Healthcare Operations during the COVID-19 Pandemic - Speaker Series

December 2020


Access the recording here: https://attendee.gotowebinar.com/recording/6174655403001670146
Access Mr. Hodge’s bio here: https://isearch.asu.edu/profile/1436144

James G. Hodge Jr., JD, LLM
Peter Kiewit Foundation Professor of Law; Director, Center for Public Health Law and Policy; Director, Western Region Office - Network for Public Health Law, Sandra Day O'Connor College of Law
Purposes

- Emergency Declarations – Federal, State, Local
- Emergency Powers and Limitations
- Core Legal Issues re: CSC
- Liability Protections
  - Legal standard of care and "reasonable provider"
  - Various liability protections for providers and health care entities
  - Difference between immunity and indemnification
  - PREP Act liability protections for vaccinators and others
  - Minimize risk in CSC triage environments
Multi-level Emergencies

Public health authorities, powers, liabilities & immunities vary depending on the type of emergency declared at each level of government.

- **International**
  - WHO Public Health Emergency of Int’l Concern
  - Emergency Declarations by Foreign Governments

- **Federal**
  - Stafford Act or National Emergencies Act
  - HHS Public Health Emergency

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

- **Local**
  - Emergency or Disaster
  - Public Health Emergency
COVID State & Select Tribal / Local Declarations of Emergency

Click on the date of each state to view the declaration.
Legal Triage In Emergencies

Efforts of legal actors & others during declared emergencies to build a favorable legal environment by prioritizing issues & solutions facilitating legitimate public health responses.
Emerging Legal Issues

Topics

- Testing/Screening/Treatment
- Crisis Standards of Care
- Social Distancing Measures
- Privacy
- Liability & Insurance
- Emergency Powers - Triage
- Surveillance & Reporting

Emerging Legal Issues

- Crisis Standards of Care
- Testing/Screening/Triage
- Social Distancing Measures
- Privacy
- Liability & Insurance
- Emergency Powers - Triage
- Surveillance & Reporting
Crisis Standards of Care

Substantial change in usual healthcare operations and level of care due to a pervasive or catastrophic disaster
Crisis Standards of Care – Legal Issues

- Coordination
- Allocation
- Reimbursement
- Licensure
- Scope of Practice
- Patient’s Interests
- Duty to Care
- Uniformity
- Liability
Prospective Civil Liability Claims

- Negligence/Malpractice
- Intentional Torts
- Privacy Infringements
- Discrimination
- Worker’s Compensation
 LIABILITY SINKHOLE
Risks & Vindication
Two Legal Paths Re: Negligence in CSC

Greater

Path 1

- Malpractice Insurance
- Employed Personnel
- Resources
- Conventional Care
- Contingency Care
- Emergency Declaration
- Patients
- VHPs
- Liability Risks

Follow the Evolving Std of Care

Path 2

Provide Enhanced Liability Protections for HCWs & Entities

Lesser

Unclassified//For Public Use
Despite risks, many liability protections apply in routine events & declared emergencies, especially concerning health care volunteers, workers, and entities.
Specific Focus

Difference between immunity & indemnification
Specific Focus

- **PREP Act liability protections for vaccinators & others**
- Authorizes HHS Secretary to provide immunity to certain individuals and entities against loss claims arising out of the manufacture, distribution, administration, or use of "covered countermeasures" in response to a public health emergency
- Applies to **all covered HCWs**
- Does not cover willful misconduct
- May cover "omissions"
Minimize Risk in CSC Triage Environments

- Risk Mitigation
  - Shifting Standards
  - Scope of Practice
  - Transparency
  - Consistency
  - Ethical Adherence
  - PPE & other Safety Measures
  - Oversight & Internal Review

Unclassified//For Public Use

ASPR
TRACIE

18
Contact Us

asprtracie.hhs.gov  1-844-5-TRACIE  askasprtracie@hhs.gov