Influenza Outbreaks and State Executive Orders: The Governor’s Role in Responding to Flu Emergencies
Speakers

Moderator: Lisa M. Koonin, DrPH, MN, MPH
• Director (Acting), Influenza Coordination Unit, Centers for Disease Control and Prevention

Gregory Sunshine, JD
• Public Health Analyst, Centers for Disease Control and Prevention, Office of State, Tribal, Local, and Territorial Support, Public Health Law Program

Michael J. Primeau
• Director, Office of Emergency Preparedness, New York State Department of Health

Lauren Block, MPA
• Program Director, National Governors Association, Center for Best Practices Health Division
Influenza Emergency Declarations: Examining Past Trends for Future Flu Preparedness

Gregory Sunshine, JD
Public Health Analyst, Carter Consulting Inc.
Public Health Law Program
Office for State, Tribal, Local and Territorial Support

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April 19, 2016
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- How we do it
  - Training and workforce development
  - Legal epidemiology
- Who we serve
  - CDC programs and state, tribal, local, and territorial communities
  - You!
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Important Concept: Federalism

- Federalism is the separation of powers between the different levels of government
  - Article 1, Section 8, of the Constitution: federal government’s enumerated powers
    - interstate commerce
    - tax and spend
    - national defense
  - 10th Amendment of the Bill of Rights: “powers not delegated to the United States by the Constitution... are reserved to the States”
Important Concept: Emergency Declarations

- Emergency declarations are
  - Public announcements
    - “An emergency has occurred and the state will respond to it.”
  - Legal determinations
    - Special emergency grant by legislature through its powers over lawmaking
    - Made by an authorized government official
    - Trigger special emergency powers
    - Allow expenditure of emergency funds
    - Can be tailored by type of event
Collecting and Coding Influenza Emergency Declarations

- Focused on executive orders (EOs) and emergency declarations issued during influenza emergencies
- Excluded non-emergency EOs, such as those establishing advisory committees and leave programs
- Used legal databases, online searches, and direct contact with jurisdictions

- Established coding categories to find common trends such as:
  - Jurisdiction
  - Date
  - Issued by
  - Types of actions ordered
  - Types of laws suspended
How many influenza emergency EOs and emergency declarations did we find?

- 22 total
- Range from 2004 to 2014 (likely due to limitations of what’s online)
- 18 were for H1N1
- 1 was for Epidemic Seasonal Flu
- 3 were for a “Vaccine Shortage Creating Potential for a Public Health Crisis”
Interesting Trends

- What states issued influenza emergency declarations and orders?

States that have issued flu emergency EOs and declarations

- AZ
- CA
- MD
- ME
- MO
- NE
- NH
- NY
- OH
- OR
- RI
- WI
Interesting Trends

Who issues influenza emergency declarations and orders?

- Governors
- Commissioners of Health
- State Assemblies
Interesting Trends

- What types of actions are being ordered in each EO and declaration?
  - Generic Response
  - Nonpharmaceutical Interventions & Continuity of Operations Plan (COOP)
  - Public Outreach and Education
  - Vaccine Supply, Distribution, and Administration
## Interesting Trends

### What types of generic response actions are being ordered?

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<tr>
<th>Generic Response Actions</th>
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<td>Activates Response</td>
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<td>Extends previous EO</td>
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<td>Designate health department or state health officer/director as lead for response</td>
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<td>Designate state emergency management or state emergency management director</td>
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<td>Broad activation of all available powers</td>
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<td>Disaster funds available for response</td>
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<td>Anti-price gouging provisions</td>
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<td>Designate non state personnel as state for liability protections</td>
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<td>Grant immunity to designated health care workers or volunteers</td>
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<td>Interagency coordination</td>
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<td>Orders all health and medical officials and local emergency management officials to</td>
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<td>Suspends laws or regs for generic response purposes:</td>
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Interesting Trends

What types of actions are being ordered?

