

THE ADVISOR

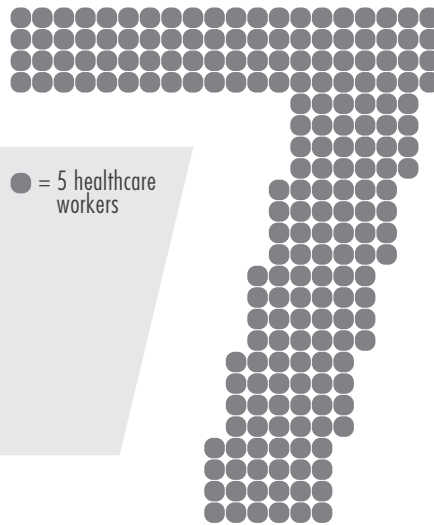
MONTHLY COMPLIANCE COMMUNICATOR



OSHA: IS IT REQUIRED OR JUST RECOMMENDED?

One of the most common questions we receive is, "Is that rule required or just recommended?" This question has been especially prevalent during the current pandemic. People want to know if they really have to follow the rule or if it is merely a suggestion. However, that is not what the words mean when it comes to OSHA citations and penalties.

Required means that it is specifically written into an OSHA law. With the current COVID-19 pandemic we also have temporary enforcement guidelines by OSHA that carry the same weight as a formal regulation. This is true when any immediate need to protect the safety and health of workers occurs. It takes time (sometimes years) to pass a new law and temporary guidelines can be implemented quickly when a clear danger is present.



Do you know that over 1000 healthcare workers died in the first 7 months of the pandemic?

Continued on Page 2

IN THIS ISSUE

OSHA: Is it Required or Just Recommended?

PAGE 1-2

Let's Talk Masks, Again!

PAGE 3 - 5

Information Blocking – Digging Deeper

PAGE 6 - 8

It's Your Call

PAGE 8

Sign-in sheet

PAGE 9

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OSHA COMPLIANCE

Recommended usually means, in the context of OSHA regulations, the CDC has posted guidelines that exceed what is dictated by OSHA. The CDC does not have the ability to make law. It evaluates the science of a hazard and recommendations of groups such as NIOSH (National Institute of Occupational Health and Safety) and can quickly get that information out to the public. OSHA will take CDC recommendations that specifically affect worker safety and will then draft a law to submit to Congress. This does not mean OSHA ignores CDC recommendations. OSHA can (and will) cite and fine for failure to follow CDC recommendations.

An OSHA regulation known as “The General Duty Clause” gives them the power to cite on CDC recommendations and industry standards. The General Duty Clause states:



Each employer shall furnish to each of his employees: employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.

Since the start of the pandemic through October, 2020, OSHA cited 144 establishments for violations relating to coronavirus, resulting in proposed penalties totaling \$2,025,431. The violations included failures to:

- Implement a written respiratory protection plan.
- Provide a medical evaluation, fit test, and training on the proper use of a respirator and PPE.
- Record and report an injury, illness or fatality.
- Comply with the General Duty Clause of the Occupational Safety and Health Act of 1970.

The only difference to OSHA between an OSHA law and a CDC recommendation is they will only ask about laws if they are performing a random inspection. If OSHA is inspecting for a particular reason such as a complaint or fatality they can and will ask questions about violations of CDC recommendations. This also applies if they view something that violates a CDC recommendation during a random inspection. If they find a violation of a law or recommendation the fines are the same.

If you are a TMC client be sure to notify the Client Service Center when you are inspected. We can aid you in negotiations and settlement with OSHA at no additional cost.

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INFECTION CONTROL COMPLIANCE

LET'S TALK MASKS, AGAIN!

The SARS-CoV-2 virus and COVID-19 have been impacting the way we function in our personal and professional lives for over a year now. Since this virus is spread mainly by close contact through respiratory droplets, a large amount of information has been published on respiratory protection and the need for everyone entering the workplace to wear either a mask or face covering.

In recent days, the Centers for Disease Control (CDC) has released updated guidance on the importance of respiratory protection and additional direction on how to reduce exposure to respiratory secretions. The information provided by the CDC is pertinent both inside and outside of healthcare facilities. Studies at the CDC have determined that by following a few simple steps, both the fit and filtration capacity of mask can be improved, which could further decrease the spread of the virus.

Improving fit – Making the mask fit more tightly will prevent air from entering through the gaps around the edges of the mask, requiring the air to flow through the mask.

