



Navigating the COVID-19 Issues Affecting the EMS Workplace

Webinar Broadcast Date: March 20, 2020

EMS World, the American Ambulance Association and Page, Wolfberg & Wirth were pleased to team up to present critical information about the COVID-19 public health emergency and its impact on EMS providers and their workplace.

We are here to assist you during this difficult time for our country. If you have any questions related to the legal aspects of the coronavirus pandemic, reach out to us! We are here to help. Contact any of the presenters as follow:

Scott Moore: smoore@mooreemsconsulting.com

Ryan Stark: rstark@pwwemslaw.com

Steve Wirth: swirth@pwwemslaw.com

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EMS World Webinar - Navigating COVID-19 Issues Effecting the EMS Workplace

Attendee Questions and Answers

What are your recommendations if we have billers that need to work from home that specifically need to handle physical paperwork (run logs, PCS's, face sheets)? Can we deliver paperwork to them at their homes or have them pick up/drop off paperwork? How do we stay HIPAA compliant with physical paperwork at biller's homes?

We recommend reducing actual paperwork as much as possible. And you are obligated to continue to follow the HIPAA safeguards when employees are working at home. We suggest having any physical paperwork scanned and sent to remote employees via secure and encrypted messaging or have it uploaded to a secure company website for remote access by those working from home. We strongly discourage any movement of paper to employee's homes. The HIPAA rules do not change because an employee is working from home. If transporting paper is unavoidable, paper should be transported in a secure folder, such as a tied manilla folder, and maintained in a secure location in the home – such as a locked drawer or cabinet, if possible.

Are hospitals required to let EMS personnel know if they had come into contact or possibly been exposed by a patient that was later diagnosed with COVID-19?

Yes, the hospital's infection control officer should be notifying any person who has been involved in caring for a COVID-19 patient who has been exposed. That is why it is critical for EMS providers to leave a signed copy of the Patient Care Record (PCR) at the destination facility at the conclusion of the patient transport. As a reminder, make sure all EMS caregivers are accounted for on the PCR documentation.

Does an EMS worker exposed have to quarantine or can they test and still continue working?

This depends on how you are defining exposed. If the EMS caregiver was wearing the appropriate Personal Protective Equipment (PPE) and appropriately donned and doffed their PPE, then this would not be considered an exposure. If the EMS worker was not wearing the appropriate PPE and was exposed, then this individual should seek the guidance of a qualified healthcare provider and follow their recommendation regarding quarantine. However, provided the worker was exposed, then the latest recommendation we are aware of states that the employee should remain quarantined for 14 days. But consult your medical director and infection control officer.

Do any of the new leaves cover an employee afraid to work for fear of bringing the disease home?

No, neither the Emergency Paid Family and Medical Leave nor the Emergency Paid Sick Leave provide paid leave for mere concerns of bringing the virus home, absent an order to quarantine or a recommendation by a healthcare provider.

Are removing beards recommended?

Yes, an EMS worker must be able to make a meaningful seal with an N95 Respirator Face Mask through qualitative testing methods. Having facial hair makes creating or maintaining a seal very difficult, if not

impossible. If the employee voices a religious objection to being fully clean shaven, you should consult with your legal counsel concerning your rights and obligations as an employer.

With the waivers for telehealth and the allowance of non-HIPAA compliance, do you foresee ambulance providers being paid for these services? Can they bill any other fees for telehealth?

No, there is currently no provisions or waivers that permit EMS to be reimbursed for telehealth services. Currently, only licensed practitioners who provide the telehealth visit, virtual check-in, or e-visit can bill Medicare for the consult time.

If I am a volunteer EMS, I get Covid through a rescue call, how am I covered under my state job?

State workers compensation laws generally provide coverage for volunteer firefighters and EMS personnel for wage losses and medical benefits. If you are a volunteer and contract COVID-19 in the course of your duties and you seek evaluation and treatment for the illness and it was contracted during the course of your duties, it would generally be compensable under most state workers' compensation laws.

