

CONSIDERATIONS WHEN RESUMING PRACTICE

With each province and territory working on a different strategy for when and how Canadian workplaces can begin to reopen and resume delivery of services, there is a common message for everyone – there will be a “new normal”.

This will include accounting for physical/social distancing, ensuring appropriate use of personal protective equipment (PPE), adopting proper cleaning and disinfecting protocols, and other measures to assist in reducing transmission of COVID-19 moving forward.

With this situation has also come new or increased liability exposures for professionals, particularly health practitioners. Therefore, it’s important to understand how to reduce or mitigate your liability risks, while also adhering to broader requirements.

This document provides a number of considerations for workplaces beginning to re-introduce staff and patients into their facilities. However, this is not an exhaustive list, and it is important to reference specific public health guidelines and occupational health and safety requirements from your provincial or territorial government, Health Officer, and regulatory body, if applicable. Professionals practicing in a public setting must also adhere to the protocols established within their workplaces.

Workplace Patient and Client Considerations

These include:

Screening, for instance of staff and clients before entry to assess for symptoms of COVID-19 and exposure history;

Physical Distancing, such as restricting the total number of individuals in the facility at one time;

Appropriate use of PPE, including appropriate use of procedure mask when carrying out interventions, and gloves, gown, mask, eye protection where there is risk of exposure to biological liquids;

Cleaning / Disinfection, including having staff and clients wash their hands with soap and water or use an alcohol-based disinfectant before and after each consultation, among other measures.

The lifting of restrictions due to the COVID-19 pandemic is determined by each individual province or territory.

More detailed recommendations for health professionals can be found here:

[Saskatchewan](#) and [here](#)

[Manitoba](#)

[Alberta](#) and [here](#)

[Ontario](#) and [here](#)

[Prince Edward Island](#) and [here](#)

[Quebec](#)

Many professionals are also asking about new or increased liability exposures related to resuming in-person delivery of services, specifically around liability associated with transmission of the COVID-19 virus. For instance,

If I infect a patient without knowing I have COVID-19 while rendering care and am sued, will my Professional Liability Insurance protect me?

If you are delivering professional services and are worried about liability related to possible transmission of COVID-19 to your patients, please rest assured that your professional liability insurance (PLI) policy is there to protect you.

An allegation related to transmission of COVID-19 while delivering professional services is considered similar to any other allegation of injury to a patient under your PLI policy. In fact, the definition of “injury” in the policy wording includes “disease” and the consequences that result from it, including death, mental anguish, and disability, among others.

As with professional practice generally, you are expected to practice safely and work within your scope of practice. During the current COVID-19 pandemic this means following the recommendations of your provincial/territorial government and the best practice guidelines and standards set by your regulatory body and workplace, particularly with respect to infection prevention, use of PPE, and safe delivery of care. If you disregard these guidelines, it could be argued that transmission of the virus was an expected or intended consequence of your decision and your insurance coverage may not respond. It is also standard to have exclusions for claims arising from actual or alleged abuse. Please remember to practice safely to keep yourself and your patients’ safe in these difficult times.

Does my insurance coverage respond if a visitor contracts COVID-19 on my premises, such as a waiting room?

Your Commercial General Liability (CGL) insurance protects you against claims arising from “bodily injury” or “property damage” that you (or your business, including your staff) may cause to another person as a result of your operations and/or premises and not related to your delivery of professional services. Generally, the definition of “bodily injury” in a CGL policy includes disease.

There may be coverage under a CGL policy to respond in this scenario, provided there were allegations of bodily injury, property damage or personal injury claimed by a third party arising from your handling of the COVID-19 pandemic. As with any CGL claim under the policy, the loss must also have occurred during the policy period and in the Coverage Territory. There are also standard policy exclusions that would be reviewed in the case of a claim. Decisions about how coverage will respond to claims relating to COVID-19 will be made by the insurer based on the facts of each claim, the policy at issue and applicable law.

Telehealth

You may also be delivering services via Telehealth to assist clients who can be appropriately served by digital means. There are additional exposures when utilizing technology to deliver care, including potential privacy breach or ransomware attack. You may already have an element of cyber/privacy coverage under your professional liability insurance policy, however BMS recommends that you consider securing additional Cyber Security & Privacy Liability insurance for additional protection.

This document is based on information available as of May 6, 2020. We encourage you to monitor the website of your provincial or territorial government and College for updates. This document is not intended to take the place of broker, legal or College advice. Please contact BMS if you have any questions about your liability insurance coverage and how it may respond in your practice scenario.