



## Issue Brief: Substance Abuse Treatment, Emergencies, and the Law

As of June 27, 2012

**Introduction.** While national or regional emergencies or disasters are well-known for causing an array of harms to physical health, they can also have a significant impact on individuals' mental and behavioral health. Existing mental health conditions, such as schizophrenia and depression, may be exacerbated by an emergency. Large-scale emergencies may affect the mental and behavioral health of first responders, public health officials, health care workers, and others involved in response efforts. The mental health of certain vulnerable populations, including children, the elderly, individuals in group facilities, and persons from socially or economically disadvantaged groups, may also be impacted. Depending on the particular mental and behavioral health issues that arise, individuals may need to access mental health services during and/or after a declared emergency.

In September 2008, the Centers for Disease Control and Prevention (CDC) established a Preparedness and Emergency Response Research Center (PERRC) at the Johns Hopkins Bloomberg School of Public Health. One of the Center's goals is to identify, research, and analyze the legal and ethical issues that arise during emergencies relative to mental and behavioral health. As part of this effort, scholars and researchers at the Johns Hopkins PERRC, in collaboration with the ASU Sandra Day O'Connor College of Law, have created a series of translational tools on relevant legal and ethical issues.

**Purpose.** This tool is intended as a resource for health care providers and administrators, public health officials, emergency planners, clergy, and their public and private sector partners who seek to identify key legal issues that may arise during and after emergencies related to substance abuse treatment. This tool provides general information and is not intended to offer jurisdiction-specific guidance. The content focuses primarily on relevant federal laws although select state or local laws may also be discussed.

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**Disclaimer.** While this document was prepared with support from CDC (5P01TP000288), its contents do not represent the official legal position of CDC or other project partners. *This document does not provide specific legal advice.* Practitioners should consult with their legal counsel for a more detailed understanding of federal laws and to understand the implications of relevant state laws.

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**Background:** The National Institute on Drug Abuse characterizes substance abuse treatment as a therapeutic process that includes detoxification, treatment, and relapse prevention services. Approximately one-quarter of individuals receiving substance abuse treatment in the United States receive medical treatment for addiction to opioids (e.g., heroin).<sup>2</sup> In addition, over 700,000 prescriptions are filled for medications used to treat alcohol dependence each year.<sup>3</sup> Multiple behavioral therapies are also used in substance abuse treatment, such as counseling (at the individual or group level), cognitive-behavioral therapy, multidimensional family therapy, and motivational incentives and interviewing.<sup>4</sup> Most individuals receive substance abuse treatment services in outpatient clinics,<sup>5</sup> although some utilize residential treatment programs, which allow patients to remain at a residence for detoxification for short- or long-term stays.<sup>6, 7</sup>

**Substance Abuse Treatment Services in Declared Emergencies:** Individuals currently receiving or needing substance abuse treatment services may face unique challenges during emergencies. During an emergency, laws pertaining to substance abuse treatment generally remain in effect unless government explicitly waives them through a formal declaration of emergency. Numerous legal provisions can help to facilitate substance abuse treatment in affected states:

- *Licensure Portability for Health Care Professionals:* Licensed health care professionals, including counselors, nurses, and physicians, participate in substance abuse treatment. When an emergency occurs, these professionals may be deployed to affected states in which they are not licensed to provide care. Several federal and state laws allow these providers to offer substance abuse treatment services during out-of-state emergency responses. The Emergency Management Assistance Compact (EMAC), which has been executed in every state, allows licensed health care professionals to practice in states affected by an emergency. However, it only applies to those who work in the public sector (i.e., for state or local government), or others who may formally be brought within the umbrella of state or local responses. Some states have passed similar emergency laws for private sector and volunteer health care professionals.<sup>8</sup>
- *Civil Liability Protections:* Some emergency laws or compacts, such as EMAC, contain provisions that limit civil liability for licensed health care professionals who practice under their auspices during emergencies. These protections typically require health care professionals to act within their scope of practice during an emergency response. Therefore, substance abuse professionals must assess how their scope of practice is defined or altered during an emergency response—particularly if they normally provide care only under supervision<sup>9</sup> (e.g., advance practice nurses in some states)—to benefit from any applicable civil liability protections.
- *Regulatory Requirements for Opioid Treatment Programs:* Opioid treatment programs (OTPs) provide medications such as methadone, which are usually taken by patients in the presence of a health care professional. During an emergency, the strict legislative and regulatory protocols that OTPs follow may be disrupted. For example, they may not be able to produce timely verification of legally required information, such as the identities and methadone doses of displaced individuals.<sup>10</sup> The Substance Abuse and Mental Health Services Administration (SAMHSA) has provided guidance for OTPs, which may help them to navigate these types of legal challenges during and shortly after emergencies.<sup>11</sup> This guidance includes suggestions for ways to establish that a displaced individual is receiving care from an OTP and determining their medication dose.

**Funding for Substance Abuse Treatment During Emergencies:** Once the federal or state government has made a legal declaration of “disaster” or “emergency,” emergency laws make certain funding streams available to support responses to affected communities’ mental and behavioral health needs:

- *Crisis Counseling Assistance and Training Program*: Following a Presidential declaration of disaster (but not an emergency or public health emergency declaration), the Stafford Act permits the federal government, through FEMA and SAMHSA,<sup>12</sup> to execute the Crisis Counseling Assistance and Training Program (CCP).<sup>13,14</sup> The CCP, which provides financial assistance in response to requests from affected states and localities, is intended “to relieve mental health problems caused or aggravated by [a] major disaster or its aftermath.”<sup>15</sup> CCP funds are available for up to 9 months after a disaster declaration,<sup>16,17</sup> but may not be used to support substance abuse treatment services, other than to provide referrals to treatment programs.<sup>18</sup> Concerns have been raised that many Americans lack health insurance that adequately covers substance abuse treatment services, making them less likely to receive such services following a CCP referral.<sup>19</sup> This may be addressed, in part, by provisions of the Patient Protection and Affordable Care Act, which will be implemented in 2014, that expand coverage for substance abuse treatment.<sup>20,21</sup>
- *Emergency Response Grants*: SAMHSA’s Emergency Response Grants (SERG) are another federal resource available to meet communities’ post-disaster mental and behavioral health needs regardless of a Presidential disaster declaration. Federal law allows SAMHSA to devote up to 2.5 percent of its funding each year to these grants, which may cover emergency mental health and substance abuse services.<sup>22</sup>
- *State-Specific Resources*: Other state-specific funds may become available to address substance abuse treatment needs following an emergency. For example, after the 9/11 terrorist attacks, New York State’s Office of Alcoholism and Substance Abuse Services offered financial assistance to affected substance abuse treatment programs.<sup>23</sup> In addition, shortly after 9/11 and Hurricane Katrina, individuals receiving substance abuse treatment who met eligibility criteria received expedited, emergency Medicaid enrollment or waivers.<sup>24,25</sup>

## References

<sup>1</sup> For additional information about this topic, see Rutkow L, Vernick JS, Wissow LS, et al. Prescribing authority during emergencies. *J Legal Med.* 2011;32:249–260 and Rutkow L, Vernick JS, Mojtabei R, et al. Legal challenges for substance abuse treatment during disasters. *Psychiatr Serv.* 2012;63:7-9.

<sup>2</sup> Substance Abuse and Mental Health Services Administration. National Survey of Substance Abuse Treatment Services. Rockville, MD, Department of Health and Human Services, 2008.

<sup>3</sup> Mark TL, Kassed CA, Vandivort-Warren R, et al. Alcohol and opioid dependence medications: prescription trends, overall and by physician specialty. *Drug Alcohol Depend.* 2009;99:345-349.