If you are a sole EMS provider in a small town can you stand down while waiting for an ambulance if it's suspected COVID-19

Generally speaking, you are obligated to respond to all requests for services and you cannot limit response just because the patient is suspected COVID-19. You may certainly adapt your response to limit the number of people making the initial assessment of the patient so that you don't have multiple EMS providers potentially exposed. This should be discussed and addressed by your medical director and EMS system officials. If you do not have the appropriate Personal Protective Equipment (PPE) to engage a patient who is suspected or exhibiting symptoms of any infectious illness or disease, you should not place yourself in danger. Remember the basics, scene safety and BSI. That being said, you should not be responding to any emergency without the appropriate equipment.

Since CDC has recommended isolation cannot be provided by wheelchair vans, would ambulances now be considered medically necessary when the patient needs to be transferred to another facility?

No. "Medical necessity" requirements for reimbursement have not changed for Medicare and most other payers during this crisis. Transport by means other than an ambulance must be contraindicated to be reimbursable by Medicare. The reality is that most suspected COVID-19 patients will not need to be transported by ambulance. You may transport a wheelchair van patient by ambulances in this crisis due to better isolation and infection control, but in most cases, you will not be able to bill for the ambulance level of service. You may not bill Medicare for transport in a wheelchair van or vehicle other than an ambulance.

What about provider signatures and patient signatures that EMS crewmembers must obtain. Do we still need to obtain these signatures?

As of the date of this document, there has been no change to the Medicare signature requirements for obtaining the signature of a patient as well as signatures of crewmembers performing patient care. In some situations, infection control procedures and symptoms of the patient may render the patient incapable of signing, but the clinical condition and infection control procedures undertaken must be clearly documented. One cannot simply rely on "P.U.T.S. – COVID-19" without supporting

documentation. We have specifically asked CMS if they would or modify the signature requirements in the face of this pandemic, but we have not heard back from them yet.

Would a billing service be considered essential to operations of your business? Ambulance service?

If you are referring to the Emergency Paid Family and Medical Leave as provided by Emergency Family and Medical Leave Expansion Act or Emergency Paid Sick Leave as provided in Division E of the Family First Coronavirus Response Act, the regulations have not been published yet to provide greater detail on whether administrative personnel, including ambulance billing staff, are included in the definition of emergency responder.

As state Governors issue stay-at-home orders, only essential or life-sustaining businesses are permitted to remain open at their physical addresses in many cases. Ambulance services are considered essential or lifesaving businesses in these cases. Ambulance billing services and other companies that directly support ambulance services may also be considered essential businesses. You will need to consult the specific list for your state.

Our policy is to cancel the VFD if there is suspicion of “pathogens of consequence” to limit their risk of exposure. As a member of the VFD, is it reasonable to delay scene arrival until dispatch has completed EMD and determine that the patient having COVID-19 like symptoms?

You should follow your medically approved dispatch protocols and procedures. Some systems are re-tooling their dispatch system and instead of sending two or three agencies to a single ambulance request, they are reducing the number of agencies, or limiting the initial contact with the patient to one or two EMS practitioners to conduct the assessment while the rest of the responders went outside to safe distance. This makes good sense, but there should be no delay of dispatch in most of these situations. You should consult with your medical director regarding this concern.

Will non-ambulance transport get reimbursed?

As of today, Medicare has not provided any changes to what is reimbursable under the current Ambulance Fee Schedule. At this point, under Medicare, reimbursement is only available if a patient is transported to a covered destination (hospital, CAH, SNF, residence, dialysis center) in an ambulance. Non-ambulance transport is not covered by Medicare, but other insurance plans may pay for non-ambulance transport such as wheelchair van transports, and some state Medicaid programs do as well. Consult plan benefits for third party insurance plans and your state Medicaid rules.

**What's the position on full-time EMS clinicians who also hold part-time clinical positions elsewhere?
What's the FT employer's obligation to cover COVID-19 infection?**

Under most state's workers' compensation laws, an employee who contracts a contagious illness as a result of a workplace exposure will be viewed as having a compensable injury, or an occupational disease. This includes employees who work on a part time or per diem (casual) basis. There is no distinction for employees who are full time. In most states, there needs to be a causal connection between the employee contracting the illness and the employee performing his/her duties with a particular employer. For example, the employee would have to show that the exposure occurred at work. Some states have systems where workers comp costs can be shared between employers as well.

