Executive Summary:
Allocation of Scarce Resources Project

Since its inception in 2002, the Wisconsin Hospital Emergency Preparedness Program has established State Expert Panels to develop guidelines for the allocation of scare resources. This document summarizes the work of these panels and their recommendations for the implementation of these guidelines by hospitals.

A. Altered Standards of Care

The State Expert Panels prefer not to use "altered standards of care", which is used very popularly in the literature[1] to refer to how treatment may change in a mass casualty incident due to limited resources. Instead the Panels prefer the use of the term "allocation of scare resources".

B. Goals for all Hospitals in the State

The goals established by the State Expert Panels for this project reflect the goals established by the Institute of Medicine of the National Academies and by the Agency for Healthcare Research and Quality.

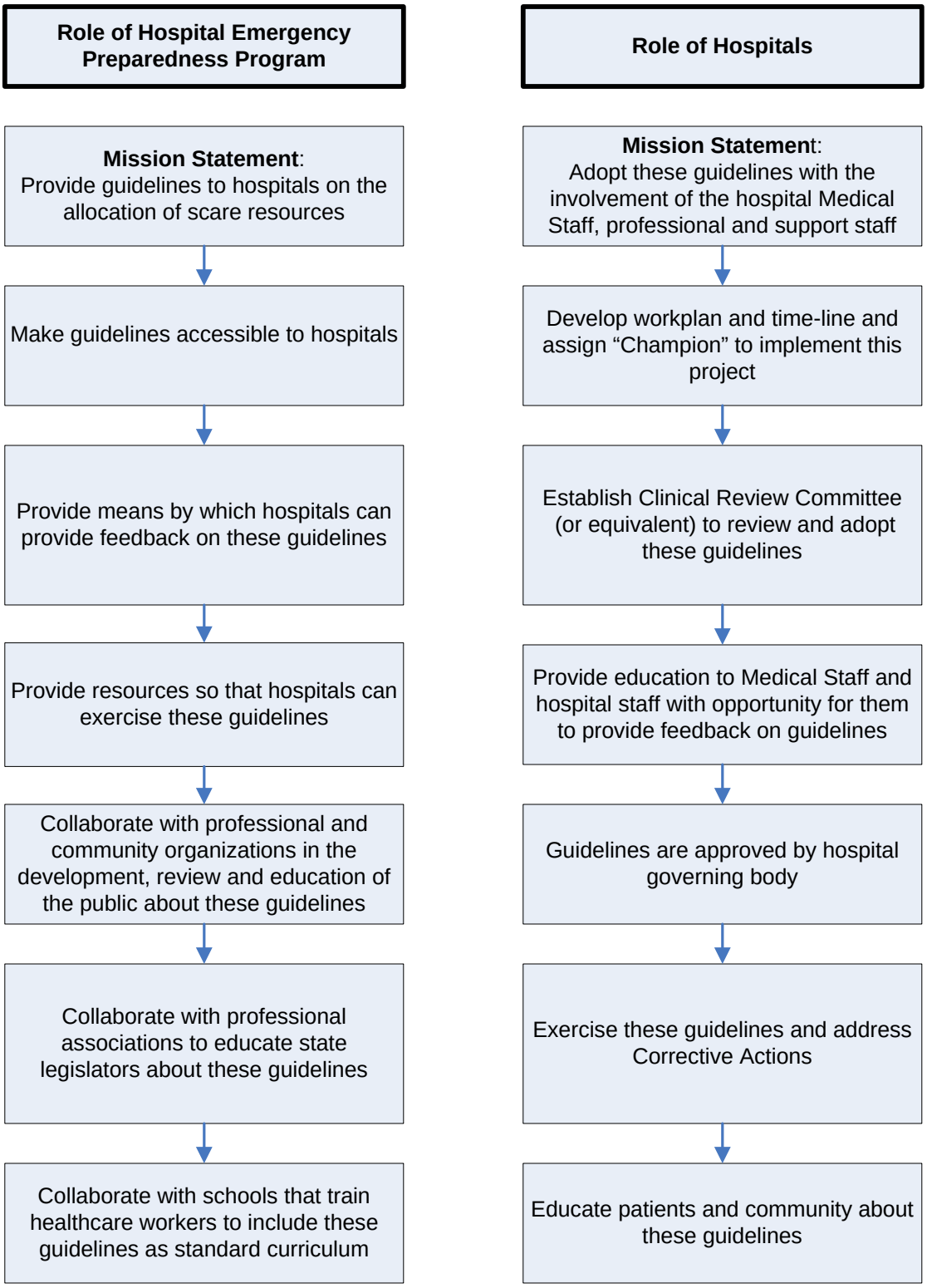
- The allocation of scarce resource guidelines are applied consistently by Wisconsin hospitals.
- There is consensus and solidarity among physicians and healthcare professionals on the application of these guidelines.
- The community has been engaged in the development of these guidelines
- These guidelines adhere to ethical norms.
- The federal and state government provides legal protections for practitioners, hospitals, implementing these guidelines.
- A 'trigger" for the implementation of these guidelines is identified.

