Agenda

I. Welcome and Overview

II. Review of Florida Bioethics Network’s Ethics Guidelines for Crisis Standards of Care in Public Health Emergencies  
   Kenneth W. Goodman, PhD; and Jeffrey P. Brosco, MD, PhD,  
   Florida Bioethics Network

III. Liability Issues
   
   Andy Bolin, Bolin Law Group

IV. Discussion
Preparing for the Worst-Case Scenario: Florida Bioethics Network Crisis Standards Guidelines

COVID-19 Impact on Florida Hospitals

- COVID Patients
- COVID Pts in ICU
- COVID Pts on Vents

States with Crisis Standards of Care

- Arizona
- California
- Colorado
- Illinois
- Kansas
- Kentucky
  Adopted March 31, 2020
- Louisiana
- Michigan
- Minnesota
- Nevada
- New Mexico
- New York
- Oregon
- Pennsylvania
- Utah
- Vermont
- Virginia
- Washington
Preparation for the Worst-Case Scenario: Florida Bioethics Network Crisis Standards Guidelines

Background: Crisis Standards in Florida

- Completed in 2011 but not formally approved or adopted.
- Included many of the same components that are incorporated in the other state plans reviewed.
- The adoption of a statewide crisis standard of care plan is important to:
  - Ensure inter-institutional consistency
  - Enable advanced training of clinical staff
  - Support a standard methodology for clinical decision making
  - Provide an ethical foundation for crisis standards
  - Preserve health care worker’s well being

Support for Ethics Guidelines

Associated Industries of Florida
Community Health Systems
Florida Bioethics Network
Florida Chamber of Commerce
Florida College of Emergency Physicians
Florida Justice Reform Institute
Florida Nurse Practitioners Network
Florida Society for Respiratory Care
Florida Society of Anesthesiologists
Florida Society for Healthcare Risk Management

Florida Hospital Association
### Proposed Liability Protections

1. **Time Limited.** Expires on October 1, 2020, unless further extended. The time limitation ensures that the effect of the executive order does not extend beyond the time period necessary to address the COVID-19 crisis.

2. **Limited in Scope.** Does not apply to willful misconduct by a health care provider.

3. **Protects providers who follow standards of care.** Health care providers who provide care and treatment consistent with standards of care, specifically developed for use in a crisis (discussed further, below), are provided temporary and limited immunity from civil liability and criminal prosecution.

4. **Protects providers who comply with EO 20-72.** Protection is provided to health care providers who in good faith endeavor to make decisions that will comply with your Executive Order 20-72.

5. **Extends immunity afforded to “Good Samaritans”.** Immunity already afforded to “Good Samaritans” is extended to health care providers who would not otherwise have that immunity because they are compensated for their services or they otherwise do not meet requirements of Section 768.13, Florida Statutes, which are ordinarily appropriate but are not appropriate during a crisis.
Florida Bioethics Network

• Established in 1990 at University of Florida, now based at University of Miami

• Leaders in ethical issues related to public health, clinical practice and biomedical research

• Composed of physicians, ethicists, nurses, health care attorneys, social workers and clergy

Framework

• Updated April 2020
  • Strengthens protections for disabled patients
  • Ethically optimized care
  • Deactivation of the triage
  • Prioritization status
Principles and Values

- Fairness
- “Duty to treat”
- No duty to provide treatment if not beneficial, not effective or contrary to clinical judgment
- Not on a “first-come, first served”
- Ineffective intervention is not quality care
- Guidelines for clinician decision-making
- Palliative care

Examples of Care Standards

<table>
<thead>
<tr>
<th>Medical or Hospital Standard</th>
<th>Alternative</th>
</tr>
</thead>
<tbody>
<tr>
<td>Direct or face-to-face clinician-patient interaction</td>
<td>Telehealth interaction</td>
</tr>
<tr>
<td>Mechanical ventilation with a particular device</td>
<td>Ventilation with another kind of device, e.g., use of a transport ventilator when the standard is an intensive-care ventilator. In cases of device shortages, triage might be necessary to allocate available tools.</td>
</tr>
<tr>
<td>One ventilator for each patient</td>
<td>Use of ventilator to support more than one patient</td>
</tr>
<tr>
<td>Each patient in a bed in a standard hospital room</td>
<td>Patients in beds placed in other venues</td>
</tr>
<tr>
<td>Critically ill patients in critical care units</td>
<td>Critical care patients in other units refitted to extent possible</td>
</tr>
<tr>
<td>Cardio-pulmonary resuscitation</td>
<td>No CPR</td>
</tr>
<tr>
<td>Extracorporeal membrane oxygenation</td>
<td>No ECMO</td>
</tr>
<tr>
<td>First-come, first-served access to treatment and resources</td>
<td>Triage standard of saving as many lives as possible</td>
</tr>
</tbody>
</table>
Preparing for the Worst-Case Scenario:
Florida Bioethics Network
Crisis Standards Guidelines
April 21, 2020

