

## **Section 11. Ethics**

### **I. Introduction**

When influenza pandemic strikes the world many people, ranging from government and medical leaders to health care workers, will face a host of difficult decisions that will affect people's freedoms and their chances of survival.

The World Health Organization, in describing international human rights principles, stresses that while individual rights and freedoms must be protected, these freedoms can be restricted when the public's health is threatened.<sup>1</sup>

CCHS is committed to conducting its pandemic flu planning and response efforts using widely held ethical values to make these decisions.

Fairness is a fundamental concern of decision making in times of crisis and resource limitations. Three principles<sup>2</sup> related to fairness that CCHS will consider as it makes these difficult decisions include: that CCHS will consider as it makes these difficult decisions include:

- Public engagement that allows non-expert citizens to place technical facts within the context of public values
- Publicity that actively communicates with stakeholders.
- Review that allows stakeholders to provide information and acts as an appeal process.

Decisions should aim to promote the common good and avoid social and familial fragmentation. They should adhere to the "precautionary principle" of public health:<sup>3</sup>

- Transparency so that the public understands how decisions are made
- Inclusion so that stakeholders can make their voices heard
- Accountability so that the public knows who is making the decisions and where the resources are going

CCHS will use the guidelines described in this section, documents such as the Surge Related Ethical Principles issued by the California Department of Health Services, and the direction of the Contra Costa Regional Medical Center Ethics Committee to guide decision-making.

### **2. A Guide for Decision making**

Many issues will be raised during the pandemic that cannot be resolved in advanced. To assist decision making during the pandemic, CCHS will use a

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<sup>1</sup> Addressing Ethical Issues in Pandemic Influenza Planning. WHO. 2006

<sup>2</sup> Accountability for Reasonableness. Daniels 2000.

<sup>3</sup> Ethics and Emergency Preparedness. Harvey Kayman, MD, MPH, PHMO III

guide developed by the University of Toronto. This guide emphasizes attention to 15 ethical values, of which 10 are substantive values and five are procedural values. They should be seen as a package of interdependent values that are important in any democratic society. They apply to the key areas described in III below.

**Ten substantive values to guide ethical decision-making**

<b>Substantive value</b>	<b>Description</b>
Individual liberty	<p>In a public health crisis, restrictions to individual liberty may be necessary to protect the public from serious harm. Restrictions to individual liberty should:</p> <ul style="list-style-type: none"> <li>• Be proportional, necessary, and relevant;</li> <li>• Employ the least restrictive means; and</li> <li>• Be applied equitably.</li> </ul>
Proportionality	<p>Proportionality requires that restrictions to individual liberty and measures taken to protect the public from harm should not exceed what is necessary to address the actual level of risk to or critical needs of the community.</p>
Protection of the public from harm	<p>To protect the public from harm, health care organizations and public health authorities may be required to take actions that impinge on individual liberty. Decision makers should:</p> <ul style="list-style-type: none"> <li>• Weigh the imperative for compliance;</li> <li>• Provide reasons for public health measures to encourage compliance; and</li> <li>• Establish mechanisms to review decisions.</li> </ul>
Privacy	<p>Individuals have a right to privacy in health care. In a public health crisis, it may be necessary to override this right to protect the public from serious harm.</p>
Duty to provide care	<p>Inherent to all codes of ethics for health care professionals is the duty to provide care and to respond to suffering. Health care</p>

Duty to provide care – continued	Providers will have to weigh demands of their professional roles against other competing obligations to their own health, and to family and friends. Moreover, health care workers will face significant challenges related to resource allocation, scope of practice, professional liability, and workplace conditions.
Reciprocity	Reciprocity requires that society support those who face a disproportionate burden in protecting the public good, and take steps to minimize burdens as much as possible. Measures to protect the public good are likely to impose a disproportionate burden on health care workers, patients, and their families.
Equity	All patients have an equal claim to receive the health care they need under normal conditions. During a pandemic, difficult decisions will need to be made about which health services to maintain and which to defer. Depending on the severity of the health crisis, this could curtail not only elective surgeries, but could also limit the provision of emergency or necessary services.
Trust	Trust is an essential component of the relationships among clinicians and patients, staff and their organizations, the public and health care providers or organizations, and among organizations within a health system. Decision makers will be confronted with the challenge of maintaining stakeholder trust while simultaneously implementing various control measures during an evolving health crisis. Trust is enhanced by upholding such process values as transparency.
Solidarity	As the world learned from SARS, a pandemic influenza outbreak will require a new vision of global solidarity and a vision of solidarity among nations. A pandemic can challenge conventional ideas of national sovereignty, security or territoriality. It also requires solidarity within and among health care institutions. It calls for collaborative approaches that set aside traditional values of self-interest or territoriality among health care professionals, services, or institutions.