- Nonpharmaceutical Interventions & COOP
  - State agencies must advise employees to stay home if they have flu symptoms
  - State agencies must amend COOPs to address the current threat

- Public Outreach and Education
  - State health department must create informational website for the public
  - All state agencies directed to work with all government partners to use their websites to direct the public to the state’s informational website
### Interesting Trends

- **What types of Vaccine Supply, Distribution, and Administration actions are being ordered?**

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<td>Prioritize vaccines for certain groups</td>
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<td>Assess and report vaccine supply to CDC</td>
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<td>Access and distribute state and federal antiviral stockpiles</td>
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<td>Make antiviral treatments available to persons within the State, regardless of insurance or other health coverage</td>
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<td>Directed state agencies to coordinate and facilitate the establishment, implementation, administration and operation of vaccination clinics in school-based settings</td>
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<td>Authorize qualified EMTs-Intermediate and EMTs-Paramedic to perform immunizations and administer drugs</td>
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<td>Authorize registered volunteers to assist with receipt, distribution, accounting for and administration of vaccine</td>
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<td>Designate appropriate health care workers authorized to administer vaccines to participate in vaccination clinics</td>
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<tr>
<td>Suspends laws or regs for vaccine distribution purposes:</td>
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Suspension of Laws and Regulations in Emergencies

- Emergency declarations may allow governors to suspend, amend, or replace laws and regulations that may inhibit response

- Examples:
  - N.Y. Exec. Law § 29-a. Suspension of other laws
    - “1. Subject to the state constitution, the federal constitution and federal statutes and regulations, the governor may by executive order temporarily suspend specific provisions of any statute, local law, ordinance, or orders, rules or regulations, or parts thereof, of any agency during a state disaster emergency, if compliance with such provisions would prevent, hinder, or delay action necessary to cope with the disaster.”
    - “(d)(1) After declaring a state of emergency, the Governor, if the Governor finds it necessary in order to protect the public health, welfare, or safety, may: (i) suspend the effect of any statute or rule or regulation of an agency of the State or a political subdivision;”
Suspension of Laws and Regulations in Emergencies

How this looks in practice:

- New York


Subdivision 1 of section 6902 of the Education Law in so far as it limits the execution of medical regimens prescribed by a licensed physician or other licensed and legally authorized health care provider to nurses licensed pursuant to Article 139 of the Education Law, so that, for the purposes of this Executive Order only, physician assistants, specialist assistants, dentists, dental hygienists who have been issued a dental hygiene restricted local infiltration anesthesia/nitrous oxide analgesia certificate, pharmacists, midwives, and podiatrists, which professions are licensed or certified under Articles 131-B, 133, 137, 140 and 141 of the Education Law and advanced emergency medical technicians certified pursuant to Public Health Law Article 30 may administer vaccinations against 2009 H1N1 influenza and seasonal influenza at PODs, provided they first receive training in techniques, indications, precautions, contraindications, infection control practices, and use of personal protective equipment sufficient to provide the basic level of competence for such tasks, as determined by the Commissioner of Health after consultation with the Commissioner of Education:
Suspension of Laws and Regulations in Emergencies

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Suspension of Laws and Regulations in Emergencies

- How this looks in practice:
  - New York

Suspension of Laws and Regulations in Emergencies

How this looks in practice:

- Maryland

A. Pursuant to Section 14–107(d)(1) of the Public Safety Article of the Annotated Code of Maryland, and notwithstanding Section 13–516(g) of the Education Article of the Annotated Code of Maryland and other State regulatory requirements, Emergency Medical Technician – Paramedics and Cardiac Rescue Technicians licensed by the State Emergency Medical Services (EMS) Board are hereby authorized to administer 2009 H1N1 Influenza Vaccine to public safety personnel, health care providers, and members of the general public subject to such rules as are established by the EMS Board.

Suspension of Laws and Regulations in Emergencies

• How this looks in practice:
  • Maryland

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### Intersecting Trends

- **What types of laws did governors suspend during flu emergencies?**

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<td>State purchasing and contracting requirements</td>
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<td>Contracting and bidding requirements and waiting period for emergency appointments</td>
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<tr>
<td>Any regs that delay or hinder response</td>
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<td>Allow, for the purposes of POD vaccination, licensed physicians and certified nurse practitioners to prescribe and administer vaccines pursuant to a non-patient specific order</td>
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<td>Amends and adopts rules allowing for state Medicaid to reimburse physicians for administering the H1N1 vaccine</td>
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<td>Allows pharmacists to administer vaccinations for patients 6 months and 18 years of age, whether at PODs or in other settings pursuant to a non-patient specific order</td>
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</tbody>
</table>
Interesting Trends

- What states expanded scopes of practice to enable vaccine supply, distribution, and administration?
Why were scopes of practice expanded?

