

# THE ADVISOR



## MONTHLY COMPLIANCE COMMUNICATOR

### Diligence in the Mundane: Update on COVID-19 Guidance from Oversight Agencies

In recent days we have seen guidance issued by several entities which provide further directions on measures to reduce the likelihood of exposure to the SARS-CoV-2 virus and a potential COVID-19 infection. It has been a long 13 months and while there is improvement in infection rates and a decrease in numbers of lives lost, being diligent in what may be perceived as mundane is still critically important. Review of the recent actions of the FDA, CDC and OSHA provide insights as to next steps and what to expect as we still face the pandemic.

#### IN THIS ISSUE

**Update on COVID-19**  
PAGE 1-6

**21ST CENTURY CURES ACT**  
PAGE 7 - 9

**It's Your Call**  
PAGE 9

**Sign-in sheet**  
PAGE 10



*Continued on Page 2*

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HIPAA OSHA INFECTION CONTROL BUSINESS ASSOCIATES



# INFECTION CONTROL COMPLIANCE

*Continued from Page 1*

## FDA

On April 9, a letter was issued to health care personnel and facilities providing direction on the use of disposable filtering face-piece respirator (FFRs). This communication includes the recommendation to transition away from reusing disposable N95 respirators.

The FDA recommends that health care personnel and facilities:

- Limit decontamination of disposable respirators. Decontaminated respirators and respirators that have undergone bioburden reduction should be used only when there are insufficient supplies of new FFRs or if you are unable to obtain any new respirators.
- Transition away from a [crisis capacity strategy](#) for respirators, such as decontamination of N95 and other FFRs.
- Increase inventory of available [NIOSH-approved respirators](#)— including N95s and other FFRs, elastomeric respirators, including new elastomeric respirators without an exhalation valve that can be used in the operating room, and powered air-purifying respirators (PAPRs). Even if you are unable to obtain the respirator model that you would prefer, the FDA recommends that you obtain and use a new respirator before decontaminating or bioburden reducing a preferred disposable respirator.

While you may not be decontaminating disposable N95 respirators, this letter provides the first indication that perhaps very soon the Emergency Use Authorization which allows the reuse or extended use of disposable N95 respirators may end.

### **Take away:**

Both the CDC and the FDA feel the supply of disposable respirators is becoming more stable and are giving the direction to either purchase reusable respirators such as the elastomeric respirator or increase inventory of NIOSH approved disposable N95 units. If you are still having issues obtaining adequate supplies of these respirators, be sure to document your attempts at obtaining additional respirators.

*Continued on Page 3*

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# INFECTION CONTROL COMPLIANCE

## CDC

The CDC has issued several updates over the past months mainly directed at the general public, addressing mask wearing and visits among family and friends. This has created some confusion about acceptable practices among healthcare providers, especially for those who have been vaccinated. On April 9, recommendations were published specifically [addressing infection control recommendations](#) for fully vaccinated healthcare providers. The updated recommendations are listed below.

### Work restrictions

- Fully vaccinated HCP with [higher-risk exposures](#) who are asymptomatic do not need to be restricted from work for 14 days following their exposure.
- HCP who have traveled should continue to follow CDC [travel recommendations and requirements](#), including restriction from work, when recommended for any traveler.

### SARS-CoV-2 Testing

- Anyone with symptoms of COVID-19, regardless of vaccination status, should receive a viral test immediately.
- Asymptomatic HCP with a higher-risk exposure, regardless of vaccination status, should have a series of two viral tests for SARS-CoV-2 infection. Testing is recommended immediately and 5 to 7 days after exposure
  - **EXCEPTION:** If the person has had COVID-19 [infection in the last 90 days](#) they do not need to be tested if they remain asymptomatic.



*Continued on Page 4*

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# INFECTION CONTROL COMPLIANCE

*Continued from Page 3*

## Use of Personal Protective Equipment (PPE)

- There is NO change in any of the recommendations. Use of PPE is based on the assessed risk of the procedure.

