



State Disaster Management Plans Impact Hospital Response to COVID-19 Outbreak

One of the most heavily-debated legal and ethical issues to arise during the current COVID-19 outbreak is what methodology a hospital should use to allocate ventilators when the number of patients who need a ventilator exceeds the hospital's supply of ventilators. Even more heavily discussed is whether a hospital should disconnect a patient from a ventilator against the wishes of the patient and his/her family in order to use that ventilator for another patient with a statistically greater chance of survival.

So how is a hospital supposed to make that decision?

For the most part, the day-to-day operation of a hospital does not involve making difficult decisions regarding the allocation of a limited supply of the resources needed to provide patients with potentially life-saving treatment, like the allocation of ventilators. That all changes in an emergency, e.g., pandemic, natural disaster, mass casualty event. In those situations, the demand for hospital services quickly skyrockets while a hospital's resources do not. Even if the hospital maintains an inventory of extra resources for use in an emergency (which is common), those extra resources may not be adequate to meet patient demand depending on the severity, duration and geographic area impacted by the emergency.

Faced with this reality, a hospital is forced to make difficult decisions about which patients receive needed care and which do not, knowing full well that its decision may mean life for one patient and death for another. The hospital also knows that this decision may result in lawsuits by the families of patients who do not receive the needed care.

To guide this decision making process, hospitals often rely on disaster management plans developed by state government (collectively, “Plans” and individually, “Plan”). Some states have very extensive Plans, including an overall Plan and separate Plans for different types of disasters, e.g., natural disaster plan, a mass casualty plan, a pandemic plan (some even have an influenza pandemic plan). Some states have one single over-arching Plan. Some states have no publicly-available Plan at all.

Some states have very detailed Plans that go so far as providing a framework for determining when a disaster begins (thereby triggering the provision of care under the Plan), when a disaster ends, and how care should be provided during the disaster, including triage guidelines for hospital admission and for allocation of treatment (e.g., ICU beds, burn unit beds, ventilators). Other states have Plans more focused on providing a framework for hospitals and other healthcare providers to make such decisions themselves.

No matter how detailed or basic a state’s Plan may be, Plans are generally voluntary guidelines, not legal requirements. As a result, each hospital is free to use, in whole or in part, or discard the Plan, as it sees fit.

Even though a Plan is not legally binding, a Plan, no matter how detailed or basic, provides guidance for hospitals thrust into the position of making difficult decisions about allocation of limited resources under extremely difficult and stressful conditions. Assuming that these Plans are well-constructed and empirically based, they also provide guidance that can be used by a court to determine what constitutes appropriate medical care during an emergency. At the same time, the lack of such a Plan in a state deprives hospitals of valuable information they can use to make medical decisions during a disaster and without a state-endorsed reference point as to what constitutes appropriate medical care during a disaster.^[1]

With this in mind, the chart below identifies which of the states in which Spencer Fane has offices have a publicly-available disaster management plan and at least some details about the plan^[2]:

State	Overall	Pandemic	Triage	Ventilator
Arizona	Yes ^[3]	No	Yes ^[4]	No ^[5]
Colorado	Yes ^[6]	Yes ^[7]	Yes ^[8]	Yes ^[9]

Florida	Yes [10]	Yes [11]	No	No
Kansas	Yes [12]	Yes [13]	Yes [14]	Yes [15]
Minnesota	Yes [16]	Yes [17]	Yes [18]	Yes [19]
Missouri	No	Yes [20]	No	No
Nebraska	No [21]	No	No	No
Nevada	Yes [22]	Yes [23]	Yes [24]	No
Oklahoma	No	Yes [25]	Yes [26]	No
South Dakota	No	No	No	No
Texas	Yes [27]	Yes [28]	No	No

This blog post was drafted by Spencer Fane LLP attorneys, [Donn Herring](#) (St. Louis, MO), [Ayesha Mehdi](#) (Las Vegas), [Kristen Petry](#) (Houston), [Shannon Bond](#) (Overland Park), Laura Bond (Overland Park), [Troy Rackham](#) (Denver), [Karen Olson](#) (Minneapolis), and Mike Murphy (Cape Girardeau). For more information, visit www.spencerfane.com.

[\[1\]](#) There are certainly other publicly-available guidelines that a hospital can use to determine how to provide care during the COVID-19 outbreak, e.g., Comprehensive Hospital Preparedness Checklist for Coronavirus Disease 2019 (COVID-19) (https://www.cdc.gov/coronavirus/2019-ncov/downloads/HCW_Checklist_508.pdf); Surge Priority Planning COVID-19: Critical Care Staffing and Nursing Considerations (<https://www.chestnet.org/Guidelines-and-Resources/Resources/Surge-Priority-Planning-COVID-19-Critical-Care-Staffing-and-Nursing-Considerations?p=1>); Allocation of Scarce Critical Care Resources During a Public Health Emergency (https://www.ccm.pitt.edu/sites/default/files/UnivPittsburgh_ModelHospitalResourcePolicy.pdf); Utah Pandemic Influenza Hospital and ICU Triage Guidelines (pandemicflu.utah.gov/plan/med_triage081109.pdf); Ethical Framework for Health Care Institutions & Guidelines for Institutional Ethics Services Responding to the

Coronavirus Pandemic (

<https://www.thehastingscenter.org/ethicalframeworkcovid19/>). To the extent each of these guidelines are well-constructed and empirically based, they too can be used by a court to determine what constitutes appropriate care during an emergency.

[2] This information was developed after a review of publicly-available information on each state's websites. It is possible that a state has Plans that simply were unable to be easily accessed through the state's websites.

