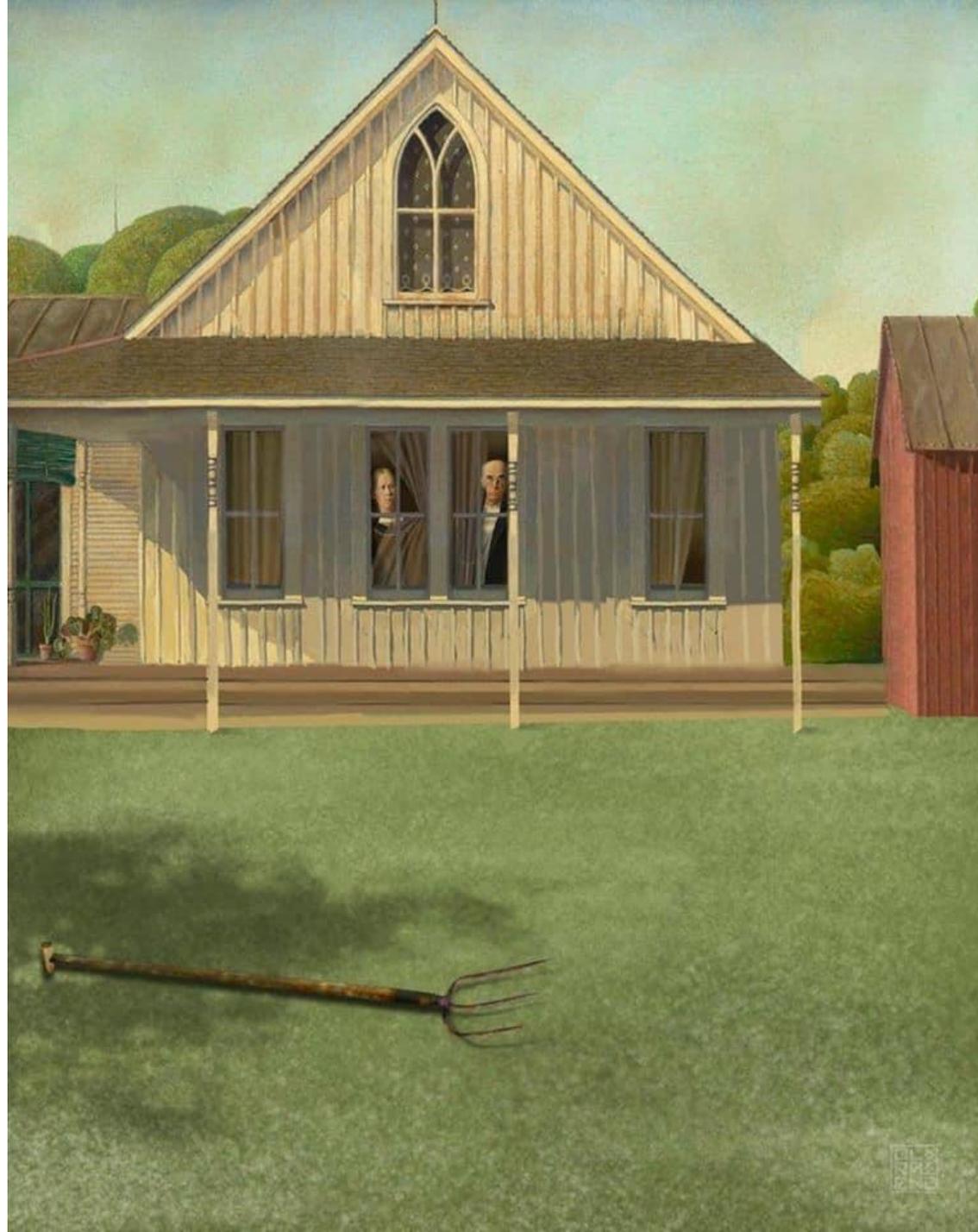


# Ethical Considerations for Delaware Lawyers during the COVID-19 Pandemic

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# What We Will Discuss

- **Delaware Judiciary response to Covid-19 and impact of stay-at-home orders**
- **Continuity of care for clients**
- **Ethics of working remotely**
- **Need for succession planning**
- **Ethics and practice resources**

