Healthcare Workers' Responsibility to Provide Care during an Influenza Pandemic

Chapter 2

An influenza pandemic in North Carolina will place unprecedented strains on the healthcare system. Public health and the broader healthcare system will face tremendous challenges trying to prevent the spread of infection, while at the same time providing appropriate care for thousands of patients who become ill with acute and/or life-threatening infections. In addition, the healthcare system will still need to provide care to others who are ill, injured, or need other nonelective procedures unrelated to the flu. The services of a wide variety of healthcare institutions (eg, hospitals and nursing facilities),[a] healthcare organizations (eg, public health departments, home health and hospice), and businesses (eg, physicians' offices, drug stores, pharmaceutical manufacturers, and other medical suppliers), as well as licensed and unlicensed healthcare personnel (eg, physicians, nurses, respiratory therapists, behavioral health professionals, nurse aides, administrators, hospital-based spiritual care workers, and hospital maintenance staff) will be essential to respond effectively to such a pandemic. Throughout this section, we refer to healthcare institutions, organizations, and businesses as healthcare *organizations* and licensed and unlicensed healthcare workers as healthcare *personnel* or *workers* (unless specifically referring to licensed healthcare professionals). When we use the term "obligation" or "duty," we refer to a formalized commitment to care based on professional licensure or contractual obligations between employer and employee. When we refer to "responsibilities," we are referring to a general ethical commitment to assist others.

Public health and the broader healthcare system will face tremendous challenges trying to prevent the spread of infection, while at the same time providing appropriate care for thousands of patients who become ill with acute and/or life-threatening infections.

North Carolina healthcare organizations and personnel have had experience dealing with natural disasters such as floods, hurricanes, and ice storms. However, an influenza pandemic would differ from these natural disasters in the length of the crisis, the amount of outside support, the lack of healthcare workers, and the risk of secondary infection. Natural disasters tend to be short in duration, with the direct impact generally lasting less than a week, although there can be long term consequences. In contrast, a virulent influenza pandemic would likely consist of multiple waves of six weeks or longer in duration. Healthcare personnel and organizations from outside the directly affected area often volunteer to provide assistance in the aftermath of a natural disaster. In contrast, there would be few outside volunteers available during a pandemic, as healthcare personnel would be needed to care for infected individuals in their own communities. While healthcare organizations often have to operate with limited staff for short periods of time during a natural disaster, during a pandemic the healthcare system may experience much higher absenteeism rates. Additional complications may further reduce the availability of workers. Healthcare personnel generally do not put their own lives at risk during a natural disaster, but they may do so in the event of an influenza

a When we refer to healthcare institutions throughout this document, we include both public and private healthcare institutions. Public institutions include state and county hospitals, state psychiatric hospitals, alcohol and drug treatment centers, developmental centers, special care center, and schools for emotionally disturbed children. Private institutions include both not-for-profit and for-profit entities.

pandemic by increased exposure to flu patients. Healthcare personnel may also have conflicting family responsibilities that are not easily addressed during a pandemic. For example, healthcare personnel with young children may have no one to care for their children during a pandemic. Other resources, such as emergency daycare services, may be unavailable during a pandemic because of the possibility of exposing children to the infectious disease.

Because problems of shortage of staff and lack of appropriate resources are likely to arise, healthcare professionals may be called upon to assume responsibilities outside their normal scope of work. For example, a psychiatrist might be asked to intubate a patient if no anesthesiologists, surgeons, or emergency physicians are available; nurses who normally work in outpatient clinics and offices may be called upon to manage intensive care patients; or a pathologist may have to help triage and treat patients in an emergency setting. In the event of an adverse health outcome, this assumption of new responsibilities could potentially subject the healthcare professional to a malpractice suit.

Professional Obligation

Licensed and nonlicensed healthcare professionals have an ethical obligation to provide care because:

1. The ability of physicians and other licensed healthcare professionals to provide care is greater than that of the public, thus increasing their obligation to provide care.
2. The licensed professions have a social contract, resulting from the privilege of self-regulation and self-licensure, that calls on members to be available in times of emergency.
3. By freely choosing a profession or job devoted to caring for the ill, healthcare personnel have assumed an ethical obligation to act in the best interests of the ill and to assume a proportional share of the risks to which their professions and/or employment setting expose them.

Healthcare personnel, healthcare organizations, licensure boards, and government must work together to maximize the likelihood that the healthcare system can respond to the crisis while at the same time providing necessary healthcare services to others with ongoing healthcare needs. Healthcare licensure boards and healthcare personnel should acknowledge duties to provide care during an influenza pandemic. Moreover, both government and healthcare organizations have a reciprocal duty to help keep the workers safe and to provide the financial, medical, and nonmedical support needed to help people work during a pandemic.

