

Crisis Standards of Care: Meeting the legal, ethical and medical challenges

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Jennifer Claymon, Partner, Reed Claymon

Lisa Snead, Litigation Attorney, Disability Rights Texas

Robert L. Fine, MD, FACP, FAAHPM, BSWH Director of Clinical Ethics and Palliative Care,
Co-Chairperson, North Texas Mass Critical Care Guideline Task Force

National and State Guidance for Establishing Crisis Standards of Care for Use in Disaster Situations

Jennifer Claymon, Partner Reed + Claymon

IOM Guidance for Establishing Crisis Standards of Care for Use in Disaster Situations

- 2009: DHHS asks IOM to develop guidelines for allocating medical resources in times of crisis and scarcity
 - IOM report: Guidance for state and local public health officials to develop comprehensive policies and protocols for standards of care
 - Five key elements
 - A strong ethical grounding
 - Integrated and ongoing community and provider engagement, education, and communication
 - Assurances regarding legal authority and environment
 - Clear indicators, triggers, and lines of responsibility
 - Evidence-based clinical processes and operations

State-level Crisis Standards of Care

- In August 2020, study in Journal of Racial and Ethnic Health Disparities identified 29 states with state-level CSC
 - 16 pre-dated COVID-19 pandemic
 - 23 explicitly stated ethical principles
 - 19 stated decisions should not factor in race, ethnicity, disability or other identity-based factors
 - 21 provided strategy for prioritizing patients for critical care resources
 - All included Sequential Organ Failure Assessment scores
 - 15 considered comorbid conditions in resource allocation decisions

Source: J Racial Ethn Health Disparities. 2021; 8(4): 824–836 (published online 8/13/2020)

Medical Standards of Care vs. Legal Standards of Care

- Medical Standards of Care

- Type and level of medical care required by professional norms, professional requirements and institutional objectives
- Vary among types of medical facilities and prevailing circumstances, such as emergencies

- Legal Standards of Care

- Care and skill a healthcare practitioner must exercise in particular circumstances based on what a reasonable and prudent practitioner would do in similar circumstances
- Flexible according to facts and situation
- May vary from state-to-state

Legal Considerations for State and Local CSC

- Emergency declarations → extraordinary powers to facilitate public health response
- Scope of practice, licensure and credentialing requirements
- Liability risks and protections for healthcare practitioners
- Anti-discrimination protections

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