

Ethical Framework for Transitions Between Conventional, Contingency, and Crisis Conditions in Pervasive or Catastrophic Public Health Events with Medical Surge Implications

MINNESOTA CRISIS STANDARDS OF CARE

Updated: 11/24/2021

This framework has been updated since 05/18/2021 to clarify fair process requirements for expedited decision-making in contingency and crisis conditions.

Ethical Framework for Transitions between Conventional, Contingency and Crisis Conditions

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Acknowledgement: *The Minnesota Department of Health thanks the Minnesota COVID Ethics Collaborative (MCEC) for developing this framework. During the COVID-19 Pandemic Response the dedication of all members of the multidisciplinary group was invaluable. MCEC membership included representation from MDH, the University of Minnesota, the Minnesota Hospital Association, tribal health, and clinical, legal, and ethical representation from both health care systems and long-term care facilities.*

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Introduction

This framework addresses ethical guidance for managing challenges associated with strains on health care systems as the need for care increases during pervasive or catastrophic public health events with medical surge implications and shortages of resources -- including supplies, staff, and spaces for providing care -- affect health care operations. This framework was drafted in light of experiences during the COVID-19 pandemic, but it provides guidance for managing resource shortages across diverse types of events.

Some events—natural disasters such as earthquakes or floods, or terrorist attacks such as detonation of “dirty bombs” (radiological dispersal devices)—have sudden impact, with significant casualties at the outset of the event. Other events, such as influenza pandemics or acts of terrorism involving mass exposure to anthrax, have an extended impact, with casualties building to potentially catastrophic numbers over time. What these diverse events have in common is their potential to overwhelm the public health and health care systems...¹.

This document provides an ethical framework for the operational transitions between conventional, contingency, and crisis conditions within the context of a pervasive or catastrophic public health event, with associated changes in standards of care when transitioning into or out of crisis conditions. This document is intended to guide care delivery and organizational response during pervasive or catastrophic public health events with medical surge implications (including potential future surges of the COVID-19 pandemic), and thus addresses both bedside ethics and organizational ethics issues. It also aims to promote consistency among institutions and systems across the state of Minnesota. In addition to enhancing transparency and the trustworthiness of emergency response throughout the state, consistent application of an ethical framework across health systems may offer liability protection to health systems and their providers because it promotes a common standard of care.² Unlike previous guidance recommended by the Minnesota COVID Ethics Collaborative (MCEC) and adopted by the Minnesota Department of Health (MDH), this framework does not address allocation of specific resources, or other challenges regarding particular types of interventions (e.g., CPR).³

¹ Jonathon P. Leider, Debra DeBruin, Nicole Reynolds, Angelica Koch, Judy Seaberg, “Ethical Guidance for Disaster Response, Specifically Around Crisis Standards of Care: A Systematic Review”, *American Journal of Public Health* 107, no. 9 (September 1, 2017): p. e2. See also Agency for Healthcare Research and Quality. *Altered Standards of Care in Mass Casualty Events*. Rockville, MD: US Department of Health and Human Services; 2005.

² Minnesota Department of Health (MDH). *Minnesota Crisis Standards of Care Framework LEGAL AUTHORITY AND ENVIRONMENT* Updated: 09/27/2019, p. 13.

³ For guidance on specific resources or interventions, see frameworks posted by MDH at <https://www.health.state.mn.us/communities/ep/surge/crisis/index.html>.

Ethical values guiding emergency response

This ethical framework for emergency response is grounded in the **fundamental ethical commitment** that the response to a pervasive or catastrophic public health event will pursue Minnesotans' common good in ways that:

- are accountable, transparent, and worthy of trust;
- promote solidarity and mutual responsibility; and
- respond to needs respectfully, fairly, effectively, and efficiently.

To honor these fundamental value commitments, pandemic response must promote Minnesotans' common good by balancing **three ethical objectives**:

- protect the population's health by reducing mortality and serious morbidity;
- respect individuals and groups; and
- strive for fairness and protect against systematic unfairness and inequity.