Duty to Care

The duty of healthcare personnel to provide care during an influenza pandemic stems from three main sources: professional, employment, and general moral responsibilities to care for others.

Professional obligation: Licensed healthcare *professionals* (eg, doctors, nurses, and psychologists) have a *professional* duty that results from their choice of profession. This obligation is based on the fundamental professional commitment to care for the sick, the special expertise of healthcare professionals, the social privileges granted to healthcare professionals by reason of their exclusive scope of practice, their authority to self-regulate their profession, and the collegial obligation to assume a proportionate share of the risks inherent in care for patients in need.[1,2] For example, the American Medical Association states that:

> National, regional, and local responses to epidemics, terrorist attacks, and other disasters require extensive involvement of physicians. Because of their commitment to care for the sick and injured, individual physicians have an obligation to provide urgent medical care during disasters. This ethical obligation holds even in the face of greater than usual risks to their own safety, health or life. The physician workforce, however, is not an

> unlimited resource; therefore, when participating in disaster responses, physicians should balance immediate benefits to individual patients with ability to care for patients in the future.[b]

Employment obligation: All healthcare personnel, including licensed and unlicensed healthcare personnel, share an employment obligation to the healthcare organization(s) where they work. In return for their compensation, employees have a contractual obligation to meet their job responsibilities and to support the work of the organization. Society has an expectation that healthcare organizations will provide care in the event of a public health emergency. Organizations can only operate if they have adequate staffing, so employees must recognize a higher commitment to work when they accept employment within a healthcare organization. By choosing to work for an organization that provides healthcare services, all healthcare personnel have an employment obligation to provide care or to support the organization's provision of care to the public.

Human responsibilities to care for others: The welfare of everyone in the community is enhanced when all its members recognize their moral responsibility to assist each other in times of need. Healthcare personnel, just like other people in the community, have a moral responsibility to help others in need.

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Countervailing Considerations

Although healthcare personnel have an ethical obligation to work during a pandemic, their responsibility is not absolute. The responsibility to provide care to patients and to work in a healthcare setting must be balanced against other potentially competing obligations. For example, healthcare professionals have a responsibility to care for themselves, so they can continue to provide care for the sick during and after the pandemic is over. Healthcare personnel may also have responsibilities to care for family members who are ill. Further, healthcare professionals also have a duty not to harm others by transmitting the disease and, therefore, must protect themselves to limit the spread of the disease.

Reciprocal Obligations of Government and Healthcare Organizations to Enable Healthcare Personnel to Work during a Pandemic

Government agencies and healthcare organizations have a reciprocal obligation to protect and support healthcare personnel who are placing their own health at greater risk during a pandemic. In the SARS epidemic in Canada, for example, 43% of people who contracted the disease were healthcare workers.[2] Providing healthcare personnel with available protection and support will help enable them to carry out their duties to provide care during an influenza pandemic. Such duties of

b AMA Statement E-9.067 Physician Obligation in Disaster Preparedness and Response. The AMA Guidelines also state: "In preparing for epidemics, terrorist attacks, and other disasters, physicians as a profession must provide medical expertise and work with others to develop public health policies that are designed to improve the effectiveness and availability of medical care during such events. These policies must be based on sound science and respect for patients. ...Moreover, individual physicians should take appropriate advance measures to ensure their ability to provide medical services at the time of disasters, including the acquisition and maintenance of relevant knowledge." Issued December 2004 based on the report "Physician Obligation in Disaster Preparedness and Response," adopted June 2004.

protection and support may take many forms. For example, *healthcare organizations* should develop an influenza pandemic plan and identify the healthcare personnel or positions that are critical to the ongoing operation of the organization. The US Department of Health and Human Services has developed a series of planning checklists for healthcare providers, along with business, community and governmental organizations, to use in developing an influenza pandemic plan. (See Appendix G.) Healthcare organizations have a duty to inform workers that they are accepting a higher risk and responsibility when accepting employment in a healthcare organization.

Reciprocal Obligation

Government and healthcare organizations have reciprocal duties to healthcare personnel:

1. Healthcare organizations have reciprocal obligations to ensure that the work asked of healthcare personnel does not exceed their professional capabilities, and that the tasks assigned are targeted to addressing the existing emergency. May involve "Just in Time" training.
2. Government and healthcare organizations have reciprocal duties to ensure that healthcare workers are suitably protected, compensated, and supported.
3. Government should provide healthcare personnel and organizations with qualified immunity from liability from malpractice or other suits if they act in good faith to provide needed health services during the pandemic.

