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## CMS Free Care Rule for H1N1 Vaccination October 14, 2009

### MEDICAID

Medicaid's long-standing policy requires that legally liable third parties be billed for the services for which Medicaid is to be billed.

In the face of the H1N1 national healthcare emergency, the free care policy will be applied in the following way:

- Per CDC guidelines, health care providers accepting CDC funds to immunize all patients, regardless of insurance, will rely on those CDC funds and will not bill Medicaid for the cost of administering H1N1 vaccines.
- Per CDC guidelines, health care providers accepting CDC funds to immunize only patients without insurance will be permitted to bill Medicaid for the cost of administering H1N1 vaccines to Medicaid beneficiaries based on the following criteria:
  - Providers with systems capabilities to bill legally liable third party private insurance must continue to do so.
  - Providers without systems capabilities to bill legally liable third party private insurers may bill Medicaid for services provided to Medicaid-eligible individuals.

### MEDICARE

**Q1:** The Centers for Disease Control and Prevention (CDC) is awarding funds to State or local government funded (or operated) public clinics and local public health departments for a mass vaccination campaign for the H1N1 influenza virus.

In order to make the vaccine available to all, the CDC has instructed public health departments and local clinics to only bill patients who have the ability to pay for the administration of the vaccine. Can Medicare cover the administration of the H1N1 vaccine given to Medicare beneficiaries, when non-Medicare patients who demonstrate no ability to pay receive the vaccine free of charge?

**A1:** Yes. Although Medicare payment is generally prohibited when a service is paid for by another governmental entity (see section 1862(a)(3) of the Social Security Act), in light of the H1N1 influenza pandemic we have determined that these administration services meet one of the exceptions to the payment exclusion concerning governmental entities. Pursuant to title 42, Part 411, section 8(b)(4) of the Code of Federal Regulations (42 C.F.R. § 411.8(b)(4), Medicare payment may be made for "services furnished in a hospital or elsewhere, as a means of controlling infectious diseases or because the individual is medically indigent."

All other Medicare rules will still apply to any claim submitted for vaccine administration.

The complete Medicare Q&A from which this information is drawn is available at:  
[http://www.cms.hhs.gov/Emergency/Downloads/H1N1\\_Medicare\\_FFS\\_Emergency\\_QsAs.pdf](http://www.cms.hhs.gov/Emergency/Downloads/H1N1_Medicare_FFS_Emergency_QsAs.pdf)