Public Expectations

- Plans should address taking care of the sickest patients

AND

- Plans should address protecting the greatest number of people possible
What is meant by “Triage”?

- Determining priorities for treatment

Who will survive or medically progress with treatment and who will not
Needs of Community vs. Individual

- Raises ethical and legal concerns
- Focus on protecting the community may mean less care for the individual
Altered Standards of Care

- Public health emergencies shift focus from individual outcomes to population outcomes.

- Public health emergencies may require altered standards of care.
  - Limited resources alter access to vaccines and anti-virals
  - Limited space alters access to hospitals’ ventilators
  - Limited healthcare workforce alters access to providers
Texas Law

- **Health and Safety Code 166.044(d):**
  The standard of care that a physician, health care facility, or health care professional shall exercise under this section is that degree of care that a physician, health care facility, or health care professional, as applicable, of ordinary prudence and skill would have exercised under the same or similar circumstances in the same or a similar community.

- **Civil Practice & Remedies 74.153:**
  In a suit involving a health care liability claim against a physician or health care provider for injury to or death of a patient arising out of the provision of emergency medical care in a hospital emergency department or obstetrical unit or in a surgical suite immediately following the evaluation or treatment of a patient in a hospital emergency department, the claimant bringing the suit may prove that the treatment or lack of treatment by the physician or health care provider departed from accepted standards of medical care or health care only if the claimant shows by a preponderance of the evidence that the physician or health care provider, with willful and wanton negligence, deviated from the degree of care and skill that is reasonably expected of an ordinarily prudent physician or health care provider in the same or similar circumstances.
IOM Calls for National Guidelines

- Who will receive scarce resources?
- How will priorities be determined?
- What is the “trigger” for implementing a pandemic response plan?
Sequential Organ Failure Assessment (SOFA)

- Adopted by: New York, Minnesota, Utah and Colorado to determine allocation of ventilators to patients
- Texas plan recommends use of SOFA
Pandemic Flu Response

- Focus on community vs. patient centered care: distributive justice
  - Utilitarian approach directs treatment to those who need/benefit from it; withholds from those who would not
  - Equal chances directs treatment on first come, first served basis
  - Exclusion criteria implicate disability community concerns
Addressing concerns of vulnerable populations

- Lack of protocols
- DNR orders and Advance Directives
- Discrimination prohibitions
Survivability

- Application of principle must be clear
- Review exclusion criteria to ensure non-discriminatory applications to vulnerable populations
Implementing a Plan

- Declaration of public health emergency
- Impact isolated to small geographic area
- Need for proactive planning
- Clear, concise, consistent adherence to plans to facilitate public compliance
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