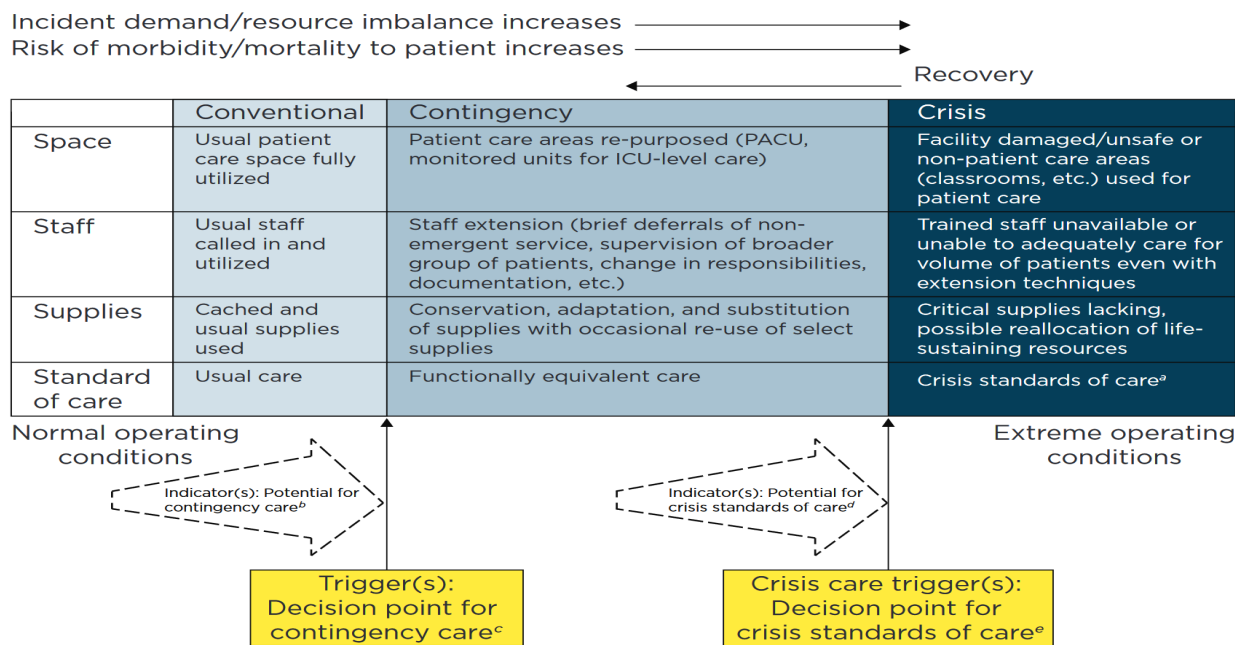
Understanding standards of care under conventional, contingency, and crisis conditions

When demand for staffing, space, and supplies outstrips availability, or when demand remains high for an extended period of time, healthcare facilities and systems must determine whether they can maintain care practices typically used in conventional conditions or whether they face contingency conditions or crisis conditions. If scarcity is widespread, regional or state authorities may be responsible for acknowledging contingency or crisis conditions and providing guidance for ethical response. For example, when emerging therapeutics such as Remdesivir first become available for use during the COVID-19 pandemic, limited supply requires implementation of an ethical framework for triage (see, e.g., "Ethical Framework For Allocation of Remdesivir in the COVID-19 Pandemic"⁴). In a public health emergency such as the COVID-19 pandemic, care is provided on a spectrum, starting with conventional conditions, progressing to contingency conditions when increased demand for one or more resources requires alterations in usual healthcare delivery practices, and in some circumstances moving to crisis conditions, when scarcity of resources relative to demand becomes acute and it is no longer possible to provide care that is functionally equivalent to conventional care.

⁴ See, e.g., "Ethical Framework For Allocation of Remdesivir in the COVID-19 Pandemic," <https://www.health.state.mn.us/diseases/coronavirus/hcp/remdesivir.pdf> and "Ethical Framework for Allocation of Monoclonal Antibodies during the COVID-19 Pandemic," <https://www.health.state.mn.us/diseases/coronavirus/hcp/mabethical.pdf>.

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Table 1: Contrasting conventional, contingency, and crisis conditions.⁵



Under conventional conditions

Usual standards of care apply. Best practices, individual patient choice, and the patient’s best interests should guide care. As usual standards of care involve providing care that is customary under normal circumstances, the healthcare system or facility has no special obligation to communicate to the community and patients that usual standards of care are in operation, other than to clarify when this norm has been resumed after adaptations to contingency or crisis conditions have been temporarily instituted. It should be noted that there is variation in the care customarily provided by healthcare institutions under conventional conditions, given diversity among institutions and their capacity. For example, tertiary care hospitals provide different types of care in conventional conditions than do critical access hospitals. Nevertheless, best practices, individual patient choice, and the patient’s best interests should guide care in conventional conditions relative to the capacity of the institution.

Under contingency conditions

The core goal in contingency conditions is to adapt care practices—e.g., through conservation or substitution of resources, changes in staffing plans or use of space—to avoid crisis conditions while striving to maintain usual standards of care. The care delivered may be different but should be functionally equivalent to care that is provided in conventional conditions. Functional equivalence does not require that outcomes will be identical to those in conventional conditions. Given the limitations of contingency conditions created by resource shortages, a range of possible care practices and associated outcomes may be functionally

⁵ Institute of Medicine. 2013. *Crisis Standards of Care: A Toolkit for Indicators and Triggers*. Washington, DC: National Academies Press, p. 17. <https://doi.org/10.17226/18338>.

equivalent to those in conventional circumstances. This range is characterized by two types of factors:

1. **Outcomes of care** should be expected to be substantially similar in contingency conditions as in conventional ones; **death or serious adverse outcomes should not be expected because of altered care delivery, for patients** (who may be affected by e.g. shortages of supplies or staff) **or staff** (who may be affected by e.g. shortages of personal protective equipment (PPE), or hazardous conditions at the facility related to a tornado or bombing). Adapting practices to provide functionally equivalent care may require identification of alternative therapeutics to replace those in short supply, alternative models for staffing or use of space, cancellation, or postponement of elective procedures, and/or load-balancing across the system or region. Care practices should remain as close as possible to those in conventional conditions, given limitations imposed by resource constraints, but a range of outcomes may be functionally equivalent to those attained in conventional conditions. Regional authorities and the state should work collaboratively with health systems to ensure that outcomes are tracked so data can anchor assessments of functional equivalence, as there may be uncertainties about which conditions or practices may significantly compromise patient outcomes.
2. In addition, **the aim of care** should continue to be focused primarily on the well-being and treatment preferences of each individual patient. This contrasts with crisis standards of care, in which the primary goals of care shift to advancing population health. Contingency conditions require attention to population health considerations only to the extent that resources need to be conserved, extended, and adapted to meet the needs of all patients.

