Resuming Elective Procedures During COVID-19: Federal and State Guidance

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As the COVID-19 pandemic shows signs of stabilizing, states and the federal government have begun to plan for easing social distancing restrictions, including the various federal, state, and local-level limitations on elective procedures. Although these restrictions have helped preserve capacity and resources for treatment of COVID-19 and reduced further transmission of the virus, they have severely limited the availability of critical elective procedures to patients and negatively impacted provider income from elective procedures. The American Hospital Association recently warned that the halt of elective procedures has led to limited revenue for hospitals, causing severe cash flow issues that could lead to a historic financial crisis. This article provides an overview of federal, state, and professional association guidance on considerations for resuming elective procedures during the COVID-19 public health emergency.

Guidance on Restarting Elective Procedures and Surgeries

On April 19, CMS released its own provider-focused guidance for re-opening facilities to provide non-emergent, non-COVID-19 healthcare. CMS has recognized that as states and localities begin to stabilize, postponed medical care will be among the activities to be prioritized for re-opening. For all providers, CMS continues to strongly encourage telehealth options when available and clinically appropriate. In addition, CMS recommends that providers continue to evaluate the necessity of the care and consider establishing Non-COVID Care ("NCC") zones to screen all patients for symptoms of COVID-19. The impact of elective procedures on available resources and surge capacity preparedness should be considered, as follows:

- **Medical Supplies**. Providers should have adequate supplies of equipment, medication and supplies so that they do not detract from the communities' ability to respond to a potential surge of COVID-19 cases. In particular, providers should have an adequate supply of Personal Protection Equipment ("PPE"), and staff should continue to wear surgical facemasks at all times.
- **Workforce**. Providers should continue to screen staff for COVID-19. Further, if a provider creates NCC zones, then staff working in NCC zones should only work in NCC zones. Importantly, community staffing levels must remain adequate to cover a potential surge in COVID-19 cases.
- **Facility Capacity and Policies**. Health facilities that have decided to provide in-person, non-emergency care should create NCC zones and protocols to reduce risk of COVID-19 exposure and transmission. Policies should facilitate social distancing as much as possible. For example, chairs could be spaced at least six feet apart and waiting times could be minimized.
- **Testing Capacity**. Before entering an NCC facility, providers should screen all patients for potential COVID-19 symptoms. Once a provider establishes adequate testing capacity, they should screen patients and staff using laboratory testing.

State Guidance

States have now begun the process of allowing elective procedures. Over 20 states have announced they are permitting some elective procedures or will be doing so soon. The following discussion present sample state approaches to reopening.

On April 22, **California's** Governor announced that the state would begin to allow hospitals and health systems to resume delayed medical procedures, such as heart valve replacements, angioplasties, and colonoscopies. Further, California will be working with Colorado, Nevada, Oregon, and Washington, to share best practices on allowing providers to resume delayed

medical care, as a part of the Western State's Pact. In addition, on April 27, the California Department of Public Health released guidance on what providers should consider when resuming elective procedures. Similar to the CMS guidance, considerations include supply of PPE and workforce availability.

On April 23, the Governor of **Virginia** extended the state's ban on "elective surgeries" until May 1. The Governor and State Health Commissioner will work with health facilities to evaluate how to ease restrictions on procedures and the availability of PPE. The Governor also announced that the state had increased its supply of PPE. The ban does not apply to "any procedure if the delay would cause harm to a patient" or to "outpatient visits in hospital-based clinics, family planning services, or emergency needs."

On April 27, **Colorado** entered the "Safer at Home" phase. In this phase, elective procedures can restart but with "strict precautions to conserve adequate PPE and ability to meet critical care needs." "Voluntary or Elective Surgeries and Procedures at Medical, Dental, and Veterinary Settings," which includes healthcare facilities, clinics, offices or practices, surgical centers, or other settings where health care services are provided, can restart in accordance with the guidance Colorado has provided. This includes minimizing the risk of COVID-19 transmission and having enough resources to test for COVID-19. Further, "Limited Healthcare Settings," which include optometry, podiatry, and acupuncture may resume, in accordance with guidance from Appendix E of Public Health Order 20-28.

On April 28, **Massachusetts** extended its Stay at Home Advisory until May 18. The Governor's order requiring non-essential businesses to close their workplaces to the public and customers remains in effect. On March 10, the Massachusetts Commissioner of Public Health has issued an order requiring all hospitals and ambulatory surgical centers licensed in the state to postpone or cancel all "non-essential elective invasive procedures" from March 18 until the State of Emergency is terminated by the Governor. The April 28 extension did not mention any updates to the March 10 order, so it remains in effect.

Beginning on April 29, **New York**, one of the hardest hit states in the nation, will now allow "general hospitals to perform elective surgeries and procedure" if certain conditions are met:

- Within a county, the total available hospital inpatient and ICU capacity is over 30 percent, and the total change, from April 17, 2020 to April 27, 2020, in the number of hospitalized patients who are positive for COVID-19 is fewer than ten; and
- For each hospital within a county that has met the qualifications, the available hospital inpatient and ICU capacity must be over 30 percent and the total change, from April 17, 2020 to April 27, 2020, in the number of hospitalized patients who are positive for COVID-19 is fewer than ten.

Finally, **Texas** announced on April 17 that it would lift its order postponing elective procedures if providers met one of two requirements: 1) the procedure would not deplete capacity or PPE supplies needed to deal with the COVID-19 pandemic; or 2) the facility will reserve at least 25 percent of its capacity for treatment of COVID-19 patients and will not request any PPE from a public source, "whether federal, state, or local for the duration of the COVID-19 disaster."

Association Guidance

A joint statement from the American College of Surgeons, American Society of Anesthesiologists, Association of Perioperative Registered Nurses, and American Hospital Association also creates a similar roadmap for restarting elective procedures and surgeries. The statement contains principles and considerations to guide providers in resuming elective procedures and formulating associated policies. These include timing of the resumption (a sustained reduction in rate of new COVID 19 cases in the relevant geographic area for at least 14 days) and whether the facility has an adequate levels of numbers of ICU and non-ICU beds, PPE, ventilators, medications, anesthetics and all medical surgical supplies.

The American Medical Association has provided a physician practice guide to reopening. Some recommendations include restarting incrementally, such as bringing employees back in phases and limiting hours to prevent high-volume. The AMA

also recommends screening employees for symptoms of COVID-19 and minimizing contact between employees as much as possible (such as dedicated workstations and patient rooms to minimize the number of people touching the same equipment).

State associations have also issued guidance for resuming elective procedures. For example, the California Medical Association released guidance on reopening for California providers. These guidelines include a phased approach to resuming elective procedures, prioritizing delayed care, and paying special attention to vulnerable populations such as the elderly and immunocompromised.

Conclusion

As the United States moves toward reopening, health care providers should monitor applicable state and federal guidance and consider the recommendations from professional associations as they resume non-essential procedures, all while remaining prepared for the possibility of a resurgence of COVID-19 cases.

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