DECLARATION OF H1N1 NATIONAL EMERGENCY ALLOWS IMPORTANT REGULATORY WAIVERS

President Obama Saturday declared a national emergency in response to the spreading H1N1 influenza pandemic, an action that is supported by the AHA and others involved in tracking how hospitals are faring during the growing pandemic.

The declaration of a national emergency satisfies the second of two conditions needed to provide the Secretary of the Department of Health and Human Services (HHS) with the authority to waive certain Medicare, Medicaid and Children’s Health Insurance Program (CHIP) regulatory requirements under Section 1135 of the Social Security Act. The first condition, the declaration of a public health emergency by the HHS Secretary, was satisfied April 26, 2009. Meeting both conditions opens the door for hospitals and others to petition for Section 1135 waivers in response to their particular needs during this public health emergency.

“These [regulatory] requirements provide important protections for patients during normal day-to-day operations, but they may impede the ability of health care facilities to fully implement disaster operations plans that enable appropriate care during emergencies,” according to HHS.

Under Section 1135, the Secretary may temporarily waive or modify the application of regulatory provisions related to the Medicare conditions of participation or other certification requirements for providers, physician participation requirements, pre-approval requirements, state licensure requirements for physicians and other health care professionals (as they apply to Medicare, Medicaid or CHIP payment), certain Emergency Medical Treatment and Labor Act actions, sanctions under the Stark self-referral prohibition, modification in the deadlines and timetables for performance of required activities, limitations in payments for out-of-network providers under Medicare+Choice and sanctions and penalties for non-compliance
with certain provisions of the Health Insurance Portability and Accountability Act.

The implementation of such waivers or modifications is typically delegated to the Administrator of the Centers for Medicare & Medicaid Services who, in turn, determines whether – and the extent to which – sufficient grounds exist for waiving such requirements with respect to a particular provider, to a group or class of providers, or to a geographic area.

The links below will take you to important information about Saturday’s announcement.

Click on these links to learn more about Section 1135 waivers and what they can do for health care facilities.

- [http://www.flu.gov/professional/federal/h1n1emergency10242009.html](http://www.flu.gov/professional/federal/h1n1emergency10242009.html)
- [http://www.cms.hhs.gov/H1N1/](http://www.cms.hhs.gov/H1N1/)

Click on this link for White House information on the President’s declaration of an emergency under the National Emergencies Act.

- [http://www.whitehouse.gov/blog/2009/10/25/president-obama-signs-emergency-declaration-h1n1-flu](http://www.whitehouse.gov/blog/2009/10/25/president-obama-signs-emergency-declaration-h1n1-flu)

Click on this link for the President’s emergency declaration.