Scope of Practice Issues in Public Health Emergencies

Fact Sheet

Overview

States may find it necessary to modify the scope of practice for some of their regulated professions to meet increased demand for important services during an emergency. The need to supply sufficient numbers of healthcare practitioners to satisfy increased patient demand during a public health emergency is the driving force behind allowing temporary changes to practice requirements. Modifying scope of practice can be accomplished by expanding or altering the scope of activities a practitioner is allowed to engage in and by removing or adding conditions on the permitted activities. Practitioners operating under a modified scope of practice during an emergency may be subject to conditions such as control, supervision, or training requirements. Their modified practice activities may be further limited to situations in which they are working under the direct order or supervision of a state or local entity such as a health agency, emergency management agency, or incident commander. This document discusses the mechanisms used by states to modify scope of practice during emergencies and analyzes the types of activities and control measures associated with modified scope of practice.

Defining Scope of Practice

The "scope of practice" for a regulated profession includes those activities and procedures that a person with a specified level of education, training, and competency is authorized to engage in under the statutes and regulations of the state in which the person practices. Scope of practice can also incorporate conditions that may limit the exercise of authorized activities and procedures, such as limited formularies or supervision requirements. Laws and rules governing regulated professions typically also establish continuing education or training requirements, periodic re-examination to ensure continued competency, and mechanisms to adjudicate complaints and impose penalties for violations.

Persons meeting a state's requirements for that field are issued a license, certification, or some other type of authorization to practice in that state. Practitioners in a field are expected to know what activities and procedures they are and are not authorized to conduct and keep their actions within this scope. Should a practitioner exceed the authorized scope of practice, he or she could be liable for violation of the state's practice laws, as well as potentially more severe claims such as malpractice.

Because each state has its own unique set of practice requirements for the professions it regulates, the analysis of scope of practice issues should first begin with identifying and analyzing a state's applicable statutes, regulations, and other policies issued by the cognizant regulating body (e.g., health agency, licensing board, etc.). (See the ASTHO *Scope of Practice Issues State Analysis Guide* to facilitate this review.) States likewise use a variety of approaches in modifying the scope of practice that applies to regulated professions in both daily nonemergency settings and when there is a public health emergency or other emergency event.

Modifying Scope of Practice

State legislatures consider legislation that alters the routine, nonemergency scope of practice for a range of healthcare and other regulated professions annually. As a general proposition, changing the scope of practice for a given profession can be controversial for those affected by the changes. Proposed changes in scope can at times be viewed by the public and regulators as turf battles between two or more segments of a profession fighting over the exclusive right to engage in an activity. However, proposed scope of practice changes can also be seen as a better way to protect the public and give consumers better access to competent professionals. Scope of practice modifications may also be necessary to keep pace with changes in technology, scientific advancement, and increased societal needs. Because many of the skill sets of various professions overlap—especially in healthcare—it is inevitable that there will be some common skill sets among different regulated professions.

Overlapping and closely related skills can become the foundation for modifying and expanding scopes of practice during emergencies. States have modified the scope of practice for certain licensed professions as a strategy to expand their public health emergency response capacity. This practice allows practitioners to conduct activities and procedures they are not normally permitted to do or alters the conditions under which they practice (e.g., replacing direct supervision requirements with written protocols).

During the 2009 H1N1 influenza pandemic, a number of states authorized or used modified scope of practice primarily to expand the number of persons eligible to perform vaccinations. These modified scopes of practice were generally temporary measures that were allowed during the duration of a declared emergency or until otherwise permitted by law or order. Other states did not use modified scope of practice during H1N1 because the capacity of healthcare providers was sufficient to respond to the outbreak in the state; some pursued other strategies, such as the use of volunteer healthcare providers, to supplement their response capacity.

Legal Authorities to Modify Scope of Practice

The legal authorities and mechanisms for modifying scope of practice for a public health or other emergency vary among states. During the H1N1 outbreak, states used different legal approaches to accomplish scope of practice changes. Some states have permanently authorized modified scopes of practice in emergencies for selected regulated professions, either by statute or regulation. In this instance, these provisions may be activated by an emergency declaration by a governor, health officer, practice regulatory body, or other authorized officials. The modifications authorized may be specified in statute or regulation or defined by order on a case-by-case basis for each emergency. Other states have used orders from a governor, health officer, or practice regulatory bodies during a declared emergency to authorize and specify the modified scope of practice applicable for that emergency.

Modified practice authority granted in an emergency generally lasts until the underlying emergency declaration expires or is otherwise cancelled by the health agency or professional regulatory body. The emergency scope of practice modifications may or may not evolve into permanent scope of practice changes for a profession.

