

TABLE 3-1

Selected Legal Issues of Concern to Health Care Practitioners and Entities Responsible for Emergency Preparedness

Subject	Legal Issues
Organization of Personnel	<ul style="list-style-type: none"> • How are employees, independent contractors, and volunteers legally distinguished for the purpose of coordinating services and benefits during an emergency? • Do existing labor contracts or union requirements affect the ability of the entity and its personnel to respond to an emergency? • Have appropriate contractual or other mechanisms been executed to facilitate the delivery of services by employed or volunteer personnel, ensure worker safety, or ensure the availability of workers' compensation or other benefits during an emergency?
Access to Treatment	<ul style="list-style-type: none"> • Has the entity assessed its strategy for conducting medical triage under legal requirements for treating existing and forthcoming patients? • Is the entity prepared to screen and potentially divert excess numbers of patients during an emergency consistent with the Emergency Medical Treatment and Active Labor Act (EMTALA), absent its waiver during a declared emergency? • Do health care personnel who are designated to treat existing and forthcoming patients pose any risks to patients either through (1) exposure to infectious or other conditions or (2) the use of personal protective equipment that may impede the delivery of medical services?
Coordination of Health Services	<ul style="list-style-type: none"> • Are health care personnel aware of the legal effects of a shift to crisis standards of care and changes relating to scopes of practice during a declared emergency? • Are health care personnel knowledgeable about conditions related to the issuance of emergency use authorizations (EUAs) by the Food and Drug Administration (FDA), including accompanying mandatory emergency use information for patients and providers? • Are adequate mechanisms in place to ensure compliance with surveillance, reporting, testing, screening, partner notification, quarantine, isolation, and other public health mandates during an emergency? • Are legal issues concerning the use of volunteer health professionals during an emergency addressed through the entity's emergency plan?
Patients' Interests	<ul style="list-style-type: none"> • Can patients with physical or mental disabilities be accommodated during the emergency consistent with disability protection laws? • Do patients have adequate access to available medical countermeasures to ensure their health and safety? • Are appropriate measures in place for attempting to ascertain patients' informed consent? • Barring waiver of national, state, or local privacy laws through emergency declarations, are the entity and its personnel prepared to respect patients' health information privacy rights during an emergency? • Is the entity prepared to evacuate at-risk patients in response to an emergency?
Allocation of Resources	<ul style="list-style-type: none"> • Is there a legitimate process for determining allocation of limited resources that is fair, reasonable, nondiscriminatory, and credibly based on protecting the health of patients and the public? • Are there federal, state, and/or local policies regarding resource allocation that should be followed? • Can government appropriate existing resources (with just compensation) for communal purposes during an emergency?
Liability	<ul style="list-style-type: none"> • When may the entity and its personnel be liable for their actions in treating patients under crisis standards of care during an emergency? • What legal protections from liability for entities, their health care personnel, independent contractors, and volunteers (including insurance coverage) apply during an emergency? • May entities and their personnel face potential liability for failure to adequately plan or train for emergencies?

continued

TABLE 3-1 Continued

Subject	Legal Issues
Reimbursement	<ul style="list-style-type: none"> • Are there established reimbursement protocols for treating patients during an emergency? • Are private health insurers or other payers legally required to reimburse for care delivered to patients in furtherance of the public's health? • Are entities organized to seek federal and state reimbursement through the Centers for Medicare & Medicaid Services, the Federal Emergency Management Agency, or other sources for care delivered in off-site facilities operated by the entity? • Have federal/state authorities accelerated, altered, or waived Medicare/Medicaid requirements for reimbursement during an emergency?
Interjurisdictional Cooperation	<ul style="list-style-type: none"> • Has the entity executed memorandums of understanding, mutual-aid agreements, or other agreements to facilitate interjurisdictional coordination of emergency health care services? • Are these agreements consistent with federal (Department of Health and Human Services/Assistant Secretary for Preparedness and Response or Centers for Medicare & Medicaid Services; Department of Homeland Security/National Incident Management System) or other government requirements? • Is the entity's all-hazards emergency plan integrated with community-level emergency planning and objectives? • Have state or local governments on international borders addressed specific concerns through lawful agreements across borders?

SOURCE: Hodge et al., 2009.