Legal Issues In Public Health Emergencies

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Principal Objectives:

- The Legal Environment in Emergencies
- Regulation of Health Professionals
- Liability Issues
Assessing the Role of the Law in Public Health Emergencies

Laws pervade emergency responses at every level of government:

- They determine what constitutes a public health or other emergency
- They help create the infrastructure through which emergencies are detected, prevented, and addressed
- They authorize the performance (or nonperformance) of various emergency responses by a host of actors
- They determine the extent of responsibility for potential or actual harms that arise during emergencies
Legal Triage - 1

Legal Triage in PHEs – Public health law in real-time

Government

Laws

Partners

Actors
Legal Triage - 2

**Legal triage** refers to the efforts of legal actors and others to construct a favorable legal environment during emergencies through a prioritization of issues and solutions that facilitate legitimate public health responses.

Legal actors and others must:

- **assess and monitor changing legal norms** during emergencies;

- **identify legal issues** that may facilitate or impede public health responses as they arise;

- **develop innovative, responsive legal solutions** to reported barriers to public health responses;

- **explain legal conclusions** through tailored communications to planners and affected persons; and

- **consistently revisit the utility, efficacy, and ethicality of legal guidance.**
Legal Landscape in Emergencies

Once an emergency is declared, the legal landscape changes depending in part on the type of emergency declared.
Levels of Emergency Declarations - 1

**Local**
- Emergency or Disaster
- Public Health Emergency

**State**
- Emergency or Disaster
- Public Health Emergency

**Federal**
- Stafford Act Emergency
- DHHS Public Health Emergency

**International**
- WHO Public Health Emergency of Intl Concern
- Emergency Declarations By Foreign Governments

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[Image: Diagram showing the levels of emergency declarations from local to federal and international, with categories like Emergency or Disaster, Public Health Emergency, Stafford Act Emergency, DHHS Public Health Emergency, WHO Public Health Emergency of Intl Concern, and Emergency Declarations By Foreign Governments]
Levels of Emergency Declarations - 2

- International Govts Emergency Declarations
  - International WHO Public Health Emergency of International Concern (PHEIC)
    - Federal “DHHS” public health emergency
    - Federal “FEMA” emergency
      - State emergency or disaster
        - State public health emergency
          - Local public health emergency
          - Local emergency or disaster

Public health and health care authorities and powers, liabilities, immunities, and other critical legal issues vary depending on the type of emergency declared.
Model State Emergency Health Powers Act

- Individuals are bestowed special protections and entitlements
- Government is vested with specific, expedited powers to facilitate emergency responses
- Licensing and credentialing requirements may be waived
- Volunteers and others may be protected from civil liability
States Defining “Public Health Emergency”

“Public health emergency” or similar term defined in state statutes - 26

Data Current as of August 15, 2011
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Licensure Reciprocity

• When can health professionals practice across state lines?

• **Emergency Declarations** and other laws allow states to waive normal laws for professional licensure, certification, and privileging during a declared emergency and to recognize out-of-state health professionals.

• **Emergency Management Assistance Compact (EMAC)** provides similar licensure reciprocity for state agents.

• Other **reciprocity agreements** may apply (e.g., Nurse Licensure Compact,)
Scope of Practice Limits

• **Defined** - extent of a licensed or certified professional’s ability to provide health services pursuant to their competence and license, certification, privileges or other lawful authority to practice.

• **Uniform Emergency Volunteer Health Practitioners Act** ~ volunteer health practitioners cannot provide services that are outside the practitioner’s own scope of practice even if a similarly-situated practitioner in the state is permitted to provide the same services.

Source: http://www.uevhpaoDesktopDefault.aspx?tabindex=1&tabid=69
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Civil Liability

- **What is civil liability?**

Civil liability is the potential responsibility that a person or institution may owe for their actions, *or failures to act*, that result in injuries or losses to others.
Who May Face Civil Liability?

- Health care workers and volunteers
- Health care entities or employers
- Persons or entities responsible for emergency responses
Standard of Care in Emergencies

**Standard of Care**
Generally refers to the duty owed health care practitioners to their patients depending on the circumstances.

**Crisis Standard of Care**
Adapt standard of care to screen and treat increasing numbers of patients with limited resources.
Two Legal Paths Re: Negligence Claims In Crisis Standards of Care

Path 1
- Conventional Care
  - Follow the Evolving Standard of Care
- Patients
- VHPs
- Liability Risks

Path 2
- Contingency Care
- Emergency Declaration

Greater
- Malpractice Liability
- Insurance
- Employed Personnel
- Resources

Lesser

Provide Enhanced Liability Protections for Health Practitioners and Entities

Crisis Standard of Care
Liability Protections for Health Practitioners and Entities in Emergencies

Despite liability risks, many legal liability protections apply during emergencies, including:

- Governmental (sovereign) Immunity
- Good Samaritan Acts
- Volunteer Protection Acts
- Federal PREP Act
- Entity Liability Protections
Questions/Comments - Contact Us

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• Questions, comments, thoughts?

• Thank you!