OMIC
**OPHTHALMIC MUTUAL
INSURANCE COMPANY**
A Risk Retention Group

Risk Management Recommendations

Sponsored by the American Academy of Ophthalmology

COVID-19 FAQs

Purpose of risk management recommendations

OMIC regularly analyzes its claims experience to determine loss prevention measures that our insured ophthalmologists can take to reduce the likelihood of professional liability lawsuits. OMIC policyholders are not required to implement risk management recommendations. Rather, physicians should use their professional judgment in determining the applicability of a given recommendation to their particular patients and practice situation. These loss prevention documents may refer to clinical care guidelines such as the American Academy of Ophthalmology's *Preferred Practice Patterns*, peer-reviewed articles, or to federal or state laws and regulations. However, our risk management recommendations do not constitute the standard of care nor do they provide legal advice. Consult an attorney if legal advice is desired or needed. Information contained here is not intended to be a modification of the terms and conditions of the OMIC professional and limited office premises liability insurance policy. Please refer to the OMIC policy for these terms and conditions.

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COVID-19 presents clinical and administrative challenges to healthcare providers, primarily in the areas vaccination, mask-wearing, and testing. This document is a summary of frequently-asked questions and risk management guidance.

A Starting Place: Set COVID-Related Policies

Implementing policies and procedures helps a practice keep patients and staff safe, lets physicians focus on patient care, and minimizes potential liability exposure.

Risk Management Recommendations

- Think about how you will approach different patient scenarios (e.g., patients who present w/o a mask and no vaccine cards).

- Develop consistent, written policies and procedures surrounding these issues (including that dismissal from the practice may be a consequence of refusal to adhere to policies) and communicate those policies to patients. You can inform patients of your policies at different points: when they call for an appointment, when you make reminder calls, and again through signage or handouts in the office. Emphasize that your policy is in place to protect patients and the practice.

- If you have a patient who either won't share vaccine or test information or wear a mask, then have a plan to provide appropriate patient care and minimize professional liability risk.

    o One area of concern, from a patient safety and liability standpoint, is delayed diagnosis and treatment stemming from patients who leave without being seen, or cancel/miss

appointments without rescheduling. To prevent care from falling through the cracks, the physician should:

- Review the patient's clinical status and determine next steps based on that status and urgency of care (e.g., can the visit or treatment be delayed? If not, can the practice make an accommodation to see the patient, or can they transfer the patient's care?).
- Document the decision-making rationale for delaying or transferring a patient's care.
- Inform the patient about the seriousness of his/her condition, the care that is needed, and the timeline for completing that care.
- Document all communication (including *attempts* to communicate), results, and actions taken.

- If a patient continues to refuse to follow the office's COVID policies, send a letter of non-compliance and notify of possible termination of care. See OMIC's risk management resource, Non-Compliance: A Frequent Prelude to Malpractice Lawsuits, for more recommendations and sample letters.

- Termination of physician-patient relationship should be done on a case-by-case basis; see FAQ for specific risk management recommendations.

FAQs

Continuing/Discontinuing Mask Requirements

Should our practice continue requiring masks, even if the state or other authorities have lifted the requirement?

Risk Management Recommendations

Continuing or discontinuing mask requirements could evolve with virus variants or other circumstances. Here are some considerations:

Requiring Masks

- You can decide to adopt rules that are stricter than local, state, and federal rules, and require individuals to wear masks. If you do that:

  o Provide patients with advance notice of your policy so they know what to expect. You can do this at the time they make an appointment, when you send reminders, and by adding a message on your website.

  o Emphasize that your policy is to protect patients and the practice, and that you are following the CDC's guidance for healthcare settings.

- Practices manage mask requirements differently:

  o Some require masks in the waiting area, but then they allow for removal of masks in the exam room.

  o Some require masks in the exam room as well as in the waiting room.

Removing the Mask Requirement

- If you're considering removing the mask requirement for patients, visitors, and staff, it should be for reasons that promote the safety of all.

  - Check your state and local health departments to confirm that their recommendations for optional mask use apply to healthcare settings (i.e., not just to other businesses).

  - If your state and county health departments allow healthcare settings discretion with mask requirements, you should evaluate public health data (e.g., rate of vaccinations; new COVID-19 infections, hospitalizations, deaths in your area) in deciding whether removing the requirement is currently safe.