What other protections are in place for volunteer EMS providers with illness or suspected exposures?

Volunteer EMS agencies are generally required to carry workers' compensation insurance coverage for all personnel, regardless of their status as an employee volunteer. In some states, the municipal government is required to provide this coverage. There are a myriad of other laws such as state EMS Acts, the Ryan White Law, and others that help protect volunteers to an extent similar to career employees from the safety standpoint.

What information regarding COVID calls can we share legally with our County Executive and other EMS agency who runs into our County? Should we only share numbers or can we share more than that - such as location of the call.

HIPAA permits EMS agencies to disclose health information to a public health authority, such as a County health department or County EMS agency (such as a regional EMS council), as long as that department or agency is authorized by State law to collect such information for the purpose of preventing or controlling disease. Generally, public health authorities are granted wide discretion to determine what information they need to collect to fulfill their function of preventing or controlling disease. So, as long as the authority is authorized by law to collect additional call information – such as location of the call – you may release that information to the County health department or EMS agency. While we cannot comment on every States' law concerning, but we have seen that most public health authorities in the United States are authorized by State law to collect location and even limited information concerning the patient's status. See, 164.512(b)(1)(i).

What if an employee files for FMLA leave over "anxiety" relating to contracting COVID-19. Would they be eligible?

Generally, an employee's "anxiety" over potentially being exposed or contracting COVID-19 would not be covered unless it fits the definition of a "serious health condition" under the FMLA. A serious health condition is a condition that involves inpatient care or one that incapacitates you (for example, unable to work) for more than three consecutive days and have ongoing medical treatment (either multiple appointments with a health care provider, or a single appointment and follow-up care such as prescription medication). So in some cases of minor flu symptoms, FMLA would not be available – but flu with complications could become a "serious health condition" under the FMLA. Keep in mind too that the FMLA only applies to private sector employers with 50 or more employees or public agencies regardless of the number of employees.

We run into issues where patient's we transport meet screening criteria but are refusing to wear masks for transport, can crews refuse to transport them?

Generally, no, unless the patient poses other risks of harm to the crew. EMS staff can don their own Personal Protective Equipment (PPE) to ensure that they can safely transport a patient who refuses to wear a mask.

We are a small ambulance service and we are being hurt with a decrease in the number of transports. What if a patient dies from COVID-19 and had no insurance? Will the government help with payment?

There are multiple stimulus packages that are being negotiated by Congress to assist businesses that are affected by the COVID-19 pandemic. We cannot determine if your organization will be eligible for any

economic or financial relief being provided by the federal or state government. We strongly recommend that you separately track all COVID-19 related costs, including unreimbursed medical care provided to COVID-19 patients in the event that there are subsequent financial programs that provide relief for businesses that are negatively affected by this pandemic.

Can we elect to exclude employees from paid sick leave AND the E-FMLA?

Both Division C and Division E of the “Family First Coronavirus Response Act” include provisions that permit employers of health care providers or emergency responders to exclude those employees from the category of eligible employees.

We take temperatures of employees per state Health Dept guidelines...if they have a fever, we won't allow them to work. Do we force them to take sick time or do we put them on administrative time not charged to their leave?

First, under pandemic conditions you are permitted to take the temperature of all employees as part of a screening process to determine if they are safely capable of working. (Ordinarily that would be considered a medical inquiry or examination and would not be permitted). It is recommended that you follow the CDC guidelines when taking employees temperatures and excluding them from working. Second, you are permitted to not allow them to work if they have a fever or other symptoms of COVID-19. Third, you may charge the time off from work against other accrued leave as long as state law does not prohibit it. So you need to check state law in your jurisdiction. Also, if you send the employee home, some states may require a minimum amount of pay for showing up – called “reporting pay.” This may also be addressed in a collective bargaining agreement if you are a unionized workforce. Aside from these laws, you should pay your employee consistent with any accrued paid time off benefits that your organization provides. Additionally, if your organization is required under the new Emergency Paid Sick Leave Act, then you should pay the employee consistent with those provisions and final Regulations, once they are published.

