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Hot Topics In Risk Management

Every day we hear from our insureds on the Risk Management Hotline, and we will be sharing some of those questions and answers with you.

Our Risk Management Team is here to help you minimize and mitigate Medical Professional Liability risk.

Preparing Your Practice for Post COVID-19 Patient Care - Informed Consent for Elective or Non-essential Surgery and COVID-19

Informed consent is a process, not a form. Evidence the process occurred may include the physician's and the patient's testimony about the process, physician's medical record entry about the process, and/or a signed consent form. Often, the physician's testimony, which usually relies upon custom and practice, heavily influences the jury, followed by the medical record entry, and then the consent form itself.

At a minimum, MICA recommends physicians continue having informed consent discussions with patients, including COVID-19 information and potential related risks, and documenting the discussions in the medical record. Physicians may also want to include in the documented discussion the clinical judgment that went into the decision to proceed with surgery, and, if appropriate, that the patient was given the option of rescheduling but elected to proceed at this time. Physicians may rely on the documented informed consent discussion entry in the medical record. Better, they may implement a revised consent form, including COVID-19 information; or implement a separate COVID-19-related consent form.

The University of Chicago Department of Surgery shared the changes made to the Department's informed consent process in ***Unknown Unknowns: Surgical Consent During the COVID-19 Pandemic*** published in the Annals of Surgery. The authors stress the need to include the following:

- an "enhanced informed consent discussion" about surgery risks;
- the "uncertain (but likely increased) risk of nosocomial infection;" and
- changes to daily hospital operations, especially in the nation's "hot spots," that could affect the perioperative process.

The authors explain in an enhanced informed consent discussion, which should consider the following:

- the uncertainty about the risks of surgery and anesthesia in asymptomatic or pre-symptomatic patients;
- the potential for COVID-19 transmission while traveling to the hospital or health care facility; while in a non-patient care area of the hospital or facility, such as a cafeteria or public restroom; during surgery or in the post-anesthesia care unit; and while traveling home, all compared to remaining at home and observing strict social distancing;
- how quickly information about COVID-19 changes hospital or facility operations so that one day visitors may be allowed in a patient's room and the next day they are not, patients in one nursing unit may be moved to another nursing unit unfamiliar with the patient's surgery or recovery, or staffing or bed shortages necessitating moves around the hospital; and
- whether the patient has an advanced directive, living will, or health care power of attorney.

The article, recommended interventions, and steps for an enhanced informed consent discussion are available at https://journals.lww.com/annalsofsurgery/Documents/Unknown%20unknowns%20.pdf.

The Medical Professional Liability Association (MPLA), an association of professional liability insurance carriers, published a ***Special Consent Form for an Elective Surgery or Procedure During the COVID-19 Pandemic***. The one-page document includes:

- a statement of the patient's voluntary authorization to the surgery or procedure during the COVID-19 pandemic;
- a statement the patient understands the procedure is elective and may not need to be done at this time;
- a place for the physician to fill in alternatives to performing the procedure now;
- a place for the physician to list the risks of delaying the procedure;
- acknowledgment by the patient of receipt of an informational document, which addresses issues and risks associated with surgery during the pandemic and the safeguards instituted to minimize the risks;
- acknowledgment by the patient of the risks of becoming infected with coronavirus and that infection could result in significant illness, disability, or death;
- a statement of the patient's understanding of a second consent form for the procedure; and
- the physician's statement about discussion of the contents of the form, answering all the patient's questions, and that the patient has been adequately informed of the information in the form and the patient consented to what is in the form.

Please contact the MICA Risk Management Services team at 602.808.2137 or rm_info@mica-insurance.com for a copy of the form.

Physicians and their practices should shape the informed consent process around their patient population, hospital and surgery center processes, and specialty. In the event of a lawsuit, jurors will appreciate hearing physicians explain their preparation for the informed consent process and how they tailored the process to fit to their patients.