Using the Law to Promote the Mental Health of Older Adults during Disasters

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Introduction
When a disaster occurs, adults over age 65 may be disproportionately impacted due to sensory deficits, chronic health conditions, diminished social support and isolation, and financial limitations. Although older adults comprised approximately 15 percent of the New Orleans population, they accounted for over 70 percent of the fatalities associated with Hurricane Katrina in 2005. Disasters can also impact older adults’ morbidity, as a disaster may disrupt established habits and routines (e.g., timing of medication administration) and result in removal from a familiar environment, promoting disorientation. This may raise particular challenges for older adults with mental and physical co-morbidities, and subsequently for their formal and informal caregivers.

While some older adults may need care for physical health problems following a disaster, mental health needs are often overlooked or unmet. One study of Hurricane Katrina survivors found that, compared to older adults, middle-aged individuals were twice as likely to have received mental health services in the eight months after the hurricane. This may be attributed to a variety of factors, including older adults’ concerns about stigma, perceptions that post-disaster services should be reserved for younger people, lack of information about available mental health services, and apprehension about the cost of such services.

Because some older adults have cognitive difficulties that may be exacerbated by a disaster, and others may develop emergent conditions (e.g., anxiety, depression), it is especially important for emergency planners and others to consider their mental health needs.

Law can serve as a powerful tool to protect the mental health of older adults in both disaster and non-disaster circumstances. For example, laws establish the licensure and credentialing procedures for geriatric mental health specialists and determine the processes by which individuals receive and fill prescriptions for medications. Sometimes laws may have the unintended effect of frustrating efforts to address older adults’ mental health concerns, because many laws intended for non-disaster situations remain in place during disasters. In this article, we analyze three areas in which the law offers important opportunities to promote the mental health of older adults during and shortly after a disaster.

Promoting the Mental Health of Older Adults in Disasters
Laws have the potential to inhibit or promote the mental health of older adults in disaster contexts. Non-emergency laws remain in effect during a disaster unless explicitly waived, which means that health care providers must continue to meet certain requirements, such as obtaining informed consent for health care services. In disaster circumstances, this may prove difficult, particularly for older adults with cognitive impairments. When a disaster occurs, legal challenges may also arise relative to the regulatory infrastructure of the Medicare program, which provides health insurance to many older adults. These consid-
erations have led to the passage of varied emergency laws, which can help ensure that older adults receive mental health services from specialist providers during and immediately after disasters.

**Medicare Services**

For approximately 43 million individuals — most of whom are over age 65 — the Medicare program provides health insurance coverage. Medicare Part A, known as “hospital insurance,” covers inpatient hospital care, some home health care services, and hospice care. Medicare Part B, referred to as “medical insur-

ance,” covers outpatient medical services. In addition, Medicare offers coverage for prescription medications. Importantly, Medicare coverage includes inpatient and outpatient mental health services as well as prescription medications used to treat mental and behavioral health conditions.⁶

When a disaster occurs, it may become difficult for health care providers and patients to comply with governmental regulations pertaining to Medicare beneficiary eligibility, billing, and service providers and facilities. This may happen for varied reasons, such as evacuation and displacement of Medicare beneficiaries and their providers or temporary closure of health care facilities. For older adults who depend on mental health care — such as outpatient therapeutic visits and/or psychotropic medications — to manage a chronic condition, an inability to comply with Medicare program requirements raises serious concerns.

The federal government has addressed this issue with the creation of a temporary waiver for certain Medicare requirements during and shortly after a disaster. Known as an 1135 waiver, this legal provision was developed “to ensure to the maximum extent feasible...that sufficient health care items and services are available to meet the needs of individuals...enrolled in the [Medicare] program....”⁷ For an 1135 waiver to become available, the President must declare an “emergency” or “major disaster” through one of several federal emergency laws.⁸ In addition, the Secretary of the U.S. Department of Health and Human Services must also declare a “public health emer-

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In recent years, 1135 waivers have been employed in a variety of disaster circumstances, including torna-

does and severe storms in Missouri in 2011 and the H1N1 flu pandemic in 2009.¹³ When these waivers are offered, health care facilities that routinely serve older adults for inpatient or outpatient mental and physical health issues should prepare to respond to temporary alterations in Medicare requirements, in keeping with the language of the waiver.

**Staffing Shortages**

For some older adults, access to home health aides, nurses, physicians, and other health care providers is critical to address mental or physical health needs. Older adults with physical health conditions may, for example, require assistance with mobility-related tasks. For older adults with mental health conditions — such as severe cognitive impairment or dementia — a caregiver or health care provider’s help may be needed for a variety of daily activities, such as eating, dressing, and bathing.¹⁴ In addition, older adults with serious cognitive impairments may, by law, rely upon a designated friend or relative to provide consent for medical procedures.¹⁵

During a disaster, dependent older adults may be separated from trusted caregivers or health care providers for hours or days. Older adults who, due to a mental health condition, lack decisional capacity may be separated from their legally designated proxy decision-maker. If these individuals require care for a mental or physical health condition during this
period of separation, temporary health care providers may experience difficulty determining who has the legal authority to provide informed consent for such services.