- Authorize qualified Emergency Medical Technicians (EMTs)-Intermediate and EMTs-Paramedic to perform immunizations and administer drugs
- Authorize registered volunteers to assist with receipt, distribution, accounting for and administration of vaccine
- Expand who can administer vaccines
- Expand who can administer vaccines at Points of Dispensing (PODs), provided they receive training determined by the state health official (SHO)
- Allow physician assistants to medically supervise PODs, provided they first receive training determined by SHO
- Allow, for the purposes of POD vaccination, licensed physicians and certified nurse practitioners to prescribe and order non-patient specific regimens to professionals now permitted to administer those vaccines under other suspensions
Why were scopes of practice expanded?

- Allow licensed pharmacists to administer vaccinations at PODs or in other settings pursuant to a non-patient specific order issued by any physician licensed in the State or any nurse practitioner certified in the State, without regard to such physician or nurse practitioner’s practice location, provided that such pharmacists continue to receive adequate supervision as determined by SHO.
- Allow pharmacists to administer vaccinations for patients between six months and 18 years of age, whether at PODs or in other settings.
- Allow registered professional nurses whose CPR certification has lapsed but who remained licensed to administer vaccinations at PODs, provided they are first trained in CPR.
- Allow school-based health centers who are lawfully authorized to administer vaccinations to do so to adults, including during regular school hours at elementary or secondary schools.
Interesting Trends

What scopes of practice were expanded?

- EMTs – Intermediate
- EMTs – Paramedic
- EMTs – Paramedics and Cardiac Rescue Technicians
- Advanced EMTs
- Physician assistants
- Specialist assistants
- Dentists
- Pharmacists

- Dental hygienists who have been issued a dental hygiene restricted local infiltration anesthesia/nitrous oxide analgesia certificate
- Midwives
- Podiatrists pursuant to a non-patient specific order
- Registered volunteers*
- Additional categories of healthcare providers as determined by SHO*

*Does not specify which practice area is expanded
Conclusions

- Influenza emergency EOs and declarations call for a wide variety of actions
- While varied, overall these actions are intended to accomplish goals for generic response, public outreach and education, access to vaccines, and nonpharmaceutical interventions and continuity of operations
- Emergency EOs and declarations can be a strong tool in increasing access to vaccines by allowing for prioritizing supply, increasing distribution, and expanding administration
  - Lessons related to vaccines can be extended to other prescription drugs
- Emergency and outbreak response goals can be met by ordering actions or altering the legal landscape
- Pre-planning your executive orders is invaluable!
Thanks!

Contact:
Gregory Sunshine, JD
Public Health Analyst
Carter Consulting, Inc., with the Public Health Law Program
Office for State, Tribal, Local and Territorial Support

gsunshine@cdc.gov

For more information, contact CDC
1-800-CDC-INFO (232-4636)

The findings and conclusions in this report are those of the authors and do not necessarily represent the official position of the Centers for Disease Control and Prevention.
Influenza Outbreaks and State Executive Orders: The Governor’s Role in Responding to Flu Emergencies

Michael J. Primeau
Director, Office of Health Emergency Preparedness
New York State Department of Health
Engaging the Governor’s Office

• Most are fire fighters

• Show them the fire

• Effects of not being prepared

• Make it important to them, “buy in”
Engaging the Governor’s Office

• Not a problem during emergencies
State Executive Orders

• No pre approved waivers

• Each incident is unique

• Waiver during the last incident doesn’t mean a waiver in the next

• Doesn’t mean don’t go through the planning process
State Executive Orders

• You must brief each order for each incident

• Lean on your legal staff, lawyers can speak “legalize”

