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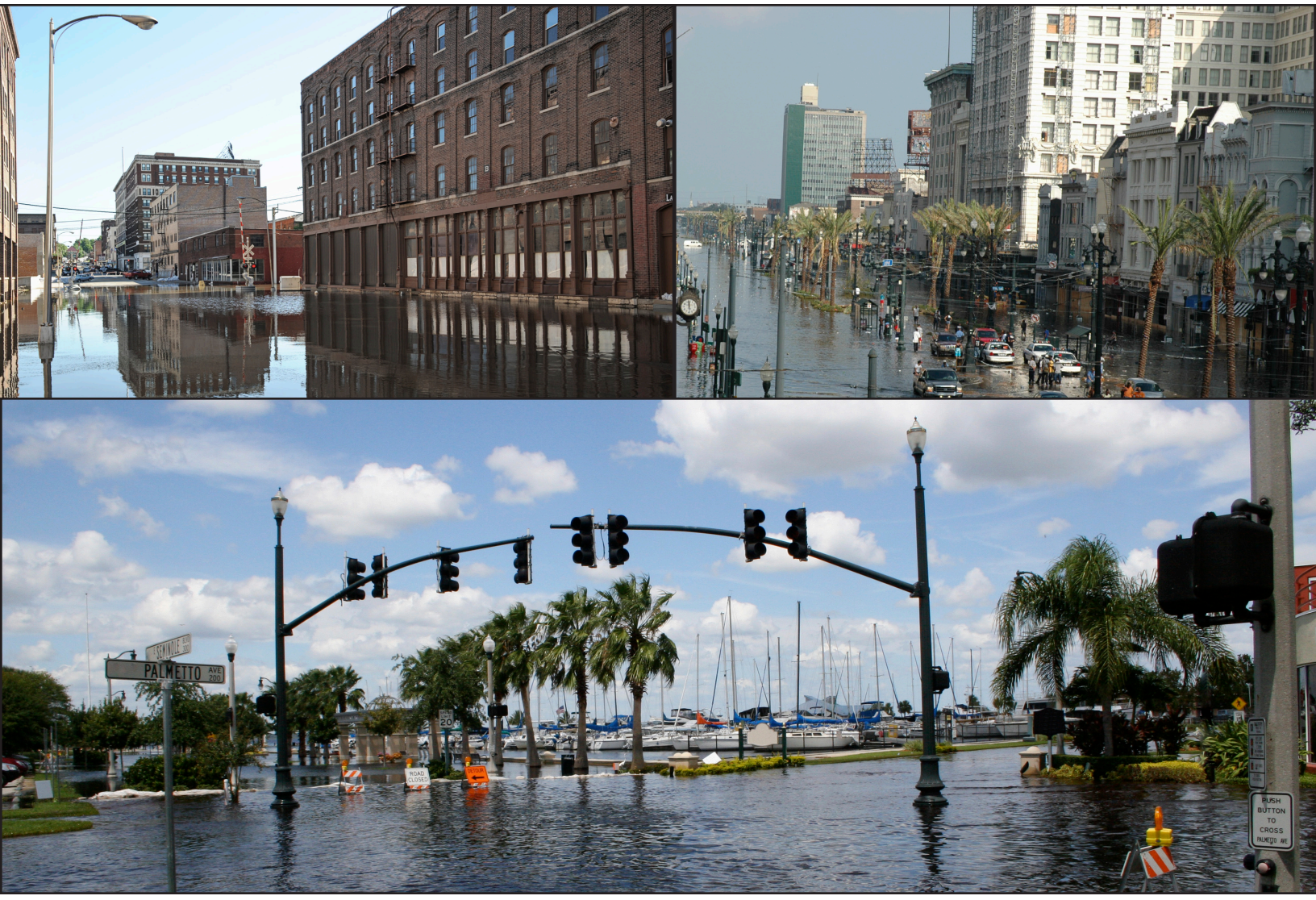

Responding to a Natural Disaster at your Hospital

Indiana Society for Healthcare Engineering

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In 2008, various parts of Indiana experienced significant rainfall, rising water and flooding at levels not seen for 100 years. Hoosiers in communities throughout the State were forced from their homes and found their lives severely disrupted. Several Indiana Hospitals found themselves in the same situation. Some Hospitals were flooded during the storms, resulting in closure or partial closure of their services and damage to facilities. These closures have a dual effect; not only were the Hospitals that had to close services affected, but some of their patients had to be transferred to other facilities, triggering the need for consideration of issues on the receiving end as well.