Improving filtration – Increasing the number of respiratory droplets that are captured by the mask.



(Photo courtesy of the CDC)

Improving fit

Making the mask fit more tightly will prevent air from entering through the gaps around the edges of the mask, requiring the air to flow through the mask. Because masks do not typically fit tightly around the face, air can leak in and out around the edges allowing respiratory droplets to both enter and be inhaled and escape. To reduce this leakage of air the mask should fit tightly around the top and the sides of the mask without any gaps.

Several options were provided by the CDC.

Continued on Page 4

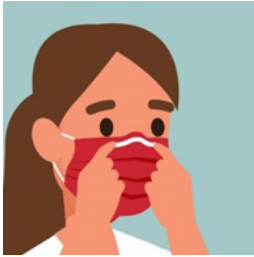
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INFECTION CONTROL COMPLIANCE

1



(Photo courtesy of the CDC)

Masks with **nose wires** provide the ability reduce air leaks at the top of the mask and may also prevent fogging of eye ware. Always be sure that the wire conforms to the nose and face.

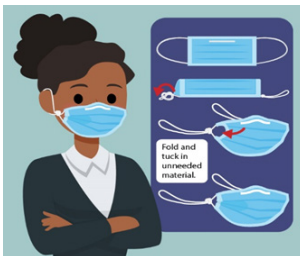
2



(Photo courtesy of the CDC)

Using a **mask fitter or brace** over a medical procedure mask or a cloth mask will also provide a tightening effect on the mask thus reducing the air leakage around the edges.

3



(Photo courtesy of the CDC)

Knotting and tucking of the ear loops and material. Knot the ear loops close to the edge of the mask. Once this is completed tuck the additional mask material under the edges of the mask. This [YouTube video](#) provides direction on this process. You can check to ensure your mask is fitting tightly by cupping your hands around the edges of the mask and inhaling and exhaling. You should feel a reduced flow of air around the sides and top of the mask. You should also feel the air coming out through the front of the mask.

Improving Filtration

Filtration of respiratory particles is an important function of respiratory protection. When increasing filtration capacity, more respiratory particles are captured by the mask, thus reducing the amount escaping into the workplace environment. This increased filtration will also reduce the infectious droplets the worker may be exposed to.

Continued on Page 5

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INFECTION CONTROL COMPLIANCE

Layering

Adding more layers can reduce the number of respiratory droplets that come through a mask. One way to accomplish layering is to use a cloth mask that has multiple layers of fabric. Another method to accomplish this is by wearing two masks.

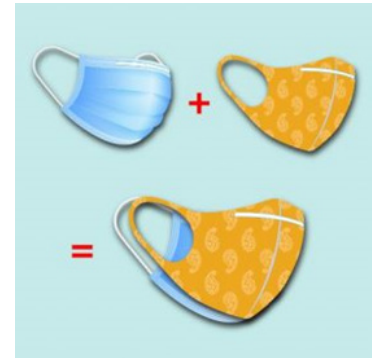
Wearing two masks improves both the fit and filtration capacity. A study has shown that wearing a cloth mask over a medical procedure mask provides much better protection to both the wearer and those around them compared to wearing a medical mask alone.

Working in a healthcare facility, especially in an area with evidence of moderate to substantial community spread of the virus requires certain processes to be followed related to respiratory protection. When providing direct patient care or for source control, one of the following options should be used:

- An N95 respirator approved by NIOSH or one listed on [Appendix A on the FDA website](#).
- A well-fitting facemask as previously described.
- Use of a cloth mask over the facemask to help it conform to the wearer's face. This is not recommended when delivering patient care. Ensure everything has been done so that the medical mask is fitting as tightly as possible. A face shield or goggles should be added for eye protection. IF the decision is made to use a cloth mask over a medical mask during patient contact, the cloth mask must be changed for a fresh mask after each patient encounter.

There is excellent additional information on the [CDC FAQ addressing use of 2 masks at the same time in a healthcare setting](#).

The role masks play in the protection against exposure to the SARS-CoV-2 virus continues to evolve. Remember that the highest level of protection when providing care to a suspect or confirmed COVID infected patient is the use of a N95 respirator and eye protection. There are many choices for respiratory protection. Be sure to choose the one that offers the highest level of protection based on your current activity.