**Framework**

- Triage Evidence Support Teams
- Review Process
- Ethics Committees
- Ventilator Allocation and Re-allocation Guidelines
- Evidence-based, objective criteria for patient triage
- Support for health care workers

**Ventilator Allocation and Re-Allocation Guidelines**

- Resource Triage Protocol
  - Triggers for ventilator triage
  - Activation of ventilator triage
  - Mortality risk assessment and triage
  - Triage Evidence Review Team to monitor evolving situation and support clinicians
Preparing for the Worst-Case Scenario: Florida Bioethics Network Crisis Standards Guidelines

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Triage Scoring

Comorbid Scoring

1 DM moderate dementia
2 CAD malignancy < 10 year survival
3 HTN NYHA class III (CHF or PA)
4 moderate COPD/ILD
5 severe insulin CAD
6 NYHA class IV (CHF or PH)
7 severe chronic lung disease (FEV1 < 25%, TLC < 60%, home oxygen)
8 cirrhosis (MELD > 20)
9 Traumatic brain imaging (motor GCS < 1)
10 severe burns (survival < 10%)
11 unwitness/recurrent cardiac arrest
12 Severe immunocompromised (AIDS, refractory neutropenia)
13 conditions/immediacy mortality despite therapy

Ventilator Triage Protocol
20200328 1.0 English

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SOFA Scoring

Respiratory: P/F
>400
<400
<300
<200
<100

Renal: Cr or UO
<1.2
1.2-1.9
2.0-3.4
3.4-4.9
5.0 or <200

Hepatic: Tbil
<1.2
1.2-1.9
2.0-5.9
6.0-11.9
>11.9

CV:
MAP <70 mmHg
DBP <60 mmHg
DA <5 or DOB (any dose)
DA >5 or epi <0.1 or PE <0.1
DA >15 or epi >0.1

Hematologic:
>150
≤150
≤100
≤50
≤20

Neurologic: GCS
15
13-14
10-12
6-9
<6

Final Priority Score: Comorbid + SOFA sections = priority group

Priority Group N/A 1 2 3
Final score not scored 1-3 4-5 6-8

Age is a tie-breaker, consult with ICU attending.
Triage Evidence Support Team: 305-XXX-XXXX, Palliative Care: 305-XXX-XXXX
Legal and Liability Issues

Andy Bolin, Bolin Law Group

Crisis Standard of Care Adoption

1. Adopts a community standard
   • Provides better protections than having no standard in place
   • Prevents patchwork of standards by systems that may be used against each other
   • Lessons Learned from H1N1 pandemic
2. Reduces arguments of alleged bias against protected classes
3. Supports clinicians by better defining the standard of care as opposed to making those decisions in the midst of a crisis.
4. Prevents delays in decision making
Lawsuit Concerns Following Covid-19 Crisis

1. Not having guidelines that anticipated the need for crisis standards of care.
2. Not having guidelines that anticipated a critical shortage of medical equipment or supplies.
3. Not treating patients who allegedly were injured or expired because resources were directed towards other patients that likely would not survive.
5. Placing liability concerns ahead of sound, evidence-based decision making.

Lawsuit Concerns Following Covid-19 Crisis

1. Delay of testing or other elective procedures that the Plaintiff will later claim should not have been considered "elective."
2. Testing delays or division making.
3. Discharging known or presumed positive patients to treat mild symptoms.
4. Failure of hospitals to insure adequate staffing (claims against hospital v. provider) OR relaxed standards for privileges or credentialing.
5. Failing to repeatedly test/take temps of providers caring for patients.
6. MANY providers are posting things on social media during this time. Be aware of privacy violations related to photos and posts and also the optics of these videos.
Preparing for the Worst-Case Scenario: Florida Bioethics Network Crisis Standards Guidelines

Current Florida Law Does Not Address this Crisis

1. Current protections for “good Samaritans” or other emergency situations do not cover decision making during this time.
2. Protections related to advanced directive decision making do not apply.
3. HHS Declaration provides protections for use of “countermeasures” only and not broader protections for all care and treatment.

Documentation

1. Documenting decision making will be especially important
2. Likewise, document awareness of any guidelines in place
3. Give thought to documenting the inability to consult with proxies or other caregivers during a crisis situation