

## Section 4 - Legal Authority

### Guideline 4.1 – Deviation from Established Procedures

**State EMS pandemic influenza plans should establish procedures for EMS providers to deviate legally from their established treatment procedures to support mitigation of and response to pandemic influenza and other public health emergencies while still assuring appropriate education, medical oversight and quality assurance.**

#### Rationale

Providing established and dynamic procedures for EMS providers to deviate legally from their established, day-to-day treatment procedures supports the evolving role of EMS while still providing for high quality patient care.

#### Considerations

- State and local EMS pandemic influenza plans should provide for expedited review and approval of new treatment modalities and procedures. They should provide sufficient flexibility to EMS Medical Directors to credential EMS providers to perform procedures and to administer medications to match the exigencies of the situation while still protecting public safety through appropriate education, medical oversight and quality assurance.
- There should be an EMS statewide system to “trigger” the authorization of new procedures and medications by EMS providers in coordination with public health officials.
- A just-in-time training program, combined with appropriate and coordinated information to the EMS medical directors and EMS providers, will help to ensure appropriate and competent medical care.
- There should be mechanisms for temporary licensure of EMS providers from other jurisdictions or those who may be retired or inactive providing there are sufficient safeguards to protect public health and safety.
- EMS pandemic influenza plans might consider opportunities to make optimum use of volunteer health personnel through the Emergency System for Advance Registration of Volunteer Health Professionals (ESAR-VHP<sup>48</sup>).

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<sup>48</sup> Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Pub. L.No. 107-188 § 107, 116 STAT. 595 (2002). See also <http://www.hrsa.gov/esarvhp/>

- EMS pandemic influenza plans should integrate the capabilities and resources of various governmental jurisdictions, incident management and emergency response disciplines, and the private sector to conform to the National Incident Management System<sup>49</sup> (NIMS).
- There should be pre-event coordination between those administering the EMS licensing laws and those administering laws that may waive certain health occupation licensing provisions in emergency situations such as emergency health powers acts.
- Public health, law enforcement, emergency management officials and fire officials, Public Safety Answering Points (PSAPs) and EMS first responders will benefit from joint training on the legal authorities essential to effective response in public health emergencies before the emergency occurs.
- Deviation from established treatment protocols might, for instance, also include administration of vaccines and anti-virals, new medications, declaration of death or other activities.

## Background – Scope of Practice

Scope of practice is a description of what a licensed individual legally can, and cannot, do. Each State has the statutory authority and responsibility to regulate EMS within its borders and to determine the scope of practice of State-licensed EMS personnel. Scopes of practice are typically defined in law, regulations or policy documents. In contrast, credentialing is a local process by which an individual is permitted by a specific entity (EMS medical director) to practice in a specific setting (EMS agency).

It is virtually impossible to create a scope of practice that takes into account every unique situation, extraordinary circumstance, and possible practice situation. This is further complicated by the fact that EMS personnel are an essential component of disaster preparedness and response. In many cases, EMS personnel are the only medically trained individuals at the scene of a disaster when other healthcare resources may be overwhelmed.

The *National EMS Scope of Practice Model*<sup>50</sup> states that it cannot account for every situation, but rather is designed to establish a system that works for entry-level personnel under normal circumstances. It is assumed that the scope of practice of EMS personnel may be modified or changed in times of disaster or crisis with proper education, medical oversight and quality assurance to reasonably protect patient safety.

If predictions about the surge of patients and the concomitant increase in absenteeism among EMS personnel become a reality, EMS providers' regular

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<sup>49</sup> US Department of Homeland Security. ONLINE. 2004. *National Incident Management System*. Department of Homeland Security. Available: [www.fema.gov/pdf/emergency/nims/nims\\_doc\\_full.pdf](http://www.fema.gov/pdf/emergency/nims/nims_doc_full.pdf) [18 March 2007].

<sup>50</sup> National Highway Traffic Safety Administration. 2007. *National EMS Scope of Practice Model*. Washington, DC, National Highway Traffic Safety Administration.

day-to-day practices may need to be modified during pandemic influenza. In addition, staff may be apprehensive about leaving home, need to care for sick family members and/or may find it difficult to travel to work. Burnout from stress and long hours may occur, and replacement staff may be needed.

EMS pandemic influenza plans should identify sufficient State legislative authority, administrative rules/regulations and liability protection to support the role of EMS providers during a pandemic influenza event or other major public health emergencies. The legal authority should provide for a system in which the procedures and medications that EMS providers are authorized to use may be dynamically modified, if necessary, to reflect the evolving roles of EMS providers during an influenza pandemic, while simultaneously assuring medical direction, appropriate education and quality assurance.

## Background – Other legal issues

The organization and delivery of healthcare is highly regulated. During a public health emergency such as an influenza pandemic, it is likely there may be temporary modification of other regulatory requirements at all levels of government. For instance, the *National Strategy for Pandemic Influenza: Implementation Plan*<sup>51</sup> suggests waivers and modification of certain legal requirements during pandemic influenza. It asserts, “Depending on the severity of a pandemic, certain requirements may be waived or revised to facilitate efficient delivery of health care services.”