• Operators just get frustrated

• Lawyers AND politicians speak some other unknown language
H1N1

• 1 Executive Order

• 34 modifications to statute/regulation
<table>
<thead>
<tr>
<th>Statutory/Regulatory Provision</th>
<th>What the Provision Does</th>
<th>Reason for Inclusion in EO No. 29</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>EDUC. LAW § 6902(1)</strong></td>
<td>Limits medical regimens prescribed by a licensed physician or other licensed and legally authorized health care provider to nurses licensed pursuant to Article 139 of the Education Law. Waived so that certain medical professions may administer vaccinations against 2009 H1N1 influenza and seasonal influenza at PODs, provided they first receive training in techniques, indications, precautions, contraindications, infection control practices, and use of personal protective equipment sufficient to provide the basic level of competence for such tasks, as determined by the Commissioner of Health after consultation with the Commissioner of Education. Such professions falling under this waiver include: • Professions licensed or certified under Articles 131-B, 133, 137, 140 and 141 of the Education Law, including physician assistants; specialist assistants; dentists; dental hygienists who have been issued a dental hygiene restricted local infiltration anesthesia/nitrous oxide analgesia certificate; pharmacists; midwives; and podiatrists; and • Advanced emergency medical technicians certified pursuant to Public Health Law Article 30.</td>
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<tr>
<td><strong>EDUC. LAW § 6542</strong></td>
<td>Requires physician assistants and specialist assistants to be under the supervision of a physician when performing medical services and only allows physician assistants and specialist assistants to perform such acts and duties as are assigned to them within the scope of practice of such supervising physician. Waived so that physician assistants may medically supervise PODs. Also waived so that physician assistants and specialist assistants may administer vaccinations against 2009 H1N1 influenza and seasonal influenza at PODs pursuant to a non-patient specific order, provided they first receive training in techniques, indications, precautions, contraindications, infection control practices, and use of personal protective equipment sufficient to provide the basic level of competence for such tasks, as determined by the Commissioner of Health after consultation with the Commissioner of Education.</td>
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<tr>
<td><strong>10 NYCRR § 94.2 (a) and (b)</strong></td>
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Hurricane Irene/Tropical Storm Lee

• 2 Executive Orders

• 34 modifications to statue/regulation
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<th>Reason for Inclusion in EO:</th>
</tr>
</thead>
<tbody>
<tr>
<td>EXEC. LAW, Art. 2-B; § 29</td>
<td>Gives the Governor the authority to direct any and all state agencies to provide assistance under the coordination of the Disaster Preparedness Commission. Such state assistance may include: (1) utilizing, lending, or giving to political subdivisions, with or without compensation therefor, equipment, supplies, facilities, services of state personnel, and other resources, other than the extension of credit; (2) distributing medicine, medical supplies, food and other consumable supplies through any public or private agency authorized to distribute the same; (3) performing on public or private lands temporary emergency work essential for the protection of public health and safety, clearing debris and wreckage, making emergency repairs to and temporary replacements of public facilities of political subdivisions damaged or destroyed as a result of such disaster; and (4) making such other use of their facilities, equipment, supplies and personnel as may be necessary to assist in coping with the disaster or any emergency resulting therefrom.</td>
<td>Pursuant to the authority in EXEC. LAW, § 29, the EO directs the implementation of the State Disaster Preparedness Plan and authorizes the New York State Department of Health, among other State agencies, to take appropriate action to protect State property and to assist affected local governments and individuals in preparing for, responding to, and recovering from this disaster, and to provide other such assistance as necessary to protect the public health and safety.</td>
</tr>
</tbody>
</table>

**EO No. 21**

<table>
<thead>
<tr>
<th>Statutory/Regulatory Provision:</th>
<th>What the Provision Does:</th>
<th>Reason for Inclusion in EO:</th>
</tr>
</thead>
<tbody>
<tr>
<td>PUB. HEALTH LAW § 4174(2) and (9)</td>
<td>Sets forth fee requirements for replacement of birth certificates or certified transcripts of birth, and certified copies or transcripts of death or fetal death</td>
<td>Waived to the extent that they require payment of a fee for these documents</td>
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<tr>
<td>PUB. HEALTH LAW § 4174(9)</td>
<td>Sets forth fee requirements for duplicate or replacement certification, certified copy or certified transcript of dissolution of marriage.</td>
<td>Waived to the extent that they require payment of a fee for these documents</td>
</tr>
<tr>
<td>PUB. HEALTH LAW § 4139(6)</td>
<td>Sets forth fee requirements for a duplicate or replacement certification, certified copy, or certified transcript of a certificate of marriage.</td>
<td>Waived to the extent that they require payment of a fee for these documents</td>
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(See §§ PUB. HEALTH LAW 4174(9); 4139(6), supra)
Superstorm Sandy