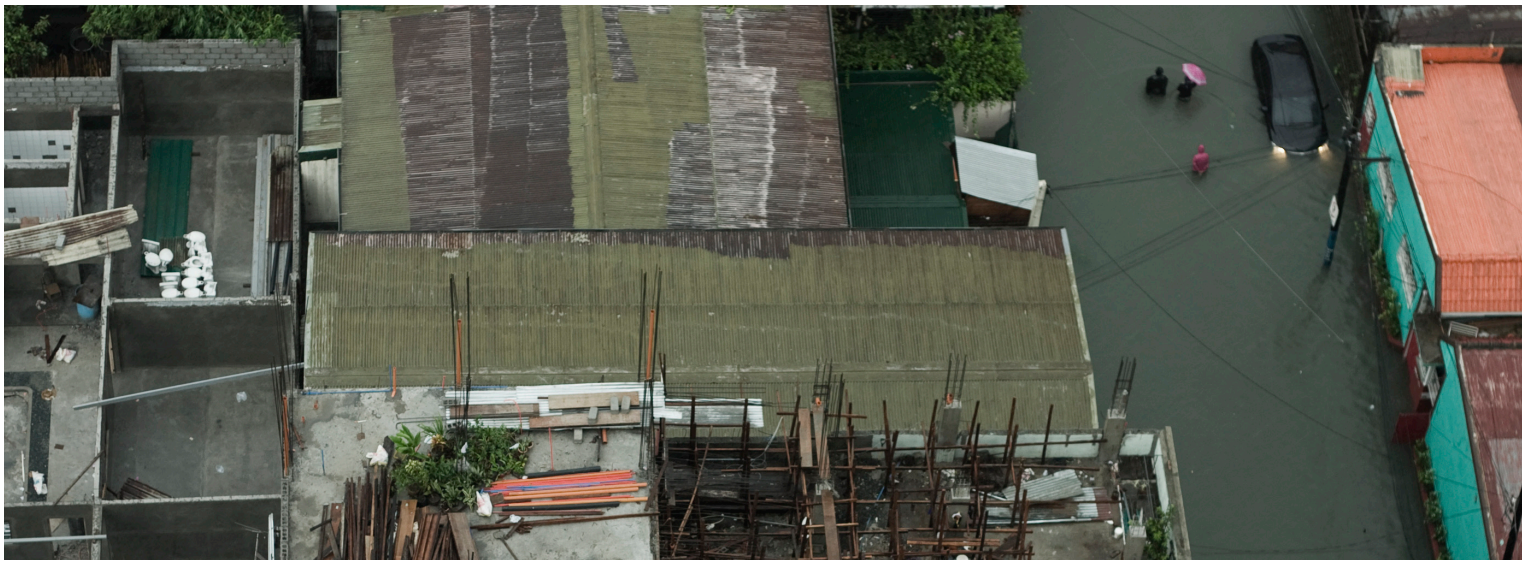
The purpose of this article is to summarize a list of issues that Hospitals should consider in the event of a disaster.

1. INSURANCE

The obvious initial step is for Hospitals to immediately contact their insurance companies. Secondly, Hospitals should begin reviewing their insurance policies to assess the scope of the coverage available, including "loss of business" or "business interruption" claims. Once the scope of the coverage has been identified, the Hospital should assess coverage limits and any deductible obligations it may have. The insurance carrier will send adjusters to the site to assess the scope of the damage, and also to serve as a central point to coordinate needed services such as water disposal, construction, replacement of damaged or lost equipment, rehabilitation of damaged assets, etc. We strongly encourage Hospitals to assign a representative from the administrative team to work directly with this individual to keep track of all such steps. Bear in mind they are working with the Hospital, but for the carrier. Frequently, the initial steps in dealing with the carrier suggest they have agreed to provide coverage, which is not always the case. Therefore, keeping close tabs on the activities undertaken, documenting all services and related expenses are essential steps in the event there is a coverage dispute in the future.

2. CREDENTIALING

Some facilities may need to transfer patients to other area Hospitals consistent with their existing disaster planning or Hospital mutual aid agreements. Receiving Hospitals will likely experience requests from patients' attending physicians to continue their care of the patient at the receiving facility, even though they do not have medical staff membership or clinical privileges at the receiving facility.



