

Ebola Preparedness: Mission Critical for Hospitals and Health Systems

The urgency of having an effective Ebola response plan in place is underscored by public outcry in response to news that a second health care worker had contracted Ebola in the United States. Although the quarantine period has now ended for the first group of exposed persons, Ebola has forever changed how infection control and health care worker protection will be viewed by the public, and much needs to be done to counteract the erosion of public trust that has occurred in recent days. The lesson of the current Ebola experience is that an organization's emergency preparedness, or lack thereof, can directly affect its ability to serve the health care needs of its community, and in extreme circumstances, lead to a total collapse of the health system, as seen in West Africa. At a minimum, the events at Texas Health Presbyterian Hospital Dallas demonstrate that community-based facilities face significant challenges in treating Ebola.

In responding to this crisis of confidence, hospital and health system leaders, and their boards of directors—who have the ultimate obligation of ensuring the safety of patients and staff—face an unprecedented task. Hospitals and health systems must engage in a comprehensive and candid assessment of the adequacy of their current infection control capabilities and health care worker protection programs. For many hospitals the focus needs to be on the ability to appropriately isolate patients who present with Ebola symptoms until such time that these patients can be transferred to facilities with specialized capabilities and infrastructure.

As health care providers, hospitals and health systems must develop, implement, continually update, and "stress test" clinical protocols and guidelines for infection control, patient triage and isolation, and stabilization. Health care workers must be properly equipped and adequately trained to safely perform these protocols. Transfer protocols and safe transport arrangements need to be considered to ensure disease containment. Hospitals and health systems, as employers, also face liability for failure to adequately protect their health care workers and should immediately devise strategies to proactively address and respond to labor concerns. Hospitals and health systems also should ensure employment policies and procedures are implemented in a manner that meets both the needs of this unique challenge, and complies with applicable labor laws.

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To strategically respond to these challenges, hospitals and health systems should take the following five steps immediately:

- **Engage the Board of Directors.** Under state licensing provisions, the Medicare Conditions of Participation and The Joint Commission hospital accreditation standards, the governing body of a hospital is legally responsible for the overall conduct of the hospital as an institution and the organization's quality and patient safety activities. Hospitals and health systems need to ensure their boards of directors are aware of their ongoing efforts to develop an Ebola response plan and ensure the general adequacy of that plan. In discharging their oversight duties, members of the board should ensure steps are being taken to protect health care workers, and verify that adequate resources are being allocated to this effort. Board members also should have an understanding of what testing is being done to verify the adequacy of the preparation efforts.
- **Critically Evaluate Adequacy of Health Care Worker Protection Efforts.** Hospitals and health systems need to conduct a rigorous and candid assessment of the adequacy of current infection-control strategies before a patient presents to their facility. At a minimum, senior leaders must ensure that the most current Centers for Disease Control and Prevention (CDC) guidelines are fully implemented. New CDC guidelines were issued yesterday, which require organizations to provide full-body suits and hoods that protect health care workers' necks, institute new procedures for the removal of equipment and disinfection of hands, and appoint a "site manager" to supervise the putting on and taking off of personal protective equipment. The CDC also recommends that hospitals and health systems consider implementing a "buddy system" in which health care workers check each other as they enter and exit patient rooms. Hospitals also need to consider whether they look beyond the CDC guidelines and consult experts who have tested experience in Ebola infection management techniques. Additional planning needs to be undertaken to ensure patients presenting with Ebola symptoms are immediately isolated in a room with a private bathroom, rapid response teams are deployed, and appropriate disinfecting facilities are provided. In developing these health care protection guidelines, hospitals and health systems must ensure compliance with relevant Occupational Safety and Health Act (OSHA) requirements, including, without limitation, OSHA's General Duty Clause, OSHA's Personal Protective Equipment (PPE)/Respiratory Protection Standard, OSHA's Bloodborne Pathogen Standard, OSHA's Hazard Communication Standard, OSHA's Whistleblower Protection Program, OSHA Guidance and

other information addressing Ebola.