If these 2 conditions are no longer met, then care is no longer functionally equivalent. At that point, care transitions from contingency conditions to crisis conditions, and crisis standards of care must be implemented.

It should be noted that triage or rationing does not always compromise patient outcomes, and in such cases these practices are permissible in conventional or contingency conditions. For example, rationing may be used across a patient population as a conservation strategy for particular resources to prevent moving into crisis conditions; examples that are not expected to compromise patient outcomes include across-the-board strategies such as decreasing to 90% the value at which oxygen saturations are maintained to conserve oxygen, rationing prophylactic antibiotics to prioritize treatment uses, or disallowing the use of IV hydration when oral intake is possible. Similarly, it is customary to triage patients in busy emergency departments even in conventional conditions and doing so need not compromise patient outcomes. **However, when triage or rationing substantially compromise patient outcomes—**e.g. when ventilators or medications are in such short supply that the needs of all patients cannot be met—**then crisis conditions apply for those resources.**

Scarcity is dynamic and may evolve rapidly, so that **conditions may shift across the surge continuum as scarcity and the ability to maintain care that is functionally equivalent to that provided in conventional conditions waxes or wanes. Deviations from conventional approaches to care should be minimized and should be applied only to resources that are becoming scarce, not extended to other resources.** Further, impending crisis conditions should

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trigger the facility to seek assistance with obtaining additional resources or load-balancing patients to reduce the burden and allow the facility to stay in contingency conditions.

Healthcare systems have an ethical obligation to collaborate to maintain as much as possible a uniform or consistent approach to conservation and extension of resources across the region, through load-balancing or other strategies.

When a shift away from conventional approaches to care is required, decisions must be transparent, accountable, and consistent with fundamental ethical values, so that they provide effective protections for patients and appropriate support for healthcare professionals. **The mechanisms for resolving disagreements about medical decision-making under contingency conditions may be accelerated or otherwise streamlined.** However, these processes should be functionally equivalent to those used under conventional conditions in terms of protections for patients.

Bedside clinicians should not engage in ad hoc alterations to care practices -- i.e., alterations in care made at the bedside (including triage or rationing) without appropriate consultation. Changes to care practices should be made in consultation with unit, facility, or system leadership, and following explicit institutional policy if available or relevant ethics guidance such as ethics frameworks disseminated by MDH. Those consultations with leadership will facilitate:

- recognition of resource shortages and understanding of the challenges faced by providers at the bedside,
- activation of efforts to maintain care that is functionally equivalent to that provided in conventional conditions,
- standardization of the facility's/system's approach to resolving the issue, which is likely not limited to a single patient care encounter, and
- efforts to avoid CSC.

If the bedside clinician must make a very time-sensitive decision about patient care -- e.g., deciding which patient can safely remain on BIPAP and which should be intubated, or which can wait for dialysis and which needs treatment more urgently -- and consultation with leadership would not be possible in the required timeframe, the provider should consult with at least one other provider with relevant expertise, and then rapidly notify leadership about the resource shortage and the decision that was made. All consultations with leadership or other providers should be documented. **Judgments concerning functional equivalence may require input by clinician specialists (e.g., to answer questions about whether alterations in frequency of dialysis may increase risk for patients) or incident command in consultation with unit directors and/or practice managers (e.g., in the case of staffing changes).** These decisions should be informed by evidence on functional equivalence to the extent possible but shifting conditions as the incident unfolds may mean that some decisions must be made under uncertainty. **To promote functionally equivalent care, healthcare facilities/systems should provide support for healthcare workers**, including by communicating clearly about scarcity and plans for addressing it, designating leaders authorized to address questions about how to adapt care to evolving conditions, protecting workers with adequate personal protective equipment (PPE), and addressing their psychological and moral distress.

If a healthcare system or facility is facing shortages of one or more resources that create contingency conditions, the system or facility should **explicitly communicate this to providers** in order to support efforts to maintain care that is functionally equivalent to that provided in conventional conditions and to aid efforts to avoid CSC. The system or facility should also **communicate this development to regional partners** to promote coordination of efforts to avoid CSC, such as load-balancing. Finally, the healthcare system or facility also has an **obligation to communicate to patients and the community** that while care is functionally equivalent, the conditions of care are different than usual, especially when the system or facility is approaching crisis conditions with respect to any particular resource or scarcity broadly impacts care delivery. Doing so promotes transparency, and may help reinforce messages about the importance of public health measures (such as masking and social distancing to prevent pandemic surges) that may worsen conditions in healthcare facilities.

Under crisis conditions

Crisis standards of care (CSC) apply to resources

- that are unavoidably scarce and for which there is no appropriate substitute or alternative, despite the efforts to mitigate scarcity outlined above, and
- when such scarcity places some patients at substantial risk of adverse outcome.

In such crisis conditions, care may be allocated according to a different set of clinical and/or other criteria than under usual standards of care; **crisis conditions “justify temporarily adjusting practice standards and/or shifting the balance of ethical concerns to emphasize the needs of the community rather than the needs of individuals.”**⁶ In pervasive or catastrophic public health events with medical surge implications, response must focus on the overall benefit to the population, to try to minimize morbidity and mortality, while also respecting rights and promoting fairness across our population.