Hospitals generally have the authority to grant temporary privileges to ensure continuity of care for transferred patients. At minimum, Hospitals should collect background information that verifies state licensure and current competence. Current competence for purposes of granting temporary privileges may include copies of the attending physician's medical staff application and delineation of clinical privileges from the physician's primary Hospital. Hospitals should also consider obtaining confirmation of DEA/CSR registration, insurance, and a Data Bank Report. Upon verification of this information, temporary privileges are typically granted by the CEO upon recommendation by an authorized medical staff representative. Of course, temporary privileges should also be issued in conformity with the Hospital's medical staff bylaws with appropriate documentation. Under the circumstances, it may be unlikely that all of the information described here is obtained prior to granting temporary privileges; we do not believe this is problematic provided that the receiving Hospitals follow up and obtain such information as quickly as possible. It may take some weeks before all of this information is obtained.

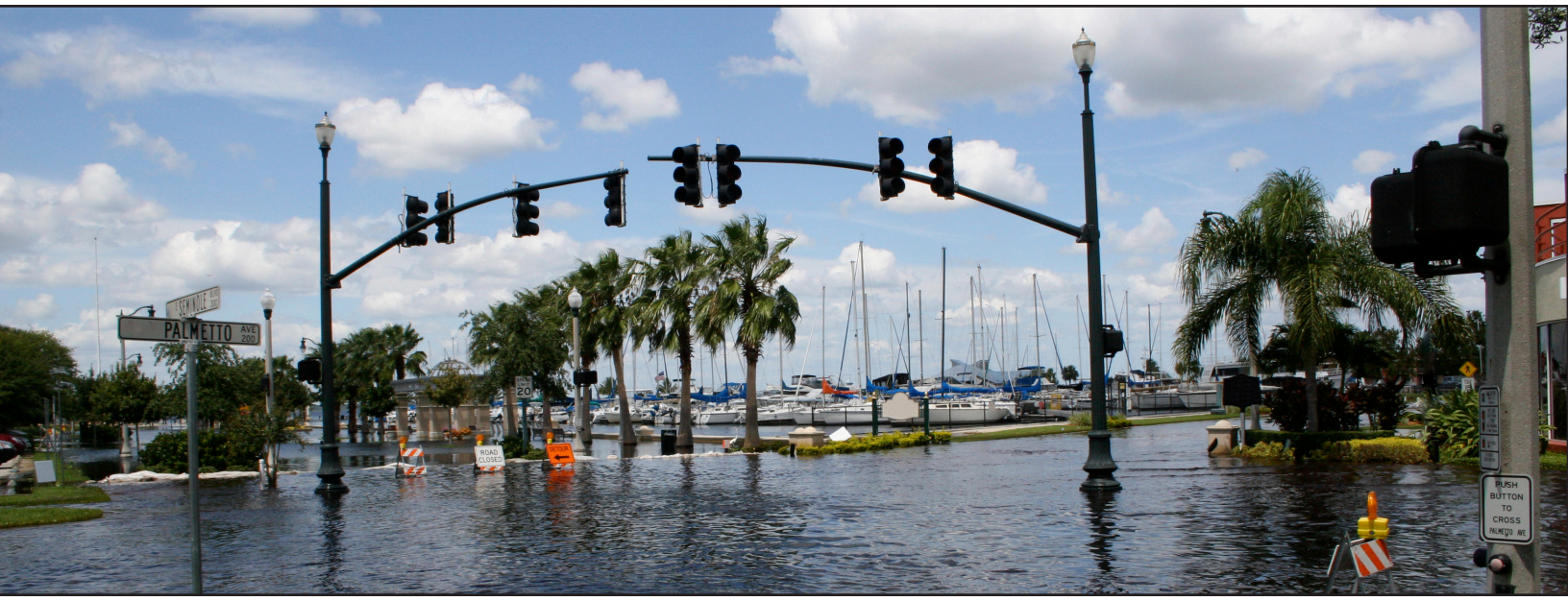
3. CONTRACTUAL ARRANGEMENTS

Hospitals have a variety of contractual relationships, both commitments to provide and receive certain services. A Hospital that closes, or has to close certain departments, may temporarily be unable to fulfill some of these obligations. We recommend identifying contracts for all Hospital services which are impacted by temporary closures. Then, we recommend Hospitals contact the parties, informing them of the circumstances and notifying them of the current impossibility of providing or receiving services, as appropriate. These communications should be followed up in writing, asserting that temporary contractual noncompliance results from a force majeure, also known as an "Act of God." Often, agreements have a specific force majeure clause. Under the circumstances, we are hopeful that most vendors will be cooperative. However, we recommend documenting any "understanding" as quickly as possible to minimize later disputes. Hospitals may also be able to assign payments to vendors while the Hospital is closed. Each agreement should be reviewed to assess the Hospital's options.

