



COVID-19 Litigation – Laying the Groundwork for Uncharted Territory

Presented by

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Covered Topics

- Current state of patient/resident/family civil liability claims involving COVID-19 infection and the risks they present to hospitals and long-term care providers and anticipated claims.
- Best practices for preventing and defending these cases, including the use of the PREP Act and “federal officer” statute to support federal court jurisdiction and other applicable defenses.
- Risk mitigation steps that can be implemented now to prevent claims/assist in the defense of future COVID-19 claims

Overview

- COVID-19 claims are a different animal to “run of the mill” healthcare cases.
- They are more factually complex and will likely involve “evolving” standard of care.
- They will involve a new potential set of expert witnesses
- They may implicate the PREP Act and “federal officer” statute.

Status of Immunity for Healthcare Providers

- Attempts at Obtaining Civil Liability Protection
 - Federal Efforts
 - State Efforts

Observations Re: Current Litigation

- Dynamics of COVID-19 Claims
- Use of Arbitration in COVID-19 Claims

Existing Legislation

- The PREP Act: When it can be used and how it can be helpful
- The “federal officer” statute: When it can be used and how it can be helpful

Risk Management Strategies

- Careful documentation and preservation of all “evidence” (obvious and otherwise)
- Quick and complete response to attorney inquiries (notify carrier and risk management team)
- Develop as part of QA facility specific, as detailed as possible, chronology of communications, challenges, strategies, countermeasures, etc. (with references to “evidence”)

Topics for Special Consideration

- Infection Control
 - Pre-COVID
 - During Pandemic
- PPE Strategies
- COVID Testing/Vaccination Strategies
- Staffing & Employee Deployment
- Staff Training
- Visitors and Third-Party Involvement
- Significant Regulatory Documents (CMS, CDPH, County & Others)
- Housekeeping & Disinfection

Questions

Thank You.