- **Changes to care practices that may significantly compromise patient outcomes may not be implemented unless they are unavoidable.**
- **Any such changes must be due to specific shortages of specific resources.** Specific scarce resources may require triage or rationing or other alterations to care practices, but this does not mean that clinicians are free to triage or ration unrelated resources or to change practices more widely than necessary. Providers should maintain care that is functionally equivalent to usual standards, if possible.
- When shortages undermine the ability to provide care that is functionally equivalent to that provided in conventional conditions, **decisions regarding changes to care practices must be transparent, accountable, and consistent with fundamental ethical values.**

⁶ Institute of Medicine. 2012. Crisis Standards of Care: A Systems Framework for Catastrophic Disaster Response. Vol. 1: Introduction and CSC Framework. Washington, DC: National Academies Press: 1-1.

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- **Bedside providers should not engage in ad hoc triage or rationing.** Ad hoc decisions fail to provide appropriate protections for patients or adequate support for healthcare professionals. The need for other changes to care practices -- e.g., implementing crisis plans for staffing or space -- should also be escalated to facility/system leadership.
- Providers should not obscure or conflate justifications for alteration, withdrawal, or withholding of treatment; **decisions to triage or ration due to resource scarcity must not be conflated with decisions that an intervention is futile, potentially inappropriate for patient-specific reasons not related to scarcity, or constitutes non-beneficial care,** as discussed below.

Depending on how widespread crisis conditions are within the state, facilities, healthcare systems, the regions to which they belong, or the state should determine and **communicate to patients and to the community that operating conditions have changed**, that specific resources are scarce in a way that may result in poorer outcomes for patients, that care may thus no longer be functionally equivalent to usual standards of care, and that triage or rationing may occur. Facilities, healthcare systems, and regions or the state should also **communicate when CSC are no longer needed** for the resource in question.

Response plans should **address access barriers and health disparities to avoid exacerbating health inequities**. Obligations to distribute the burdens and benefits of the healthcare system fairly and equitably across the community remain.

Response plans must also implement **appropriate protections for critical workers in high-risk settings** -- including relevant healthcare workers -- in addition to attending directly to the needs of the general public. This may mean giving workers priority for scarce resources or changing expectations about what types of treatment they are required to provide patients if certain interventions are too risky to healthcare providers.⁷

Table 2: Comparing ethical obligations and clinical practices across the spectrum of care.

Conditions	Ethical obligations	Clinical Practices
Conventional	Optimize individual patient care; pursue care options consistent with best practices, patient choice, and best interests.	Usual standards of care apply. Do not tolerate unusual or substandard care.
<i>Contingency</i>	Strive to maintain usual standards of care by providing care that is	Tolerate practices that utilize limited resources differently than usual with

⁷ See, for example, “Hospital Guidance: Making Cardiopulmonary Resuscitation Decisions in the Context of the COVID-19 Pandemic,” <https://www.health.state.mn.us/communities/ep/surge/crisis/cpr.pdf>.

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Conditions	Ethical obligations	Clinical Practices
	functionally equivalent to that given in conventional circumstances. Recognize that a range of care practices may be functionally equivalent to care in conventional conditions. Track outcomes to better anchor assessments of functional equivalence. Standard of care is still oriented to individual patient interests, with obligations to conserve and extend resources, in order to avoid or delay crisis standards of care.	the expectation that such altered practices are developed and performed in accordance with usual standards of care. In contingency conditions, this standard of care is maintained by providing care within the range of options that are functionally equivalent to care in conventional conditions. Changes to care practices that are likely to adversely affect patient outcomes are not permitted.
Crisis	Obligations to community supersede individual patient interests. Minimize morbidity and mortality, while also respecting rights and promoting fairness across the population. Facilities, healthcare systems, regions, and/or the state should communicate to patients and to the community that operating conditions have changed.	Crisis standards of care apply. Care is no longer functionally equivalent to usual standards of care. Significant risk to the patient or provider may exist but should be mitigated to every extent possible.

Ethical obligations across the continuum of care

Ethical obligations that remain constant under conventional, contingency, and crisis conditions:

- Fundamental norms of good care apply across the continuum of care. Patients should be provided the best care possible given available resources.
- Equity considerations continue to be fundamental across the spectrum of care. Consideration should be given to measures that will be needed to promote equity as conditions worsen, to prevent bias from affecting decision-making (e.g., anti-racism training for staff, the inclusion of equity officers on decision-making teams when such teams are needed).
- Patients should be allowed to communicate with their loved ones, and authorized decision-makers should be able to participate in care decisions. While it may be necessary to restrict visitors during the pandemic, healthcare facilities should create alternative ways to meet these communication priorities. Hospitals should also provide support for people who need assistance with communication or other support from family, an aide, an authorized decision-maker, or staff.