Modified Scope of Practice Activities in Emergencies

Modifying scope of practice in emergencies generally involves addressing: (1) the types of activities permitted under the modified scope; (2) the types of practitioners permitted to engage in the modified activities; (3) the control or supervision requirements for the practitioners undertaking the modified activities; and (4) any new or supplemental training a practitioner is required to receive. The 2009 H1N1 influenza pandemic saw broader use of modified scope of practice by states than in prior public health emergencies.

Permitted Activities and Practitioners Undertaking Them

States' approaches to modifying the types of practitioners and the activities they are allowed to conduct in an emergency vary considerably. There are, however, common elements addressed in a modified scope of practice decision:

- ***Types of practitioners allowed to engage in the modified practice activity***. Not all regulated health professions in a state will be required or permitted to work under a modified scope of practice during an emergency. Those professions with the same or similar skill sets necessary to meet the particular demands of specific emergency event are most likely to be considered for modified practice. During the H1N1 response, pharmacists and EMS providers were among the professions most frequently designated for a modified scope of practice to supplement states' capacity to rapidly vaccinate their populations with the H1N1 vaccine. Other potential strategies include allowing experienced personnel to temporarily perform at the next level of credential within a field without qualifying education, training hours, or examination, and allowing prior licensees or retired practitioners who were in good standing to practice during the emergency event.
- ***Types of modified activities permitted.*** The types of modified activities a regulated professional will be permitted to conduct under modified practice will vary with the level of practitioner (e.g., registered nurse vs. nurses' aide) and the extent of the need. Examples of modified practice activities include, but are not limited to, administering drugs, performing vaccinations or other injections, monitoring respiratory function,

and monitoring general patient condition. In the H1N1 pandemic response, states primarily modified scope of practice to increase the numbers of vaccinators available to meet real or anticipated demand.

- ***Conditions or limitations on the practitioner when doing the modified practice activity.*** States frequently place conditions or limitations on regulated professionals who practice under a modified scope during an emergency. These requirements can take a number of forms. They may address the types of drugs or vaccines that a practitioner working under an emergency modified scope of practice may administer. They may limit the age of patients that the practitioner may treat (e.g., adults only). They may also impose medical control or supervision requirements (see discussion below).

  Conversely, a modified scope of practice in an emergency may relax existing conditions or limitations on scope of practice. In H1N1, states increased the age range of patients that specified healthcare practitioners could vaccinate (e.g., adding children over a certain age). Other strategies can include reducing the numbers or types of personnel required for a task (e.g., requiring that an ambulance be staffed by specified levels and numbers of EMTs) or expanding the formulary of drugs a practitioner may administer. An emergency scope of practice can also temporarily modify or eliminate certain medical control or supervision requirements.

Medical Control and Other Supervision Issues

Some regulated professionals, such as licensed medical doctors, are authorized to practice independently within the scope of practice specified by the state in which they are licensed; they do not require supervision or control by another licensed practitioner. For many healthcare and other regulated professionals, however, their permitted scope of practice in nonemergency settings includes requirements for medical control—oversight by a more senior practitioner or one with additional training—or some other type of supervision. Medical control or supervision is accomplished through personal oversight or written directions in the form of prescriptions, protocols, or orders. Temporarily modifying medical control and supervision requirements, either by altering, removing, or adding requirements, is a frequent consideration and strategy used to change a professional scope of practice during public health emergencies. During H1N1, some states used this approach to allow physicians to issue standing orders permitting vaccination without issuing prescriptions to individual patients.

- **Direct Oversight**—Some healthcare practitioners may only engage in certain activities if they are working under the direct oversight of a physician or other specified practitioner. Oversight can include requirements that practitioners work within a specified physical proximity to the supervisor.

- **Prescription**—The requirement that a drug, vaccine, or procedure cannot be administered by a healthcare practitioner unless it has been authorized in a prescription by another specified practitioner is a form of medical control. The types of healthcare providers who are authorized to issue prescriptions for drugs, vaccinations, or other medical procedures vary by state. Commonly authorized professionals include, but are not limited to, doctors, nurse practitioners, and dentists. Practitioners with prescription authority may be limited as to the types of drugs they are permitted to prescribe and the types of persons they may prescribe to. During emergencies, requirements that each patient have an individual prescription may be modified to permit the use of standing orders to authorize the widespread administration of vaccines and drugs without prescriptions.