My question is wouldn't employees need to be clean shaved for OSHA reasons, especially if all you had were N95 masks for respiratory protection?

Yes, an EMS practitioner must be able to make a meaningful seal with an N95 Respirator Face Mask through qualitative testing methods. Having facial hair makes creating or maintaining a seal very difficult, if not impossible.

Outside of a departmental policy, can an employer force an employee to shave their beard?

Yes, with the exception of possibly making a reasonable accommodation due to an employee's religious beliefs. For example, certain religions forbid a person being clean shaven. If the employee has a sincerely held religious belief, the employer is obligated to engage in the interactive process to determine if there is a reasonable accommodation that it can provide this employee that would address the legitimate safety and OSHA compliance interests of the employer to be met while not offending the employee's sincerely held religious beliefs. In some instances, an employee can maintain a shortly trimmed beard that permits for a qualitative seal with an N95 Respirator Face Mask. Alternatively, the employer may be able to purchase an alternative mask or whole head hood that would provide the same protections while permitting the employee to maintain their beard. Consult your legal counsel when anyone objects to a practice or procedure based on religious grounds.

Our EMS personnel are requesting to wear their body armor, as well as lawful firearms while serving through this National Emergency. Should we relax our protocols to make these reasonable accommodations?

An employer can permit their employee to wear body armor if the employee requests it and it does not interfere with the employee safely performing their duties. The question of firearms cannot be answered in this setting and requires consultation with your state law and agency legal counsel. But generally, an employer can prohibit the carrying of firearms even in states where conceal carry and open carry are permitted and the employee has the appropriate license to do so.

Our County Emergency Management has mandated that First Responders be staged on all calls waiting for EMS to arrive here in NC. Some of our First Responders could arrive and offer live saving care 20 to 30 minutes before the ambulance. Could this present a legal issue for our County?

This is a local issue and must be addressed by your state and local protocols - many systems are modifying their response protocols to reduce the number of responding personnel to the absolute minimum necessary to make an initial assessment of the patient before additional personnel are brought into the scene. If there are significant delays in access to care, or delays in getting a qualified EMS responder to the patient to obtain an initial patient assessment, then those policies should be reevaluated, in our view.

OSHA requires fit testing on each type of mask that we might use. Any chance of there being a waiver to that? If not, can see an issue where we get a big shipment of N95's that are different than what we normally carry, and we can't issue them out until we fit test. What kind of liability do we open ourselves up to if we don't fit test.

OSHA has issued this guidance that directly addresses this question.

<https://www.osha.gov/memos/2020-03-14/temporary-enforcement-guidance-healthcare-respiratory-protection-annual-fit>

Now that 6201 has passed are there any changes in from what you said?

The final version of the new law provided in Both Division C and Division E of the "Family First Coronavirus Response Act" provisions that permit employers of health care providers or emergency responders to exclude those employees from the category of eligible employees. Additionally, we are awaiting the US Department of Labor (DOL) to publish the Regulations for both the Emergency Paid Family and Medical Leave and the Emergency Paid Sick Leave Act. The U.S. DOL has published an initial set of [Frequently Asked Questions \(FAQ\)](#) related to the emergency leaves provisions of the new law.

Is there any conversation by the Federal government to temporarily waive the ACA maximum number of hours worked in a year - 1,560, to avoid a penalty?

The ACA provides that all employee who work an average of 30 hours a week over the measurement period during a given year must be eligible to elect health insurance benefits in the following benefit year under an employer sponsored health plan. There have been no waivers of this provision.

If the hospital is refusing to acknowledge whether a patient's COVID-19 test results, can you invoke the Ryan White Act to get the results?

Yes. We believe the Ryan White Act notification provisions apply to the COVID-19 pandemic and this novel coronavirus. The Ryan White HIV/AIDS Treatment Extension Act of 2009 requires a medical facility to notify, upon request, an emergency response agency if a patient transported by that agency to the medical facility is diagnosed with a potentially life-threatening infectious disease. Failure to do so would be a violation 42 U.S. Code § 300ff-132.

