Pandemic Influenza Emergency Response

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Ethics Guidance and Matrix
Attachment 12

Of the New Mexico Department of Health (DOH)
Hazard Specific Appendix, Appendix 2
Pandemic Influenza Emergency Response
New Mexico Department of Health Emergency Operations Plan (EOP)

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SUMMARY

After major homeland security and public health preparedness initiatives and directives began to come from the federal government, a number of New Mexico Department of Health (NMDOH) staff raised concerns about foreseeable issues such as terrorism incidents, disease pandemics, and natural disasters which could place pressure on staff's ability to make effective, ethical decisions. This Attachment was developed to address these concerns.

This Attachment provides guidance to NMDOH personnel who directly or indirectly participate in the ethics-based decision making process during health emergencies. The following guidance encourages participating staff to examine ethical issues raised during the deliberation process prior to determining a course of action.

This guidance takes two forms. First, there is a common language and frame of reference for decision-making participants. Each major ethical principle is clearly identified and explained. Second, specific questions and application steps provide a path to reaching a decision or recommendation.

RATIONALE

When major disease outbreaks, acts of terrorism, and natural disasters occur, the Ethics Guidance and Matrix is used by NMDOH staff to examine Ethical Principles, Key Questions and Guidelines for New Mexico Public Health Issues. Codes of Ethics, Statutes, and Articles and Commentary, will guide the challenging decision making process when health, medical and mortuary impacts on the public and agency stakeholders are significant.

In order to encourage its use, this Attachment will be referenced in such State plans as the NMDOH Emergency Operations Plan, Annex Five (Health, Medical) of the All Hazard Emergency Operations Plan and the NMDOH Strategic Plan. The Ethics Guidance and Matrix will also be used during debriefing exercises to assure effective, ethical inquiry during crisis conditions.

DEFINITIONS

beneficence – the quality or state of being beneficent, doing or producing good, performing acts of kindness and charity

hotwash - occurs immediately following an operations-based exercise and allows players/ responders the opportunity to provide immediate feedback. It enables controllers and evaluators to capture events while they remain fresh in players' minds and to ascertain players' level of satisfaction with the exercise and determine any issues or concerns and proposed improvement items.

AUTHORITIES, POLICIES, AND PRINCIPLES

Various agencies, academic institutions, professional associations and organizations publish public health policy guidance materials setting forth applicable laws, ethical principles, codes of ethics, and moral considerations. This Attachment draws upon expert sources to provide NMDOH staff with practical guidance to assure an examined, practical and articulate response.

Major sources utilized include:

Statutes

New Mexico Public Health Emergency Response Act (PHERA), Sections 12-10A-1, et seq., NMSA 1978 (Laws of 2003, Chapter 218)

Codes of Ethics

Declaration of Professional Responsibility
American Medical Association
[www.ama-assn.org/go/declaration]

Public Health Code of Ethics
American Public Health Association
[www.apha.org/codeofethics/ethics.htm]

Articles and Commentary

Ethics and SARS: Learning Lessons From the Toronto Experience
University of Toronto Joint Centre for Bioethics
[www.yorku.ca/igreene/sars.html]

Leading During Bioattacks and Epidemics with the Public's Trust and Help
 University of Pittsburgh Medical Center
 [www.upmc-biosecurity.org/pages/resources /leadership /executive/ leaders.html]

Ethics and Disaster Preparedness
American Medical Association
 [www.ama-assn.org/ama/pub/category/print/12487.html]

When Pestilence Prevails: Physician Responsibilities in Epidemics
American Journal of Bioethics (4) 1, January 2004
[www.bioethics.net/journal/]

Public Health Ethics: Mapping the Terrain
Journal of Law, Medicine & Ethics, 30 (2002): 170-178

Core Legal Competencies for Public Health Professionals
Center for Law and the Public's Health at Johns Hopkins and Georgetown Universities
[www.publichealth.net]

SITUATIONS AND ASSUMPTIONS

A. Situations

The risks of terrorist attack, large-scale communicable disease outbreak, and natural disaster require preparation and readiness. However, any major health emergency involves unpredictable elements which will challenge NMDOH decision-makers to act promptly and prudently. Effective response under emergency conditions requires NMDOH decision-makers apply their knowledge and expertise in accordance with ethical principles.