- **Protocols and Standing Orders**—Written protocols are a standard set of rules that govern the activities of regulated healthcare and other professions and serve as a form of medical control. Professionals such as EMS and nurses typically work under protocols issued by physicians. State or local laws, rules, or orders may authorize temporary changes to a protocol to facilitate public health emergency response activities. Standing orders authorize specified practitioners, such as nurses and pharmacists, to administer drugs and vaccines according to an approved protocol without a physician's examination.

Government Oversight in Emergencies

Modifying scope of practice may be coupled with a requirement that practitioners acting under a modified scope must be working at the direction of or under the control of state or local government emergency response officials such as a health agency, emergency management agency, or incident commander. During H1N1 some states limited the activities of healthcare practitioners operating under a modified scope of practice to settings such as public vaccination clinics or point of dispensing (POD) locations.

Training Requirements

Regulated professionals may be required to receive additional training before they are permitted to undertake activities in response to a public health emergency or other emergency event. Training requirements can apply to professionals who will be acting under a modified scope of practice, as well as those who are acting within their existing scope.

- ***Within Existing Scope of Practice***—New training or refreshers may be required for professionals whose existing scope of practice may already authorize a specific activity (e.g., administering immunizations), but whose actual practice may not involve conducting the activity regularly. Additional training for those acting within their scope of practice may also be required because of the nature of the emergency or the medications and protocols developed to respond to it. Thus, should a disease outbreak be caused by a highly infectious agent, healthcare professions may require special training on infection control measures and personal protective equipment (e.g., N-95 respirators).
- ***With Modified Scope of Practice***—A modified scope of practice in emergencies can entail additional or specific training requirements before the professional is permitted to undertake the activities permitted by the practice modification.

Concerns Regarding Modified Scope of Practice in Emergencies

While modifying the scope of practice for some professions during specified circumstances in an emergency may be seen as less controversial than a permanent change, there remain areas of concern that arise when considering modifications to scope of practice during emergencies. Some of the concerns raised include that practitioners will be performing tasks or procedures they have little or no prior experience doing and that just-in-time-training does not meet the level of training necessary to perform the tasks covered by the modified scope. The use of medical controls and other forms of supervision in concert with the modified practice activities is a strategy used to address these concerns.

Practitioners operating under a modified scope of practice also voice concerns about potential liability for their actions during a public health emergency. New and existing federal and state legal protections against liability address these concerns. Many of the immunities and liability protections were newly developed or refined within the last decade, while others are fundamental principles of governmental immunity that continue to evolve as our understanding of modern emergencies likewise evolves. The extent to which liability protections are available to an individual, entity, or class will depend on the actor, the law providing the protections, and the circumstances of a particular emergency response. (See ASTHO *Emergency Authority & Liability Toolkit* for more information.)

Interstate Scope of Practice Issues in Emergencies

In addition to the issues that arise when a state temporarily or permanently modifies the scope of practice for certain regulated professions within that state, questions and conflicts can develop when healthcare or other licensed practitioners deploy (as governmental employees, contractors, or volunteers) to another state during an emergency response effort. There may be differences between the allowed scope of practice in the home state and the state to which the practitioner is deployed. This is especially relevant where the practitioner has a broader scope of practice in the home state than in the deployment state. Professional requirements and any legal restrictions should be carefully considered in development of a mutual aid agreement or other mechanism through which a practitioner is deployed. The document must set forth which scope of practice will apply as well as the potential liability protections and workers' compensation available to a practitioner. (See ASTHO *Emergency Authority & Liability Toolkit* for more information.)

Sources

- Courtney B et al. "Expanding Practitioner Scopes of Practice During Public Health Emergencies: Experiences from the 2009 H1N1 Pandemic Vaccination Efforts." Biosecurity and Bioterrorism. Vol. 8, No. 3. 2010.
- Federation of State Medical Boards. *Assessing Scope of Practice in Healthcare Delivery: Critical Questions in Assuring Public Access and Safety.* 2005. Available at www.fsmb.org/pdf/2005_grpol_scope_of_practice.pdf. Accessed January 31, 2012.
- Health Resources and Services Administration. *Emergency System for Advance Registration of Volunteer Health Professionals (ESAR-VHP)—Legal and Regulatory Issues.* Draft Report. May 2006. Available at www.publichealthlaw.net/Research/PDF/ESAR%20VHP%20Report.pdf. Accessed January 31, 2012.
- National Council on State Boards of Nursing. *Changes in Healthcare Professions' Scope of Practice: Legislative Considerations.* January 2012. Available at www.ncsbn.org/Scope_of_Practice_2012.pdf. Accessed January 31, 2012.

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