# Delaware Judiciary response to COVID-19 and impact of stay-at-home orders

- **Supreme Court Order(s)**
- **Updated information on Delaware Courts insert website address**
- **Stay-at-home orders**
- **MCLE requirements**

# Continuity of Duty to Clients

- **Communication with Client – Rule 1.4**
  - Notice to clients and setting expectations
  - Client appointments and social distancing
  - In person, phone, video conferencing
  - Changes to court appearances
- **Competence and Diligence – Rules 1.1 and 1.3**
  - Meeting deadlines
  - E-filing

# Considerations for working remotely

- **Business continuation plan that includes access to**
  - **Electronic and paper files**
  - **Telephone and voicemail**
  - **Mail and deliveries**
  - **Email**
  - **Court e-filing**
  - **Calendar**
  - **Trust business accounts**

# Ethics of working remotely

- **Competence in using technology - Rule 1.1 Comment [8]**
  - **Added risks of using remote technologies**
- **Maintaining confidentiality - Rule 1.16**
  - **Appropriate use of technology**
- **Supervising office staff while working remotely Rules 5.1, 5.2, 5.3**
- **Client files**
- **Trust accounts - Rule 1.15**
  - **Electronic transfers – Rule 1.15(d)(12)(I)**
  - **Record keeping – Rule 1.15(d)**

# The need for succession planning

- **Quarantine or incapacity of lawyer - Rule 1.3  
Comment 5**
- **Declining or terminating representation Rule 1.16**
- **Designation of successor counsel**
- **Agreements and authorizations with successor  
counsel**
- **American Bar Association**

# Ethics and practice resources

- Delaware Lawyers Assistance – Carol Waldhauser 777-0124
- ABA Formal Opinion 482 (Sept. 19, 2018) Ethical Obligations Related to Disasters
- Supreme Court Rule 58 Provision of Legal Services following determination of major disaster.
- ZOOM, Quick Books, DSBA, ABA, Malpractice Carriers
- [https://www.americanbar.org/groups/professional\\_responsibility/resources/lawyersintransition/successionplanning/](https://www.americanbar.org/groups/professional_responsibility/resources/lawyersintransition/successionplanning/)



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## Essential Services Screening Recommendations for COVID-19 Pandemic

*To help protect the public against the spread of COVID-19, Governor John Carney and Delaware Division of Public Health Director Karyl T. Rattay, MD, MS, are requiring that high-risk businesses, and strongly recommend that all other employers, screen employees each day before work by following these steps:*