B. Assumptions

- A public health emergency or disaster such as a terrorism incident, rapidly spreading disease outbreak, or natural disaster could involve numerous casualties, and significant social and economic consequences to the State of New Mexico.
- Public confidence and trust in the integrity of public health leaders and decision makers is essential to obtain compliance and active cooperation.
- A decision may be viewed with suspicion and subject to criticism when it requires the allocation of scare resources, limits individual liberty or privacy, or adversely impacts segments of the population. In order to sustain a decision in the face of scrutiny, the decision must have a sound ethical basis.
- When a decision has been presented to a community and is based on ethical principles, it is more likely to be accepted, implemented, and enjoy the support of New Mexicans.
- Health emergency management personnel at all preparedness and response levels are accountable for consistently acting in accordance with generally accepted ethical standards.

CONCEPT OF OPERATIONS

A. Relevance of Ethical Principles.

Ethical awareness is essential in each of the major domains of emergency management. These domains include the identification of potential hazards and threats (awareness), development of the capacity to deal with those threats (preparedness), action to prevent or mitigate an incident (prevention), and action to address and recover from an incident (response). NMDOH applies ethical principles to decisions made in each of these domains.

B. Definition of Ethical Principles.

- *Respect Individual Liberty* - Individuals have a right to travel, refuse treatment, and be secure in their person without restraint or compulsion. Reasonable accommodations will be made for individuals with disabling conditions to address their emergency preparedness, safety and security needs. Autonomy is a core ethical principle in health care.

- *Protect the Public From Harm* - When serious, clear, imminent harm is foreseeable, public health authorities should act to protect the health and well-being of the people of New Mexico. Beneficence is a core health care ethical principle.

- *Act With Proportionality* - When the use of governmental power can be justified to protect public health, that power should be exercised in a way that avoids unnecessary impact on individuals or individual groups of people. Justice is a core health care ethical principle.

- *Act With Reciprocity* - When people are isolated/quarantined, they are deprived of the ability to care for themselves. Therefore, officials charged with public health should see that these individuals and/or groups receive adequate care, isolation/quarantine is not unnecessarily prolonged, and other impacts such as psychosocial isolation/quarantine are addressed.

- *Maintain Transparency* – The people of New Mexico are entitled to honest, accurate information about the public health issues affecting them, including the risks and benefits of their options and choices. Officials should provide meaningful opportunity for input into issues that affect the publics' health, well-being, and personal liberty. Information should be presented to individuals and communities in a culturally sensitive manner. Integrity is a foundational moral value.

- *Protect Privacy* - Individuals have the right to privacy of information about their health conditions unless the invasion of privacy or disclosure of otherwise confidential information accomplishes a well-defined, important public health objective.

- *Protect Against Stigmatization* - Public health officials should act and minimize harm to groups and individuals who may be at risk due to hostile or discriminatory behavior during a health emergency.

- *Provide Care* - There is general consensus in ethics codes and professional journals that health care providers have an ethical responsibility to care for those in need in

epidemic or emergency situations, even at some risk to their own health. Debates continue regarding the extent of this responsibility.

- *Act With Equity* - When resources are limited and inadequate to meet the needs of the population, access must be appropriate and based on rational criteria. Any decisions about distribution of benefits and burdens must be made in a fair manner, weighing risks, benefits, and costs. Justice is a core health care ethical principle.

C. Implementation

In order for NMDOH to be effective in health emergency management, ethical principles must be applied to all challenging decisions in preparedness, prevention, response, and recovery. The level of ethical awareness necessary to ensure appropriate application requires training to be delivered in three modules:

1. Skills training for likely decision-making participants including, but not limited to, Division Emergency Response Team Leaders (ERTLs), NMDOH Emergency Operations Center Representatives (EOCR), others who work in the NM Department Operations Center (DOC), and members of the Situation Analysis Team (SAT),

2. Awareness training for all DOH staff about the Ethics Guidance and Matrix Attachment

3. Executive briefing for external stakeholders, partner agencies such as the New Mexico Department of Public Safety (DPS), the Governor's Office of Homeland Security (GOHS), the New Mexico Environment Department (NMED), senior leadership in NMDOH, and other state agencies

The following key questions in any health emergency management activity guide prompt and practical application of ethical principles:

TABLE 1: Ethical Applications Questionnaire

Principle	Key Questions
Respect Individual Liberty	*Will the action under consideration deprive anyone of his or her freedom to …..?*
	If so, are there alternative means to achieve our public health goals that eliminate or reduce this deprivation?
Protect the Public from Harm	*What plan/policy/action will most effectively protect the health of the citizens of the State as a whole?*
	What steps are necessary to effectively protect vulnerable or historically underserved populations?
Act with Proportionality	*Is there some possibility that proposed action could cause individuals or groups to lose privacy or liberty?*
	If so, are there less intrusive options for action that should be considered?

