



# Top Ten Tips for Managing EMR Documentation During the COVID-19 Pandemic

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# Top Ten Tips for Managing EMR Documentation During the COVID-19 Pandemic

By Matthew P. Keris

The recent trend in high-exposure health care provider litigation encompasses not only the pursuit of a case based on the medicine, but also a separate case in discovery based on the electronic medical record (EMR) and audit trail. In response to this rapidly developing area of health care law, Marshall Dennehey has launched an Electronic Medical Record and Audit Trail Litigation Practice Group. Led by Matthew P. Keris, a recognized thought leader and author in the area of EMR litigation, the attorneys in this practice assist medical professionals and facilities with the production and preservation of EMR/audit trail documents to reduce litigation costs and standardize discovery. They also provide counsel in dealing with EMR system vendors, plaintiff EMR consultants, and other discovery and trial issues associated with EMR litigation.

As hospitals are overwhelmed with COVID-19 patients and staff are stretched to their limits, EMR documentation is likely to suffer as a result of rushed, less detailed and error-prone entries. In the current medical malpractice climate, where greater scrutiny can be placed on the EMR and audit trail over the medicine itself, legal immunity should not be expected for claims that arise during this time. Here are the top ten best practices for managing documentation during the COVID-19 pandemic.

1. **Be a good historian.** Years from now, you will need to remind and educate counsel, judges and juries of the magnitude of this world pandemic. You may need to compare COVID-19 period numbers to your typical census to demonstrate that the hospital was much busier than normal, which would impact documentation practices.

2. **Chronicle EMR technical issues.** If the EMR system “goes down,” suffers widespread “glitches,” or is compromised in any way, it contributes to an EMR problem, and you will need to explain it later. Best efforts should be made to detail these issues now for use later.
3. **Keep accurate hospital staffing records.** It will be important to show an increased reliance of locum tenens, agency nurses, “unretired” health care providers and volunteers who may have never used the particular EMR system prior to giving care. Staffing information will be critical in explaining the EMR for care given in this time period.
4. **Document duties and privileges that have been expanded or temporarily changed.** When examining the record at a later date, these new responsibilities may explain why information was documented by a certain person.
5. **Acknowledge in written form that documentation requirements have been relaxed during the COVID-19 period.** It should be specifically acknowledged that documentation of patient care should be performed “as soon as reasonably possible” as opposed to “simultaneous to the care rendered.” Doing so will eliminate a later argument that a staff member violated hospital documentation protocols during the COVID-19 period.
6. **Relax smartphone penalties and determine if staff are using their devices for patient care or taking personal notes.** If so, have that information delivered to the official record.
7. **Investigate EMR workaround practices for safety purposes.** While dangerous practices should be ended immediately, if legitimate workarounds are discovered, keep an open mind and eliminate unnecessary EMR redundancies to improve care.

8. **Limit the “footprint” in the EMR after the patient is discharged from the hospital.** One unsettled area of the law is whether a privilege can be attached to an audit trail. In states that hold that the audit trail is an “original source” document, similar to the hospital chart, attorney or peer review involvement within the EMR may not be protected. An audit trail showing involvement by the attorney or peer review could expose where their concerns about the care are placed.
9. **Recognize that documentation practices during COVID-19 may not meet your usual standards.** Your staff needs to treat the patient, not the record. Most will understand and agree that it is better to have a good result than a detailed chart.
10. **Advocate and defend your decisions and practices from the COVID-19 period.** Judges and juries will remember and understand the hard decisions made during this unprecedented time period. They will be forgiving of occurrences and practices that broke from the norm. The rightful goodwill endeared upon health care providers will not quickly dissipate. Years from now, when others second-guess or scrutinize decisions made during this period, with the benefit of hindsight, return fire and fight back with facts.

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