

Center for Medicaid and State Operations/Survey and Certification Group

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DATE: October 16, 2009

TO: State Survey Agency Directors

FROM: Director
Survey and Certification Group

SUBJECT: **H1N1 Flu Vaccinations or Other Emergency Activities and State Survey Agency (SA) Federal Survey and Certification Responsibilities**

Memorandum Summary

- **Situation:** H1N1 (swine-origin influenza A) flu virus cases have been identified in all 50 States across the nation, and the Centers for Disease Control and Prevention (CDC) indicate that thirty-seven States report widespread influenza activity at this time. The CDC began distributing the H1N1 vaccination to State public health agencies in mid-October. Concerns have been expressed as to whether there are sufficient clinical personnel to administer all vaccine.
- **Federal Survey Workload During H1N1 Flu Pandemic.** This memo provides information that Centers for Medicare & Medicaid Services (CMS) will work with the SAs, on a case-by-case basis, to adjust work schedules, and other survey and certification actions if State emergency response authorities determine that they must deploy surveyors to administer vaccinations and the State has determined no alternative strategies are available. However, the Federal annual survey and certification work must still be accomplished to the maximum extent practicable, and funds other than the Medicare Trust Fund resources for survey and certification must be used when surveyors are performing vaccine administration or other work that is not part of the 1864 agreement.

Background

Questions have been raised on whether CMS will permit the SAs to adjust or forego their Federal survey and certification work if State emergency authorities have determined it is necessary to deploy the SA's clinical professionals to provide influenza vaccinations during the H1N1 pandemic.

Effective emergency preparedness and response is a critical priority for CMS, and support for our State partners is essential to that goal. At the same time, CMS depends on the SA surveyors to address all provider/supplier inspections, recertification surveys, and complaint surveyors to forestall any diminutions of care quality. CMS has an excellent track record of working with affected States through many emergency situations, and is confident that the twin goals of emergency response and constant beneficiary protection can be balanced in an optimum manner.

While SA personnel are not subject to Federal personnel management and deployment, CMS has established contracts with the States under section 1864 of the Social Security Act, which obligates the States to conduct provider onsite surveys and complaint investigations according to a Federal timetable and process. The State surveyors inspect providers and suppliers upon entry into the Medicare and Medicaid program, when complaints are received due to poor care, and on a recurring basis to assure that providers remain compliant with the Medicare Conditions of Participation (CoP), Conditions for Coverage (CfC), or other Federal requirements.

For several providers/suppliers where our most vulnerable populations reside and receive services, the inspection interval is set by statute. For example, surveyors are required to inspect nursing homes no longer than at 15-month intervals (and annually, on average), and for intermediate care facilities for the mentally retarded (ICFs/MR), the inspections occur on an annual basis.

State Survey Agency Staff and H1N1 Vaccination or Other Emergency Response Duties

When there are no acceptable alternatives and State emergency preparedness and response authorities deem it necessary to deploy SA clinical professionals for emergency assignment, including administering H1N1 vaccinations, the SA must contact its CMS Regional Office. CMS will work with each State on a case-by-case basis to support effective emergency responses, while accomplishing the Federal Medicare and Medicaid work to the maximum extent practicable.

While Federal Medicare Trust funds contracted with the State under section 1864 of the Social Security Act may not be used to perform duties that are not part of the survey and certification functions (i.e., other funds must be used for the re-deployment activities), CMS will work with the State to adjust their work schedules, mobilize staffing help and take other actions as needed, so that the year-end Federal work can still be accomplished to the maximum extent practicable.

CMS has accomplished these goals with many States during major crises, such as Hurricanes Katrina, Gustav and Ike, the Midwest floods of 2008, and the North Dakota/Minnesota floods in 2009. While CMS does not have the authority to waive the statutorily-required surveys, it can recognize extraordinary circumstances in its application of follow-up actions under the State Performance Standards System and can make adjustments to the non-statutory work.

We would also expect that the State would implement ameliorative or alternative strategies to address emergencies and, post-emergency, to recover the Federal survey and certification workload. Strategies such as soliciting retired and part-time nurses, or adequately supervised student nurses for administering vaccinations could help during an emergency. We would also expect that the Federal survey and certification work would be affected only for defined periods of the emergency.

Helpful H1N1 Web Sites

- U.S. Department of Health and Human Services/Centers for Medicare & Medicaid Services (CMS) Emergency Web Site – Pandemic Flu (EMTALA Fact Sheet, FAQs, etc.): <http://www.cms.hhs.gov/H1N1/>
- CDC H1N1 Web Site – H1N1 Flu Vaccination Resources: <http://www.cdc.gov/h1n1flu/vaccination/>
- U.S. Government – Flu.gov: One-stop access to U.S. Government H1N1, avian and pandemic flu information (managed by HHS): <http://pandemicflu.gov/>
- U.S. Government – Flu.gov: Frequently Asked Questions (FAQ) Search: <http://answers.flu.gov/>

Effective Date: This guidance is effective immediately.

/s/
Thomas E. Hamilton

cc: Survey and Certification Regional Office Management