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- Patients have a right to refuse treatment at any time, and to designate individuals to make decisions on their behalf if they can no longer make decisions for themselves.
- Patients should receive supportive care and treatment to manage symptoms, including palliative care; this applies to all patients, including those who are not prioritized to receive specific resources.
- Institutions should identify a process for ethics support during an emergency. The primary functions of ethics support are to facilitate application of ethical frameworks for emergency response (especially given the need to respond to challenging ethical issues that will inevitably arise during the emergency), and to help manage moral distress of providers.
- Conflicts in decision-making should be resolved with a transparent, fair, and consistent process that applies to all patients equally. As the strain on healthcare resources deepens, the mechanisms for resolving disputes may be accelerated or otherwise altered, if it is no longer possible to maintain conventional processes.
- Healthcare institutions have no obligation to provide treatment that is futile -- meaning that an intervention simply cannot accomplish the intended physiologic goal.⁸ Withholding or withdrawing futile treatment is not a form of rationing.
- Obligations to fairly and equitably distribute the burdens and benefits of the healthcare system across the community remain.
- Healthcare institutions have an obligation to protect the interests of their workers across the continuum of care, including in contingency and crisis conditions. This obligation is grounded in three ethical considerations:
 - the instrumental value of those workers' services to the community mean that healthcare workers should be protected so that they can continue to provide services to patients;
 - duties of reciprocity, given that workers take on risk to protect others; and
 - duties of respect, which require support for healthcare workers' physical, mental, and emotional well-being, regardless of their professional role and obligations.

As scarcity increases or other risks related to the event (e.g. infrastructure damage from a bombing or storm) compromise safety, changes to care delivery or the standard of care increase the likelihood of psychological and moral distress among workers. In addition, scarcity of some resources may compromise worker safety. Thus, institutions have obligations to provide psychological support, to implement a process for ethics support to address moral distress, and to maintain safe working conditions including, but not limited to, providing adequate PPE. In addition, these considerations may ground changing expectations about what

⁸ Bosslet, G. T., Pope, T. M., Rubenfeld, G. D., Lo, B., Truog, R. D., Rushton, C. H., ... & Au, D. H. (2015). An official ATS/AACN/ACCP/ESICM/SCCM policy statement: responding to requests for potentially inappropriate treatments in intensive care units. *American Journal of Respiratory and Critical Care Medicine* 191(11), 1318-30. Cf. Kasman, D. L. (2004). When is medical treatment futile? A guide for students, residents, and physicians. *Journal of General Internal Medicine* 19(10), 1053-56.

types of treatment healthcare workers are required to provide patients if certain interventions pose high risks to the workers.⁹ MDH may also issue guidance recommending that workers be given priority for some scarce resources under certain circumstances.¹⁰

Ethical processes in contingency conditions or CSC

Individual hospitals or healthcare facilities have the capacity to identify scarcity that affects care, and the responsibility to mitigate shortages by reaching out to other facilities, systems, regional Health Care Coalitions, or statewide authorities; to adapt care practices to maintain functional equivalence to care in conventional conditions; and also to determine when no further mitigation strategies can stave off resource shortages that necessitate a shift to CSC within the practice setting.

If multiple facilities or healthcare systems in an area all have a common shortage that cannot be resolved, then regional Health Care Coalitions have an obligation to acknowledge regional shortages. Similarly, **if multiple regions have unresolvable shortages in the same resources, then state-level administrative units have an obligation to acknowledge widespread shortages that may warrant a shift** to crisis standards of care for particular resources. When shortages are widespread within a region, or between regions, it will be helpful for the Health Care Coalition or the state to endorse common strategies to address these shortages. When shortages do not affect facilities or health systems throughout the state, state-wide shifts in care practices or standards of care will not be warranted, and these situations should be mitigated by moving resources or patients to allow facilities to move out of crisis conditions as soon as possible.

For localized shortages, individual facilities or healthcare systems also have the responsibility to **identify when scarcity has abated or ended**, and care practices or standards of care should return to contingency or conventional. For more widespread shortages, that responsibility will fall on the region or the state.

Ethical procedures for triage or rationing decisions under crisis standards of care

- **Facilities/systems should develop policies and procedures regarding triage or rationing that are grounded in MDH guidance (including ethics guidance)** and established in advance of the onset of crisis conditions, where possible. If emerging conditions give rise to the need to develop new guidance during the incident, facilities/systems should designate personnel who will be responsible for leading this effort.
- **Bedside providers should not make triage or rationing decisions unless they are based upon policies developed by the facility or system for managing such shortages.** When triage or rationing decisions involve significant judgment (rather than simply applying

⁹ See, for example, “Hospital Guidance: Making Cardiopulmonary Resuscitation Decisions in the Context of the COVID-19 Pandemic,” <https://www.health.state.mn.us/communities/ep/surge/crisis/cpr.pdf>.

¹⁰ See, for example, “Ethical Framework for Allocation of Monoclonal Antibodies during the COVID-19 Pandemic,” <https://www.health.state.mn.us/diseases/coronavirus/hcp/mabethical.pdf>.

clearly stated metrics) then elevating those decisions away from bedside providers and to individuals/teams accountable to facility leaders promotes ethical allocation of resources and promotes awareness among facility leadership about the ways in which scarcity impacts patient care and the experience of bedside providers.

