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Crisis Standards of Care and Civil Rights Laws

Purpose

The purpose of this document is to highlight language from the National Academies of Science, Engineering and Medicine (NASEM), the Department of Health and Human Services Office of Civil Rights (DHS OCR), the Federal Emergency Management Agency (FEMA), and relevant law which support the adherence to civil rights laws and disability rights laws in the application of Crisis Standards of Care during resource-constrained emergencies, such as the COVID-19 pandemic.

Intended Audience

This document is intended to provide information about crisis standards of care in a resource-constrained setting, such as the COVID-19 pandemic, to state, local, tribal, and territorial policymakers, healthcare systems leadership, and other decision-makers.

Issue

Certain jurisdictions may be developing or implementing potentially discriminatory policies that negatively impact vulnerable populations (e.g., older adults and persons with disabilities). These policies are addressing the application of crisis standards of care in resource-constrained settings in the context of the COVID-19 pandemic.

Background

Civil rights norms and laws, including in the context of declared disasters, are not suspended or waived in times of disaster. Guidance from the National Academies of Science, Engineering and Medicine (formally the Institute of Medicine) offers clear alignment of Crisis Standards of Care (CSC) recommendations to established civil rights laws in support of vulnerable populations.

Crisis Standards of Care Guidance

National Academies of Sciences, Engineering, and Medicine. (2020). **Rapid Expert Consultation on Crisis Standards of Care for the COVID-19 Pandemic.** The National Academies Press.

- “CSC criteria must then be clear enough that practitioners can apply them when making decisions at the bedside, especially when the stewarding of scarce resources means withholding or withdrawing critical care services. Those criteria must reflect the values, wishes, and interests of all patients, especially the most vulnerable.” [2020, NASEM REC, pg 3]

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National Academies of Sciences, Engineering, and Medicine. (2009). **Guidance for Establishing Crisis Standards of Care for Use in Disaster Situations: A Letter Report.** The National Academies Press.

- “State, local, and tribal governments should partner with and work to ensure strong public engagement of community and provider stakeholders, with particular attention given to the needs of vulnerable populations and those with medical special needs.” [2009 NASEM Letter Report, pg 5]
- “Ethically and clinically sound planning will aim to secure equitable allocation of resources and fair protections for vulnerable groups as compared to the general population.” [2009 NASEM Letter Report, pg 28]
- “Ensure Consistency in Crisis Standards of Care Implementation... Developing specific response measures for vulnerable populations and those with medical special needs, including pediatrics, geriatrics, and persons with disabilities.” [2009 NASEM Letter Report, pg 90]
- “Policy makers must seek to eliminate ways in which irrelevant factors such as class, race, ethnicity, neighborhood, or personal connections shift the burden of disaster toward vulnerable groups.... Policies should reflect awareness of existing disparities in access to care, take account of the needs of the most vulnerable, and support the equitable and just distribution of scarce goods and resources.” [2009 NASEM Letter Report, p 29]
- “...while all populations remain vulnerable to catastrophic events particular populations remain more vulnerable than others. These populations—as described in the committee’s report—should be given particular attention to make sure their unique needs are considered in disaster planning and response efforts.” [2009 NASEM Letter Report, p 90]

Civil Rights Laws and Norms

Federal civil rights laws and regulations apply, and have not been suspended, during the COVID-19 national health emergency. Federal fund recipients must comply with those requirements.

Every human being has fundamental and inherent dignity, equality, and worth, and has a right to be treated equally and fairly in the provision of health care services under federal civil rights laws.

Treatment decisions, including denials of care under CSCs, must be made after nondiscriminatory consideration of each person, free from stereotypes and biases based on disability or age—including generalizations and judgments about the quality of life, or relative value to society, concerning disabilities or age. This individualized consideration should be based on current objective medical evidence and the views of the patients themselves as opposed to unfounded assumptions.

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Civil Rights Laws and Emergency Declarations

Civil rights laws cannot be waived during emergencies and should be complied with in a timely manner. Alterations to preexisting structures must be in accordance with applicable accessibility standards under the Architectural Barriers Act (ABA) or Americans with Disabilities Act (ADA) to the maximum extent feasible. [See ABA Accessibility Standard F202.3, Exception 2 and 28 CFR § 35.151(b)(1) (ADA Accessibility Standard).] Entities are also not required to take any action that would result in undue financial and administrative burdens.

Section 308 of the Stafford Act (42 U.S.C. § 5151)

(a) Regulations for equitable and impartial relief operations

The President shall issue, and may alter and amend, such regulations as may be necessary for the guidance of personnel carrying out Federal assistance functions at the site of a major disaster or emergency. Such regulations shall include provisions for insuring that the distribution of supplies, the processing of applications, and other relief and assistance activities shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, disability, English proficiency, or economic status.

(b) Compliance with regulations as prerequisite to participation by other bodies in relief operations

As a condition of participation in the distribution of assistance or supplies under this chapter or of receiving assistance under this chapter, governmental bodies and other organizations shall be required to comply with regulations relating to nondiscrimination promulgated by the President, and such other regulations applicable to activities within an area affected by a major disaster or emergency as he deems necessary for the effective coordination of relief efforts.

For more information on [Ensuring Civil Rights During the COVID-19 Response](#), review the FEMA Civil Rights Bulletin.