



Ohio Alert: Elective Procedures and Surgeries No Longer Postponed, but Risk Assessment Necessary

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This will come as welcomed news to Ohio health care providers struggling financially during the COVID-19 pandemic: Dr. Amy Acton, part of Governor DeWine's COVID-19 taskforce, announced an [order](#) on April 23, 2020, directing health care providers in hospitals and outpatient surgery centers to reassess procedures and surgeries that were postponed. Dr. Acton had previously issued an order on March 17, 2020, postponing elective surgeries to conserve critical personal protective equipment and to open bed space to care for COVID-19 patients.

The order provides the following critical directives for health care providers:

- Review any postponed procedures or surgeries with patients.
- Consider with patients their current health situations and make a joint decision with patients whether to proceed with the procedure or surgery.
- Evaluate new or other chronic conditions of patients that may have a significant impact on their quality of life.
- Inform patients of the risk of contracting COVID-19, and the impact COVID-19 will have on them during the post-operative recovery process.

Health care providers, like hospitals, have been [struggling financially](#) during COVID-19, especially those in rural settings, due to postponements of elective surgeries and procedures. Hip and knee replacements and cosmetic procedures are good revenue generators for hospitals whose margins were narrowing even before the COVID-19 pandemic. Their inability to perform these procedures pushed them toward the red, so health care providers are certainly encouraged to begin reviewing these postponed procedures and surgeries in accordance with Dr. Acton's order.

Providers know that business needs do not outweigh the needs of a patient's care. Therefore, they need to be sure to proceed in line with the order's directives and document the process to mitigate as much risk as possible. Indeed, there is already speculation about the possibility of health care providers, especially hospitals, being inundated with plaintiffs' lawsuits related to COVID-19. So following Dr. Acton's orders is even more critical to ensuring economic recovery for any health care organization.

Scheduling a cosmetic surgery for a patient with multiple co-morbidities which would make them susceptible to COVID-19 is not the best idea. Regardless of how hard the patient pushes for the surgery or procedure, remember the order requires a "joint decision" between the provider and patient. Be sure to document whether the patient has any new conditions. This may prove difficult to do correctly without an in-person examination, but the patient should be asked whether they have any new health issues since the last assessment to schedule the procedure. Finally, with respect to item 4 listed above, providers must document that they informed a patient of (1) the risk of contracting COVID-19, and (2) the impact it will have on them during their recovery, because it could prove critical in the unfortunate event a patient does contract the virus.

For further information on this topic or advice on how to proceed with these elective procedures and surgeries, please contact a member of Frost Brown Todd [Health Care Innovation Industry Team](#). We are here to help you help your patients!

To provide guidance and support to clients as this global public-health crisis unfolds, Frost Brown Todd has created a [Coronavirus Response Team](#). Our attorneys are on hand to answer your questions and provide guidance on how to proactively prepare for and manage any coronavirus-related threats to your business operations and workforce.

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