

PRINCIPLES OF LAW AND ETHICS TO GUIDE ALLOCATION DECISIONS INVOLVING SCARCE RESOURCES IN PUBLIC HEALTH EMERGENCIES

Based on input and discussion provided by participants at the:

Summit on Legal and Ethical Issues on the Frontlines of
Public Health Emergency Response

June 29, 2006

As refined by faculty and staff from the:

Johns Hopkins Center for Public Health Preparedness
Phoebe R. Berman Bioethics Institute at Johns Hopkins University
Center for Law and the Public's Health at Georgetown and Johns Hopkins Universities

As of October 9, 2006

Introduction

Law and ethics are inextricably linked to good public health practice in emergencies. Given the maxim that all disasters are “local” events, state and local public health leaders need a clearly defined set of legal and ethical principles to help them make sound, real-time decisions for allocating scarce resources in a crisis. The all-hazards model of public health preparedness requires that any public health response framework be adaptable to a variety of emergency contexts, ranging from pandemic preparedness to terrorism response to weather-related disasters. Despite the rich literature on legal and ethical dimensions of rationing, public health practitioners still lack a clearly defined set of principles that they can reliably and efficiently apply toward allocating scarce resources in a crisis.

To address this need, the Summit assembled leading experts and emerging thinkers in public health law, ethics and practice in Washington, DC, and tasked them to generate a series of discrete principles that can translate into effective public health allocation decision-making at the state and local levels. During and after the Summit, the participants iteratively defined and revised these principles, resulting in a series of ten principles below (please note that the ordering of the principles does not reflect any attempt to prioritize their importance). These principles are grouped into three broad categories: obligations to community; good preparedness practice; and balancing personal autonomy and community well-being/benefit. Despite this grouping, the principles could also be organized as substantive and procedural in nature. Substantive grounds for these principles include allocation decisions that should be (1) driven and supported by good data, (2) non-discriminatory and sensitive to the needs of vulnerable

populations, and (3) revisable. Procedural grounds underlying these principles include the need for: (1) transparency to all stakeholders, (2) public participation to the greatest extent possible, and (3) accountability.

Some common legal and ethical norms may not be fully stated or captured in these principles, largely because their relevance is clear. Thus, for example, any decision-maker needs to be knowledgeable of changing legal requirements at the federal, state, and local levels that arise during the declaration of a state of emergency to make good choices about allocating scarce resources. As well, whenever such decisions may harm individuals or private property, fair compensation may have to be provided. Please note also that when the principles below refer to persons, they mean not only individuals but also groups of individuals.

These ten principles are meant to serve as the basis for future development of more specific guidelines to aid “live” allocation decision-making concerning scarce resources in public health emergencies. As a result, the principles described below represent only a first – albeit critical – step toward an ultimate goal of linking law, ethics, and real-world public health emergency resource allocation practices. To achieve this objective, subsequent post-Summit activities will include working closely with state and local public health leaders to develop, refine, and test more specific applications of the ten principles described in this document.

Principles of Law and Ethics to Guide Allocation Decisions Involving Scarce Resources in Public Health Emergencies

In deciding how to allocate scarce resources during a public health emergency, public health practitioners should:

Obligations to Community

1. Maintain transparency (e.g., openness and public accessibility) in decision-making process at the state and local levels.
2. Conduct public health education and outreach (to the extent possible) to encourage, facilitate, and promote community participation or input into deliberation about allocation decisions.

Good Preparedness Practice

3. Adhere to and communicate applicable standard of care guidelines (e.g., triage procedures) absent an express directive by a governmental authority that suggests adherence to differing standards..
4. Identify public health priorities based on modern, scientifically-sound evidence that supports the provision of resources to identified persons.

5. Implement initiatives in a prioritized, coordinated fashion that are well-targeted to accomplishing essential public health services and core public health functions.
6. Assess (to the extent possible) the public health outcomes following a specific allocation decision, acknowledging that the process is iterative.
7. Ensure accountability (e.g., documentation) pertaining to the specific duties and liabilities of persons in the execution of the allocation decision.
8. Share personally-identifiable health information -- with the patients' consent where possible -- solely to promote the health or safety of patients or other persons.

Balancing Personal Autonomy and Community Well-Being/Benefit

9. Balance individual and communal needs to maximize the public health benefits to the populations being served while respecting individual rights (to the extent possible), including providing mitigation for such infringements. (e.g., provide fair compensation for volunteers who are injured while rendering emergency care or services for the benefit of the community).
10. Consider the public health needs of various individuals or groups without regard for their human condition (e.g., race, ethnicity, nationality, religious beliefs, sexual orientation, residency status, or ability to pay).