BREAKING NEWS: In addition, the Office for Civil Rights (OCR) on 3/25/20 issued [Guidance](#) on how facilities may disclose protected health information (PHI) about an individual who has been infected with or exposed to COVID-19 to law enforcement, paramedics, other first responders under HIPAA. The Guidance explains the circumstances under which a facility may disclose PHI to first responders, including: when needed to provide treatment; when required by law; when first responders may be at risk for an infection; and when disclosure is necessary to prevent or lessen a serious and imminent threat.

If an employer is requiring you to work from home, are they obligated to provide the necessary equipment for you to do your job effectively? Can they make you use your personal cell phone to conduct official business?

There is no federal law that prohibits an employer from requiring you to use your own computer or other personal electronic equipment such as cell phones, but some states may have laws about what employers can and cannot ask employees to pay for. We generally recommend that the employer provide all necessary equipment such as computers for at-home work. This is important for patient privacy purposes as well as maintaining integrity of all data stored on those devices.

Employers should work with their employees to establish hours of work for employees who telework and a mechanism for recording each teleworking employee's hours of work. Non-exempt employees must receive the required minimum wage and overtime pay free and clear. This means that when a covered employee is required to provide the tools and equipment (e.g., computer, internet connection, facsimile machine, etc.) needed for telework, the cost of providing the tools and equipment may not reduce the employee's pay below that required by the FLSA.

If an employee tests positive and their workers comp claim is then approved so they're getting compensated that way, is that employee also entitled to the new paid sick pay? Or does the compensation through workers comp cover that?

In most states, merely testing positive does not make the claim compensable under workers' compensation laws. Generally, the illness must have been contracted during the course of the employee's duties. If the claim is compensable under the new Emergency Paid Sick Leave Act, typically, workers' compensation may account for, and offset, any compensable wages from the indemnity portion of the workers' compensation benefit.

If an employee refuses to work due to fear of getting or bringing COVID-19 home to their family, does that employee have that right?

An employee can refuse to work due to their fear of being exposed or contracting COVID-19. However, an employer may discipline or terminate an employee for refusing to come to work. Employers are encouraged to ask employees why they fear contracting the illness. If the employee's concerns are based upon the employer not having the required Personal Protective Equipment (PPE), then the employee's fear may be reasonable and protected under OSHA. Generally, just an employee's fear is not enough to meet OSHA refusal standard.

I have some crew members asking about hazard pay. How do I reply?

Absent any provisions in a Collective Bargaining Agreement (CBA), an employer is not obligated to pay "hazard pay" to employees during the COVID-19 pandemic response.

I have gotten notice from an assisted living facility that they need all our medics (both emergency and non-emergency) to fill out a lengthy screening questionnaire before entry is allowed. Seems like that would significantly delay emergency care. Thoughts?

The health care facility is permitted to require your employees to complete a reasonable questionnaire related to COVID-19 symptoms to help prevent the spread of the illness in their facility. However, the questionnaire must be limited to COVID-19 specific symptoms or sequelae.

I am a fire department administrator. We have a member quarantined and being tested for COVID-19. We have been told that the department cannot be notified of the results because of HIPAA, is that accurate?

Employers can make inquiries of employees to determine if their employees are exhibiting or have been exposed to COVID-19 in an effort to determine if other employees have been exposed or to prevent the exposure to other employees. In addition, HIPAA does not apply to health information contained in employment records held by a healthcare provider in its role as an employer. So, HIPAA may not even apply to the test results if the results are acquired by the healthcare provider in its role as an employer. Finally, HIPAA permits EMS agencies to disclose necessary COVID-19 information if the agency believes, in good faith, that disclosure of that information is necessary to prevent or lessen a **serious and imminent threat to the health or safety**. If the employer has a good faith belief that other employees may have been exposed to COVID-19, it may tell those employees about the potential exposure and the need to be tested under this HIPAA exception. Whenever possible, the employer should protect the identity of the employee and simply communicate to the other employees that they may have been exposed.

Has CMS issued a medical necessity guideline for possible COVID-19 patients in reference to coding?

