



CMS Free Care Rule for 2009 H1N1 Influenza Vaccination
October 27, 2009

MEDICAID

Medicaid's long-standing policy is that Medicaid is not liable for services that are available without charge to the beneficiary or other legally liable third parties. In general, Medicaid is obligated to ensure that other legally liable third parties pay primary to Medicaid.

In the face of the national healthcare emergency presented by the 2009 H1N1 flu, the free care and third party liability policies will be applied in the following way:

- Consistent with the Centers for Disease Control (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 2009 H1N1 flu vaccines.
- Health care providers accepting CDC funds to immunize only patients without other coverage will be permitted to bill Medicaid for the cost of administering 2009 H1N1 flu vaccines to Medicaid beneficiaries based on the following criteria:
 - Providers with systems capabilities to bill legally liable third party private insurance or other coverage of non-Medicaid eligibles and Medicaid beneficiaries must continue to do so.
 - Providers without systems capabilities to bill legally liable third party private insurers or other coverage of non-Medicaid eligibles and Medicaid beneficiaries may bill Medicaid for services provided to Medicaid-eligible individuals, but must include in the bills sufficient information to facilitate Medicaid billing of those legally liable third parties of Medicaid beneficiaries.

MEDICARE

Q1: The 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 2009 H1N1 flu virus. In order to make the vaccine available to all, the CDC has instructed public health departments and local clinics to only bill third party payers for those patients who have coverage for administration of the vaccine. Can Medicare cover the administration of the 2009 H1N1 flu 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 2009 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)