- If you remove the mask requirement:

  - Be diligent with other infection control and prevention measures (e.g., cleaning, barriers). See CDC information: Updated Healthcare Infection Prevention and Control Recommendations in Response to COVID-19 Vaccination (Updated April 27, 2021.)

  - Have a plan for patients who may still want or need to wear masks, even if they've been vaccinated (e.g., preference or immunocompromised).

    - Give patients advance notice that you are no longer requiring patients to wear masks, and instruct them to wear a mask if they feel they need to do so.

    - Reassure patients that staff and physicians will continue to wear masks.

Requiring Vaccines or Proof of a Negative COVID Test

Can our practice require patients to be vaccinated or show proof of a negative COVID test? What about employees?

Risk Management Recommendations

Regarding patients:

- This is up to the practice.

  - Check federal, state, and local guidelines (or regulations, if applicable) to make sure there are not restrictions on doing this. (It's possible that your state or local government will actually allow or encourage this, depending on how COVID cases are developing in your area.)

  - If you decide not to confirm vaccination status, then it's advisable to post signage about the health risks unvaccinated, unmasked people are taking.

Regarding employees:

- Check your state or local authority for applicable orders. Some states have issued mandates that healthcare workers (note: depending on the state, this could include volunteers) either be vaccinated or undergo regular COVID testing. In the absence of any mandate, consult the following resources:

  - U.S. Equal Employment Opportunity Commission. What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws (Updated May 28, 2021.)

  - Centers for Disease Control and Prevention (CDC). COVID-19 Vaccines for Healthcare Personnel. COVID-19 Vaccines for Healthcare Personnel (Updated May 27, 2021.)

Termination of Patients who are Non-Compliant with COVID Rules

Can we terminate patients from the practice if they are not vaccinated, refuse to wear a mask, or show proof of a negative COVID test?

Risk Management Recommendations

It could be problematic to terminate the relationship with any and all patients who refuse to be vaccinated, wear a mask, or show proof of a negative COVID test. While it's true that physicians can terminate patients for a number of reasons, including a patient's refusal to follow an office policy, **each decision depends on the specific patient**.

- Start by checking local and state guidance to make sure there aren't any restrictions on declining to provide care.

- Be careful not to inadvertently discriminate against a patient who might be in a protected category.

- Consider the individual patient's clinical picture to determine a plan, and communicate it in writing to the patient.

- If you determine it's safe to terminate the relationship with a patient, document your decision in the chart and send a letter to the patient by regular and certified mail (giving adequate notice to avoid potential allegations of abandonment), and maintain a copy of the letter in the chart. The letter should reiterate the patient's eye condition and emphasize the need for the patient to establish care with another ophthalmologist (note the timeline for treatment, if appropriate).

- See OMIC's risk management resource, Terminating the Physician-Patient Relationship, Terminating the Physician-Patient Relationship, for more recommendations and sample letters.

Physician/Staff Who Test Positive for COVID

One of our doctors tested positive for COVID. Do we need to notify patients?

Risk Management Recommendations

- As a first step, check your state and county health departments for guidance. They may be able to tell you whether physicians are required to notify patients of a potential COVID exposure.

- If notification is not required, you can always do it as a courtesy. You can notify patients (with a phone call and letter) in a way that protects the infected person's privacy (e.g., "Someone in our office tested positive for COVID-19 on the day of your visit...").

- The CDC may also be resource for what to communicate (i.e., what potentially exposed individuals should do re: getting tested, etc.).

- Check state and local laws and regulations regarding OSHA reporting or worker's compensation obligations.

Continuation of COVID Consents

We have been asking the surgery patients to sign a COVID surgery consent during the pandemic, accepting the increased risk. How long do we need to continue doing this?

Risk Management Recommendations

- Considering that there are virus variants, and many unvaccinated people, it's prudent to continue informing patients of risks related to COVID-19 as part of the consent process for elective procedures.

- Stay current with advisories from the CDC and your state and local health departments.

OMIC policyholders who have additional questions or concern are invited to use OMIC's confidential Risk Management Hotline by emailing us at riskmanagement@omic.com, or calling 800-562-6642, option 4.