Act with Reciprocity	*What should we do to ensure that quarantine and isolation impacts are mitigated to the least degree possible?*
	What should we do to address the risks to health care workers (and their families) as they provide care to those in need?
Maintain Transparency	*Are we open and honest with stakeholder groups and the general public about our internal processes, the information that affects them, and the decisions we make?*
	Are we accountable to those we serve for our actions and decisions so we maintain public trust and preserve our credibility?
Protect Privacy	*Do proposed actions or recommendations safeguard the privacy of individuals and the confidentiality of their health care information?*
	Do we have a compelling reason to breach privacy/ confidentiality?
Protect Against Stigmatization	*Is there any risk to groups or individuals of negative social response by others in this situation or in the foreseeable future?*
	What can we do to anticipate this response and reduce or eliminate its impact?
Provide Care	*How might health care workers view the risks of providing care and respond to those who need their help?*
	What can we do to assist DOH employees and other essential health care workers so they assess risks accurately and provide care to those in need when it is reasonable to do so?
	What can be done for DOH and other health care providers to promote their well-being,
Act with Equity	*Does any proposed action or decision effectively ration or limit the distribution of needed resources to the population in need?*
	If so, can we adequately justify the manner and basis of the decision, particularly to those who do not receive the needed resource?

To assure the application of ethical principles to all prevention, preparedness, response, and recovery efforts, it is essential that any "hot wash" or other significant health emergency management debriefing review the inclusion of these tenets during the operation.

ORGANIZATION AND RESPONSIBILITIES

All NMDOH personnel with authority and responsibility for planning, policy development, and decision-making in health emergency management must be familiar with these ethical principles. Specific NMDOH emergency management roles also require the ability to apply ethical principles when under pressure in a response setting. Applicable personnel include:

- Situation Analysis Team (SAT) members

- NMDOH Emergency Operations Center Representatives (EOCR)

- NMDOH Department Operations Center (DOC) members

- Incident Command Post staff at public health regional offices

- NMDOH Senior leadership

Personnel who occupy these roles will demonstrate their commitment to ethical practice in their sphere of responsibility when they model three key behaviors:

1. Identify and clearly communicate ethical principles for consideration in health emergency management situations.

2. Ask questions that elicit potential ethical concerns from subordinates, external partners, colleagues, and stakeholders.

3. Create and maintain a climate that encourages others to raise concerns so ethical principles can be discussed openly and applied to any proposed action or recommendation.

PLAN DEVELOPMENT AND MAINTENANCE

This Attachment should be reviewed annually and modified based upon experience and feedback from users and stakeholders.

TABLE 2: Ethical Principles Questionnaire

Ethical Principle	Key Questions	Guidelines for New Mexico Public Health Issues
Protect the Public from Harm When serious, clear, imminent harm is foreseeable, public health authorities should act to mitigate the threat and protect the health and well-being of the people of New Mexico.	*What plan/policy/action will most effectively protect the health of the citizens of the state as a whole?* *What steps are necessary to effectively protect vulnerable or historically underserved populations?*	• Beneficence is a core health care ethical principle. Protection of public health can justify limitations on individual freedom, privacy, and the confidentiality of health information. • Address the greater vulnerability of children, the frail elderly, and the physically/mentally compromised. Careful preparation to protect those at greatest risk increases everyone's sense of security. • In a situation with limited resources, consider how this principle applies to groups, e.g. citizens, foreign visitors, resident aliens, and undocumented immigrants. • Decisions should be rooted in the value of stewardship with the intent to achieve the best patient health and public health outcomes in times of great need and limited resources. • Decisions may be necessary that limit access to hospitals, resulting in the delay or denial of care to people with severe illness. For those admitted, contact and support from friends and family members may be lost. (see Transparency and Equity)
Provide Care Health care providers have an ethical	*How might health care workers view the risks of providing care and respond to those who need their help?*	• Professional codes of health ethics emphasize the responsibility of licensed health professionals to treat those in need, even at some risk to themselves. There is a general consensus on this point, although debate remains on the extent of this responsibility.