CMS has not issued any new guidance regarding medical necessity and the transport of COVID-19 patients for ambulance services. Under Medicare, medical necessity for an ambulance can only be met if the patient cannot safely be transported by means other than an ambulance. All other forms of transport must be contraindicated. Many patients with minor COVID-19 symptoms may be able to be safely transported by car or other vehicle.

Employer provides PPE, but the employee doesn't wear it and then comes in contact with COVID patient. Is the employer workers comp still going to pay?

Yes, workers' compensation is generally a "no fault" legal standard. In other words, an employer is liable for their employee not following the employer's safety policies and procedures and any subsequent illness or injury will still be compensable under state workers' compensation laws.

Earlier you said that if a employee refuses to wear PPE they could be fired, but if they go on a scene without a mask then it would be work comp?

If the employee refuses to don their Personal Protective Equipment (PPE) an employer can discipline, and in some instances, terminate an employee for violating company policies and procedures. An employer would want to follow their own disciplinary procedures or practices, if they are established. However, if an employee had a work-related injury or illness, it will be compensable under workers' compensation.

Do we know if EMS is going to be approved for Telehealth services?

We have no indication thus far as to Medicare reimbursement for telehealth services provided by an ambulance service.

COVID-19 is a Ryan White disease, too?

Yes. Novel influenza A viruses are on the CDC list of *Potentially Life-Threatening Infectious Diseases: Routinely Transmitted Through Aerosolized Droplet Means* which we believe includes the novel coronavirus. However, the National Volunteer Fire Council (NVFC) is requesting the government to explicitly include COVID-19 as one of those viruses. But we believe a reasonable interpretation of the current list would include it without this action.

Can hospital emergency departments go on diversion or refuse to accept a patient?

Yes, a hospital may go on diversion in accordance with local and state protocols. EMTALA ordinarily requires the hospital to perform a screening exam of any patient that comes to the hospital and to stabilize those patients before transport if they are unable to accept the patient. However, some of the EMTALA obligations have been waived by the Secretary of Health and Human Services during this public health emergency. Here's a quick summary:

On March 13, 2020, following President Trump's declaration of a national emergency due to the COVID-19 pandemic, [the Secretary of Health and Human Services \(HHS\) issued](#), among others, the following Emergency Medical Treatment and Labor Act (EMTALA) waiver under his 1135 waiver authority:

Waiver of sanctions under EMTALA for the direction or relocation of an individual to another location to receive medical screening pursuant to an appropriate state emergency preparedness plan or for the transfer of an individual who has not been stabilized if the transfer is necessitated by the circumstances of the declared Federal public health emergency for the COVID-19 pandemic.

This waiver gives hospitals flexibility regarding the management of emergency department resources regarding COVID-19 screening and treatment. With this waiver, a hospital is permitted

to redirect patients seeking COVID-19 screening to an alternative site, even off-campus, to conduct a medical screening examination (MSE) there, without conducting an MSE at the hospital.

However, that the waiver allows for redirection or transfer to deal *only* with the COVID-19 pandemic. Hospitals should not otherwise take actions inconsistent with EMTALA.

Also, the waiver expressly states that it does not apply to any action taken that discriminates among individuals based on their source of payment or ability to pay.

Are local governments included in the Families First Coronavirus Response Act (FFCRA)?

Yes. Generally, most local government entities are included in the Emergency Paid Family and Medical Leave and Emergency Paid Sick Leave regardless of the number of employees.

Any word on Medicare & Medicaid covering treat no transport for patients medical control directs us to have patient stay home and self-quarantine with COVID-19 symptoms?

There has been no modification to the current Medicare Fee Schedule with respect to treat-no-transport or treatment in place. Medicare will only reimburse ambulance services for transports to a covered destination. A CMS pilot program called [ET3](#) is due to begin soon to test payments for treatment in place and transport to alternative destinations, but that program has not yet been implemented.

To avoid any potential contamination if the PCR clearly had “verbal signature obtained” from suspected COVID-19 patient would we be able to compliantly bill these trips to Medicare, Medicare Replacement, Tricare, VA and other Government Payors for payment?”