The State Expert Panels recommend that hospitals are prepared to make decisions for the allocation of scarce resources in a mass casualty incident by January 1, 2012.

[1] The Institute of Medicine of the National Academies, in its report, "Guidance for Establishing Crisis Standards of Care for Use in Disaster Situations", released September 24, 2009, uses "crisis standards of care". There is also an earlier study, "Altered Standards of Care in Mass Casualty Events", Agency for Healthcare Research and Quality (AHRQ), AHRQ Publication No. 05-0043, April 2005.

C. Action Steps

This flowchart depicts the process recommended for the implementation of this project:



D. Trigger for Implementation

There is not yet national consensus on the "trigger' for the implementation of these guidelines. According to the Institute of Medicine, trigger points are reached when institutional surge capacity cannot accommodate the demand through conventional or contingency responses that do not require an adjusted standard of care. The Institute of Medicine (IOM) states that:

> "Crisis care occurs under conditions in which usual safeguards are no longer possible. Crisis care is provided when available resources are insufficient to meet usual care standards, thus providing a transition point to implementing *crisis standards of care.* Note that in an important ethical sense, entering a crisis standard of care mode is not optional – it is a forced choice, based on the emerging situation. Under such circumstances, failing to make substantive adjustments to care operations – i.e., not to adopt crisis standards of care – is very likely to result in greater death, injury or illness"[2].

The State Expert Panels offer, for consideration, the following recommendations for a "trigger". The following four conditions should be met before a hospital activates these guidelines.

1. There is a declaration of an emergency or a request has been made by the hospital for the declaration of an emergency[3].
2. The hospital has activated its Emergency Operations Plan.
3. The hospital is experiencing unavailability of critical resources and cannot access these resources from other sources.
4. The hospital is unable to refer patients to another facility because of the emergent situation.
    a. All hospitals have Inter-Facility Transfer Agreements and these hospitals should be contacted to determine if they can accept the transfer of patients.
    b. Hospitals are to reach out to an even wider radius[4] of hospitals, including those with which the hospital may not have Inter-Facility Transfer Agreements.

E. Legal Protections

The issue of liability for hospitals in a mass casualty incident is evolving nationally. Presently, there are limited legal provisions or protections, if any, for hospitals that would implement allocation of scare resource guidelines in an emergency or mass casualty incident.

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[2] Institute of Medicine of the National Academies (IOM), *Guidance for establishing crisis standards of care for use in disaster situations: a letter report.* Washington, DC: The National Academies Press; 2009; page 15.

[3] See Section I, Declaration of an Emergency.

[4] What is a reasonable radius is dependent upon the circumstances of the incident and also on patient health and safety – how far can a patient be transported without jeopardizing patient safety and health.

While Wisconsin statutes do not cite another or an altered standard of care applicable in an emergency or a mass casualty incident, the general standard of care governs the delivery of medical services. This standard of care takes into consideration the circumstances under which the practitioner acts and a mass casualty incident will have a drastic effect on these circumstances. In an emergency or mass casualty incident, practitioners will not actually be practicing below the standard of care; rather, the standard of care will reflect these circumstances.

At the present time, the following activities may provide the documentation necessary to demonstrate to federal and state regulators and or to the courts that the hospital has pre-planned its intent, if required by an incident, to make allocation of scarce resource decisions or to go beyond what is permitted federal or state rules and regulations due to the exigencies of the incident. It is recommended that the hospital:

1. have policy and procedure or plans (Emergency Operations Plan) that address guidelines for the allocation of scare resources with these guidelines being approved by its governing body,
2. has educated its staff in its Emergency Operations Plan, and
3. has exercised its Emergency Operations Plan.

F. Transparency to Our Communities

In the brochure, "Ethics of Health Care Disaster Preparedness", the State Expert Panel on the Ethics of Disaster Preparedness define transparency as:

> **Transparency/Openness**: The process of developing the guidelines for the allocation of scarce resources and how these guidelines will be applied in a disaster is open to public discussion and scrutiny.

The State Expert Panels working on these guidelines are in agreement with this principle of transparency. However, hospitals must keep in mind that this project, although being addressed nationally and within the state, is in the early stages of its evolution. The following points should be considered:

1. Federal agencies, national and state professional associations, state preparedness programs and others are in various stages of developing and implementing guidelines for the allocation of scarce resources. There has been much published in the professional literature about such guidelines.

2. The guidelines, referenced in this document, are, at the present time, recommendations only. Although they have been developed by subject matter experts, they have not yet been vetted by the healthcare community with the opportunity for these healthcare professionals to comment and edit these guidelines.

3. It is critical that hospital Medical Staff and healthcare workers be a part of this vetting process and reach consensus on the validity of these guidelines.

4. Hospitals and their Medical Staff and healthcare workers should have a basic understanding of these guidelines before these guidelines are shared with the community so that they can appropriately address the questions and concerns of the community. It is important that Medical Staff and health professionals, know that "key messages" (see Section G) about these guidelines will be shared with the public.