- **Facilities/systems should designate individuals or teams who will be responsible for making triage or rationing decisions when MDH guidance or facility/system policy recommends that bedside providers not make such decisions.** These individuals/teams may be separate from (or the same as) the triage officers or teams established for triage of critical care resources (see, e.g., “Allocation of Ventilators and Related Scarce Critical Care Resources During the COVID-19 Pandemic”¹¹). The individuals/teams designated to make triage or rationing decisions for specific resources should have relevant clinical expertise, as well as training concerning equity and fairness in decision-making (e.g., training regarding disability bias and anti-racism training).
- Triage or rationing scarce resources means that a patient’s access will depend on both individualized assessment and a comparative assessment of patients who need the resource at the same time.
- Triage and rationing decision-makers should have access to **ethics support** to help resolve ethical issues as they arise.
- **Triage or rationing decisions should not consider or be based upon:**
 - Race, ethnicity, gender, gender identity, sexual orientation or preference, religion, citizenship or immigration status, or socioeconomic status;
 - Ability to pay;
 - Age as a criterion in and of itself (this does **not** limit consideration of a patient’s age as it relates directly to clinical prognostication of likelihood to survive this acute episode);
 - Disability status or comorbid condition(s) as a criterion in and of itself (this does **not** limit consideration of a patient’s physical condition as it relates directly to clinical prognostication of likelihood to survive this acute episode);
 - Predictions about baseline life expectancy beyond the current episode of care (i.e., life expectancy if the patient were not facing the current crisis), unless the patient is imminently and irreversibly dying or terminally ill with life expectancy under 6 months (e.g., eligible for admission to hospice);
 - First-come, first-served;
 - Judgments that some people have greater “quality of life” than others; or
 - Judgments that some people have greater “social value” than others. In some circumstances (e.g., when MDH determines that there is an acute shortage of healthcare workers and this is increasing risk to patients), certain workers providing

¹¹ <https://www.health.state.mn.us/communities/ep/surge/crisis/allocation.pdf>.

critical services in high-risk settings should be prioritized for access to certain resources.¹² The ethical rationale for prioritizing these workers in resource allocation relates to their specific job function in incident response, and does not involve a view that some individuals have greater social value than others.

- Recommendations for mechanisms to resolve disagreements about medical decision-making may be found below.
- Processes should be established to conduct **periodic retrospective review** of all triage and rationing policies and decisions. This is important to ensure that the policies are current and appropriately inclusive, and that any triage and secondary review processes are working appropriately and in keeping with ethical requirements, including considerations of equity. Problems discovered should be **resolved immediately**.

Ethical procedures for resolving conflicts over care decisions across the spectrum of care

Typically, the transition between conventional, contingency, and crisis conditions and standards of care has been focused on shortages in space, staff, and supplies. It should also be recognized that decision-making procedures appropriately change through these transitions as well. When conflicts between care providers and patients/families (or other authorized decision-makers) arise, there is an ethical obligation to provide fair and transparent procedures to resolve those conflicts. During contingency and crisis conditions, resource- and time-intensive conflict resolution procedures may need to be streamlined, but ethical obligations to maintain fair procedures for conflict resolution continue across the spectrum of care conditions.

Clarifying the types of conflicts that may arise

Decisions to withhold or withdraw treatment may be considered for a variety of reasons, and all of these types of decisions may give rise to conflict. The literature discusses multiple types of conflict. For the purposes of this framework, **futile treatments** are defined narrowly as interventions that cannot achieve their desired physiologic goal. **Potentially inappropriate treatments** are interventions that have at least some chance of accomplishing their physiological effect,¹³ but clinicians believe that competing ethical considerations justify not providing them for reasons that are patient-specific and not related to scarcity. (Note that in

¹² See, e.g., “Ethical Framework for Allocation of Monoclonal Antibodies during the COVID-19 Pandemic,” <https://www.health.state.mn.us/diseases/coronavirus/hcp/mabethical.pdf>.

¹³ Bosslet, G. T., Pope, T. M., Rubenfeld, G. D., Lo, B., Truog, R. D., Rushton, C. H., ... & White, D. B. (2015). An official ATS/AACN/ACCP/ESICM/SCCM policy statement: responding to requests for potentially inappropriate treatments in intensive care units. *American Journal of Respiratory and Critical Care Medicine* 191(11), 1318-30. See also Kon, A. A., Shepard, E. K., Sederstrom, N. O., Swoboda, S. M., Marshall, M. F., Birriel, B., & Rincon, F. (2016). Defining futile and potentially inappropriate interventions: a policy statement from the Society of Critical Care Medicine Ethics Committee. *Critical Care Medicine* 44(9), 1769-17; White, D. & Pope, T. (2016). Medical futility and potentially inappropriate treatment. *The Oxford Handbook of Ethics at the End of Life* (S. J. Youngner & R. M. Arnold, eds.), 65-86.

the context of emergency response, scarcity must be transparently managed through processes geared toward resource extension, conservation or adaptation, or triage or rationing when scarcity cannot be resolved. Scarcity must not be resolved using processes for decision-making concerning potentially inappropriate treatment.) **Non-beneficial** treatments are treatments that clinicians believe are not in the best interests of the patients because the burdens outweigh the benefits.¹⁴ Finally, **triage or rationing decisions** are determinations that a particular intervention or level of care cannot be provided to all patients who need it, given conditions of scarcity. **Triage or rationing that is likely to result in adverse patient outcomes should only be undertaken under CSC.**

It is essential for care teams to clearly identify the type of conflict involved in a case, and to respond appropriately to that conflict. Under conditions of scarcity, clinicians who are facing resource shortages may feel pressure to withdraw or withhold treatments to conserve resources. It is ethically problematic to mislabel a decision to withdraw or withhold treatment based on scarcity as a decision about futile, potentially inappropriate, or non-beneficial treatment.

Conflicts may arise over triage or rationing decisions.