Unfortunately, there is no such thing as a verbal signature, and as of now CMS has not suspended or relaxed the requirements for obtaining a patient’s signature for claim submission purposes for Medicare patients. A patient must sign the assignment of benefits statement UNLESS the patient is “physically or mentally incapable of signing” or the patient is deceased prior to the submission of a claim for the service. But a patient with confirmed or suspected COVID-19 may be physically or mentally incapable of signing.

In light of possible or confirmed COVID-19 infections, if there are legitimate infection control procedures in place (e.g., infection control barriers) and the PCR documentation supports the reason for those procedures, then the patient may be physically incapable of signing under the Medicare signature rules. Likewise, a patient may be mentally incapable of signing under the Medicare signature rules if the patient was exposed to a COVID-19 patient or is suspected of having COVID-19. For example, some case reports suggest that patients with an active COVID-19 infection could be hypoxic, in respiratory distress, and be disoriented with related mental status changes.

With a suspected COVID-19 patient who has a life-threatening medical condition, what risk will the EMS provider have by taking the time to don all PPE prior to patient care?

All EMS personnel must don their Personal Protective Equipment (PPE) prior to engaging in patient care. Scene safety, Body Substance Isolation (BSI), and other established infection control procedures are necessary for the protection of EMS practitioners engaged in the treatment and transport of suspected COVID-19 patients

Is there a limit to the amount of hours/days a first responder, in any capacity, can be forced to work during the current state of emergency?

No. There are no limits under the Fair Labor Standards Act (FLSA) as to the maximum number of hours an employee can be required to work. Some states however have limited the number of hours that certain healthcare providers may work so you need to check state law. Certainly, employers need to be cognizant of the risks associated with fatigue and excessive work hours and provide adequate rest and break periods and a process for identification of fatigued workers who cannot safely perform the job duties.

What about the EMS practitioner who is exposed in the line of duty? What defines exposure and can that employee continue work?

The CDC has established various degrees of exposure ranking them as high risk, medium risk, low risk. Most EMS exposures to COVID-19 patients will be low risk. Low risk is defined as having a brief interaction with a patient with a COVID-19 patient or prolonged contact with patients wearing a face mask for source control while the healthcare provider was wearing a face mask or respirator. Low risk exposures generally do not prohibit the employee from continuing to work if the employee is asymptomatic. There should be self-monitoring with delegated supervision until 14 days after the last potential exposure with temperature monitoring and other safeguards. The Centers for Disease Control (CDC) has issued guidance for EMS personnel which can be found at <https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-for-ems.html>

Just to be clear we have just less than 50 employees – we are NOT responsible for sick pay outside their usual paid time off, right?

Prior to the new law, small employers were not required under federal law to provide any type of paid sick leave. (A few states do require certain employer to provide limited paid leave). But now the Families First Coronavirus Response Act (FFCRA) requires certain employers – including those with less than 50 employees except as noted below – to provide their employees with emergency paid sick or family leave for specified reasons related to COVID-19. The Department of Labor's (DOL) Wage and Hour Division administers and enforces the new law's paid leave requirements. These provisions will apply from the effective date of April 2, 2020 through December 31, 2020.

Generally, the Act provides that covered employers must provide to all employees:

- Two weeks (up to 80 hours) of paid sick time at the employee's regular rate of pay where the employee is unable to work because the employee is quarantined (pursuant to Federal, State, or local government order or advice of a health care provider), and/or experiencing COVID-19 symptoms and seeking a medical diagnosis; or
- Two weeks (up to 80 hours) of paid sick time at two-thirds the employee's regular rate of pay because the employee is unable to work because of a bona fide need to care for an individual subject to quarantine (pursuant to Federal, State, or local government order or advice of a health care provider), or care for a child (under 18 years of age) whose school or child care provider is closed or unavailable for reasons related to COVID-19, and/or the employee is

experiencing a substantially similar condition as specified by the Secretary of Health and Human Services, in consultation with the Secretaries of the Treasury and Labor.

NOTE: Small businesses with fewer than 50 employees may qualify for exemption from the requirement to provide leave due to school closings or childcare unavailability if the leave requirements would jeopardize the viability of the business as a going concern.

Update: The final language in the law permit Employers of Health Care Providers or Emergency Responders to exclude such employees from eligibility for the paid leave provided under the Act, if they wish to do so.

