducing seating inpatient areas; and
- Separating entry points for COVID-suspected patients, other patient types and staff.

The survey also found that 73% of the health care providers surveyed involved their facilities' management department in most or all of the decision-making process in response to COVID-19. The surveyed property owners and managers listed their most common sources for information regarding COVID-19 response procedures as the CDC, ASHE and the American Society of Heating, Refrigerating and Air-Conditioning Engineers, which 90% of respondents were able to successfully employ while avoiding having to cease everyday operations of their facilities.

NEXT STEPS

Hall Render recently hosted a webinar featuring a panel of hospital and non-hospital medical office operators and consultants who discussed

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best practices from a facilities perspective to manage medical office space in the COVID-19 era.

If you have additional questions or would like to discuss what a facilities management plan might look like for your organization, please contact:

- Joel Swider at (317) 429-3638 or jswider@hallrender.com; or
- Your primary Hall Render contact.

Special thanks to Ben Jamison for his assistance in preparing this article.

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