Legal Issues In Public Health Emergencies

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Principal Topics:

- Defining “Crisis” in the Context of Emergencies
- Assessing the Legal and Ethical Environments in Emergencies
- Core Legal Issues
  - Licensure of Health Practitioners
  - Liability

Crisis Standards of Care

Conventional Contingency Crisis

Crisis Standard of Care - IOM

Public Health Emergencies - Defined

Boston flu outbreak prompts mayor to declare public health emergency

The city of Boston has declared a public health emergency as fears of a flu outbreak are spreading among the city’s residents. Mayor Francis Beane announced the declaration on January 15, 2019, citing the number of flu cases in the city as over 300.
Public Health Emergencies - Defined

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 - 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 Triage - 3

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.
**Multiple Levels of Emergency Declarations**

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<th>Local</th>
<th>State</th>
<th>Federal</th>
<th>International</th>
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<td>Emergency Declaration</td>
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Public health authorities and powers, actors, liabilities, immunities, and other critical legal issues vary depending on the declared emergency.

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**Model State Emergency Health Powers Act**

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

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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).

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**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.

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**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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**Proliferation of Emergency Legal Issues**

- **Authority**
- **Licensure**
- **Legal Triage**
- **Compulsory Powers**
- **Liability**
- **Social Distancing**
- **Allocation of Resources**
What About 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 Be Liable?

- Health care workers and volunteers
- Health care entities or employers
- Persons or entities responsible for emergency responses

Changing Standards of Care

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

Crisis Standards 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

- Greater
  - Responsibility
  - Insurance
  - Employment
  - Resources
- Lesser
  - Follow the Evolving Standard of Care
  - Provide Enhanced Liability Protections for Health Practitioners and Entities

Liability Protections for Health Practitioners and Entities in Emergencies

- Governmental (sovereign) Immunity
- Good Samaritan Acts
- Volunteer Protection Acts
- Federal PREP Act
- Entity Liability Protections

Conclusions

- So how will these and other legal issues be addressed in Arizona pursuant to implementation of crisis standards of care?; and
- How do laws and policies comport with ethics norms and frameworks in emergencies?
Questions/Comments

The Network for Public Health Law

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