4. ENVIRONMENTAL

Hospitals should review their Emergency Preparedness Plan to make sure that it is up to date with respect to contact information for key personnel and regulatory agencies.

One of the primary environmental issues involves the quality of the Hospital's drinking water. If the Hospital relies on a municipality for its drinking water, then it should contact



local officials to determine if the drinking water is safe for consumption. If, on the other hand, the Hospital maintains its own source of drinking water, then an appropriate analysis should be undertaken to ensure that the source is producing safe drinking water. The facility manager should ensure that the wastewater treatment system is operating pursuant to its state or federal permit.

The Hospital's facility manager should also be consulted regarding hazardous and infectious waste. If a release of a reportable quantity of a hazardous or infectious material has occurred, then Hospitals should consult its Spill Plan and contact its legal counsel to determine if the release must be reported to state and/or federal authorities. All hazardous and infectious waste must be disposed according to state and federal guidelines. All other debris may be disposed of at designated city or county locations.

Hospitals should also make sure that flooded facilities appropriately remediate any mold that may exist. An indoor environmental consultant should be contacted to determine if mold exists and the proper strategy for remediation.

5. EMPLOYMENT

Some Hospitals may face a temporary shutdown of operations and need to call-off employees, while others may see an influx of patients and have to call-in employees. Existing departmental and personnel policies address employment issues.

For Hospitals that temporarily shut down some or all operations, employees not engaged to work by the Hospital can typically be placed on an administrative leaves. The Hospital should decide whether these employees will be permitted to use accrued vacation time while on a leave of absence. For Hospitals with an influx in patients and increased staffing needs, employer's have broad discretion in calling people in to work, declining vacation requests, and assigning job duties that would not commonly be required of an employee.

Before denying an employee's request for time off, be mindful that an employee may be protected by the FMLA depending on his/her reason(s) for needing the leave. Some employees may not be able to work, even if the Hospital is still open, if they have to care for themselves or certain family members with a "serious health condition" as contemplated by the FMLA. Employees and/or their family members may have a medical condition caused or aggravated by the flooding. These may qualify as a "serious health condition" as defined by the FMLA, entitling them to FMLA protection.

Employees required to work must be paid for their time. Some employees may volunteer their time to the relief and/or clean up efforts. The Hospital should make clear

that in such circumstances the employee is not being required to volunteer and that the employee will not receive compensation for the time they contribute.

6. LICENSURE AND ACCREDITATION

Hospitals must verbally notify the Indiana State Department of Health ("ISDH") of a "a disruption, exceeding four (4) hours, in the continued safe operation of the Hospital or in the provision of patient care, caused by internal or external disasters. . ." within twenty-four (24) hours of the occurrence. 410 IAC 15-1.2-1(e)(1).

Written reports must then be submitted to ISDH within a reasonable time thereafter and should include:

- An explanation of the circumstances surrounding the occurrence;
- Summaries of findings, conclusions, and recommendations associated with the occurrence; and
- A summary of actions taken to resolve identified problems, prevent recurrence of the incident, and improve overall patient care.

Hospitals should ensure that they continue to notify ISDH of the availability of services after an initial report. For instance, if an additional service line becomes unavailable after the initial notification to ISDH, the Hospital must also notify ISDH regarding this additional service line outage.

NOTE: The Indiana Hospital Licensure Rules require ISDH to approve the reopening of any Hospital closed due to flood, fire, or other disaster. Hospitals are therefore required to contact ISDH prior to reopening. In response, ISDH will survey a Hospital to ensure the facility is capable of providing services again. Hospitals should make sure that they are prepared to provide services before contacting ISDH for this survey.

Special Waiver Requests

Hospitals affected by disaster may no longer be able to comply with many record retention requirements. For example, radiology film and medical records may be damaged. If there are no electronic copies, then Hospitals experiencing such losses should contact ISDH to request a waiver of the retention requirements.

Patient safety may require that some patients are transferred to distinct part skilled nursing facilities. In such a situation, the Hospital should contact ISDH as soon as possible to request a waiver of the prohibition against the comingling of patients.

