

Title: NICCL Advisory—H1N1—National Emergency Declaration
Source: CDC IMS JIC Public Health Workforce
Date: 10/26/09

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From: NATIONAL JIC [NationalJIC@dhs.gov]

Re: Presidential National Emergency Declaration

NICCL Advisory -- H1N1 -- National Emergency Declaration

Background: Today, the President signed a proclamation declaring the 2009-H1N1 influenza pandemic a National Emergency to facilitate our ability to respond to the pandemic by enabling – if warranted on a case-by-case basis - the waiver of certain statutory requirements for medical treatment facilities. In particular, this proclamation is aimed at providing the ability to waive legal requirements that could otherwise limit the ability of our nation's health care system to respond to the surge of patients with the 2009-H1N1 influenza virus.

Below are talking points on the declaration.

Talking Points:

- Since the 2009-H1N1 influenza virus emerged in the spring, we have been proactively taking steps to reduce the impact of disease and protect the health of our citizens
- As a Nation, we have prepared at all levels of government, and as individuals and communities
- Today we are taking a positive step to continue those preparations
- With this proclamation, the President is acting decisively to enable authorities* that may be necessary to respond effectively as the flu season progresses
- A foundation of our national approach to the 2009-H1N1 pandemic has been preparedness – personal, business, and government – and with this proclamation, we are advancing our overall response capabilities*e.g. alternative site care of patients

If Asked:

Q: How do we know that the purposes of the provisions that are being waived won't broadly undercut patient rights (e.g. permitting discrimination; privacy intrusions; etc)

A: Federal regulations exist to protect patient rights under day-to-day, non-emergency situations. But these provisions may impede the most appropriate care in emergency situations. These 1135 Waivers are important to allow hospitals to provide the best possible care under emergency conditions, but they

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will not be granted in a blanket fashion. Facilities must specifically request 1135 Waivers, and each request will be reviewed for appropriateness prior to approval. When conditions allow for normal operations within the confines of existing laws and regulations, hospitals are required to adhere to those requirements and can incur large fines and potentially criminal charges if they do not.

Q: Specifically, what will this NEA Declaration allow that hospitals are not able to do already?

A: An NEA Declaration fulfills the second of the two conditions required for the Secretary of HHS to be able to grant 1135 Waivers. When specifically granted these 1135 Waivers, healthcare facilities will be able to and establish alternate care sites, modified patient triage protocols, patient transfer procedures and other actions that occur when they fully implement disaster operations plans.

Q: Why do this now; why can't we wait until a hospital or region needs these 1135 Waivers?

A: The H1N1 epidemic is moving rapidly. By the time regions or healthcare systems recognize they are becoming overburdened, they need to implement disaster plans quickly. 1135 Waivers still require specific requests be submitted to HHS and processed, and some State laws may need to be addressed as well. Adding a potential delay while waiting for a National Emergency Declaration is not in the best interest of the public, particularly if this step can be done proactively as we are doing here.

Q: Have 1135 Waivers been granted and used in the past?

A: Yes, 1135 Waivers have been used in a number of recent disasters to help healthcare facilities cope with large patient burdens. Examples include Hurricane Katrina (2005), Hurricanes Ike and Gustav (2008), and the North Dakota flooding (2009). In fact 1135 Waivers have been previously granted as precautionary measures in the case of the recent 56th Presidential Inauguration (2009)