



SOME QUESTIONS ABOUT THE PUBLIC HEALTH EMERGENCY RESPONSE ACT

Why do this now?

Planning ahead for a catastrophic public health emergency is the best way to avoid needless loss of life or wasted resources. In the event of a large-scale infectious disease outbreak, it is in the public's best interest for all infected or at-risk individuals to promptly seek care in order to minimize the likelihood of spreading the disease. We also need to guard against the threat of economic calamity for the nation's hospitals. In the event of a major infectious disease outbreak such as a pandemic, elective surgeries and other vital services may be suspended, and a surge of uncompensated care could put healthcare facilities at risk.

Didn't the federal government reimburse states following Katrina?

Yes, but the reimbursement for uncompensated care was limited and delayed. In the aftermath of Hurricane Katrina, many individuals were moved to different states and separated from their health insurance documentation. Some were uninsured, and others lost employer-based insurance due to the closure of businesses. In many cases, care was provided without definitive financing mechanisms. After Hurricane Katrina, the federal government had to establish a vehicle for providing the services (as a temporary "1115 waiver" expansion under the Medicaid program), and subsequently, individual states had to apply to participate in these waiver programs. Only 8 of the 17 waivers extended to states contained an uncompensated care pool to reimburse providers who treated uninsured evacuees. Congress approved \$2.1 billion for grants to states in the Deficit Reduction Act, but the bill was not enacted until six months later, and only 8 of 32 eligible states received money for uncompensated care.¹ This legislation seeks to eliminate such an unnecessary delay.

Does the Secretary of HHS have this authority already?

Neither the Stafford Act nor the Public Health Service Act provides a mechanism to reimburse victims or their providers for the cost of uncompensated care in a disaster, and neither has ever been used for this purpose.² The Public Health Emergency Fund can be used to "respond to the public health emergency, including making grants, providing awards for expenses, and entering into contracts and conducting and supporting investigations into the cause, treatment, or prevention of a disease or disorder..." While the statute doesn't explicitly prohibit use of the PHEF for uncompensated care, there is no precedent for using the Fund for such a purpose. It is clear that the administration of program to provide temporary care to uninsured individuals requires authorization and a rulemaking process.

¹ GAO Report, "Hurricane Katrina: Allocation and Use of \$2 Billion in Medicaid and Other Health Care Needs," Feb 2007.
<http://www.gao.gov/new.items/d0767.pdf>

² CRS Report for Congress, Updated Sep 2007.

Further, clarifying the reimbursement mechanisms, patient eligibility, provider eligibility, and other issues ahead of time will eliminate the confusion, delay and costliness we saw during Katrina. We want individuals in a pandemic to get diagnosed and treated as soon as possible, so uncertainty of reimbursement is extremely dangerous.

Why not use the Stafford Act as a mechanism?

There is precedent for using the Stafford Act *emergency* declaration for an infectious disease outbreak, but there is no precedent for the more stringent (and more helpful) *major disaster* declaration in the event of an outbreak. So it's not clear that a major disaster would be declared in a pandemic. According to CRS, "many of the needs likely to result from a flu pandemic could not be met with the types of assistance provided pursuant to the Stafford Act, even if a major disaster declaration applied."³ Declaring a public health emergency through the Public Health Service Act allows the Secretary to provide assistance in response to public health and medical emergencies.

Isn't this really a backdoor way to expand government sponsored health coverage?

No. The benefit can only last for the duration of the public health emergency declaration or 90 days, whichever is shorter. It can only be extended once for an additional 90 days.

Won't some emergency care extend beyond the time limit in the bill?

It is possible that in some types of emergencies, radiological for example, the need for care will extend for years. This legislation is NOT designed to address that need. It is intended to address the immediate aftermath of an emergency and avoid unnecessary loss of life or waste of resources. This proposal would allow Congress and the Administration up to 180 days to determine further needs and how best to address them. In some cases the course of treatment would begin during the coverage period and extend beyond it, thus coverage would continue until the end of the course of treatment.

Won't this only increase the burden on our health care system in an emergency?

In any catastrophic public health emergency our health care system will be pushed to the breaking point. It is necessary that the federal, state, and local governments address the need for medical surge capacity. This proposal will not solve that problem. But it will address the financial hardship that healthcare providers might face in an emergency. A recent study by the Center for Biosecurity at the University of Pittsburgh found that the costs of uncompensated care in a severe pandemic would average \$784,592 per hospital, or \$3.9 billion for all US hospitals. The report recommends a federal funding structure to ensure hospitals do not become insolvent as a result of a pandemic.⁴

It is also important for the public's safety, especially in the case of bioterrorism or a pandemic outbreak, that those who are infected with disease be identified as quickly as possible in order to control the spread of infection. If uninsured individuals fear the costs of care and do not seek treatment, they risk spreading the disease to healthy individuals.

³ CRS Report for Congress, "The Public Health and Medical Response to Disasters: Federal Authority and Funding," Updated Sep 2007.

⁴ Matheny, J., E. Toner, and R. Waldhorn, "Financial Effects of an Influenza Pandemic on US Hospitals." *Journal of Health Care Finance*; Fall 2007; 34, 1, p. 58.

How will it be paid for?

The proposed funding mechanism for this benefit is the Public Health Emergency Fund (PHEF). In 1983, Congress established authority for this no-year fund, available to the Secretary of Health and Human Services. In 2000, Congress reauthorized the fund and clarified that it could only be used when the Secretary declared a public health emergency. The fund has not received an appropriation since it was explicitly linked to the public health emergency authority in 2000.

How much will this cost?

The legislation authorizes \$7 million for the administration of the Public Health Emergency Fund, as well as an education campaign about the availability of this temporary benefit. Until an emergency strikes, that is all the funding that would be needed. When an emergency occurs, it will be left to Congress to provide funds. This proposal merely creates a turn-key system that will simplify and accelerate response.

Who will administer the benefit?

The proposal uses Medicare contractors to administer the benefit, reimburse health care providers, and seek reimbursement from insurance companies as necessary. But those activities would be carried out with funds solely from the emergency fund and not Medicare funds.

Won't this proposal end up covering people who already have insurance?

Initially, some individuals whose care should be paid for by existing insurance carriers may end up covered by the emergency fund. But the proposal requires Medicare contractors to pursue proper payment from insurance companies for the care provided. This "pay and chase" system will ensure the people get timely care but that insurance companies are held to their obligations.

Will Congress have any control over this once it is enacted?

Yes. The Secretary will only have authority to use limited funds before Congress appropriates additional resources from the emergency fund. Beyond that, the benefit will expire in no more than 180 days unless Congress acts. Reports to Congress are required on the use of funds, efforts to avoid fraud, waste, and abuse, and the need for further action beyond the 180 days.