



March 19, 2020

CMS Releases Recommendations on Adult Elective Surgeries, Non-Essential Medical, Surgical, and Dental Procedures During COVID-19 Response

At yesterday's White House Coronavirus Task Force Press briefing, the Centers for Medicare & Medicaid Services (CMS) announced recommendations to limit non-essential adult elective surgery and medical and surgical procedures, including all dental procedures, during the 2019 Novel Coronavirus (COVID-19) outbreak. A copy of the recommendations may be found [here](#).

CMS's reasoning for the recommendations was three-fold:

- preserving needed resources (personal protective equipment (PPE), hospital and intensive care unit beds and ventilators and other equipment) for battling the outbreak
- freeing up the healthcare workforce to care for patients who are most in need
- limiting exposure of patients and staff to the SARS-CoV-2 virus (the virus that causes COVID-19) encouraging patients to remain home, unless there is an emergency

The recommendations provide a tiered framework for health systems to implement immediately during the COVID-19 response that is designed to inform health systems as they consider resources and how best to provide surgical services and procedures to those whose condition requires emergent or urgent attention to save lives, preserve organ function and avoid further harm from underlying condition or disease. CMS makes clear that these decisions remain the responsibility of local delivery systems, including state and local health officials, and those surgeons who have direct responsibility to their patients. However, CMS notes that in making the decisions not only must the clinical situation be evaluated but resource conservation must also be considered. The supply of PPE, hospital and intensive care unit beds and ventilators should be considered at all times, even in areas not currently dealing with COVID-19 infections.

Accordingly, noting that these should be used on a case-by-case basis, CMS suggests that hospitals and clinicians consider the following factors as to whether a planned procedure should proceed:

- Current and projected COVID-19 cases in the facility and region. Health systems should consider the tiered approach in the table below to curtail elective surgeries and procedures, with the decision made in consultation with the hospital, surgeon, patient, and other public health professionals.
- Supply of PPE to the facilities in the system
- Staffing availability
- Bed availability, especially intensive care unit beds
- Ventilator availability
- Health and age of the patient, especially given the risks of concurrent COVID-19 infection during recovery
- Urgency of the procedure

<u>Tiers</u>	<u>Action</u>	<u>Definition</u>	<u>Locations</u>	<u>Examples</u>
1A	Postpone surgery/ procedure	Low acuity surgery/healthy patient: Outpatient surgery, not life threatening illness	-HOPD -ASC -Hospital with low/no COVID-19 census	-Carpal tunnel release -EGD -Colonoscopy -Cataracts
1B	Postpone surgery/ procedure	Low acuity surgery/unhealthy patient	-HOPD -ASC -Hospital with low/no COVID-19 census	-Endoscopies
2A	Consider postponing surgery/procedure	Intermediate acuity surgery/healthy patient: Not life threatening but potential for future morbidity and mortality. Requires in-hospital stay	-HOPD -ASC -Hospital with low/no COVID-19 Census	-Low risk cancer -Non urgent spine & Ortho: Including hip, knee replacement and elective spine surgery -Stable ureteral colic -Elective angioplasty
2B	Postpone surgery/ procedure if possible	Intermediate acuity surgery/unhealthy patient	-HOPD -ASC -Hospital with low/no COVID-19 census	
3A	Do not postpone	High acuity surgery/healthy patient	Hospital	-Most cancers -Neurosurgery -Highly symptomatic patients
3B	Do not postpone	High acuity surgery/healthy patient	Hospital	-Transplants -Trauma -Cardiac with symptoms -Limb threatening vascular surgery

*

*

*

*

We anticipate that additional guidance in response to COVID-19 will be issued in the coming days and weeks, which may include additional waivers or modifications. Covered health care providers who are or may be affected by the consequences of the COVID-19 pandemic should monitor additional developments and announcements from the United States Department of Health and Human Services, CMS, the Office for Civil Rights, and various other federal and state agencies. If you have any questions about the impact of COVID-

19 on health care providers or the Elective procedure recommendations issued by CMS, please contact a member of our [national Healthcare team](#).

Contacts			
Kevin Burr	Omaha	(402) 231-8829	Kevin.Burr@KutakRock.com
Robert Cohen	Omaha	(402) 231-8738	Robert.Cohen@KutakRock.com
Torri Criger	Omaha	(402) 661-8649	Torri.Criger@KutakRock.com
Debra Fiala	Omaha	(402) 231-8750	Debra.Fiala@KutakRock.com
Kelsey Fohner	Rogers	(479) 250-9708	Kelsey.Fohner@KutakRock.com
Jennifer Forbes	Minneapolis	(612) 334-5009	Jennifer.Forbes@KutakRock.com
Howard Hahn	Omaha	(402) 231-8868	Howard.Hahn@KutakRock.com
Ashley Welch Hudson	Little Rock	(501) 975-3108	Ashley.Hudson@KutakRock.com
Jacy Hurst	Kansas City	(816) 502-4612	Jacy.Hurst@KutakRock.com
Eric Jackson	Fayetteville	(479) 695-1936	Eric.Jackson@KutakRock.com
Alexander Justiss	Little Rock	(501) 975-3153	Alexander.Justiss@KutakRock.com
Bryan Looney	Rogers	(479) 250-9703	Bryan.Looney@KutakRock.com
Debby Thetford Nye	Fayetteville	(479) 695-1966	Debby.Nye@KutakRock.com
Christopher Phillips	Omaha	(402) 231-8787	Christopher.Phillips@KutakRock.com
Anna Regnier	Fayetteville	(479) 695-3846	Anna.Regnier@KutakRock.com
Mark Sappington	Kansas City	(816) 502-4620	Mark.Sappington@KutakRock.com
Marceda Starks	Kansas City	(816) 502-4621	Marceda.Starks@KutakRock.com
Leslie Stewart	Rogers	(479) 250-9709	Leslie.Stewart@KutakRock.com
Erin Thompson	Fayetteville	(479) 695-1949	Erin.Thompson@KutakRock.com
Taylor Trippe	Fayetteville	(479) 973-4200	Taylor.Trippe@KutakRock.com
Whitney West	Omaha	(402) 346-6000	Whitney.West@KutakRock.com

This Client Alert is a publication of Kutak Rock LLP. It is intended to notify our clients and friends of current events and provide general information about healthcare issues. This Client Alert is not intended, nor should it be used, as specific legal advice, and it does not create an attorney-client relationship.

© Kutak Rock LLP 2020 – All Rights Reserved. This communication could be considered advertising in some jurisdictions. The choice of a lawyer is an important decision and should not be based solely upon advertisements.