Critical Access Hospitals may request a waiver of the twenty-five (25) bed limit only if:

1) An emergency or disaster is declared by the President pursuant to the National Emergencies Act or the Robert T. Stafford Disaster Relief and Emergency Assistance Act; and

2) A public health emergency is declared by the Secretary of Health and Human Services pursuant to Section 319 of the Public Health Service Act.

Since the recent flooding has not been declared a public health emergency, waiver of the twenty-five (25) bed limit is not available.

Joint Commission

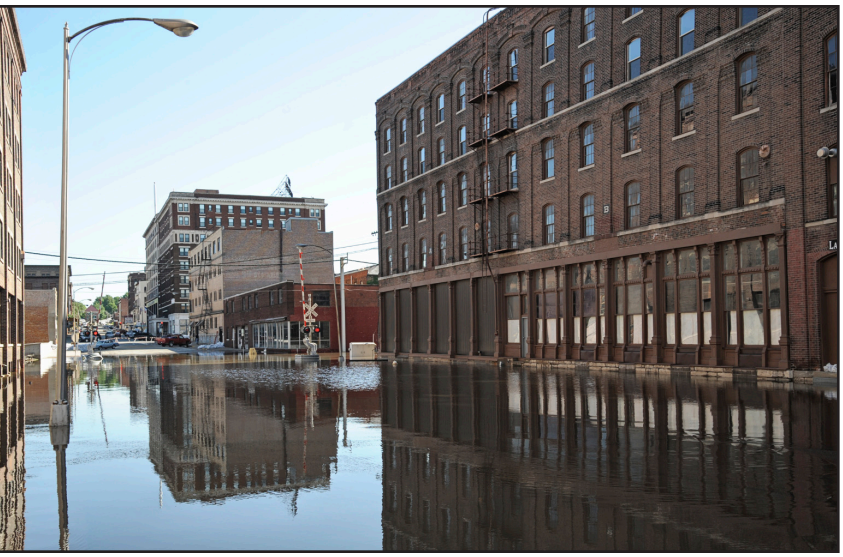
Hospitals accredited by the Joint Commission that close due to an internal or external disaster should contact Jerry Gervais at 630/792-5900 as soon as possible after closure. Mr. Gervais will communicate all information to the appropriate Joint Commission representative.

Health Facilities Accreditation Program

Hospitals accredited by the Healthcare Facilities Accreditation Program ("HFAP") that close due to an internal or external disaster should send written notification to Barb Swanson, 142 East Ontario, 8th Floor, Chicago, Illinois 60611.

7. REAL ESTATE

Hospitals may have obligations as a landlord or as a tenant under existing lease agreements. The lease agreement will



typically define the Hospital's responsibilities in the event of a flood, fire, earthquake or other natural disaster. In most cases, the landlord will reserve the right to enter and inspect the leased premises in the event of an emergency and without notice to the tenant. Natural disasters are typically considered an emergency.

If the space can not be fully utilized due to flooding or substantial damage, then a determination must be made as to whether the landlord or tenant is responsible for making the space usable again after the event of casualty. In many cases, the landlord and the tenant may have the right to simply terminate the lease if the space is unusable for a set period of time. If either party intends to terminate the lease agreement, then notice must typically be provided to the other party and in writing. Similarly, the lease should describe when the tenant can abate rent in the event of a casualty or if utilities to the leased premises are interrupted for a set number of days.

Damage to a tenant's personal property is also an issue that arises in the event of a natural disaster. Most lease agreements place the responsibility on the tenant to insure its personal property. If insurance is in place, the tenant should contact its claims representative as soon as practicable.

8. REIMBURSEMENT

The basic rule, with certain exceptions, is that the final discharging Hospital receives the full Medicare IPPS payment rate and the transferring Hospital receives a per-day payment for each day the patient spent in the transferring Hospital. If less than one day, a one day payment is made but that day does not count against the patient's Medicare days because single days are credited to the receiving/discharging Hospital. The amount of the per-day payment is calculated by dividing the regular IPPS payment that would apply to the transferring Hospital for the patient's DRG by the average length of stay for patients in that DRG. The transferring Hospital receives twice the daily payment rate for the first day of care, when resource use is expected to be intense. Total payment to a transferring Hospital is limited to the regular IPPS payment. The IPPS rate paid is the Hospital specific rate.

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