## Source Control

- In general, fully vaccinated HCP should continue to wear source control while at work.
- However, fully vaccinated HCP could dine and socialize together in break rooms and conduct in-person meetings without source control or physical distancing.
- If unvaccinated HCP are present, everyone should wear source control and unvaccinated HCP should physically distance from others.

While the CDC guidance does allow for relaxation of mask use in break areas and meetings, this does immediately bring challenges. How does the practice ensure protection for workers who either do not or cannot be vaccinated? The employer's responsibility is to protect all workers. It is important to protect the personal decisions of each worker and not create a situation of exclusion. This will be a practice level decision, but keep in mind the first recommendation in this category is for all workers in healthcare to continue source control (wearing of masks) in every area of the practice or facility.

### **Take away:**

Except as noted above, all workers should continue to follow all current infection prevention and control recommendations, that have been in place for most of the past 12 months. Very little has changed. Screening of workers and patients, cleaning and disinfection, and the appropriate use of PPE must still be practiced reducing the likelihood of exposure and spread of infection.

*Continued on Page 5*

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# OSHA COMPLIANCE

## OSHA

In last month's newsletter the National Emphasis Program was reviewed. This was a first step in addressing the President's order to ensure the safety of workers who are at high risk of exposure to this virus. This program focuses on increased inspections of high-risk workplaces which includes healthcare. In another development, OSHA has submitted an Emergency Temporary (ETS) COVID-19 Standard for final approval. According to reports, once approved the standard will become effective immediately and aligns with CDC guidance.

AGENCY: DOL-OSHA

RIN: [1218-AD36](#)

Status: [Pending Review](#)

TITLE: Subpart U – Emergency Temporary Standard – COVID-19

STAGE: Final Rule

ECONOMICALLY SIGNIFICANT: Yes

RECEIVED DATE: [04/26/2021](#)

LEGAL DEADLINE: Statutory

Finally, if you have required or will require employees to be vaccinated [OSHA recently released a Q and A](#) on reporting any COVID vaccine reaction(s).



*If I require my employees to take the COVID-19 vaccine as a condition of their employment, are adverse reactions to the vaccine recordable?*

If you **require** your employees to be vaccinated as a condition of employment (i.e., for work-related reasons), then any adverse reaction to the COVID-19 vaccine is work-related. The adverse reaction is recordable if it is a new case under 29 CFR 1904.6 and meets one or more of the general recording criteria.

*Continued on Page 6*

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# OSHA COMPLIANCE

Continued from Page 5

What would be [a qualifier for reporting](#)?

- Death
- Days away from work
- Restricted work or transfer to another job See § 1904.7(b)(4).
- Medical treatment beyond first aid. See § 1904.7(b)(5).
- Loss of consciousness See § 1904.7(b)(6).
- A significant injury or illness diagnosed by a physician or other licensed health care professional

## Take away:

OSHA is on the move and focusing on worker safety related to this virus. When the ETS is published there will be actions required by law to ensure your workplace is safe and the compliance deadline may be a very short window of time.

While great strides are being made in overcoming this pandemic, there is still much work to be done in protecting those we work with and care for. TMC will continue to provide updates on this rapidly changing situation.

If you would like more information about this information, please join us for a webinar, ***The Intersection of COVID-19, OSHA, and the CDC***, on Thursday, May 13, at 12 noon.



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# HIPAA COMPLIANCE



## 21ST CENTURY CURES ACT - INFORMATION BLOCKING RULE QUICK FACTS FOR HEALTHCARE PROVIDERS

### **What is information blocking?**

Anything a healthcare provider knows is likely to interfere with the ability of a patient or other authorized person(s) to access, exchange, or use electronic protected health information (ePHI).

- Taking longer than allowed to respond to patients' request for access to their records, or not responding at all.
- Charging patients a fee to access their records via a patient portal/EHR.
- Setting up policies, processes, or software systems in a way that limit or slow down a patient's access to their records.