• 9 Executive Orders

• 62 modifications to statute/regulation
<table>
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<tr>
<th>EO No. 47</th>
<th>Statutory/Regulatory Provision:</th>
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<th>Reason for Inclusion in EO:</th>
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<td>• EXEC. LAW, Art. 2-B; § 29</td>
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<th>EO No. 57</th>
<th>Statutory/Regulatory Provision:</th>
<th>What the Provision Does:</th>
<th>Reason for Inclusion in EO:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• EDUC. LAW, Art. 139 and associated regulations</td>
<td>Prohibits nursing services from being provided by any individual who is not licensed pursuant to such article and regulations.</td>
<td>Waived to allow out-of-state nurses to provide nursing services to the dialysis patients of a general hospital, nursing home or diagnostic and treatment center. However, the EO required that (1) nurse be licensed as a nurse by another state and be in good standing in such state, and has not had a nursing license revoked in any other state; (2) the provision of nursing services to dialysis patients is within such nurse’s scope of practice and expertise; and (3) such nurse provides services only to the patients of such general hospital, nursing home or diagnostic and treatment center.</td>
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Lessons Learned

• Engage your legal staff early

• Pre plan potential waivers needed

• Communicate with Governor’s Staff “your” needs and why it is their “needs”

• Remain flexible
Modifying Scope of Practice for the Health Care Workforce Via Gubernatorial Executive Action in Response to a Pandemic Event: A Roadmap

2016 Preparedness Summit
April 19, 2016

Lauren Block, Program Director
National Governors Association Center for Best Practices
About the National Governors Association

• Nation’s oldest organization serving the needs of governors and their staff

• NGA Office of Federal Relations (OFR): serves as the collective voice of the nation’s governors in Washington, DC

• NGA Center for Best Practices (NGA Center): a hybrid think thank/consultancy that works to surface evidence-based practices, works directly with governors on specific policy projects, and provides support to OFR. The NGA Center divisions are:
  o Health
  o Education
  o Energy, Environment, and Transportation
  o Human Services and Workforce
  o Homeland Security and Public Safety
This roadmap is intended to help governors and their senior staff:

- Identify the appropriate stakeholders to coordinate a response;
- Identify state health care workforce goals and strategies that address challenges that may arise during a pandemic event using an influenza pandemic as a model;
- Outline key policy and logistical considerations for government officials; and
- Determine specific policies that modify scope of practice, such as allowing nurses and pharmacists to dispense and administer medical countermeasures and addressing the use of alternate care sites, such as mobile clinics and schools, during a pandemic event.

The policy considerations offered in this roadmap may be addressed via gubernatorial executive orders (EOs). Issuing EOs are one strategy to expedite policy changes and can facilitate prompt delivery of care. Prompt response is especially important in a pandemic event when antivirals need to be given within the first 48 hours of illness. Some states may not need an EO to address these policies and thus, may use another executive authority.

While this roadmap specifically focuses on responding to an influenza pandemic, many of the policy options may be considered in preparation for other pandemic events.

This roadmap does not provide legal advice and should not substitute for the advice of your general counsel.
• All states have influenza pandemic response plans, which can include defined roles and duties for state officials, departments, and organizations.

• The health care workforce is one component of a state’s overall plan.

• As states consider updating their plans, the policy ideas offered in this roadmap may provide new insights for inclusion.
Roadmap to Address Health Care Workforce Issues in Response to a Pandemic Event

Understand the Goals to Determine the Health Care Workforce Response

Consider Policy Changes to Implement the Health Care Workforce Response

Understand Legal Parameters to Make Policy Changes through Executive Action

Develop Communications Strategy to Accompany Policy Changes
Understand the Goals to Determine the Health Care Workforce Response

1. Identify State Health Care Workforce Goals during a Pandemic
2. Identify Strategies to Accomplish the Health Care Workforce Goals
3. Determine the Health Care Workforce Response
Understand the Goals to Determine the Health Care Workforce Response

