Department of Veterans Affairs

Table of Legal Authorities and Policies Relevant To Emergencies
Advice on Changes in Usual VA Practices During a Pandemic

Table of Legal Authorities Relevant to Emergencies

Issue	Authority	Discussion
I. VA Authority to Provide Hospital Care and Medical Services		
A. Care to veterans	38 U.S.C. Chapters 17 and 73; 38 C.F.R. §§ 17.36 – 17.38	The primary function of the Veterans Health Administration is to provide a complete medical and hospital service for the medical care and treatment of veterans. Enrollment priorities are set by Congress.
B. Care to members of the armed forces	38 U.S.C. §§ 8111, 8111A; 38 C.F.R. § 17.230; VHA Directive 2005-045, Treatment of Active Duty Service Members in VA Health Care Facilities (October 4, 2005); VHA Handbook 1660.4, VA-DOD Health Care Resources Sharing	The Secretary is authorized to share health care resources with DOD, and to provide care to members of the Armed Forces during a time of war or national emergency.
C. Care to non-VA beneficiaries	38 U.S.C. § 1784; 38 C.F.R. §§ 17.37, 17.43, 17.95, 17.102	The Secretary is authorized to furnish hospital care or medical services as a humanitarian service to non-VA beneficiaries in emergency cases. VA must charge for such care.
D. Care to non-VA beneficiaries in a disaster or emergency	38 U.S.C. § 1785	(i) The Secretary is authorized to provide hospital care and medical services to non-VA beneficiaries responding to, involved in, or otherwise affected by a disaster or emergency. Section 1785 codifies VA's existing obligations under the National Response Plan, including VA's obligations under the Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §§ 5121, et seq.), and during activation of the National Disaster Medical System (42 U.S.C. § 300hh-11). Regulations to implement this authority are

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		currently under development.
		(ii) In a disaster or emergency declared by the President under the Stafford Act, VA can be directed to utilize its authorities and resources (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) in support of State and local assistance efforts. This is generally done through the auspices of the National Response Plan through a Stafford Act tasking or sub-tasking. The Financial Management Support Annex of the National Response Plan details this process.
		(iii) During non-Stafford Act Incidents of National Significance, the Financial Management Support Annex of the National Response Plan describes a process for signatories of the NRP to provide needed support to one another on a reimbursable basis. The Memorandum of Agreement detailing this process is set forth in the Financial Management Support Annex. The general authority for providing this assistance is the Economy Act (31 U.S.C. § 1535).
E. VA's general authority to share health care resources	38 U.S.C. § 8153; VHA Directive 1660.1, Enhanced Health Care Resources Sharing Authority - Selling	
II. Priorities for Providing Medical Care		
Considerations for prioritization of VA health care	A. The explicit language in 38 U.S.C. § 8111A and the legislative history of 38 U.S.C. § 1785 indicate that during declared major disasters and emergencies and activation of NDMS, the highest priority for receiving VA care and services	When faced with individuals who require emergency medical treatment (for example, during a disaster or emergency situation), VHA practitioners generally prioritize based on medical need. Life-threatening conditions are treated prior to less severe or

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	goes to service-connected veterans, followed by members of the armed forces receiving care under section 8111A and then by individuals affected by a disaster or emergency described in section 1785 (i.e., individuals requiring care during a declared disaster or emergency, or during activation of the NDMS).	routine conditions. This may require deferring routine or elective care for higher priority veterans in order to treat medical emergencies. This prioritization based on medical need is not dictated by a specific statute or regulation. Rather, it is derived from the general authority granted to the Secretary (and through delegation to the Under Secretary for Health and to health care providers) to provide "needed care" to veterans. Thus, during a disaster or an emergency, VA has flexibility and discretion in determining what constitutes needed care.
III. Quarantine and Isolation		
A. State law	A. The authority to compel quarantine or isolation is derived from a state's inherent "police power," a power reserved to the states under the 10th Amendment of the United States Constitution. There is significant variation among states regarding isolation and quarantine laws. Some states have laws that include specific, detailed procedures and provisions to impose and enforce mandatory isolation and quarantine, while other states have broader, more outdated laws and regulations. Further, some localities within states have laws applicable to quarantine and isolation.	If a VHA practitioner seeks to isolate or quarantine a VA patient, the authority to involuntarily isolate or quarantine an individual will likely be determined, at least initially, by state law. Regional Counsel must be contacted for guidance on applicable state law.
B. Federal Law	B. The Secretary of the Department of Health and Human Services (HHS) has statutory authority to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the United States, or from one state or possession into another. CDC may intervene in intrastate incidents if requested by state or	The Federal government's authority to act under this statute is limited to communicable diseases identified by the President. The current list of communicable diseases includes Cholera; Diphtheria; Infectious Tuberculosis; Plague; Smallpox; Yellow Fever; Viral Hemorrhagic Fevers; and Severe Acute Respiratory Syndrome