Healthcare organizations should ensure that the work asked of their healthcare personnel does not exceed their professional capabilities. Prior to an influenza pandemic, healthcare organizations should develop staffing plans, cross-train healthcare personnel, and develop "just in time" training capabilities.[c] While healthcare organizations may need to ask staff to provide care outside their normal scope of work during an emergency, healthcare organizations should ensure that healthcare workers have the appropriate training needed to assume new responsibilities. The worker's best judgment about his/her personal capabilities and potential for harm should be recognized; in some circumstances, action by a worker who has not been suitably or recently trained may lead to a greater harm than failure to act.

Healthcare organizations have a duty to ensure that tasks assigned to healthcare personnel during an influenza pandemic are targeted to addressing the existing emergency. Organizations should only require workers to work on-site if they cannot adequately perform their duties at home or off-site through social distancing methods and if the healthcare needs cannot be met through other personnel who volunteer to work during the pandemic.

Healthcare organizations also have a reciprocal responsibility to provide resources to ensure workers are as safe, compensated, and supported as possible. Safety should be ensured, as much as possible, according to the standards set out by the Occupational Safety and Health Administration (OSHA) and the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). For example, any worker with an increased risk of infection (eg, frontline healthcare workers who have daily contact with infected individuals) should be on the priority list to receive personal protective equipment, vaccinations, antiviral drugs, and other nonmedical control measures. All employees needed for the ongoing operation of healthcare organizations should have access to behavioral health services[d] and other goods or services needed to enable them to work.

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c "Just in time" trainings are specially tailored to help prepare healthcare personnel to assume new responsibilities. These trainings can be offered during a pandemic when specific gaps are identified and individuals are needed to assume new roles.

d Government and/or healthcare organizations should ensure workers have access to behavioral support services (including educational and training materials) to deal with the strain and stress of the influenza during and after the crisis.

Healthcare organizations also should assist critical healthcare personnel with dependent care and other appropriate services to enable those individuals to come to work. Similarly, healthcare organizations should provide ongoing support for the workers and their families, to ensure that the needs of the worker and his or her family will be met if the worker becomes ill or dies because of the influenza. Critical healthcare workers may be more likely to work if they know that their families will receive financial support if they get ill or die.

Government should ensure that individuals with direct influenza patient contact or those at increased risk of infection due to their required work be given priority access to personal protective equipment, vaccinations, antiviral medications, and other nonmedical control measures so as to protect these workers and prevent the spread of disease. (See Section on Prioritization for the Use of Limited Resources.) In addition, as discussed more fully below, there may be a degradation of the standard of care that can be provided in the event of a severe pandemic. Government should provide healthcare personnel and organizations with qualified immunity in the event of an adverse health outcome that results when healthcare workers need to assume responsibilities outside their normal scope of work, although liability should not be removed for gross negligence or malicious misconduct. Government agencies and individual healthcare organizations should also develop and disseminate clear plans for responding to an influenza epidemic. By providing protection and support for healthcare professionals, government and employers enable healthcare personnel to recognize and fulfill their duties to care for pandemic victims.

Thus, the Task Force believes that healthcare personnel have a duty to work, but that government and employers have a reciprocal obligation to provide them with support and protection that will enable them to work.

Recommendation 2.1:

(a) All healthcare personnel in healthcare settings have an ethical responsibility to perform their regular employment duties during an influenza pandemic and to assume new responsibilities for which they are trained, as long as actions by the healthcare personnel will not lead to greater harm than the failure to act.

(b) Government and healthcare organizations have a reciprocal responsibility to ensure that healthcare personnel are protected and supported to the extent possible. Frontline healthcare workers and others at increased risk of infection should have priority in receiving available personal protective equipment, vaccinations, antiviral drugs, and other nonmedical control measures. All critical healthcare personnel should receive behavioral health services and other goods or services needed to enable them to work. In addition, organizations have a responsibility to ensure that workers are appropriately trained to fulfill the tasks assigned to them during a crisis.

Recommendation 2.2:

Healthcare organizations should design business continuity plans to prepare for events such as a pandemic. Plans should identify the critical functions that must be continued and those positions that are critical to the continued operation of the healthcare organization. Workers who would be required to work should be made aware of the expectation to work during events such as a pandemic flu upon hiring or upon the adoption of the plan. The healthcare organization should specify the anticipated supports that will be available to the critical healthcare personnel to enable them to work, as well as the sanctions if critical healthcare personnel fail to show up for work when otherwise required to do so.

Scenario 1: A psychiatrist has been called in to help hospital personnel cope with the stresses of the flu pandemic. Suddenly, while waiting to speak with emergency department physicians, a patient on a gurney begins to turn blue and struggle to breathe. All of the other physicians and healthcare workers are busy with equally ill patients. The psychiatrist knows that she must intubate the patient (eg, insert a breathing tube into the patient's airway) to help him breathe but has concerns because she has not intubated a patient since she was an intern 10 years ago. Should she intubate the patient? Is the risk of him dying greater than the risk of her injuring him while attempting to intubate him? What if something goes wrong?