[3] Arizona has a State Disaster Medical Advisory Committee (SDMAC) that is activated during public health emergencies. They base their decisions on the Crisis Standards of Care Plan, which describes general guidelines for public health emergencies. Arizona Department of Health Services, *Arizona Crisis Standards of Care Plan* (3d ed. 2020),

<https://www.azdhs.gov/documents/preparedness/emergency-preparedness/response-plans/azcsc-plan.pdf>. SDMAC issues more specific guidelines in the context of each declared emergency and posts the guidance on SDMAC's website. Arizona Department of Health Services, State Disaster Medical Advisory Committee (last visited April 9, 2020), <https://www.azdhs.gov/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/index.php#novel-coronavirus-sdmac>.

[4] Arizona's Plan outlines three phases of triage, which integrate SOFA scores for ICU triage. Arizona Department of Health Services, *Arizona Crisis Standards of Care Plan* 29-31 (3d ed. 2020), <https://www.azdhs.gov/documents/preparedness/emergency-preparedness/response-plans/azcsc-plan.pdf>. The Plan also outlines pre-hospital triage. See *Id.* at 27-28; see also Arizona Department of Health Services, *COVID-19 Pre-Hospital Triage Guidance* (April 1, 2020), <https://www.azdhs.gov/documents/preparedness/epidemiology-disease-control/infectious-disease-epidemiology/novel-coronavirus/sdmac/sdmac-guidance-pre-hospital-triage.pdf>.

[5] Arizona's Plan generally outlines strategies to maximize medical resources during a supply shortage, though it appears it is more of a directive to SDMAC to issue more specific guidance, rather than to health care facilities themselves. See Arizona Department of Health Services, *Arizona Crisis Standards of Care Plan* 35-39 (3d ed.

2020), <https://www.azdhs.gov/documents/preparedness/emergency-preparedness/response-plans/azcsc-plan.pdf>. With regard to ventilators, it states: “[s]ubstitute anesthesia machines for ventilators when necessary,” “[u]se BiPAP whenever possible to preclude endotracheal intubation and ventilator use,” “[r]euse single use items, after appropriate disinfection or sterilization,” and “[a]llocate respiratory care resources . . . to patients whose need is greater or whose prognosis is more likely to result in a positive outcome.” *Id.* at 38.

[6] Colorado Hazard and Incident Response and Recovery Plan; Colorado State Emergency Operations Plan

[7] CDPHE All Hazards Internal Emergency Response and Recovery Plan – Annex B: Colorado Crisis Standards of Care Plan; Guidance for Alterations in the Healthcare System During a Moderate to Severe Influenza Pandemic (https://www.colorado.gov/pacific/sites/default/files/OEPR4_CDPHE_Alterations_in_Healthcare)

[8] *Id.* at 23.

[9] *Id.* at 43.

[10] State of Florida 2020 Comprehensive Emergency Management Plan (<https://www.floridadisaster.org/globalassets/comp/2020-comp/2020-state-comp.pdf>)

[11] The State of Florida Biological Incident Annex (<https://www.floridadisaster.org/globalassets/comp/2018-sert-biological-incident-annex.pdf>)

[12] http://www.kansastag.gov/AdvHTML_doc_upload/2017%20KRP%20FINAL.pdf

[13] http://www.kdheks.gov/cphp/download/Crisis_Protocols.pdf

[14] *Id.* at 12.

[15] *Id.* at 17.

[16] All-Hazards Response and Recovery Plan – Base Plan (<https://www.health.state.mn.us/communities/ep/plans/allhazardsbase.pdf>)

[17] Minnesota Crisis Standards of Care Framework – Health Care Facility Surge Operations and Crisis Care; Patient Care Strategies for Scarce Resource Situations

[18] Id.

[19] Id. at 6-1.

[20] Missouri's Pandemic Influenza Response Plan (<https://health.mo.gov/emergencies/panflu/pdf/panfluplan.pdf>)

[21] Nebraska's website states that it has a State Emergency Operations Plan patterned after the National Response Plan, but there is no link to the Plan for review. See Nebraska Emergency Management Agency, Nebraska State & Local Plans (last visited April 9, 2020), <https://nema.nebraska.gov/preparedness/nebraska-state-local-plans>. The only version that could be found was last updated in 2014, though there was apparently an updated version in 2017. See <https://www.animallaw.info/sites/default/files/Nebraska%20State%20Emergency%20Operation>; <https://nema.nebraska.gov/preparedness/state-emergency-operations-plan>.

[22] See Nevada Revised Statutes Chapter 414 Emergency Management, available at <https://www.leg.state.nv.us/NRS/NRS-414.html>.

[23] See Emergency Operations Plan for Pandemic Influenza and Highly Infectious Respiratory Diseases, available at <https://www.southernnevadahealthdistrict.org/programs/emergency-preparedness/disease-threats/pandemic-flu/>.

[24] See Nevada Crisis Standards of Care Plan, available at <https://files.asprtracie.hhs.gov/documents/nv-csc-plan-070317-final-508.pdf>.

[25] See Oklahoma Pandemic Influenza Management Plan, available at https://www.ok.gov/health/Disease,_Prevention,_Preparedness/Emergency_Preparedness_an

[26] See Interfacility Trauma Triage & Transfer Guidelines, available at <https://www.ok.gov/health2/documents/Interfacility%20Trauma%20Triage%20and%20Transfer%20Guidelines.pdf>.

Also see, Prehospital Trauma Triage, available at <https://www.ok.gov/health2/documents/Prehospital%20Trauma%20Triage.pdf>. Triage specific to natural disasters and pandemics is not available.

[27] State of Texas Emergency Management Plan – Basic Plan

[28] Respiratory Viruses Having Pandemic Potential, Public Health Preparedness, Surveillance, and Response Plan for Texas