State Health Care Workforce Goals During a Pandemic:

- Reduce disease transmission and prevent deaths
  - Educate residents about best practices to avoid new infections
  - Quickly provide access to medical countermeasures, when available
  - Treat sick individuals with antiviral medication (per CDC/state health department protocol)
  - Reach priority groups for vaccination
- Reduce stress on health care system to allow for the best use of health care providers and to provide the broadest care to state residents
  - Ensure the correct level of care is provided to minimize surge in emergency rooms, clinics, and provider offices
  - Monitor the capacity of the health care system and provide support and guidance if usual standards of care cannot be achieved
- Provide the public with consistent messaging
  - Provide consistent recommendations for antiviral treatment and priority groups
  - Encourage the public to seek care only when needed
Understand the Goals to Determine the Health Care Workforce Response

GOALS
- Reduce transmission and prevent deaths
- Reduce stress on health care system to allow for the best use of health care providers and to provide the broadest care to state residents
- Provide the public with consistent messaging

STRATEGIES
- Ensure adequate supply of countermeasures and health care professionals to provide medications, vaccinations, and pandemic related care
- Expedite delivery of care
- Determine messaging to the health care workforce and the public
Understand the Goals to Determine the Health Care Workforce Response

Modifying Scope of Practice for Certain Health Care Professionals is a Potential Health Care Workforce Response

- As mentioned earlier, scope of practice describes the procedures, actions, and processes that a health care professional is permitted to undertake, as defined by their respective state practice acts, associated regulations, and board policies. It includes defining who is authorized to engage in certain clinical actions, such as administering a vaccine or providing access to medications like antivirals.

- Emergency modification of scope of practice for certain professions can be authorized when there is an increased need for professionals to perform certain clinical functions (beyond their current scope) in the face of an emergency.
Roadmap to Addressing Health Care Workforce Issues in a Pandemic Event

1. Understand the Goals to Determine the Health Care Workforce Response
2. Consider Policy Changes to Implement the Health Care Workforce Response
3. Understand Legal Parameters to Make Policy Changes through Executive Action
4. Develop Communications Strategy to Accompany Policy Changes
Executive orders are a powerful tool that can expedite policy changes and implementation. One way governors can use executive orders is to modify scope of practice for the health care workforce to effectively respond to an influenza pandemic.

An executive order can address changes in state laws and regulations governing scope of practice for a specified amount of time during the pandemic or public health emergency. They also can include ancillary communications, such as a Frequently Asked Questions document. For example, New York included a “Frequently Asked Questions” document with an executive order in response to the 2009 H1N1 influenza emergency.

The following policy considerations may be addressed in an executive order:

- Provision of antiviral medications without an individualized prescription
- Administration of the flu vaccine
- Liability protections
- The use of alternate care sites
- The use of clinician triage lines (such as Flu on Call®)
Policy Consideration #1: Identify How Antiviral Medications Can Be Accessed Without a Prescription

**Baseline**

- In day-to-day practice, an individualized prescription is required to dispense antiviral medications to patients.

- Some states allow pharmacists and nurses to enter into a formal agreement with a physician to prescribe or dispense drugs to adults without a physician’s prescription. This type of agreement is between a specific doctor and a pharmacist or nurse and may be in the form of a protocol, standing order, or collaborative practice agreement (CPA) and may allow a pharmacist or nurse to prescribe or dispense medications in circumscribed instances. Some state laws and regulations may limit practice settings, the authority to initiate or modify drug therapy, and the number of patients permitted within these types of agreements.

- These agreements do not usually provide flexibilities in scope of practice during emergency situations.

**Policy Considerations**

- Consider using an executive order to allow pharmacists and registered nurses to provide access to antiviral medications without an individualized prescription in emergency situations.

- Consider broader language that references emergency situations in current protocols, standing orders, or CPAs.

- Consider issuing statewide protocols that allow for pharmacists and registered nurses to provide access to antiviral medications for persons who meet certain clinical or risk group criteria during emergency situations.

- Consider using other health care professionals to provide access to antiviral medications without an individualized prescription in emergency situations, such as EMTs.
Policy Consideration #2: Identify Who Can Administer the Flu Vaccine

Baseline

• In general, qualified physicians, pharmacists, and nurses can administer the influenza vaccine to adults. However, states differ in their definition of adults (e.g. not all states define an adult as someone who is 18 or older).