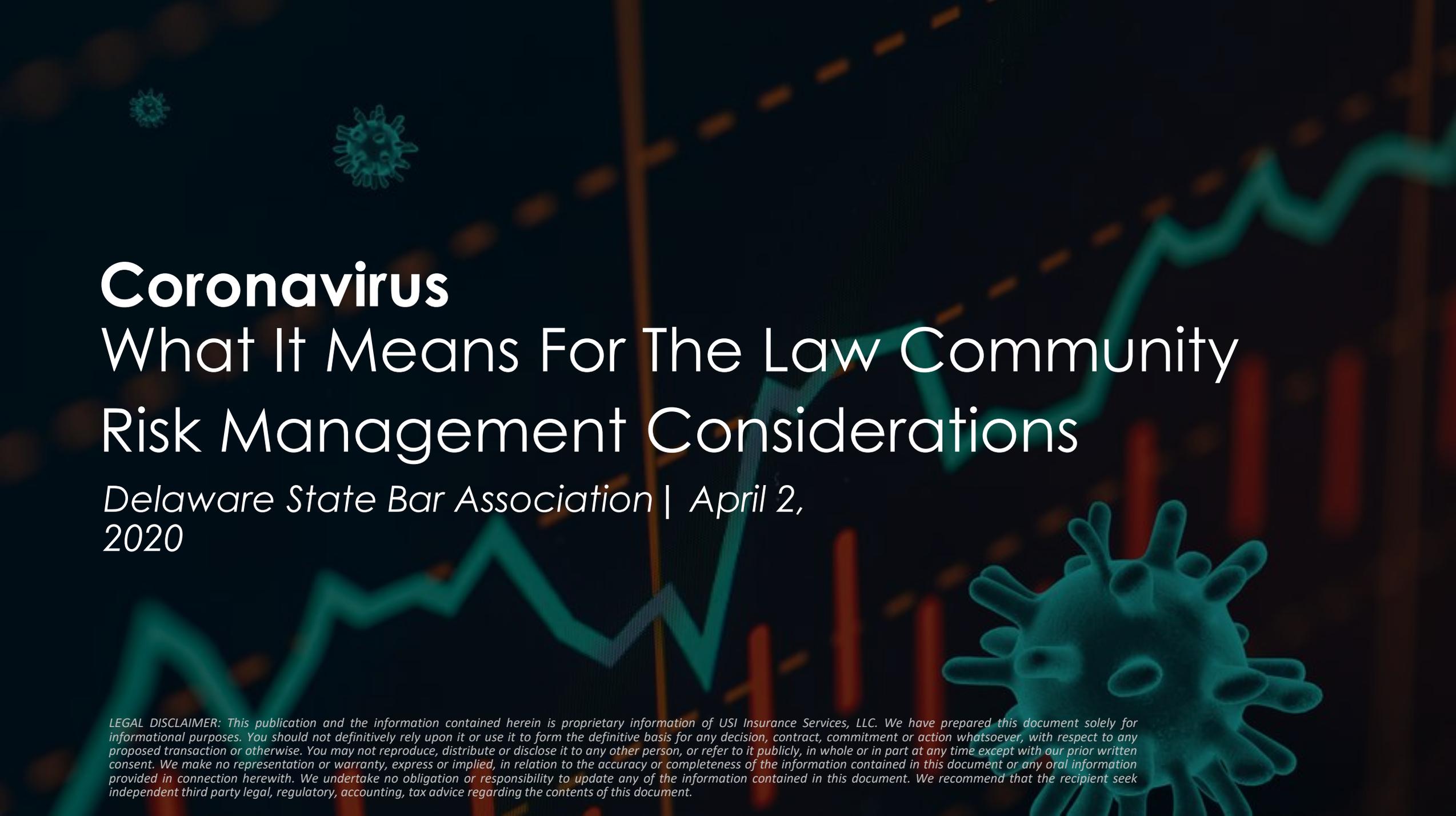
- All employees who are able to work from home should be working from home at this time.
- For those employees who must report to work: each employee must be asked about and report body temperature at or above 99.5 degrees Fahrenheit. If facility has the capability to perform active temperature monitoring, they may do so. If an employee reports or is noted to have body temperature at or above 99.5 degrees Fahrenheit, that employee should be sent home.
  - It is best to use touchless thermometers (forehead/temporal artery thermometers) if possible, but if you must use oral or other types of thermometers, make sure to clean the thermometers thoroughly between each employee, as to not spread infection.
  - Follow the manufacturer's directions to disinfect the thermometer.
  - If no directions are available, rinse the tip of the thermometer in cold water, clean it with alcohol or alcohol swabs, and then rinse it again.
  - If you do not have thermometers on site, have your employees take their temperatures at home. They should stay home if they have an elevated temperature at or above 99.5 degrees Fahrenheit and follow the same protocol.
  - Personnel screening employees for fever should consider wearing gloves and face masks per CDC recommendations.
- Employers must screen each incoming employee with a basic questionnaire, which should include at least the below, however can be made more comprehensive and/or employer-specific in consultation with medical professionals:
  - Do you have symptoms of respiratory infection (fever, cough, shortness of breath, severe sore throat, or muscle aches)?
    - If YES, but symptoms have a known cause (asthma, COPD, chronic sinusitis, etc.), employer or medical personnel should weigh risks for COVID-19 exposure and consider sending employee home.
    - If YES, or employee otherwise symptomatic and considered at risk for COVID-19 exposure, the employee should isolate at home.
      - The employee should remain at home for a total of seven (7) days **after symptoms have resolved** defined as the resolution of fever without the use of fever-reducing medications **and** improvement in respiratory symptoms (e.g., cough, shortness of breath); **and** resolution of body aches and sore throat, before being permitted to return back to work.
      - Three days after symptoms resolve, patients are no longer required to self-isolate at home; however, they must continue to practice strict social distancing, avoid sustained close contact with others and maintain good hand

hygiene, for the remaining four days (for a total of seven days) before returning to work and their normal daily routine.

