CDC Pandemic Grant:
Legal and Ethical Workgroup[1]

July 16, 2009

Issue	Concern	Ethical Approach	Suggested Action
1. **Standard of Care**	How do we appropriately plan for and allow necessary contextualizing of the standard of medical care? (Note that access to care necessarily determines the standard of care.)	As a pandemic progresses, we move from the existing patient care orientation to a public health focus. Our actions must be proportionate to the context and must be for the good of the group, which is ultimately good for the individual.	**Contextualization of care:** There must be an orderly and proportionate response to the event. To that end, we support the establishment of thresholds for contextualization of the standard of care, based on population, infection rate, resources, and mortality. As the pandemic reaches certain resource/ capacity threshold levels, normative standards of practice may change so that medical and care professionals can proceed as well as possible, given the diminishing resources and evolving context. This could be done through advance preparation of emergency powers documents to suspend certain State laws and regulations or enforcement thereof. (As of July 2009, the State is compiling laws and regulations that may need to be modified; GNYHA hopes to assist in that process.) As in all aspects of pandemic preparation,

[1] This document was prepared by a workgroup convened by the Greater New York Hospital Association (GNYHA) in coordination with the New York City Department of Health and Mental Hygiene (DOHMH) through a grant of the Centers for Disease Control and Prevention (CDC). It is not intended as a definitive treatment of these issues but as a tool to assist hospitals and communities considering the ethical issues inherent in a pandemic.

			there must be criteria and guidelines in place so that governmental decision-makers can oversee the situation. Individuals at hospitals should be making decisions that are consistent with guidelines from appropriate governmental authorities. Further, there must be an "off the shelf" product for the governmental decision-makers to use. **<u>Establishment of thresholds</u>:** We encourage the formation of City-specific thresholds, based on existing data dealing with population, coverage, hospital capacity, alternate site availability, and modeling of an anticipated influenza pandemic. For ease of administration, the evolving CDC pandemic severity index (PSI) may be an appropriate model. We note that the existing World Health Organization (WHO) phases of alert in their global influenza preparedness plan does not discuss severity of the pandemic, which is a significant element for considering contextualization of care. It may therefore not be the optimal guidance for this purpose.
	Reductions in labor force: workers will have conflicting duties to themselves and their families.	Do health care workers have obligations of professionalism that trump other duties?	Hospitals and other health care employers should take steps to anticipate health care workers' conflicting priorities and concerns and provide assistance in order to maintain

		A practical and realistic understanding of workers' needs, limitations, and fears must be taken into account.	their work force. Hospitals should acknowledge that healthcare workers may not come to work and that, at the least, it is extremely difficult to project attendance realistically. Non-health care employers should relax absenteeism standards so that a non-health care employee may be available to assume child care and other family obligations, allowing a health care employee to go to work.
	Are there ramifications for the caregivers themselves, who will have to provide a level of care that may be beneath their ideal standards?	The conflict described above may be significant for health care workers, as may be the trauma of living under constant and ongoing risk.	It will be important to have supports and counseling in place for health care workers during and after a pandemic event.
	How can we ensure the public's trust, given the necessary contextualization of care?	The public must be helped to understand the outcome that is desired for the group (rather than just a positive outcome for the individual) is desired.	We must build solidarity in our community akin to the post 9/11 experience. Communications must be employed to explain policy goals and their justification under the circumstances. The expertise behind the recommendations and the reasons for the specific measures that are instituted should also be carefully explained.

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2. **Access to Care**	Will equitable access to care be provided throughout a pandemic? Will every community be a center for provision of care?	Determine what a just allocation requires in the specific situation, emphasizing fairness and consistency.	Our goal will be to ensure access to care to all communities throughout the pandemic. Thus, governmental decision-makers and health care providers must recognize and acknowledge health disparities, which can be potentially greater in a pandemic There should be an effort to remediate disparities in anticipation of an event (ie, redistribution of resources). Over the course of the pandemic, decision-makers are encouraged to establish priorities for providing access to care, based on stage of pandemic and impact of pandemic on individual communities
	How can we ensure public trust regarding access to care?	Focus on transparent, consistent messaging to all communities.	Government officials and hospitals must commit to transparency and community engagement in the decision making processes. It will undermine public trust if there is not a unified voice and regular communications.

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3. Rationing of healthcare supplies	How can the City fairly distribute supplies of vaccine, ventilators, ICU beds, Tamiflu, masks, and other resources? This requires a strategy for providing access to care and prioritizing and maximizing existing resources, which will likely be limited.	In terms of rationing, our goal must be proportionally equivalent resource distribution based on population density and need. City and State leaders have fiduciary and ethical duties to advocate on behalf of their citizens and obtain as many resources as possible. Upon receiving distributions from the Federal government, our local leaders have the obligation to serve all communities equitably.	Governmental decision-makers and hospitals should evaluate the efficiency of allocating resources (including human resources) to optimize consequences. Resources should be distributed to hospitals by the City based on population density and need, with modifications made frequently in response to constant communication from hospitals and communities. Factors relevant to a just allocation of resources may include: -age -health -likelihood of success/ ability to recover -responsibilities in a pandemic
	In terms of protection for both caregivers and patients, how do we direct scarce resources and supplies so they will do the most good?	Consider the following global priorities in directing scarce resources, [2] acknowledging that priorities and needs will be situation-specific. • Prevention of new infection. • Essential medical and scientific personnel • Health and safety	While no model of distribution will be able to satisfy all of our articulated priorities, a constant flow of information about need and patient population will help City officials direct resources from a central repository in an ethical, effective way. Hospitals are urged to gather such information and communicate with governmental authorities and each other on a