• In addition, in some states, other allied health professionals (such as EMTs, medical, pharmacy, and nursing students, medical assistants, and others) may not be able to administer influenza vaccinations under current statute/regulation.

• During a severe pandemic, states may need to immunize their population two times (21 days apart) within a very short time period. In most states, there could be a shortage of healthcare personnel to rapidly administer vaccine to a large number of persons in a short time period.

Policy Consideration

• Consider allowing pharmacists and nurses to vaccinate broader age groups, including adolescents or children.

• Apart from pharmacists and nurses, other health professionals’ scope of practice may be temporarily modified via an executive order to allow them to administer the flu vaccine. Other professions may include the following clinicians or clinically trained individuals:
  o Current medical and allied health professionals: EMT/EMS, dentists, dental hygienists, podiatrists, physician assistants, veterinarians,
  o Lay volunteers: medical, pharmacy, and nursing students, medical assistants, community health workers, and retired or formerly licensed health care professionals.
  o Other professionals who are trained in giving injections
Policy Consideration #3: Address Liability Protections for the Health Care Workforce

Baseline

• Individuals and entities or organizations delivering care as well as professionals who are authorizing care as a result of the pandemic emergency (e.g. signing standing orders and collaborative practice agreements) may fear liability issues.

• Some liability protections are available via laws relating to emergency response, interstate compacts, volunteers, Good Samaritans, sovereign immunity, and state tort claims.

• In the case of certain federal emergency declarations, the Public Readiness and Emergency Preparedness (PREP) Act provides immunity from liability claims for a range of activities related to covered countermeasures, such as the influenza vaccine.

Policy Consideration

• Consider noting what expanded liability protections are available as a result of state and/or federal emergency declarations and to whom. This may be included as part of an executive actions, such as executive orders or emergency proclamations or declarations.
Policy Consideration #4: Address the Use of Alternate Care Sites

**Baseline**

- Under existing state laws, some health care professionals are limited to practicing in a specific care setting.
- State laws also may limit the provision of services to licensed health care facilities.

**Policy Consideration**

- Flexibility in care setting can widen the availability of services to areas where they are needed most. States may consider allowing providers to practice in alternate care sites such as mobile clinics, and designating facilities that are not licensed health care facilities as a source of care, such as schools.
Consider Policy Changes to Implement the Health Care Workforce Response

Policy Consideration #5: Address the Use of Clinician Triage Lines, such as Flu on Call®

Baseline

- Symptomatic individuals may be required to go to doctors’ offices, clinics, and hospitals to receive medical care and prescription medications (antivirals) for illness, and delays in treatment may occur if these facilities experience a surge.

- Interstate issues may arise when delivering services across state lines via clinician triage lines.

- CDC is developing a network of triage lines (Flu on Call®) to serve as an alternative way to receive medical care during a pandemic. In some states, registered nurses and pharmacists, working under an approved protocol may be able to provide access to antiviral medicines by phone for patients who meet certain criteria.

Policy Consideration

- States may consider authorizing the use of clinician triage lines, such as Flu on Call®, to deliver care. This may be done through temporary modifications in existing standing orders or protocols or by creating new ones.

- Some agreements, such as the Nurse Licensure Compact (NLC), may facilitate interstate practice for health care professionals. However, states that do not participate in these agreements may need to waive licensure requirements for out-of-state health care professionals. States may consider authorizing temporary licensure reciprocity for health care professionals working on clinician triage lines.
## Policy Considerations for an Executive Order (EO)