- Persons may return to work after this 7-day period however should continue to recognize the risk of infectiousness and self-monitor for symptoms.
  - Employees should consult medical professionals if desired or needed and may adhere to screening decisions made by on-site medical personnel as appropriate.
  - If at any time a doctor confirms the cause of the employee's fever or other symptoms is not COVID-19 and approves them to return to work, then the employees can return.
  - If NO, proceed to next step
- Have you been in *close contact* (e.g., within 6 feet for more than a few minutes) with a person with confirmed COVID-19 infection? (note: this does not apply to healthcare workers using appropriate PPE—see DPH guidance DHAN #429 for Management of Potential Exposure for Health care Personnel)
  - If YES, employee will be required to stay at home for 14 days from the time they were exposed to confirmed COVID-19.

Remember to continue to follow preventative measures no matter how many employees are in the office — physical distancing, stay home when sick, use cough and sneeze etiquette, and practice hand hygiene as often as possible. Clean all high-touch surfaces regularly. For more information, visit: [coronavirus.delaware.gov/](https://coronavirus.delaware.gov/). For answers to your COVID-19 questions, call 1-866-408-1899. Those with a hearing impairment can dial 7-1-1. Public inquiries and questions can be sent by email to [DPHCall@delaware.gov](mailto:DPHCall@delaware.gov).

(updated March 31, 2020)



# Coronavirus

## What It Means For The Law Community Risk Management Considerations

*Delaware State Bar Association | April 2,  
2020*

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## **Topics**

Legal Malpractice

Virtual Notary

Suing Clients for Fees

Cyber Exposures

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# Legal Malpractice

- An LPL policy generally provides coverage for demands made upon the policyholder for damages brought forth during the policy period resulting from an error or omission within the firms covered prior acts date.
- An “occurrence” policy (such as a homeowner’s policy) normally insures an unexpected event within the policy period that result in bodily injury or property damage.

## Risk Management Tips

- ✓ Do not cancel your policy
- ✓ Changing limits and deductibles will effect your prior acts coverage
- ✓ Make sure you are with a stable carrier with broad coverage

# Virtual Notary Work

- Typically this is excluded from your policy
  - The point of the exclusion is to prevent coverage where a notary made no effort to confirm the identity of the signor
- Some carriers have taken the position that as long as the notary was in compliance with state requirements for remote notarization the policy would respond. Following the state requirements for confirming identity and witnessing the signature (usually via video) meets the requirements of the policy.

## Risk Management Tips

- ✓ Contact your broker to see how what position your carrier is taking.

# Suing for Fees

## Risk Management Tips

- ✓ Malpractice counterclaim
  - ✓ 40% - 50% of the time
  - ✓ Potential reputational damage
  
- ✓ Is the counterclaim excluded
  - ✓ Check with your broker
  
- ✓ What is your deductible?
  
- ✓ Re-evaluate the reasonableness of your fee
  - ✓ You can not recover excess fees
  - ✓ Reduce the amount accordingly

# Cyber Exposures

## Risk Management Tips for Employers

- ✓ Require 2-factor authentication
- ✓ Engage in regular security updates
- ✓ Back up systems and data regularly
- ✓ Advise employees to be wary of everything they click on
- ✓ Use call back verification for vendor or client account changes and fund transfers for any amount above a predetermined threshold (i.e. \$25K)

## Risk Management Tips for Employees

- ✓ Keep computers and other devices in a secure place
- ✓ Log out when you are not using your computer or system
- ✓ Have strong passwords
- ✓ Back up and save data regularly
- ✓ Access corporate information with a VPN especially if you are accessing on a public network.

The background features a dark teal and red color scheme. It includes a stylized line graph with a teal line and a red dashed line, and a 3D-rendered virus-like particle with teal spikes on the right side.

***Thank You***

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