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	if local control efforts considered inadequate. 42 U.S.C. § 264; 42 C.F.R. Part 70, Interstate Quarantine and Part 71, Foreign Quarantine.	(SARS), and "Influenza caused by novel or reemergent influenza viruses that are causing, or have the potential to cause, a pandemic." (Pandemic influenza was added in April 2005. See Executive Order 13375 (April 1, 2005)).
	C. 42 U.S.C. § 266.	Special quarantine powers are available to the Surgeon General in a time of war. The Surgeon General may apprehend, examine, and detain individuals reasonably believed infected with communicable disease if they present a probable risk of infection to the armed forces or its suppliers.
IV. Liability Issues		
Liability in general	A. VA personnel acting within the course and scope of their Federal employment are generally protected from personal liability under the Federal Tort Claims Act (FTCA). A determination of whether a person's actions were within the scope of employment would be made by the Department of Justice in the event of legal action involving the employee's acts." 28 U.S.C. §§ 1346(b), 2670 – 2680; 38 U.S.C. § 7316.	
Liability in declared (Stafford Act) emergencies	B. The Stafford Act includes an explicit "nonliability" provision. 42 U.S.C. § 5148; 44 C.F.R. § 206.9, that protects the Federal Government from liability for discretionary acts performed by Federal agencies and employees in carrying out their duties.	
V. Transportation of Employees During an Emergency		
Home-to-work transportation of employees	A. Federal law generally prohibits home-to-work transportation of most employees, but authorizes agencies to approve such transportation in an emergency	(i) The authority to make this determination rests with the agency head and cannot be delegated. The requirement for an advance determination can be excepted if it is impracticable.

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	situation. 31 U.S.C. § 1344; 41 C.F.R. Part 102.5	
		(ii) If a VA medical center faces an emergency requiring transportation of personnel in order to keep the hospital up and running, VA could craft a compelling argument that it was impractical to obtain the necessary permission in advance. However, the facility must maintain logs of the transportation provided, and the Secretary's decision to authorize the transportation must be submitted to Congress, as required by the regulations.
	B. The Secretary has emergency authority under title 38, United States Code, to use Government-owned or leased vehicles to transport VA employees to and from their place of employment and the nearest public transportation or, if public transportation is unavailable or not feasible, to and from work to home. 38 U.S.C. § 703(f)	(i) The statute requires the Secretary to establish "reasonable rates" to cover the cost of such services. If VHA wants to utilize this emergency authority, VA must establish rates to cover the cost of such services.
		(ii) To expedite the use of this authority, VHA can seek a delegation to the Under Secretary for Health.

Table of Policies Relevant to Emergencies

Relevant Policy	Reference	Discussion
I. Credentialing and Privileging Health Care Providers		
	VHA Handbook 1100.19, Credentialing and Privileging; VHA Directive 2001-022, Implementation of VETPRO, VHA's National Credentials Databank; VHA Directive 2001-005, Credentialing and Privileging of Telemedicine and Telehealth Services provided in Hospitals and Clinics VHA Directive 2002-042, The Credentialing and Privileging of VA Health Care Providers Remotely Delivering Health Care to Patients at Home, in Vet Centers, and in Non-Health Care Settings Via Telemedicine and/or Telehealth VHA Directive 2002-076, Expedited Medical Staff Appointment Process	Credentialing and privileging actions that might be changed in a pandemic are described in Section 3.2.3.6
II. VA Provision of Disaster Emergency Medical Personnel		
	VHA Directive 2003-052, Disaster Emergency Medical Personnel System (DEMPS) Program and Database	Database of VHA medical personnel who have volunteered to be deployed in the event of a disaster internal or external to VA.
III. Occupational Health Issues		
Absence for employees affected by a pandemic, such as those exposed to an infectious disease	Family Medical Leave Act; Authorized Absence in emergencies, see VA Handbook 5011/3 Part II, Chapter 3 (March 2005); VA Handbook 5011/6 Part II (January 2006)	Facilities should work with their Human Resources staff to identify applicable policies addressing employee absences. VA is authorized to grant employees "authorized absence" when there is a national emergency. An employee's absence that is necessary to prevent transmission of an infectious disease may meet the definition of an emergency.

Additional Comments on Providing VA Health Care in Emergency Situations

The organization and delivery of health care is highly regulated. Depending upon the severity of a pandemic, it is possible that the Federal, state, or local government entities regulating the delivery of health care may temporarily modify some statutory or regulatory requirements. Alternatives may include enhancing, modifying, or waiving laws and regulations pertaining to the delivery of health and medical care in normal conditions.

If the VA Secretary (or designate) determines that circumstances require revision of current VA regulations governing VA hospital care and medical services, such revision must be made in accordance with applicable law. VA has no authority to unilaterally waive non-VA regulations. Further, VA has no authority to unilaterally waive statutory provisions or requirements. During an influenza pandemic, VA facilities are urged to work with Regional Counsel to monitor any changes, modifications, or waivers of the laws and regulations that govern the delivery of hospital care and medical services in VA facilities. Any such waivers or modifications are likely to be targeted to the affected area for a temporary and specified period of time. In the case of a pandemic that moves form region to region, it will be important for VA to correctly and appropriately apply any such waivers or modifications.

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