These concerns highlight the importance of ensuring that individuals with training in geriatric health participate in emergency responses. Specialists such as geriatric psychiatrists and psychologists have expertise working with older adults experiencing chronic or acute mental health challenges. In disaster circumstances, these specialists can ascertain older adults’ decisional capacity, which is critical to ensure legal compliance with informed consent processes. In advance of a disaster, these specialists can work with patients and their families to ensure that plans are in place should temporary separation from a legally designated proxy decision-maker occur.

Prior disasters have confirmed the existence of geriatric specialist shortages. After Hurricane Katrina, the U.S. Department of Health and Human Services Office of the Inspector General released a report indicating that nursing homes in the Gulf region lacked trained staff, such as nurses, while evacuating their residents, including many older adults. The report suggested that nursing homes be required to create plans “for adequate staffing levels, including clear expectations for relocation, if necessary, and for assistance with residents in an emergency....”

Existing laws can be employed to respond to this recommendation and bolster the number of geriatric specialists joining emergency response efforts. Every state has codified the Emergency Management Assistance Compact, which allows licensed health care providers – including geriatric specialists – who work for state agencies to temporarily practice in a state facing a disaster. Similar laws have been adopted in several states to allow out-of-state volunteer health care professionals to participate in emergency responses. Professional organizations and employers, such as health care delivery systems, can help geriatric specialists to understand the types of legal mechanisms already in place to facilitate their participation, and encourage nursing homes to create emergency preparedness plans that will position them to take advantage of these legal provisions to improve staffing levels.

**Continuity of Prescription Medications**

In non-disaster situations, many older adults rely upon prescription medications to help manage chronic health conditions. For example, selective serotonin reuptake inhibitors (SSRIs) may be prescribed to treat depression and cholinesterase inhibitors are prescribed for dementia.

During a disaster, older adults may be unable to access their medications, either because they have been separated from their supply or because a prescription has expired and they cannot reach their prescribing physician to request a refill. Because some older adults take multiple medications to treat varied mental and physical health conditions, drug interactions and side effects must be carefully monitored. A temporary lapse in medication during a disaster can potentially upset this delicate balance. Therefore, it is critical that the law provides mechanisms to promote continuity of prescription medications for older adults during disasters.

Federal and state laws regulate the prescribing and dispensing of certain medications, and — unless these laws are explicitly waived — they remain in place during a disaster. It is important to understand how the law may inhibit or promote the continuity of prescription medication supplies for older adults during an disaster. For example, following the devastating 2005 hurricane season, Florida legislators passed a law to allow pharmacies to provide “at least a 30-day supply of any prescription medication, regardless of the date upon which the prescription had most recently been filled....” The law is triggered in Florida counties that face a National Weather Service-issued hurricane warning and are either in a “state of emergency” as declared by Florida’s Governor or have activated their local emergency management plan. The state’s emergency prescription refill law ceases to apply once these circumstances have ended.

While Florida’s law provides an important process to help older adults maintain medication continuity, its utility is limited to one disaster context, namely hurricanes. However, a range of other disaster scenarios could also impact older adults’ ability to access prescription medications. In addition, the Florida law only applies to prescriptions that contain valid refills. It does not address scenarios in which an individual needs to access a medication during a disaster but his or her prescription has expired or contains no additional refills. States should account for these types of considerations when revisiting their prescription medication laws for emergency preparedness purposes.

**Conclusion**

With the proportion of older adults in the U.S. population expected to steadily increase in the coming decades, it is imperative to account for their mental and physical health needs in emergency preparedness.
planning and response activities. Yet, as of 2009, about half of the 50 states had not explicitly mentioned older adults in their state-wide preparedness plans. While many organizations, including the American Red Cross and the Geriatric Mental Health Foundation, have compiled helpful preparedness guides for older adults and their caregivers — with attention to mental and behavioral health concerns — these resources do not explicitly address legal challenges that older adults may face. Given the law’s ability to promote the mental health of older adults during and shortly after disasters, there is a critical need for lawyers to engage directly with emergency planners, as well as health care providers, older adults, and caregivers, to identify and explain these opportunities. Such interdiscipli- nary communication can help to mitigate older adults’ vulnerability in advance of an actual disaster scenario.

Acknowledgement
This research was supported by the Centers for Disease Control and Prevention (CDC) (5P01TP000288) through a project entitled “Legal and Ethical Assessments Concerning Mental and Behavioral Health Preparedness,” funded at the Johns Hopkins Bloomberg School of Public Health. Any views or opinions expressed in this article are those of the authors and not CDC or other project partners.

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