### **What makes this different from patient access under HIPAA?**

If you keep electronic records and a patient requests an electronic copy, the Information Blocking Rule requires that you provide it electronically. However, you are not required to buy new software or put new systems in place.

*Continued on Page 8*

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# COMPLIANCE

## What if I do not have the technology or cannot respond to a patient's request?

You must respond with the information as requested unless one of the 8 exceptions applies. For example, the Content and Manner exception would apply if you do not have the exact electronic format requested. You would be able to provide the records to the patient in another agreed upon electronic format. Be sure to document each time an exception is used.

### Preventing Harm

Protecting Security (connection not secure)

Health IT Performance (EHR is down)

Fees (what/who can be charged)

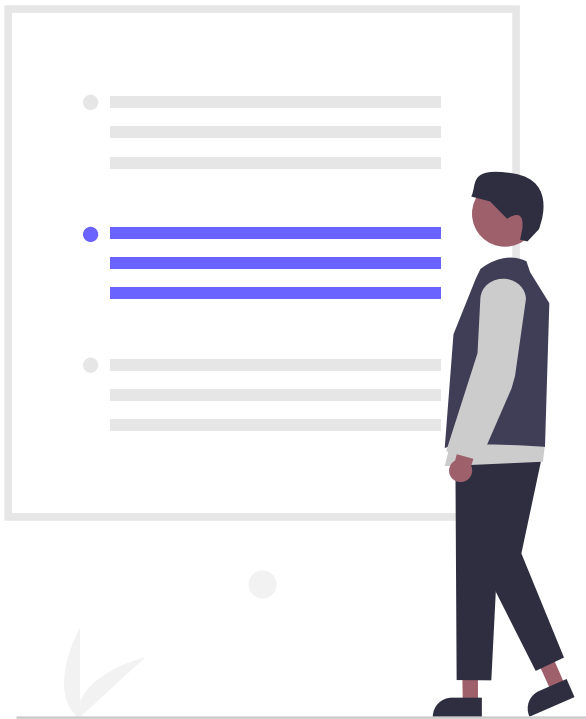
### Protecting Privacy

Infeasibility (state of emergency, etc.)

Content and Manner (form and format)

Interoperability (software negotiation)

For more details visit: [www.healthit.gov/topic/information-blocking](http://www.healthit.gov/topic/information-blocking)



## What should I do to prepare?

- Review your practice's release of information/records request process and related policies and procedures to make sure you are not interfering with access.
- Understand what choices are already available to you to provide patients with access to their electronic records. This may mean contacting your software provider or IT Support.
- Only charge fees for electronic copies of records if you provide them on a physical device like a USB or CDROM. Limit the fee to the cost of the device.

*Continued on Page 9*

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# HIPAA COMPLIANCE

## What should I do to prepare?

- Not yet. Although the Information Blocking Rule is already in effect, the Office of the Inspector General has not yet established penalties for healthcare providers.
- Medicare providers should check with CMS for penalties related to Promoting Interoperability attestations. The Information Blocking Rule does not directly affect CMS' Promoting Interoperability program.

## Questions?

[Service@totalmedicalcompliance.com](mailto:Service@totalmedicalcompliance.com) (888) 862-6742 [www.TotalMedicalCompliance.com](http://www.TotalMedicalCompliance.com)

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## IT'S YOUR CALL

### Infection Control:

Did you know that STDS are on the rise for the 6th consecutive year according to 2019 surveillance?

### HIPAA:

How many enforcements have been issued by the OCR in their HIPAA Right of Access Initiative?

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**SIGNATURE**

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### INSTRUCTIONS

Print and post newsletter in office for staff review. Each member should sign this form when completed. Keep on file as proof of training on these topics.

### IN THIS ISSUE

**Update on COVID-19**

PAGE 1-6

**21ST CENTURY CURES ACT**

PAGE 7 - 9

**It's Your Call**

PAGE 9

**Sign-in sheet**

PAGE 10