Scenario 2: A nurse volunteers to help out at a local hospital during the first wave of the flu pandemic, though for the last 10 years he has worked exclusively in an outpatient clinic setting. The intensive care unit (ICU) nurses have been hit hard by the pandemic so many volunteer nurses at the hospital are being asked to help with ICU patients. The nurse in question has little, if any, experience managing such extremely ill patients, especially with the currently limited oversight by others with more experience. He does not know whether he should indeed help with the ICU patients or seek another way to help.

Depending on the nature of the influenza virus, healthcare professionals may face disproportionate health risks in caring for sick individuals. Healthcare personnel may be asked to work longer hours or under more stressful work conditions than generally allowed. If healthcare organizations are short-staffed because of increased demand for care or increased health personnel illnesses or absenteeism, other healthcare personnel may be called upon to provide services outside their normal scope of practice. Healthcare personnel and organizations may also have to ration services, and may not be able to offer the full array of healthcare services normally available to patients. For example, in the event of a virulent influenza epidemic, there may be insufficient ventilators to meet the respiratory needs of every infected individual in the state. Physicians and other healthcare personnel may be required to determine who receives ventilator services. If there is an adverse health outcome because of the need to ration healthcare services or the need for healthcare providers to work outside their normal scope of professional responsibility, healthcare personnel and organizations may be subject to professional liability lawsuits or other legal challenges.

In addition, healthcare workers who are required to be vaccinated in order to continue to provide healthcare services during an influenza pandemic should be compensated if they are injured due to the vaccine. Current state workers compensation laws offer protection to people who were injured because they were required to receive the smallpox vaccination, NCGS §97-53(29).[e] Similar protections do not exist for workers who are required to receive an influenza vaccine as part of their job responsibilities.

Recommendation 2.3: **In order to ask healthcare providers and other healthcare personnel to assume greater risk and responsibilities, The North Carolina General Assembly should:**

(a) Modify existing laws to clarify that in the case of a declared disaster under the North Carolina Emergency Management Act (NCGS Ch. 166A, Art. 1):

(i) The standard of care to be applied in any medical negligence action arising out of healthcare provided during an influenza pandemic is the standard of practice among members of the same healthcare profession with similar training and experience, practicing under the same circumstances including the unique circumstances presented by an influenza pandemic, and situated in the same or similar communities at the time the healthcare is rendered.

e Current law considers certain conditions to be occupational diseases, compensable under workers compensation laws. This includes "Infection with smallpox, infection with vaccinia, or any adverse medical reaction when the infection or adverse reaction is due to the employee receiving in employment vaccination against smallpox incident to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act, Pub. L. No. 107-296 (Nov. 25, 2002)(to be codified at 42 USC §233(p)), or when the infection or adverse medical reaction is due to the employee being exposed to another employee vaccinated as described in this subdivision."

(ii) **Healthcare personnel and healthcare organizations have qualified immunity from liability. Individuals and organizations should not be liable for damages due to injury or death, unless there is clear and convincing evidence that the harm was caused by gross negligence, wanton conduct, or intentional wrongdoing.**

(iii) **Healthcare personnel and healthcare organizations will be indemnified for the costs of defending the lawsuit, including attorneys' fees, unless the injury or death is found to be a result of gross negligence, wanton conduct, or intentional wrongdoing.**

(b) **Modify the workers compensation laws to provide benefits to individuals who are injured because they were required to obtain an influenza vaccination or other prophylaxis as part of their job responsibilities.**

While the Task Force members believe that healthcare personnel have an obligation to work during an influenza pandemic by reason of their professional, employment, and general human responsibilities, the licensure boards are silent on this issue. Neither the North Carolina Medical Board, the North Carolina Board of Nursing, nor the North Carolina Respiratory Care Board have specific ethical or licensure requirements that these healthcare professionals have to work during a pandemic.[3-5] In the SARS epidemic, most healthcare personnel continued to work despite considerable personal risk.[2] Yet, some healthcare professionals refused to provide care to infected individuals, and some people left the profession or lost their jobs due to the refusal to report for work. A 2003 survey of US physicians found that 80% of physicians reported that they were willing to continue to care for patients in the event of a potentially deadly outbreak. A smaller percentage (55%) thought there was a duty to treat patients when endangering one's own health; fewer still (40%) were willing to put themselves at risk of contracting a deadly illness to save other lives.[6]

The Task Force believes that the ethical responsibilities of licensed healthcare personnel should be clarified by state licensure agencies.

Recommendation 2.4: The North Carolina Healthcare Licensure Boards should develop formal guidelines on the duty to provide care during emergencies, including outbreaks of infectious diseases. The guidelines should specify healthcare professionals' ethical duties, as well as the limits of such obligations.

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