See DOL Fact Sheets at: <https://www.dol.gov/agencies/whd/pandemic/ffcra-employer-paid-leave>

Has Medicare issued any instructions about the situations to use the CR modifier?

Yes, guidance on the use of the CR modifier is found in the Medicare Claims Processing Manual, Chapter 38. Generally, the CR modifier should not be used on Medicare ambulance claims.

In November 2012, Medicare issued guidance that stated, “The waiver authority under § 1135 does not authorize a waiver of the ambulance payment and coverage requirements, and thus there are no ambulance claims modifiers to indicate that a § 1135 waiver is in place. However, 1135 waivers granted to institutional providers can indirectly affect Medicare payment for ambulance transports in certain circumstances.”

One such example was given, “The waiver authority under § 1135 does not authorize a waiver of the ambulance payment and coverage requirements, such as the approved destination requirements described above. However, Medicare payment for an ambulance transport to an alternative care site may be available if the alternative care site is granted approval by CMS to function as an extension of an institutional provider (hospital, CAH or SNF) that is an approved destination for an ambulance transport under 42 CFR § 410.40 (whether under a § 1135 waiver or existing rules).”

In other words, in the example given, no CR modifier would be appropriate on the ambulance claim, because no waiver would allow an ambulance to transport to a non-covered destination. Instead, the waiver would temporarily make the destination a part of a hospital, CAH or SNF, so the appropriate modifier would be either “H” or “N”. “H” and “N” are always covered destinations, so no CR is required on the ambulance claim as the ambulance service does not require a waiver to transport to “H” or “N”.

What are your recommendations if we have Billers that need to telework from home who specifically handle actual paperwork (run logs, PCS forms, face sheets, etc.? Can we deliver paperwork to them in their homes and pick it up/have them come in and pick up and drop off paperwork? How do we stay HIPAA compliant with physical paperwork at billers’ homes who telework?

We generally recommend that EMS agencies minimize the use of paper during this crisis especially when it comes to paper containing protected health information. In most situations, paper documents can be scanned at the office and then access by the remote at home biller through a secured VPN access point. But yes, you may deliver paperwork to the homes of billers and pick up paperwork so long as the security and integrity of those documents is maintained.

Must my EMS employer pay me for extra time I am required to spend at the end of a shift to conduct mandated extra cleaning, take a shower before I leave work, or complete PCRs or other paperwork?

Yes. The employer must pay employees for all work that is predominately in the interest of the employer. That would include any work that is outside of normal shift activities that is required by the employer. For example, if your shift is over and you still need to complete patient care reports and you are doing them at your station, you should be compensated for that time. If your employer requires you to take a shower on premises before you leave the station, that time would also be compensable time to the employee.

If we go on a call with a suspected COVID patient, can we tell other staff in our agency about the potential exposure at that address?

Yes. Your agency can share necessary information with others within your agency who might respond to an address where a patient is a suspected or confirmed COVID-19 patient. This includes informing the entire department if anyone from the agency might respond to the address. For example, the agency could say: "123 Main Street is associated with a suspected COVID-19 case. Anyone who responds to the address should follow proper COVID-19 precautions until further notice.

Can we share suspected COVID status with other first responders? What about fire and police?

Yes. Your agency may share necessary COVID-19 information with other first responders on scene who might need to know the patient's suspected or confirmed COVID-19 status because they may help treat or handle the patient. This includes individuals from other EMS agencies, fire departments and police departments. It is best to communicate this status out of the earshot of bystanders, if possible.

Can we communicate COVID-19 status to responding emergency personnel through dispatch?

Yes. Dispatch centers may also communicate necessary patient information to first responders. But dispatch centers should be sensitive to the public nature of their communications. A best practice to employ is for dispatch centers to coordinate with PD, Fire and EMS within their jurisdiction and, whenever they have a suspicion of a COVID-19 case at a location, flag the address in the system. We recommend flagging with a **generic** code that is only disseminated to first responders in that jurisdiction (e.g., CODE 2344). Dispatchers may also use a generic code over the airwaves so that all responders – including fire and police – know to either keep back or use proper PPE.

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