<table>
<thead>
<tr>
<th>Potential Issue</th>
<th>Potential Solution</th>
<th>Baseline</th>
<th>How an EO can Address the Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delays in treatment may be encountered during a severe pandemic if health care facilities experience a surge.</td>
<td>Increase the number of health care professionals that can provide clinical care and dispense antivirals.</td>
<td>Dispensing authority for antiviral medications is limited for RNs and pharmacists.</td>
<td>Provide temporary modifications in scope of practice for pharmacists and RNs to allow them to provide access to antiviral medications without an individualized prescription.</td>
</tr>
<tr>
<td>During a severe pandemic event, a disease may rapidly spread between individuals and increase morbidity and mortality.</td>
<td>Reduce disease transmission and prevent deaths by expanding the ways the public can receive an influenza vaccine.</td>
<td>Certain health care professionals are not allowed to administer an influenza vaccine. Limitations also may exist in the ability to vaccinate children and adolescents.</td>
<td>Provide temporary modifications in scope of practice for pharmacists, nurses, and/or other health care professionals to administer an influenza vaccine and/or allow for broader age groups, such as children and adolescents.</td>
</tr>
<tr>
<td>Individuals and entities or organizations delivering care, as well as professionals who are authorizing care, as a result of the pandemic emergency (e.g. signing standing orders and collaborative practice agreements) may fear liability issues.</td>
<td>Communicate what liability protections are available to whom as a result of emergency declarations.</td>
<td>Liability protections are available via certain laws relating to emergency response. Certain federal emergency declarations may also provide immunity from liability claims for a range of activities related to covered countermeasures, such as the influenza vaccine.</td>
<td>Specify what expanded liability protections are available to whom as a result of state and/or federal emergency declarations.</td>
</tr>
<tr>
<td>During an emergency, access to health care services may be limited due to limitations on authorized care sites.</td>
<td>Provide flexibility in care sites to widen the availability of services to areas where they are needed most.</td>
<td>Under some state laws, some health care professionals’ are limited to practicing in specific care sites. In addition, provision of certain clinical services may be limited to only designated health care facilities.</td>
<td>Allow providers to practice in alternate care sites such as mobile clinics, and designate facilities that are not licensed health care facilities as a source of care, such as schools.</td>
</tr>
<tr>
<td>Symptomatic individuals may be required to go to doctors offices, clinics, and hospitals to receive professional care for illness, and delays in treatment may occur if these facilities experience a surge.</td>
<td>Expand the ways that symptomatic individuals can receive treatment during an emergency through clinician triage lines. CDC is developing a network of triage lines (Flu on Call®) to serve as an alternative way to receive medical care during a pandemic.</td>
<td>In some states, registered nurses and pharmacists, working under an approved protocol may be able to provide access to antiviral medicines by phone for patients who meet certain criteria. Interstate issues may arise when delivering services across state lines via clinician triage lines.</td>
<td>Authorize the use of clinician triage lines, such as Flu on Call®, to deliver care. This may be done through temporary modifications in existing standing orders/protocols or by creating new ones. Authorize temporary licensure reciprocity for health care professionals working on clinician triage lines.</td>
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Roadmap to Addressing Health Care Workforce Issues in a Pandemic Event

1. Understand the Goals to Determine the Health Care Workforce Response
2. Consider Policy Changes to Implement the Health Care Workforce Response
3. Understand Legal Parameters to Make Policy Changes through Executive Action
4. Develop Communications Strategy to Accompany Policy Changes
Understand Legal Parameters to Make Policy Changes through Executive Action

- Identify the Statutory Vehicles that Outline Emergency Authorities in the State
- Consider the Impact of Federal Declarations, Authorities, and Orders on State Response
- Understand the Legal Parameters to Make Policy Changes through Executive Action
Roadmap to Addressing Health Care Workforce Issues in a Pandemic Event

1. Understand the Goals to Determine the Health Care Workforce Response
2. Consider Policy Changes to Implement the Health Care Workforce Response
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4. Develop Communications Strategy to Accompany Policy Changes
• Providing consistent messaging to affected health care professionals and the public can avoid confusion, increase efficiency, and assist in delivering timely care to individuals in the appropriate settings.

• Engaging the appropriate stakeholders can help to delineate roles and responsibilities.

• An executive order should designate a lead agency official to direct all response activities.

• When activating temporary policy changes, communicating and coordinating with neighboring states that may have different policies is important.
Thank You

The National Governors Association would like to thank the Centers for Disease Control and Prevention for their generous support in developing this roadmap.
Questions?

Lisa M. Koonin, DrPH, MN, MPH
• lmk1@cdc.gov

Gregory Sunshine, JD
• gsunshine@cdc.gov

Michael J. Primeau
• michael.primeau@health.ny.gov

Lauren Block, MPA
• lblock@nga.org