G. How to Achieve Transparency with the Public

It has been recommended that sharing these guidelines with the community can best be accomplished through collaboration with professional and community associations that represent the community, e.g. associations for the elderly, the disabled, vulnerable populations, those with language barriers, etc. These associations, in turn, know best how to communicate with their constituents about these guidelines. As these professional and community associations share these messages with their constituents, hospitals should also communicate these key messages to their patients and communities.

Several State Expert Panels have already drafted an initial set of *Key Messages* for consideration:

a. Medical treatment options will be different in a disaster due to limited resources.
b. Treatment decisions will be made, based on sound medical practice and fundamental ethical principles.
c. Resources will be scarce and will need to be allocated, based on the ethical principles such as fairness, justice and respect for the dignity of the person.
d. Application of these guidelines will be consistent across the state.
e. The public must be prepared mentally and emotionally about what to expect in a disaster.
f. The public must stay informed so that they are empowered to manage the incident.
g. There will be public messages about:
    i. how best to use the healthcare system in a disaster,
    ii. public health policy issues such as cancellation of gatherings, quarantine, isolation, etc.,
    iii. how to care for your own health and the health of your family, if you cannot access the healthcare system,
    iv. the need for members of the community to be altruistic, and
    v. the meaning of "preparedness" - emergency responders have plans in place that will reduce mortality and morbidity, resulting from the disaster.

The suggested time-frame for implementation of these Key Messages is:

- **Summer/Fall of 2011**: The Wisconsin Division of Public Health, Hospital Emergency Preparedness Program, in collaboration with other healthcare professional associations, sponsor a forum for community organizations to inform them about the *Key Messages* and the guidelines for the allocation of scarce resources and offer opportunity for feedback and input.
- **Fall/Winter 2011**: Hospitals communicate with their patients and community through their established channels, e.g. newsletters, web sites, brochures, community education, etc. about these guidelines. The Hospital Emergency Preparedness Program will facilitate the availability of sample materials so that there is consistency in messaging across the state.
- **January 1, 2012**: Hospitals review and adopt these guidelines.

H. Chronic Care Facilities

The application of these guidelines to chronic care and long-term care facilities is presently under study, both stand-alone non-hospital facilities and those hospitals that have chronic care and long-term care services within their hospital and/or on campus and/or are off-campus but owned by the hospital.

I. Declaration of an Emergency

Wisconsin law gives the governor broad powers to respond to mass casualty events. The governor may issue an executive order declaring a state of emergency when he or she determines that an "emergency resulting from a disaster or the imminent threat of disaster" or a public health emergency exists. Wis. Stat. § 323.10.

A local government unit may also declare, by ordinance or resolution, a local state of emergency within the limits of its jurisdiction. Wis. Stat. § 323.11. Wisconsin law authorizes local governments to declare a state of emergency "whenever conditions arise by reason of a riot or civil commotion, a disaster, or an imminent threat of a disaster, that impairs transportation, food or fuel supplies, medical care, fire, health, or police protection, or other critical systems of the local unit of government." *Id.*

Hospitals should be aware of these statutes and work with local officials to request an emergency, if applicable.

J. Best Practices

Many hospitals are well underway with the implementation of these guidelines. The State Expert Panels have used the experiences of these hospitals in developing these guidelines. It is recommended that hospitals share their experiences and accomplishments to help other hospitals with the implementation of this project.

1. Hospitals are encouraged to share their accomplishments, experiences and documents by sending them via email to dhsethics@dhs.wisconsin.gov
2. After items are received, they will be posted on the Allocation of Scarce Resources web site.

K. Comments on Guidelines

The State Expert Panels welcome feedback from hospitals and those involved in the review and adoption of these guidelines.

1. Hospitals are encouraged to send comments via email to dhsethics@dhs.wisconsin.gov
2. Comments will be reviewed and then responses will be posted to a Frequently Asked Questions section on the Allocation of Scarce Resources web site.

L. Guidelines Available

The following guidelines are available at the Division of Public Health, Hospital Preparedness web site at http://www.dhs.wisconsin.gov/preparedness/hospital/index.htm.

1. Guidelines for Allocation of Scarce Resources
2. Ethics Brochures Series
    a. Ethics of Health Care Disaster Preparedness
    b. Ethical Responsibilities of Health Care Leadership
    c. Ethical Responsibilities of Health Care Professionals
    d. Ethical Responsibilities of Federal, State and Local Government
    e. Ethical Responsibilities of Health Care Vendors
    f. Guidelines for the Triage of Patients
    g. Order Form (copies of these brochures are available at no charge)
3. Clinical Management Guidelines for Hospital Healthcare Providers When Routine Critical Care Resources Are Not Available
4. Guidelines for Nursing in a Disaster
5. Template Policy on Palliative Care in a Disaster
6. Caring for a Seriously Ill Person at Home: Guidelines for the Caregiver
7. Adult Ventilator Guidelines
8. Pediatric Ventilator Guidelines
9. Oxygen Conservation Strategies
10. Sample Medical Staff By-Laws for Allocation of Scarce Resources