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HIPAA COMPLIANCE



INFORMATION BLOCKING – DIGGING DEEPER

Healthcare providers are not required to do anything new or buy new software to comply with the upcoming Information Blocking Rule issued by the HHS Office of the National Coordinator for Health Information Technology (ONC). However, understanding how your current policies and procedures could conflict with the rule's requirements is a good exercise to start now.

It is important to understand that this rule requires healthcare providers, health IT developers, and HIE/HINs to provide access to certain electronic health information unless one of the eight exceptions to the rule applies. See the February TMC newsletter for a list of those exclusions, which includes denying access if a state or federal law, including HIPAA, prohibits or limits access to the information.

In other words, if you are permitted to provide access to a patient's electronic health information, you must provide it when requested. Electronic health information is ePHI (as defined in HIPAA) that is maintained in a designated record set. That is, the information about a patient contained in a healthcare provider's medical records, billing records, or other records the provider uses to make decisions about that patient. The rule's definition of EHI excludes psychotherapy notes and information gathered for preparation or use in a civil, criminal, or administrative action or proceeding.

Initially healthcare providers will only be required to provide access to the data elements listed below. Starting October 6, 2022, access to the full designated record set will be required.

Continued on Page 7

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HIPAA COMPLIANCE

Allergies and Intolerances

Care Team Members

Clinical Notes

- Consultation Note
- Discharge Summary Note
- History & Physical
- Imaging Narrative
- Laboratory Report Narrative
- Pathology Report Narrative
- Procedure Note
- Progress Note

Smoking Status

Vital Signs

Assessment and Plan of Treatment

Health Concerns

Immunizations

Laboratory Tests Values/Results

Medications

Patient Demographics

Patient Goals

Problems

Procedures

Provenance

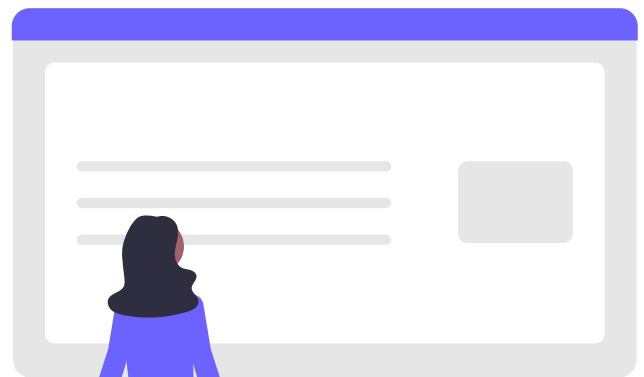
- Author Time Stamp
- Author Organization

Unique Device Identifier(s) for a Patient's Implantable Device(s)

A good first step in reviewing your policies and procedures could be to compare the last 5 requests for records in electronic format made by a patient or their personal representative to your policy. Then answer questions like the following to identify areas of improvement.

- How many calendar days did the request take from the day it was received from the patient? What, if anything, do you need to change to reduce the time?
- Was your office able to provide the information electronically as requested or did it need to be provided in a different way? Can you improve the process?

Continued on Page 7



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- Was a fee charged to the patient for the electronic records? If so, was it for an item like a CDROM or a thumb drive? Only cost-based charges are allowable. The ONC states that patient portal or EHR access should be given at no cost to the patient.
- Has your office received any complaints in the last 12-18 months about access to medical records? What can you do to change policies or procedures to prevent these complaints?

If any policies or procedures are updated after your review, be sure to train your employees on the changes.

The HHS Office of Inspector General (OIG) is the primary enforcer of the rule but will coordinate closely with ONC and the HHS Office of Civil Rights. As of March 1, 2021, OIG has not released final guidance on penalties.

TMC will notify its clients throughout the month of March as new information and support documentation is published.

IT'S YOUR CALL

OSHA:

We have a worker who tested positive for covid-19 and is in self-isolation. What is the time frame for healthcare workers to return to work after experiencing mild to moderate symptoms with suspected or confirmed SARS-CoV-2 infection?

HIPAA:

_____ is a practice that would likely interfere with the access, exchange, or use of electronic health information (EHI). Fill in the blank.

[CLICK HERE FOR ANSWERS](#)

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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

OSHA: Is it Required or Just Recommended?

PAGE 1-2

Let's Talk Masks, Again!

PAGE 3 - 5

Information Blocking – Digging Deeper

PAGE 6 - 8

It's Your Call

PAGE 8

Sign-in sheet

PAGE 9