[2] Adopted from Tia Powell, MD, Kelly C. Christ, MHS and Guthrie S. Birkhead, MD, MPH Allocation of Ventilators in a Public Health Disaster, Disaster Medicine and Public Health Preparedness 2(1): 20-26 2008.

		infrastructure • Those with the greatest medical needs • The life cycle of the pandemic • The chronically underserved • Early detection and response globally • Transparency and public cooperation	daily basis.
	As the pandemic progresses, should institutions be required to share resources between and even within institutions?	Remain focused on the good of the community. Be prepared for a reality of some hospitals refusing to share resources. To that end, public messaging should emphasize cooperation and collective benefit to help shape individual and institutional behavior. Providers and individuals should also be made aware of the legal, ethical, and other consequences of inappropriate actions	There will be a critical need for information: governmental decision-makers and hospitals must understand the complete situation (in terms of mortalities, increase or decrease in cases, availability of supplies) to make effective decisions. Hospitals are urged to gather such information and communicate with governmental authorities and each other on a daily basis. Legislators may wish to consider creating sanctions for inappropriate actions during a pandemic.

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5. **Essential Healthcare Services**	Will any essential health care services be curtailed?	As we move farther away from a model of individual welfare, some healthcare services that are usually considered essential may be curtailed.	Pre-set thresholds based on the lifecycle of the pandemic should provide a framework for the reduction of non-pandemic healthcare services that are usually considered essential At the beginning of a pandemic, some healthcare services (i.e., non-elective surgery, trauma, chemotherapy, deliveries and others) will be considered essential healthcare services. As the pandemic becomes more severe and requires more resources, some services will be curtailed. In extreme circumstances, only those services that are life-saving and highly efficacious will be provided. The State should establish the set of services, along with the determinative thresholds based on information from the City and other localities.

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6. **Designation of essential healthcare personnel**	Who should be deemed essential healthcare personnel? Who should get priority in prophylaxis or treatment?	Designation as essential should be based on the role the individual can play vis-à-vis the pandemic only.	Public health authorities should pre-establish meaningful, transparent criteria for who is granted such priority, and hospitals can make individual decisions in keeping with these criteria based on their resources, needs, or other meaningful, transparent criteria. The City and its hospitals are encouraged to

			engage in ongoing emergency response training and cross-training of personnel to develop responsive skills throughout the facility.
	How do we prevent abuses of categorization as essential medical and scientific personnel?	Individuals must feel comfortable that there is a successful response plan in place, so that they are less incented to engage in abuse.	Again, criteria for categorization as "essential" must be meaningful, transparent, well-enforced, and consistent. Arbitrary or abusive decision-making will fuel public mistrust and foster inappropriate actions.
	What are the obligations of those who are considered essential personnel?	Essential personnel who accept priority for prophylaxis or other resources are thereby obligated to perform their designated functions.	Sanctions should be in place for those who accept priority prophylaxis but do not fulfill their obligations for providing essential services.

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7. **Inclusion of vulnerable populations**	How can we ensure that certain vulnerable populations are not overlooked?	Distribution should be based on population density establishes a framework of fairness.	Distribution to hospitals should be made based on population density and need. Individual distribution will then follow, based on the elements described above.
	How do we define a vulnerable population at all? Examples may include: - Elderly - Children - Indigent - Limited English - Cultural Barriers - Homeless - Homebound - Immigrants - Mental Health - Asthma - Medically Compromised o HIV/AIDS However, this list is not exhaustive and will change based on the specific situation.	We must ensure equity and fair provision of health care services.	As discussed above, existing inequities must be considered and remediated in pandemic planning and response. Vulnerable populations or those that historically have confronted restricted access to care must be represented in planning as well. Issues like the nature and severity of the pandemic, the populations affected, and the existence of viable institutions and physicians are among those to consider in assessing the vulnerabilities of populations.
	How do we most effectively communicate with vulnerable populations?	Again, we must be guided by a sense of fairness and an understanding that action for the collective good is paramount.	The city's pre-planning for a pandemic must include translation of important documents and outreach to non-English press and community leaders.

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8. Individual rights	Will individual freedoms be restricted due to a pandemic?	Again, we are shifting from a paradigm of individual rights to collective good, so it is possible that individual freedoms may be temporarily restricted. However, any restrictions should be based in real need, not perceptions or fear.	Government decision makers are urged to plan for such potential restrictions and to communicate them openly. Vulnerable populations in particular must not be targeted or unduly restricted. Decision-makers are also encouraged to consider means to reduce the spread of the disease without unnecessary restriction of rights.

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9. **Aftermath** What we do now determines our life then	What do we perceive as a collective goal for our society during and post-pandemic?	Our goal is to maintain a functioning society and support the many individuals and families who have suffered losses.	The role of the public health authorities must be to bring the most good to the most people through a rational system. We will also seek a massive outreach by clergy, counselors, civic organizations. Efforts and resources must be reserved for re-building and maintenance at the conclusion of the pandemic.
	How do we evaluate the outcome of the pandemic?	Pandemic response will be viewed historically not just by mortality	See above

		rates but by whether our essential community structures and processes can function in the aftermath. Such continuation requires a collective effort and a commitment to virtues-based ethics like justice, compassion, and ethical leadership.	