- Triage or rationing that is expected to have adverse clinical effects, i.e., likely to lead to death or serious morbidity, should only be undertaken under CSC, not under contingency conditions.
- Healthcare systems and facilities should have explicit policy stating procedures to be followed to resolve such conflicts fairly and respectfully.
- Facilities/systems should reference the ethical framework “Allocation of Ventilators and Related Scarce Critical Care Resources During the COVID-19 Pandemic” for recommendations regarding a process of secondary review/conflict resolution for triage or rationing decisions for those resources.¹⁵ That process should be adapted to provide a tailored conflict resolution process for other resources as well when triage or rationing is expected to have serious adverse clinical effects (i.e., is likely to lead to death or serious morbidity).
 - The facility/system should identify the personnel who will be responsible for conducting secondary reviews. These individuals should have relevant clinical and ethics expertise.
 - Measures should be adopted to promote equity in conflict resolution -- for example, secondary review personnel should have training concerning equity and fairness in

¹⁴ Nates, J. L., Nunnally, M., Kleinpell, R., Blosser, S., Goldner, J., Birriel, B., ... & Sprung, C. L. (2016). ICU admission, discharge, and triage guidelines: a framework to enhance clinical operations, development of institutional policies, and further research. *Critical Care Medicine* 44(8), 1553-1602 (using “nonbeneficial” to mean that the treatment “is not...in the best interest of the patient.”).

¹⁵ <https://www.health.state.mn.us/communities/ep/surge/crisis/allocation.pdf>.

decision-making (e.g., training regarding disability bias and anti-racism training) or should include members of the facility's/system's equity and inclusion team.

- Secondary reviews may be requested by the patient, the patient's authorized decision-maker, or treating clinician. During an emergency, the mechanisms for resolving disagreements about medical decision making may be accelerated. Note that secondary review at the request of the patient or authorized decision-maker may not be possible when the strain on the facility is especially acute.
- To ensure that the process focuses on only relevant considerations and does not become overwhelmed by requests, secondary review under CSC will only be considered based upon the following review criteria:
 - Objective information that the triage or rationing decision was based upon misinformation about allocation criteria such as the patient's prognosis; or
 - Objective information that the triage or rationing decision was based upon a deviation from (1) the ethical considerations specified in the relevant ethical framework, or (2) objective decision-making.
- Given the time-sensitive nature of decision-making under CSC, secondary review decisions must be considered final.

Conflicts regarding the withdrawal or withholding of futile, potentially inappropriate, or non-beneficial treatment routinely occur in acute care settings. Healthcare systems and facilities should have explicit policy stating procedures to be followed to resolve disagreements about futile or potentially inappropriate or non-beneficial treatment fairly and respectfully. This framework is not intended to provide guidance about futile, potentially inappropriate, or non-beneficial treatment per se, but to clarify standards for procedural fairness in contingency and crisis conditions when conflict resolution processes concerning these issues may need to be streamlined.

Adjusting conflict-resolution processes across the spectrum of care

Under contingency conditions, procedures for conflict resolution may be altered in ways that conserve and extend resources but also remain functionally equivalent. Changing conflict resolution procedures to, for example, have a shorter timeline, to involve fewer stakeholders, or to have fewer levels of administrative review does not necessarily compromise patient rights. An expedited but functionally equivalent conflict resolution process conserves scarce staffing resources.

To maintain functional equivalence to the fair processes provided under conventional conditions, the following procedural rights should be affirmed. Patients/families should be:

- promptly made aware of the conflict,
- informed promptly of the grounds for the conflict,

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- informed of the viability of options to transfer to another facility,
- given notice of the conflict resolution process and support to engage in that process, and
- given an opportunity to obtain a second opinion and to seek impartial secondary review of contested decisions.

The degree of procedural protection should be correlated to the significance of the interest that is being burdened; the more significant the interest, the more rigorous the procedural protections should be. For example, conflict over withdrawal of life-sustaining treatment should involve a highly rigorous process, whereas conflict over the suspension of visitation rights necessitated by the emergency may involve a less demanding process.

It should be noted that, as scarcity deepens, it may be impossible to maintain functionally equivalent procedures for conflict resolution. For example, under CSC, the strain on the facility may be so acute that it may no longer be possible for patients or their authorized decision-makers to access secondary review of triage or rationing decisions for particular resources. Healthcare systems and facilities should work to maintain functionally equivalent procedures for conflict resolution whenever possible. Ideally, consistent regional processes will be established. **Under all circumstances, there are basic elements of due process that must be maintained:** patients/families (or other authorized decision makers) should

- be promptly made aware of the conflict,
- informed promptly of the grounds for the conflict, and
- given notice of the conflict resolution process and support to engage in that process.

Respecting these rights promotes accountability, fairness, and trustworthiness.

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Table 3: Decision-making and conflict resolution processes across the spectrum of care.

	Conventional conditions	<i>Contingency conditions</i>	Crisis conditions
Operating conditions	Normal	Suboptimal	Extreme
Processes for decision-making and conflict resolution	Usual procedures – usual standards of care.	Expedited procedures, functionally equivalent to usual procedures.	Non-equivalent procedures, maintaining at least minimum due process obligations. Triage and review personnel activated. Crisis standards of care.