<sup>4</sup> National Institute on Drug Abuse. Treatment Approaches for Drug Addiction. Bethesda, MD, National Institutes of Health, 2009.

<sup>5</sup> Center for Substance Abuse Treatment. All-Hazards Response Planning for State Substance Abuse Service Systems. Rockville, MD, Substance Abuse and Mental Health Services Administration, 2004.

<sup>6</sup> Substance Abuse and Mental Health Services Administration. National Survey of Substance Abuse Treatment Services. Rockville, MD, Department of Health and Human Services, 2008.

<sup>7</sup> National Institute on Drug Abuse. Treatment Approaches for Drug Addiction. Bethesda, MD, National Institutes of Health, 2009.

<sup>8</sup> Rutkow L, Vernick JS, Wissow LS, et al. Prescribing authority during emergencies. *J Legal Med.* 2011;32:249–260.

<sup>9</sup> A National Review of State Alcohol and Drug Treatment Programs and Certification Standards for Substance Abuse Counselors and Prevention Professionals. Rockville, MD, Substance Abuse and Mental Health Services Administration, 2005.

<sup>10</sup> 42 C.F.R. § 8.12 (2011).

<sup>11</sup> Curie CG. Guidance to the State Methadone Authorities and Opioid Treatment Programs. Rockville, MD, Substance

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Abuse and Mental Health Services Administration, 2005.

<sup>12</sup> Disaster Technical Assistance Center. Crisis Counseling Assistance and Training Program. Rockville, MD, Substance Abuse and Mental Health Services Administration, <http://www.samhsa.gov/dtac/proguide.asp>.

<sup>13</sup> 42 U.S.C. § 5183 (2010).

<sup>14</sup> Catastrophic Disasters: Federal Efforts Help States Prepare for and Respond to Psychological Consequences, but FEMA's Crisis Counseling Program Needs Improvement. Washington, DC, U.S. Government Accountability Office, 2008.

<sup>15</sup> 42 U.S.C. § 5183 (2010).

<sup>16</sup> Disaster Technical Assistance Center. Crisis Counseling Assistance and Training Program. Rockville, MD, Substance Abuse and Mental Health Services Administration, <http://www.samhsa.gov/dtac/proguide.asp>.

<sup>17</sup> 44 C.F.R. § 206.181 (2011).

<sup>18</sup> Sundararaman R, Lister SA, Williams ED. Gulf Coast Hurricanes: Addressing Survivors' Mental Health and Substance Abuse Treatment Needs. Washington, DC, Congressional Research Service, 2006.

<sup>19</sup> Sundararaman R, Lister SA, Williams ED. Gulf Coast Hurricanes: Addressing Survivors' Mental Health and Substance Abuse Treatment Needs. Washington, DC, Congressional Research Service, 2006.

<sup>20</sup> Davis CS. Applicability of Patient Protection and Affordable Care Act to Substance Use Disorder Treatment. Public Health Law Network, 2010.

<sup>21</sup> Buck JA. The looming expansion and transformation of public substance abuse treatment under the Affordable Care Act. *Health Aff.* 2011;30:1402-1410.

<sup>22</sup> 42 U.S.C. § 290aa(m) (2010).

<sup>23</sup> Frank B, Dewart T, Schmeidler J, et al. The Impact of 9/11 on New York City's Substance Abuse Treatment Programs: A Study of Patients and Administrators. Albany, NY, New York State Office of Alcoholism and Substance Abuse Services, 2003.

<sup>24</sup> Maxwell JC, Podus D, Walsh D. Lessons learned from the deadly sisters: drug and alcohol treatment disruption, and consequences from Hurricanes Katrina and Rita. *Subst Use & Misuse* 2009;44:1681-1694.

<sup>25</sup> Frank B, Dewart T, Schmeidler J, et al. The Impact of 9/11 on New York City's Substance Abuse Treatment Programs: A Study of Patients and Administrators. Albany, NY, New York State Office of Alcoholism and Substance Abuse Services, 2003.