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Is Your Hospital Ready for a Pandemic?

On January 21, 2020, the Centers for Disease Control and Prevention (“CDC”) confirmed the first case of a new coronavirus, “2019-nCoV” or “Wuhan coronavirus,” in the United States. The patient—like the other four, confirmed US cases—had recently returned from Wuhan, China, where the outbreak of 2019-nCoV, began. The respiratory virus has spread to Thailand, Canada, Japan, South Korea, Taiwan, Macau, Nepal, Singapore, Vietnam, Australia, Cambodia, and the United States, sickening almost 3,000 people and causing eighty-one deaths since reported in China in December 2019. Chinese officials are attempting to contain the spread of the virus and have imposed a travel ban covering 16 cities in the central Hubei province quarantining approximately 50 million people.

Coronaviruses are a family of viruses that can cause mild symptoms such as the common cold, to much more serious conditions such as pneumonia or respiratory failure. The Wuhan coronavirus is related to two other coronaviruses which caused outbreaks in recent years, including Middle East Respiratory Syndrome (“MERS”) and Severe Acute Respiratory Syndrome (“SARS”). Chinese health authorities have confirmed that this virus can be transmitted from person to person, and there is concern patients may be infectious and can spread the disease before they exhibit symptoms. Currently, there is no vaccine for coronaviruses.

The recent outbreak of Wuhan coronavirus emphasizes the need for hospitals to adopt policies and proper training to facilitate a more effective response during a pandemic. Some of the challenges that hospitals will face if faced with a pandemic include:

Recognition and Response: It is important that all hospital personnel, particularly emergency room staff, fully know and understand the potential symptoms of the coronavirus. Additionally, adequate communication systems and alerts should be implemented to trigger necessary reviews or additional in-depth questioning. During the Ebola outbreak in 2014, a patient in Dallas ultimately died of the disease and two hospital nurses



became infected in part, due to a lack of recognition of the significance of the patient's recent travel history and a failure to impart critical information between treating professionals. Swift identification and isolation of patients exhibiting symptoms of the virus will help to obtain earlier, and potentially more effective treatment for patients and minimize exposure to others.

Staffing Challenges: During the SARS and MERS outbreaks, transmission of the coronavirus was observed between infected patients and healthcare personnel. During a pandemic, healthcare personnel and other hospital staff may be discouraged from reporting for duty, due to the risk and fear of becoming ill, and/or transmitting the virus to their family members. Hospitals will need to effect policies that motivate healthcare personnel to show up for work in order to prevent a crippling shortage of healthcare providers. Additionally, shift times may need to be revised to account for the demands associated with working in full personal protective equipment ("PPE"). Hospitals should also be cognizant of the stress and emotional demands associated with caring for seriously ill and potentially highly contagious patients. The provision of therapy services and other similar resources may be appropriate.

HIPAA Compliance: During an emergency, patients may become incapacitated, hindering the ability of the hospital to accurately identify the individual. Various groups, including disaster relief organizations, members of the media, the patient's family and friends, and emergency personnel may reach out to hospital personnel regarding the health status of patients. It is important that practitioners, employees and business associates be reminded of their obligations under HIPAA and other state and federal laws. Hospital staff and healthcare personnel must be aware of when Personal Health Information may be disclosed and to whom.

Communications Challenges: Particularly early on, the presence of a patient with an identified illness, such as the coronavirus, is likely to be a newsworthy event. Hospitals should review their internal and external communication plans to ensure the hospital is able to accurately communicate complex information to highly stressed audiences. Town hall style meetings could be considered as a means to address safety and other concerns. It may be helpful to appoint one person or a small team to handle all media questions and events.

Shortages of Medical Countermeasures and Personal Protective Equipment: In the event of the spread of a natural disease, or a deliberate biological, chemical or nuclear threat, medical countermeasures ("MCM") may not yet be available or may be in short supply. Hospitals will need to ensure that they can communicate effectively with local public health departments to ensure access to MCMs. Hospitals will also need to comply with Occupational Safety and Health Administration regulations to ensure that the proper PPE is maintained for healthcare personnel and staff. Hospitals should ensure their medical waste vendors have the necessary skills and equipment to handle any highly infectious materials.

Adequate Training: During an emergency, healthcare personnel will be placed in an "all-hands on deck" scenario, in which they may be treating populations which they do not normally treat. For example, additional training may be needed for generalist-trained clinicians with varying degrees of understanding of acute care for children and pregnant women. Consideration will need to be given to certain populations, such as parents of infected children. In-patient physicians and healthcare personnel may need additional education to evaluate and treat the long-term impacts that result from various biological conditions. Hospital personnel will need to be able to perform their duties effectively in all levels and types of PPE.

Surge Capacity: During a pandemic, healthcare personnel will need to evaluate and care for an increased volume of patients, ultimately putting a strain on both resources and personnel. Hospitals will need to coordinate with state health agencies regarding the transfer of excess patients, in addition to ensuring adequate amounts of MCMs, PPE and other resources to handle a larger number of patients.



Crisis Management: Hospitals should have in place crisis management procedures and protocols before the crisis arises. Dealing with a crisis without such systems in place can result in confusion and poor decision-making.

Litigation: With a public health emergency such as a pandemic, hospitals and healthcare providers will likely face various types of litigation, including claims for medical malpractice, HIPAA and data breaches, and personal injury lawsuits resulting from the use of MCMs. Hospitals should implement policies to minimize the chances of litigation.

King & Spalding has worked with leading hospitals to identify issues that should be addressed when faced with crises in general and pandemics in particular. If you have questions about how to further assess risks and improve your healthcare facility's emergency preparedness policies and procedures, please contact Jennifer Siegel or Catherine Greaves.

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This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered "Attorney Advertising."

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