Stewardship	Those entrusted with governance roles should be guided by the notion of stewardship. Inherent in stewardship are the notions of trust, ethical behavior, and good decision-making. This implies that decisions regarding resources are intended to achieve the best patient health and public health outcomes given the unique circumstances of the influenza crisis.
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### Five procedural values to guide decision making

Procedural value	Description
Reasonable	Decisions should be based on reasons (i.e., evidence, principles, and values) that stakeholders can agree are relevant to meeting health needs in a pandemic influenza crisis. The decisions should be made by people who are credible and accountable.
Open and transparent	The process by which decisions are made must be open to scrutiny, and the basis upon which decisions are made should be publicly accessible.
Inclusive	Decisions should be made explicitly with stakeholder views in mind, and there should be opportunities to engage stakeholders in the decision-making process.
Responsive	There should be opportunities to revisit and revise decisions as new information emerges throughout the crisis. There should be mechanisms to address disputes and complaints.
Accountable	There should be mechanisms in place to ensure that decision makers are answerable for their actions and inactions. Defense of actions and inactions should be grounded in the 14 other ethical values proposed above.

### III. Key Issues to be addressed

Four key ethical issues must be addressed in pandemic flu planning<sup>4</sup>

#### A. Health Workers

Health workers have a duty to provide care during a communicable disease outbreak. CCHS is committed to promoting worker safety at all times, and to supporting workers in the discharge of their duties throughout a period of extraordinary demands;

CCHS will endeavor to make public the criteria used to deploy employees to assignments during the outbreak, and to ensure that duty assignments are reasonably equitable with respect to the distribution of risk among individuals and occupational categories.

#### B. Restricting the Liberty of the Public

<sup>4</sup> Developed by the Pandemic Influenza Working Group at the University of Toronto

Until a new flu vaccine is developed or other medications are found to control pandemic flu, restrictive measures may be one of the important public health tools to reduce spread of this communicable disease. Governments may need to limit three basic personal freedoms that we take for granted: mobility, freedom of assembly and privacy. There may be a need to close schools, cancel public gatherings and sporting events, and impose quarantine, isolation and even detention.

In making decisions that restrict the liberty of the public, CCHS will:

1. Balance personal autonomy and individual liberties with protection of the public and promotion of the common good
2. Make every effort to ensure that no part of the community is more impacted than another sector unless there is a reasonable health-related reason for targeting a particular sector.
3. Use the least restrictive means necessary
4. Allow for safeguards such as the right of appeal.
5. Explain the reasons for restrictive measures;
6. Describe the benefits of compliance
7. Outline the consequences of non-compliance.
8. Minimize stigmatization
9. To the extent consistent with public safety, protect the privacy of individuals and/or communities affected by quarantine or other restrictive measures.
10. Work with its partners such as Employment and Human Services and the Office of Emergency Services to arrange for support services to individuals and communities impacted by quarantine and other restrictions.

### **C. Allocating Scarce Resources**

During a pandemic, the human and material resources of health care will be rapidly overwhelmed. There will be scarcities of medicines, equipment and health care workers in all countries, with less-developed nations facing some of the greatest scarcities. There will be cases of people who will possibly have to forego medical care for other serious medical conditions. Hospitals will be strained beyond their capacity to accommodate seriously ill patients and alternate methods of care will have to be provided.

Priority setting to allocate scarce resources such as vaccines and antiviral medicines, providers' time, ventilators and hospital beds, will be necessary.

It is important to recognize that in a pandemic flu situation, resource limitation may mean that some people who need and deserve resources will not get them and that there will be no distribution plans that can avoid harm to all. The task is to decide who amongst those with a legitimate need shall receive the resources.

If resources are scarce and priorities have to be established, CCHS will:

1. Make every effort to insure that the allocation process is fair and promotes human dignity.
2. Publicize a clear rationale for giving priority access to health care services, including antivirals and vaccines, to particular groups, such as front line health workers and those in emergency services. CCHS will use the strategies described in the Crisis and Emergency Risk Communications plan to initiate and facilitate constructive public discussion about these choices.
3. As time and health considerations permit, engage its stakeholders (including the Board of Supervisors, Office of Emergency Services, Hospital Disaster Council, unions, Medical Staff, Bioethics Committee, Senior Staff, the public and other partners) in determining what criteria should be used to make resource allocation decisions (e.g., access to ventilators during the crisis, and access to health services for other illnesses).
4. Provide formal mechanisms for stakeholders to bring forward new information, to appeal or raise concerns about particular allocation decisions, and to resolve disputes. To accomplish this, it will use its website, Health Emergency Information Line, County Call Center and other feedback mechanisms.

#### **D. Complying with Global Advisories**

One way that governments and the World Health Organization seek to control the spread of communicable diseases is through restrictions on travel. Especially during the early stages of what looks like a pandemic, travel advisories can help to slow the spread of the virus. These restrictions can impose severe penalties not only on individuals, but also on entire regions.

CCHS will comply with travel advisories and other global directives and will use the strategies described in its Crisis and Risk Communications Plan to disseminate travel advisories to the public in a timely manner.