



Standards of Care During A Prolonged Public Health Emergency

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DPH Standards of Care Workgroup

Standards of Care Workgroup

- Comprised of: DPH staff, individual practitioners, representatives from a variety of health care organizations, ethicists, and other public health professionals.
- Studying the provision of care during a prolonged public health emergency:
 - overwhelming demand for services with scarce available resources

Standards and COOP

- Why are “standards of care” relevant to COOP planning?
 - Challenge in COOP planning is to maintain essential functions under changed circumstances
 - As circumstances change (as resources become scarce), standards will change

What are standards?

- Two types of standards:
 - Clinical judgment: treatment that would be provided by a similarly qualified, prudent practitioner under the same or similar circumstances
 - Includes standardized practices within facilities, *e.g.*, how frequently vital signs are taken. These are actually institutionalized clinical judgments that assume the availability of certain resources
 - Statutory and regulatory requirements re: staffing, physical plant, dietary, reporting, documentation

Workgroup Mission

For prolonged public health emergencies:

- Develop ethical guidelines for clinical decision-making;
- Develop procedures for requesting waivers/modifications of statutes and regulations;
- Clarify existing laws re liability

Ethical guidelines for making clinical decisions

Standards of care depend on totality of circumstances. As circumstances change, so does the standard.

Ethical guidelines – making clinical decisions

- “Altered standards of care” – common term used to describe changes to standards of care when there is a prolonged public health emergency and resources become scarce
- Is a legal misnomer since “standards of care,” by definition, depend on the totality of the circumstances (including scarcities of resources)

Ethical guidelines – making clinical decisions

- It is not possible to identify standards of care for every circumstance that might arise. Therefore, will develop ethical guidelines for decision-making
- Modeled on “Stand on Guard for Thee” – Canadian model
- Paradigm shift from individual to population-based care, *i.e.*, “the greatest good for the greatest number” -- save the most lives possible with severely depleted resources

Ethical guidelines – making clinical decisions

Canadian model - decision making should be:

- Open and transparent
- Reasonable
- Inclusive
- Responsive
- Accountable
- Consistent with core ethical values

Ethical guidelines – making clinical decisions

Core ethical values:

- Individual liberty: restrictions must be proportional to risks
- Protect public from harm: balance protective measures against loss of liberty
- Proportionality: minimum necessary restrictions
- Privacy: least intrusive measures
- Equity: fairness; justice

Ethical guidelines – making clinical decisions

Core ethical values (cont.):

- Reciprocity: ease burdens of those who bear a disproportionate burden in protecting public good
- Trust: ethical and transparent decision-making processes; build trust *before* emergency declared
- Solidarity: communication between stakeholders
- Stewardship: protect and develop resources; accountability for public well-being

Ethical guidelines – making clinical decisions

Apply framework to:

- Allocation of scarce resources such as limited staffing, beds, vaccines, antivirals, ventilators
- Reallocation of people and resources
- Triage

Ethical guidelines – making clinical decisions

- Cannot define precisely how resources should be allocated. Requires clinical judgment by persons familiar with the totality of circumstances
- Not possible to predict all circumstances

Ethical guidelines – making clinical decisions

Application of the Canadian model requires that:

- Policies/standards be fairly and justly applied without regard to payer source or demographics
- Decision-making be rational, just, and equitable
- Standards/protocols be incrementally altered – only enough to meet current circumstances and for no longer than necessary
- Accountability: document changes and reason why

Ethical guidelines – making clinical decisions

Examples

- Care that is provided on a scheduled, regular basis: first, stretch the interval, don't drop the intervention (instead of turning every 2 hours, turn every 3 hours); stop care altogether only if okay for that particular patient OR must stop it for everyone due to lack of staff or equipment.

Ethical guidelines – making clinical decisions

- Consider minimizing documentation, using checklists to speed recording of critical information (medication administration; treatments given, critical parameters)
- Individualize with minimal required parameters, *e.g.*, patient with BP problem – monitor BP, not TPR

Ethical guidelines – making clinical decisions

- Consider using standardized methodology for decision-making about life-saving care/technology when these are inadequate for the number of patients presenting (*e.g.*, SOFA scale) – consider documenting assessment scores in each patient's record
- Consider separating triage and treatment functions to ensure equity of the process

Ethical guidelines – making clinical decisions

- Elective care may be eliminated at any time and should be eliminated before necessary care
- If staff roles are expanded, do so incrementally and only for as long as necessary; expanded roles should ideally be under supervision of experienced, licensed person who delegates and directs a team of healthcare workers and oversees patient caseload
- Consider applying the concept of “field expediency” as circumstances become more dire

Ethical guidelines – deciding whether to work

Expect 30-40% absenteeism due to worker illness and illnesses of family; the need to grieve lost loved ones; fears for safety of self and family; child, elder and pet care needs; liability concerns; worry that they may not be able to perform “up to usual standards;” fear of practicing outside scope of licenses or being asked to do things that they are not trained to do...

Ethical guidelines - deciding whether to work

- Questions have been raised about the ethical obligation of health care workers to provide care, and consequences for failure to do so
- CT has no statute that specifically requires professional staff to provide care
- Could be employment issue
- If there is a complaint made, DPH has no standard rule and will consider the totality of the circumstances.

Ethical guidelines - deciding whether to work

- Core ethical value of reciprocity requires: easing burdens of those who bear a disproportionate burden in protecting public good, *i.e.*, facilities have ethical obligation to care for their staff. This, in turn, will encourage workers to solve their ethical dilemma in favor of coming to work
- Core value of Trust requires working with staff before an emergency occurs to create policies and procedures that address staff concerns.

Ethical guidelines - deciding whether to work

Develop policies and procedures re:

- Physical safety of staff and their families
(PPE, anti-virals, vaccinations, training, workplace absences, fever stations, telecommuting, uniform infection prevention/control precautions)
- Educating staff re legal consequences of declaration of emergency (liability protections, possible waiver of statutes and regulations)

Waivers and Modifications of Statutes and Regulations

- Waiver/modification of state laws
- Sec. 28-9(a) of General Statutes: Any time after the Governor has declared an emergency, the Governor is empowered to:
 - “ . . . modify or suspend in whole or in part, any statute, regulation or requirement or part thereof whenever in his opinion it is in conflict with the efficient and expeditious execution of civil preparedness functions. . . . ”

Waivers/Modifications of Statutes/Regulations

- Waivers – the waived provision has no force and effect; regulatory agencies cannot penalize persons or facilities for violating the provision; failure to comply will not provide a basis for finding negligence as a matter of law; may eliminate barriers to swift response to an emergency.
- Modifications: results in an immediate change to a statute or regulation

Waivers/Modifications of Statutes/Regulations

Statutes and regulations mandate, for example:

- Scopes of practice
- Staffing and dietary requirements
- Documentation and record-keeping
- Physical plant requirements

Waivers/Modifications of Statutes/Regulations

- COOP Planning must include identifying statutes and regulations that may require a gubernatorial waiver or modification
- The listing must be accompanied by a statement of the reason why the request is being made

Waivers/Modifications of Statutes/Regulations

The Department is in the process of developing a process for the efficient processing of requests for waivers or modifications. This process will be established in conjunction with the Governor's Office

Liability Concerns

This section of the guidance will outline both protections from liability that already exist in CT statutes, as well as the gaps, and make recommendations for legislative additions.

Time Table

- Spring 2009: Whitepaper draft
- Summer – Fall 2009: Roll out to community
- Fall 2009: Make revisions and finalize