- **Review Transfer Protocols and Adequacy of Current Transfer**

Arrangements. Ebola preparedness requires a significant focus on the intake and management of patients who present to emergency departments (ED). The Emergency Medical Treatment and Active Labor Act (EMTALA) requires hospitals to provide a screening exam to patients entering their emergency departments and provide stabilizing treatment to any patient with an emergency medical condition. The CDC has directed hospitals to immediately (i) isolate patients presenting with Ebola symptoms in a room with a private bathroom and (ii) contact their local health department. Consideration also must be given to the use of offsite facilities to intake and triage patients who may have been exposed to the Ebola virus. For many hospitals, the adoption of protocols to safely transfer infected or potentially afflicted patients to facilities with appropriate facilities and expertise will be a critical aspect of their Ebola response plan. EMTALA permits a hospital that does not possess the specialized capabilities to treat an emergency medical condition to transfer the patient to a facility that has the required clinical capacity. Hospitals are advised to put one or more transfer agreements in place as soon as possible, as some regional treatment facilities may have limited capacity. In addition, preparation will be needed to organize safe and appropriate means of transporting patients. Transfer protocols must be designed to comply not only with EMTALA requirements, but best practices for infection control.

- **Review Employment Policies and Procedures Related to**

Reporting/Responding to Workplace Concerns and Paid Leave. An effective Ebola response plan requires a review of current employment policies and procedures to ensure they are being implemented in a manner that rewards and encourages compliance with the organization's response plan. Among the various options for "supportive" approaches are providing paid leave for workers facing quarantine, additional compensation for rapid response team members, and "crisis" hotlines for employees to receive immediate feedback if they have concerns regarding the adequacy of their protective gear or infection control procedures. Legal requirements need to inform the practical application and implementation of employment policies and procedures to ensure health care providers remain in compliance and reduce administrative time spent analyzing the application of policies to specific circumstances. Among the employment laws that may be implicated are the following:

- **NLRA.** Hospitals and health systems need to adopt proactive strategies to deal with concerns of their workforce and protect whistleblowers. The NLRA protects the right of employees to engage in concerted activity for their

- mutual aid and protection, which may include making complaints about whether the employer is taking adequate measures to protect employees from the threat of Ebola in the workplace.
- ADA. While it is not certain that Ebola would be considered a "disability," it is a possibility, given ADA's broad definition of disability. Regardless, the ADA does not prevent employers from requiring employees to disclose travel to Ebola-infected areas. However, health care providers should be mindful of the ADA limits on an employer's ability to require medical exams and ask questions regarding an employee's health. An employer may not require employees to undergo a medical exam unless the employer has a reasonable suspicion based on objective evidence—not irrational fears or subjective perceptions—that (1) an employee's ability to perform essential job functions will be impaired by a medical condition, or (2) the employee poses a "direct threat." In analyzing these factors, employers should consider that the CDC has advised that only persons who have traveled to Ebola affected African countries in the last 21 days present a risk of transmission: travel to unaffected African countries should not be considered a threat to employees. Employers also need to comply with applicable state disability laws.
 - FMLA. Hospitals need to consider if they will fast-track and process FMLA requests, if an Ebola outbreak occurs. An employee infected with Ebola, or who has a family member infected with Ebola, may be eligible for leave under FMLA, as Ebola will almost certainly constitute a "serious health condition." Note too that an employer must notify an employee of his or her eligibility to take FMLA leave if the employer has reason to believe an absence is for FMLA-qualifying reasons.
 - **Review "VIP" HIPAA Privacy and Security Policies and Procedures**. Ebola protocols should address special procedures to protect the privacy and confidentiality of Ebola patients and exposed health care workers in compliance with the Health Insurance Portability and Accountability Act (HIPAA) and state confidentiality laws. While HIPAA does not prevent required public health reporting, hospitals and health systems need to be proactive about protecting the privacy and confidentiality of health care workers and patients who have been exposed to or are being treated for Ebola. HIPAA privacy officers may want to have a communications plan in place in advance of an outbreak to facilitate reminders to employees of the organization's duty to protect the confidentiality of such patients. In addition, HIPAA security officers may want to be prepared to institute special access controls on the records of patients with Ebola, as well as conduct monitoring of routine chart access to ensure ongoing HIPAA compliance. If you have any questions about Ebola issues in the



workplace, please contact your Reinhart [Health Care](#) or [Labor and Employment](#) attorney.

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