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Insights

CMS Announces Recommendations for Reopening Facilities to Provide Non-Emergent Health Care

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On April 19, 2020, the Centers for Medicare and Medicaid Services ("CMS") issued recommendations to States for resuming non-emergent, non-COVID-19 health care in areas with "low, or relatively low incidence of COVID-19" that relate to recent reopening guidance. The CMS recommendations are not binding on States and ultimately defer to State officials and health departments to make any final decisions for the State's health care system.

Reopening Guidance

On April 16, 2020, the White House issued Guidelines for Opening Up America Again, establishing gating criteria to assist States in understanding the conditions that could justify gradual reopening ("Gating Criteria"), as well as a three-phased approach to reopening. The Gating Criteria to be met before proceeding with the phased-in reopening include finding evidence of a downward trajectory of symptoms and cases of COVID-19 over a 14-day period. The guidelines also reference a showing that hospitals can treat all patients without crisis care and have a robust testing program in place for at-risk workers. When States or regions meet the Gating Criteria, they can proceed to Phase 1, as well as proceed under CMS's recommendations.

CMS Reopening Recommendations

In such locations where the Gating Criteria have been met and Phase 1 is proceeding, healthcare systems or clinicians have flexibility to re-start clinically necessary care for patients with non-COVID-19 needs or complex chronic disease management requirements, subject to the following general considerations, among others set forth in the CMS recommendations:

- Providers should prioritize surgical/procedural care and high-complexity chronic disease management; however, select preventive services may also be highly necessary.
- Providers should have sufficient resources available to the facility across phases of care.
- Patients and health care workers should continue to wear adequate personal protective equipment.
- Providers should conduct routine testing of staff for COVID-19 infection and have sufficient staff to address a surge in COVID-19 infections.
- Providers should continue to maintain social distancing and minimize visitors to facilities.

- Providers should ensure adequate supplies of equipment, medication and supplies, and not detract from the community's ability to respond to a potential surge in COVID-19 infections.
- When adequate testing capability is established, patients should be screened by laboratory testing before care, and staff working in these facilities should be regularly screened by laboratory testing as well.

The CMS recommendations clarify that "all facilities should continually evaluate whether their region remains a low risk of incidence and should be prepared to cease non-essential procedures if there is a surge." Governor Holcomb has announced plans to extend the existing stay at home order for the State of Indiana until May 1, 2020 and has not publicly addressed the new CMS recommendations and how they may be implemented in Indiana. However, with resepct to Indiana, see section 4 of Executive Order 20-13 which relates to "elective and non-urgent" procedures utilizing personal protective equipment beyond mere gloves. Elective and non-urgent procedures include those that "can be delayed without undue risk to the current or future health of the patient as determined by the patient's treating physician, dentist or healthcare provider."

The reopening of States and regions and the ability to reopen facilities for non-emergent care is an evolving situation and highly dependent upon State and local circumstances. Please contact Brandon W. Shirley or Robert A. Anderson if you have any questions about the impact of COVID-19 on your organization.