Appendix: Recommended Strategies

Strategies for health systems, regional leadership, and state-wide leadership

1. Optimize local surge capacity through extended staffing models, expanding bed availability, utilization of regional and national resources (e.g., Strategic National Stockpile).
2. Continue active collaboration, load-leveling, and resource problem-solving with regional and state groups (e.g., MCEC, C4, SHCC).
3. Provide communication with providers and the public about basics of current conditions, stressors on the care delivery system, and setting of expectations, with the leadership of MDH and other regional authorities.
4. Collaboratively develop metrics and actively monitor care conditions and patient outcomes for evidence-based assessment of when care remains functionally equivalent to care in conventional conditions *versus* when care is no longer functionally equivalent such that crisis standards of care (CSC) should be implemented.
5. Clearly communicate to providers and the public when crisis standards of care are in effect, to what resource(s) they apply, and when crisis standards end.

Strategies for individual hospitals and facilities

1. Provide clear and regular communication regarding scarcity conditions, operational status, standards of care, and support resources between administrators and frontline teams.
2. Actively monitor care conditions and patient outcomes in an effort to promote evidence-based assessment of when care remains functionally equivalent to care in conventional conditions *versus* when care is no longer functionally equivalent such that crisis standards of care (CSC) should be implemented. In the absence of such an evidence base, decisions about functional equivalence will be made under some degree of uncertainty and should be guided by expert judgement.
3. Clearly communicate to providers and the public when crisis standards of care are in effect, to what resource(s) they apply, and when crisis standards end.
4. Reaffirm/reference public communications by system, regional, and state authorities, and provide more detailed, organization-specific, patient- and family-centric communication. Develop and maintain multiple communication platforms and modalities to ensure effective communication with the diverse populations of the state, and target messages to local underserved communities and communities of color.
5. Identify potential stress points via simple and safe strategies (e.g., consider weekly review of difficult cases/circumstances, daily “huddles,” or designated team members to regularly query hospital teams) to ask hospital teams about worrisome circumstances (e.g., patients

with poor prognosis and incompatible treatment goals, or related to current or impending resource shortages).

6. Engage equity and inclusion representatives/experts for patient and team support and use practices such as anti-racism/anti-bias education for involved team members.
7. Establish clear procedures for conflict resolution under contingency conditions and under crisis standards of care.
8. Establish clear procedures for scarcity mitigation under contingency conditions, and clear procedures for consultation and triage or rationing during contingency conditions and crisis standards of care. Engage health systems, regional and/or state authorities to mitigate scarcity through load-balancing and resource problem-solving.
9. Identify resources to mitigate staff burnout and to address staff moral distress.
10. When scarcity of a resource is resolved, promptly restore full access to those in need; do not triage or ration for longer than necessary and ensure communication of the change is disseminated to bedside providers or decision-makers.
11. When triage or rationing is needed, monitor patients who are not initially prioritized for resources to enable reassessment of their priority for allocation if their condition changes or if circumstances alter, increasing their priority.

Strategies for bedside clinicians

1. Avoid ad hoc triage or rationing at the bedside. Follow established policies and processes. Escalate decisions on whether to institute triage or rationing to designated leaders/teams.
2. Elicit treatment preferences from patients (or the authorized decision-makers of patients who lack decisional capacity).
3. Ensure daily patient and family communication by nursing and provider teams. Acknowledge difficulty/hardship with visitor restriction and leverage technology to maintain patient communication with loved ones and caregiver communication with families. Review prior conversations, clarify situation and perceptions, discuss current status and potential shortages if potentially relevant. Maintain transparency and collaboration to support patients and families, while also acknowledging staff health/impacts; empathetically communicate that “we are in the storm together.”
4. Specifically inform patients and families of active regional collaboration, and the shared goal of maintaining a consistent standard of care and providing what each patient needs to the greatest extent possible.
5. When stressful situations are identified, support patients, families, and teams early in the process in a way that is robust and culturally attuned. When decision-making is stressful, schedule conversations at regular intervals (at least every 2-4 days) and adjust approach based on outcome.

6. Obtain ethics consults as needed and available; consider engaging regional or other external resources; seek critical care support through C4 or other channels to obtain insight/support.
7. Consult institutional policy on duties to provide life-sustaining interventions during resolution of conflicts over the patient's care plan. If the intervention about which a case review is requested is already being provided to the patient and is necessary to avoid death during the case review process, institutional policy will commonly recognize a duty to continue providing that intervention until such time as a decision to withdraw or withhold that intervention is finalized.

Strategies for triage and review personnel under CSC

1. Bedside providers should not make triage or rationing decisions for individual patients under scarcity when this decision could result in adverse outcome or death, unless facility policy for allocation of that resource assigns these decisions to bedside providers. Instead, triage or rationing, and reallocation decisions of this nature should ordinarily be made by a separate triage officer or team. If local resources cannot support a separate triage officer or team for allocation and review processes, regional resources should be contacted for assistance.
2. Once review and triage teams are implemented, then they should collect information on resource scarcity from relevant stakeholders, including bedside staff and regional authorities, at frequent intervals.
3. Triage and review teams should conduct regular case reviews and reviews of aggregate data to identify trends and address concerns, including equity issues.
4. Triage and review teams should communicate with patients and surrogates affected by scarcity to gather information from them, to provide referral to supports and services, and to inform them of their rights and interests, including due process rights in addressing conflicts.
5. Triage and review teams should prospectively identify and manage potential conflicts of interest.