Indemnity Arrangements During the Coronavirus Pandemic
NHS Wales Shared Services Partnership
Introduction

All staff in the health & social care sector are working incredibly hard to increase capacity and to provide care to patients in these very challenging circumstances. It is important that indemnity concerns do not become a barrier to effective care arrangements and the development of alternative delivery models to support patient needs.

Existing schemes operated within Wales, including the General Medical Practice Indemnity Scheme, NHS Indemnity and the Welsh Risk Pooling arrangements extend to the provision of care to patients who are diagnosed with, or suspected to have, Covid19.

The Coronavirus Act 2020 also provides provision for indemnity to be provided or extended in special circumstances.

Health bodies in NHS Wales are prevented from purchasing commercial insurance in all but a few exceptional circumstances. The common law principle of vicarious liability, means that an NHS health body employing a member of staff, is liable for the acts and omissions of those individuals in the course of their Employment.

The NWSSP Legal & Risk Service has established a hub of experienced lawyers to provide advice on legal issues arising from the Coronavirus pandemic. This is co-ordinated by Senior Solicitor Sarah Watt and enquiries should be emailed in the first instance to Sarah.Watt@Wales.nhs.uk

Sarah will coordinate the appropriate teams to assist with the enquiry and ensure the matter is progressed appropriately.

The Welsh Risk Pool Operations Team is able to provide advice on indemnity arrangements. The main WRP is of course closed but voicemails will be picked up. Anyone who has an indemnity query should address it in the first instance to the Head of Safety & Learning, Jonathan Webb, via email Jonathan.Webb@wales.nhs.uk or telephone 07850 521999.
Temporary Sites and Alternative Premises

Where a field hospital, reception centre or other facility is setup by the NHS, indemnity arrangements can be established. A lead body (which would usually be the Health Board responsible for setting up the temporary site) would become responsible for the indemnity of staff, volunteers and partners deployed to work at that location.

It is essential that contracts, memorandums of understanding and service level agreements are prepared appropriately to ensure that requirements of premises owners are maintained and that the duties of the NHS are clear. The Legal & Risk Commercial and Property teams can provide prompt advice to NHS organisations. It is therefore important that during negotiations and setup arrangements, the Legal & Risk team is involved as early as possible.

Staff Returning to Practice

Healthcare professionals who have responded to the call to assist the NHS in these unprecedented circumstances will be indemnified by the NHS organisation who is in the command and control of the activities which the individuals perform.

The Coronavirus Act 2020 facilitates an expedited approach for professional regulators to register healthcare professionals and it is important that individual organisations have clear records of who has been tasked to work on specific sites.
NHS Volunteers

There has been a very positive response to the call for additional volunteers to support the NHS during the pandemic. The existing arrangements for indemnity within the NHS already cover volunteers.

Indemnity of these new volunteers is applied by the organisation who is in command and control of their activities. It is essential that clear records are maintained of who is appointed to what task. It is also vital that volunteers are appropriately briefed and provided with appropriate equipment and guidance to carry out the tasks required of them.

Staff Working Outside of Their Normal Specialty or Service

During the pandemic, it will be necessary for existing NHS staff to work in areas and locations which are not their normal duties. Welsh Government and NHS Wales are incredibly proud of the efforts of NHS staff.

The indemnity of staff while working at a different location, carrying out different duties or, for a different NHS organisation, is provided by the health body who is in command and control of the activities performed. There does not need to be an honorary contract in place for the indemnity to apply. For example a GP working at a hospital location would be indemnified by the Health Board or Trust that is responsible for the hospital.
Alternative Guidelines or Procedures

It may be necessary for guidelines and pathways to be adjusted to deal with capacity issues and NHS staff will have difficult decisions to make during the pandemic. There is regularly updated national guidance, specialty guidance and local guidance issued by organisations. Whilst it may be different to previous practice, staff should follow the revised guidance and be assured that they are indemnified in doing so.

Primary Care

The General Medical Practice Indemnity Scheme (GMPI) provides indemnity for clinical negligence claims arising from incidents on or after 1 April 2019 to all general medical practice staff undertaking NHS ‘primary medical services’ (as defined in Legal & Risk Services’ GMPI FAQs).

Therefore, the care and treatment of patients confirmed of or suspected to have COVID-19 are captured by GMPI if a primary medical service is being carried out.

As per the standing arrangements for the GMPI scheme:

- Locum GPs need to apply to NWSSP to be included in the All Wales Locum Register (AWLR) if they want to access to GMPI.

- It is necessary for Practices to keep a record of staff working on the National Workforce Reporting System (WNWRS).

You can contact the GMPI team via:

GMPI team e-mail: GMPI@wales.nhs.uk

GMPI team helpline: 029 2090 5454

(please leave your name and contact number and brief message and the GMPI team will contact you)

We request that you email the GMPI team with any queries where possible given the ongoing situation with COVID-19.
Contact

For any questions on the information provided, please contact:

Jonathan Webb
Head of Safety & Learning
Companies House

Email: Jonathan.Webb@wales.nhs.uk