

H1N1 Influenza Pandemic Emergency Authorities Matrix

Public Health Emergency (PHE)	Addition of National Emergencies Act (NEA) Declaration to PHE	Stafford Act - Emergency Declaration
<p>Authority: SEC/HHS authorized to declare a Public Health Emergency under the PHS Act, 42 U.S.C. § 247d.</p> <p>Implementation: SEC/HHS declared a nationwide PHE for the H1N1 flu outbreak on 26 APR 09, and renewed it on 24 JUL 09 and 1 OCT 09.</p> <p>Duration: 90 days or until SEC/HHS declares emergency no longer exists.</p> <p>Geographical Restriction: A designated geographic area as specified in the declaration.</p>	<p>Authority: POTUS may declare unilaterally a National Emergency under the NEA. 50 U.S.C. §§1601-1651. This NEA allows an important section of the PHS Act to become effective, called HHS’s section 1135 waiver authority.</p> <p>Implementation: POTUS declared a National Emergency on 23 OCT 09.</p> <p>Duration: 1 year (declaration). “1135 waivers” issued by HHS under the Social Security Act generally last for the duration of the public health emergency; HIPAA and non-pandemic related EMTALA waivers under section 1135 last 72 hours after a hospital implements its disaster response plan.</p> <p>Geographical Restriction: None required by the National Emergencies Act.</p>	<p>Authority: POTUS may declare an Emergency upon gubernatorial request or unilaterally if he determines the incident is within the primary responsibility of the U.S. Government, <i>etc.</i> 42 U.S.C. § 5191(b). For emergency declaration requirements, see 44 C.F.R. 206.35.</p> <p>Implementation: None to date.</p> <p>Duration: As specified in the declaration.</p> <p>Geographical Restriction: As specified in the declaration or as amended by FEMA.</p>
<p>Relief Authorized <u>without</u> a PHE declaration:</p> <p>HHS has broad authority under other sections of the PHS Act and other laws administered by HHS to assist states and other entities during an emergency even without a formal PHE declaration under section 319. For example, under section 311 of the PHS Act, the secretary may, at the request of a state or local authority, extend temporary assistance to states or localities to meet health emergencies that warrant federal assistance.¹⁴ Other examples include: promoting research and studies into the causes, diagnosis, treatment, control, and prevention of diseases under section 301 of the PHS Act; establishing isolation and quarantine under section 361 of the</p>	<p>Relief authorized under the NEA alone:</p> <p>None. <i>See</i> 50 U.S.C. § 1631. The NEA authorizes the President to declare a national emergency and activate existing statutory provisions that authorize the exercise of special or extraordinary power. The NEA is a procedural device—it does not provide any specific emergency authority on its own.</p> <p>Relief authorized when NEA is coupled with a Public Health Emergency declaration:</p> <p>Section 1135 of the Social Security Act [42 USC §1320b–5]</p>	<p>Assistance to States/ Localities and, Indirectly, to Individuals:</p> <p>As specified in the new Disaster Assistance and Disaster Operations Fact Sheet on Pandemic Influenza 9580.106 signed 22 OCT 2009.</p> <ul style="list-style-type: none"> Emergency Protective Measures (Category B) may be available from the federal government and its agencies and departments to assist state and local governments and certain private non-profit organizations. These include Category B Emergency Protective Measures for which the state will incur a 25% cost share. These measures include:

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<p>PHS Act; maintaining and deploying the Strategic National Stockpile under section 319F-2 of the PHS Act; and deploying National Disaster Medical System teams under section 2812 of the PHS Act and select members of the Medical Reserve Corps under section 2813 of the PHS Act.</p> <p>Relief authorized under a PHE declaration (without either a National Emergency Act proclamation or Stafford Act Declaration):</p> <p>SEC/HHS may take appropriate actions to respond to the emergency such as: making grants; entering into contracts; making temporary hiring appointments; conduct/support an investigation into the cause, treatment, or prevention of the disease or disorder; and make disbursements from the Public Health Emergency Fund. 42 U.S.C. § 247d.</p> <p>The Secretary may grant extensions or waive sanctions relating to submission of data or reports required under HHS laws. A Public Health Emergency declaration can be a necessary step in enabling the secretary to take a variety of discretionary actions under other authorities to respond to the PHE. For example, she may: waive certain prescription and dispensing requirements; exempt for up to 30 days a person from select agents requirements; adjust Medicare reimbursement for certain Part B drugs; waive certain Ryan White HIV/AIDS grant program requirements; and declare an emergency justifying emergency use of an investigational product under section 564 of the Federal Food Drug and Cosmetic Act.</p> <p>Relief authorized under a PHE declaration (when there is either National Emergency Act proclamation or a Stafford Act Declaration):</p> <p>See next column describing National Emergencies Act.</p>	<p>permits the Secretary of Health and Human Services to waive certain regulatory requirements for healthcare facilities in response to emergencies. Two conditions must be met for the Secretary to be able to issue such “1135 waivers”: first, the Secretary must have declared a Public Health Emergency; second, the President must have declared a National Emergency either through a Stafford Act Declaration or National Emergencies act Declaration. If these conditions are met, then HHS may issue specific waivers or modifications under section 1135 in response to particular needs, and only within the geographic and temporal limits of the emergency declarations.</p> <p>The Secretary will issue waivers or modifications under section 1135 for specific requirements to match the specific situational needs. The requirements that may be waived include certain requirements related to Medicare, Medicaid or the Children’s Health Insurance Program (CHIP), the Emergency Medical Treatment and Active Labor Act (EMTALA), and the Health Insurance Portability and Accountability Act (HIPAA). These requirements provide important protections for patients during normal day-to-day operations, but they may impede the ability of healthcare facilities to fully implement disaster operations plans that enable appropriate care during emergencies. In addition, requirements under the Emergency Medical Treatment and Active Labor Act (EMTALA) prohibit hospitals from sending an individual to an off-campus location for an appropriate screening.</p>	<p>Emergency medical care (non-deferrable medical treatment of disaster victims in a shelter or temporary medical facility and related medical facility services and supplies, including emergency medical transport, X-rays, laboratory and pathology services, and machine diagnostic tests); Temporary medical facilities (for treatment of disaster survivors when existing facilities are overloaded and cannot accommodate the patient load); Purchase and distribution of food, water, ice, medicine, and other consumable supplies; Management, control, and reduction of immediate threats to public health and safety (e.g., to include sanitizing eligible public facilities) ;Movement of supplies and persons; Security, barricades and fencing, and warning devices; Congregate sheltering (for disaster survivors when existing facilities are overloaded and cannot accommodate survivors’ needs); Communicating health and safety information to the public; Technical assistance to State and local governments on disaster management and control; Search and rescue to locate and recover members of the population requiring assistance, and to locate and recover human remains; and Recovery and disposal of animal carcasses (except if another federal authority funds the activity - e.g., U.S. Department of Agriculture, Animal, Plant and Health Inspection Service provides for removal and disposal of livestock).</p>

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