While significant progress has been made since the terrorist attacks on September 11, 2001, in establishing joint investigative protocols and linkages among the key components of public health, emergency management, Public Safety Answering Points, law enforcement and emergency response communities, pandemic influenza will present new challenges. As a result, it is important that all concerned understand their roles and the governing legal authorities so that they can coordinate their efforts under a complex set of Federal, State, tribal, and local laws. Federal, State, local and tribal governments should review their legal authorities to respond to an influenza pandemic and identify needed changes.

To the extent possible, existing laws and other mechanisms should be used to the fullest. It is therefore important to examine existing State public health laws, licensing/certification laws, interstate emergency management compacts and mutual aid agreements, and other legal and regulatory arrangements to determine the extent to which they permit necessary planning for pandemic influenza.

A summary of several different applicable Federal laws and a variety of legal, regulatory and accreditation issues is included in Appendix P. *The Draft Checklist*

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<sup>51</sup> Homeland Security Council. ONLINE. 2006. *National Strategy for Pandemic Influenza: Implementation Plan*. The White House. Available: <http://www.pandemicflu.gov/plan/federal/index.html> [20 March 2007]

*for State and Local Government Attorneys to Prepare for Possible Disaster*<sup>52</sup> may also provide helpful information to EMS services. The checklist includes lists of questions pertaining to authority in general, authority for surveillance, and intergovernmental joint powers agreements. In addition, it addresses public information, administrative and fiscal issues, contracting, personnel, and liability.

The Model State Emergency Health Powers Act<sup>53</sup> grants specific emergency powers to State governors and public health authorities in the event of a large public health emergency and addresses liability issues. The Model Act was developed for the Centers for Disease Control and Prevention (CDC) by the Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities to ensure an effective response to large-scale emergency health threats while protecting the rights of individuals. (Additional information is provided in Appendix E.)

Colorado has chosen to plan for disaster emergencies by using draft executive orders<sup>54</sup> to create a legal framework for an emergency including the suspension of certain statutory provisions. These may provide another option for states to consider when seeking regulatory relief in an emergency. (Document included as Appendix F.)

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<sup>52</sup> American Bar Association. ONLINE. 2003. *Draft Checklist for State and Local Government Attorneys to Prepare for Possible Disasters*. American Bar Association. Available: [www.abanet.org/statelocal/disaster.pdf](http://www.abanet.org/statelocal/disaster.pdf) [18 March 2007].

<sup>53</sup> Lawrence O. Gostin, et al. *The Model State Emergency Health Powers Act: Planning for and Response to Bioterrorism and Naturally Occurring Infectious Diseases*, 288 JAMA 622 (2002). See also The Center for Law and the Public's Health web site <http://www.publichealthlaw.net/Resources/Modellaws.htm>

<sup>54</sup> Colorado Department of Public Health and Environment. ONLINE 2006. *CDPHE Internal Emergency Response Plan Governor's Emergency Epidemic Response Committee (GEEERC) Draft Executive Orders Updated Oct. 23, 2006*. CDPHE. Available: <http://www.cdphe.state.co.us/bt/HealthProviders/Attachment3.pdf> [20 March 2007]

## Guideline 4.2 – EMS Freedom of Movement

State EMS pandemic influenza plans should, in coordination with public health, emergency management, and law enforcement agencies, identify mechanisms to ensure freedom of movement of EMS assets (vehicles, personnel, etc.) when faced with restricted travel laws, isolation/quarantine or security measures.

### Rationale

Ensuring EMS personnel are able to move freely even though there may be travel restrictions is essential to the performance of their duties.

### Considerations

- Movement of EMS personnel and resources during isolation and quarantine should be coordinated, in advance, with public health, emergency management, and law enforcement officials.
- This guideline is consistent with the current version of the Department of Homeland Security’s Target capability List<sup>55</sup> for “Triage and Pre-hospital Treatment”

### Background

A jurisdiction’s chief executive may have the authority, depending upon State and local law, to order quarantine in coordination with the local health authority. Quarantine has the potential to impact the transportation of patients by ambulance, as well as the ability of EMS and Public Safety Answering Point (PSAP) personnel to travel from their homes to their places of employment. State and local planners must be cognizant of this possibility and include processes in their pandemic influenza plans to allow EMS and PSAPs to maintain continuity of operations during these extraordinary circumstances.

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##### SEE RELATED APPENDICES

1. Appendix E-- Model State Emergency Health Powers Act (excerpt)
2. Appendix F-- Colorado Draft Executive Orders
3. Appendix P—Other legal and regulatory issues

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<sup>55</sup> US Department of Homeland Security. ONLINE. 2005. *Target Capabilities List Version 1.1*. ODP Secure Portal. Available: <https://odp.esportals.com>. Lessons Learned Information Sharing. Available: [www.llis.gov](http://www.llis.gov) [18 March 2007].