responsibility to take care of those in need in epidemic or emergency situations, even at some risk to their own health and the health of their families.	*What can we do to assist DOH employees and other essential health care workers so they assess risks accurately and provide care to those in need when it is reasonable to do so?*	• Health care workers also have an obligation to maintain their own health so they can continue to care for others. • The limits to this responsibility are a matter of ongoing professional debate. Those arguing for significant limits mention related risks to families, children, and friends of health care workers as one powerful justification for a modest interpretation of the level of obligation. Some assert that, when the circumstances are most dire, professionals should continue to serve, even at potential cost to their own lives. • Brief healthcare and emergency workers so they have a realistic understanding about the safety issues involved in providing care.
Maintain Transparency In a democratic society, the public is entitled to honest, accurate information about the public health issues that affect them, including the risks and benefits of their choices and options.	*Are we open and honest with stakeholder groups and the general public about our internal processes, the information that affects them, and the decisions we make?* *Are we accountable to those we serve for our actions and decisions so we maintain public trust and preserve our credibility?*	• Integrity is a foundational moral value rooted in honesty. When the decision-makers are credible and accountable to the public, their decision has a clear sense of integrity. What mechanisms are in place to ensure that decision makers are answerable for their actions and inactions? The issue is not whether decision makers are answerable so much as it is assuring a checks and balances system is in place to assure equitable, studied, impartial decisions are made/implemented • Honest reporting about health risks, impact on the population, etc., should not violate individual privacy rights. • Transparency is essential to build public trust and gain widespread cooperation from individuals and stakeholder. Without trust and cooperation, critical public health goals cannot be met. • People need to know what to expect. Share what you know. Hold briefings early and often, using the media to reach the public. Good information helps manage the crisis. Have a bias toward providing more information rather than less. • Share uncertainties and disclose plans to address missing information. Be honest about uncertainties and describe what will be done to increase knowledge. • Make planning efforts transparent by engaging the public and including stakeholder views when developing policies and plans that affect the public's health, well-being, and personal liberty. Publicize a clear rationale for priority access to health care services including antivirals and vaccines. • Refine outreach and communication efforts to improve results.
Act with Equity When resources	*Does any proposed action or decision effectively ration or limit*	• Justice is a core health care ethical principle and an important democratic value. • During a pandemic, difficult decisions must be made

are inadequate to meet the needs of the population, access must be appropriate and based on rational criteria. Any decisions about distribution of benefits and burdens must be made by fairly weighing risks, benefits, and costs.	*the distribution of needed resources to the population in need?* *If so, can we adequately justify the manner and basis of the decision, particularly to those who do not receive the needed resource?*	about which health services to continue to provide and which to defer or eliminate. Limited resources may mean that some people will not receive all that medical care has to offer from antivirals to ventilator support. • Stakeholder response to the equity of government actions will be influenced by historic inequities unique to New Mexico. Pay particular attention to those who have been underserved in the past, e.g. tribes, rural areas, lower socio-economic groups and communities, etc. • It is easy to focus on the more quantifiable distribution of resources such as vaccine and overlook the distribution of the burdens of disease control. • Be honest about criteria used to allocate goods and services. Provide mechanisms for stakeholders to appeal or raise concerns about particular allocation decisions and resolve disputes. • Account for income differences in response plans by incorporating prevention and treatment for free or at low cost. • Make planning transparent to ensure public understanding that access to critical resources is based on demonstrated need. Reasonableness supports equity.
Act with Proportionality When the use of governmental power can be justified to protect public health, that power should be exercised in a way that avoids unnecessary impact on individuals and groups.	*Is there some possibility that proposed action could cause individuals or groups to experience restrictions to their liberty, lose privacy, or suffer economic losses?* *If so, are there less intrusive options for action that should be considered?*	• Justice is a core health care ethical principle. It is not just to use power disproportionate to the need when the exercise of power negatively impacts members of the public. • Be clear about the actual level of risk to the community and the critical needs which call for public health action. • Any restriction on liberty must be necessary and exercised by officials with legitimate authority. If confidential information is to be released, consider whether less intrusive measures could protect the public. • The justification for the exercise of government power is proportional when it is based on sufficient reasons. The reasoned basis for a decision includes evidence, principles, and values. • Are there opportunities to revisit and modify decisions throughout the crisis as new information develops? (see *Equity* above) • Are there mechanisms to address complaints and disputes?
Respect Individual Liberty During non-emergencies,	*Will the action under consideration deprive anyone of his or her freedom to …..?*	• Autonomy is a core health care ethical principle. • Individual rights can be limited when necessary to advance the greater good, in this case, protection of public health. This includes quarantine, isolation, closing schools, canceling public gatherings, and

individuals have the right to travel, freely assemble, refuse treatment, and be secure in their person without restraint or compulsion.	*If so, are there reasonable alternative means to achieve our public health goals that eliminate or reduce this deprivation?*	detention. • Requires an ethical basis, absence of feasible alternatives, and fairness of application (non-discrimination in application). Consider public perception and concerns by identifiable groups that have historically experienced discrimination. (See Equity below) • Officials should, where feasible, inform people of the nature of the threat, be open in explaining the reasons for infringing on individual liberty (See Transparency below), and actively assist those who are negatively impacted (see Reciprocity below). • Use disease controls consistent with autonomy, self-determination, and equality in order to gain public cooperation. • Other potential measures such as mandatory vaccination, surveillance cameras, and monitoring devices raise ethical concerns to be addressed.
Protect Privacy Individuals have the right to privacy of information about their health condition unless the disclosure of confidential information serves a clear, important public health objective and follows applicable law.	*Do proposed actions or recommendations safeguard the privacy of individuals and the confidentiality of their health care information?* *Do we have a compelling reason to disclose protected health information?*	• All NMDOH action must comply with applicable state and federal health privacy laws and rules Health Insurance Portability and Accountability Act (HIPAA). • This right is not absolute and the harm from releasing private information must be carefully balanced against the benefits to the public from reducing health risks. • Private information should only be released if there are not any reasonable, less intrusive means to protect public health. (See Proportionality above) • In November, 2005, the American Medical Association (AMA) issued guidelines for protecting patient rights during quarantine. "Physicians must do everything they can to protect the rights and privacy of patients without compromising the health of the public."
Act with Reciprocity When health care workers, patients, and their families face a disproportionate burden, in order to protect the public health, there is a societal obligation to take reasonable steps to minimize the burden.	*What should we do to ensure that quarantine and isolation impacts are mitigated to the maximum degree possible?* *What should we do to address the risks and consequences for our health care workers as they provide care to those in need?*	• If public officials expect people exposed to or suffering from communicable disease to cooperate and act responsibly to limit risk to others, a supportive social environment is critical. • Public officials charged with public health are legally obligated under the NM Public Health Emergency Response Act to insure that quarantined and isolated individuals receive adequate care. • Economic impacts such as loss of income by those quarantined or isolated should be considered and addressed, when appropriate. • Isolation or quarantine should not be unnecessarily prolonged and psychosocial needs for those quarantined or isolated should be considered and addressed, when appropriate. • Society/government should support and protect health care providers and their families by (a.) providing accurate information so providers are able

		to understand risks, (b.) developing and implementing policies that support safety best practices, and (c.) addressing impacts upon providers from the risks they face when acting to reat and protect the public. • Addressing impacts might include taking precautions to prevent illness among health care providers and their families, providing care for those who become ill, providing compensation for those who die performing their duty, and dealing with malpractice threats for those working in emergency situations.
Protect Against Stigmatization Public health officials should act to minimize harm to groups and individuals who may be at risk due to hostile or discriminatory behavior during a health emergency.	*Is there any risk to groups or individuals of negative social response by others in this situation or in the foreseeable future?* *What can we do to anticipate this response and reduce or eliminate its impact?*	• Historically, certain individuals and groups have suffered due to social responses by other individuals and groups when a threat to public health is real or perceived. Caution should be taken so public response to the release of information does not unduly stigmatize a group or community. • Include measures in preparedness plans to prevent hate crimes, scapegoating, and other forms of stigmatization • safeguard the privacy of individuals and communities affected by quarantine or other restrictions. • Consider people and places that may be stereotyped as contaminated or unhealthy. • Bioterrorism may result in more severe scapegoating as victims demand to know who is responsible.