

 **STATE OF NEW YORK  
DEPARTMENT OF HEALTH**

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.  
*Commissioner*

Wendy E. Saunders  
*Executive Deputy Commissioner*

May 29, 2009  
09-08

RE: Novel H1N1 Influenza

Dear Chief Executive Officer:

The New York State Department of Health has received calls from hospitals that are seeking advice for managing the large number of members of the public presenting to the emergency departments with concerns about Novel H1N1 Influenza. The callers are asking for interpretation of the Emergency Medical Treatment and Labor Act (EMTALA) when planning to handle the influx of patients.

This correspondence is to provide guidance to hospitals for acceptable options to ease the volume of patients presenting to the emergency departments with concerns about Novel H1N1 Influenza while still meeting the requirements of EMTALA. The Centers for Medicare and Medicaid Services (CMS) have published the following on their website at [http://www.cms.hhs.gov/Emergency/Downloads/H1N1\\_QsAs.pdf](http://www.cms.hhs.gov/Emergency/Downloads/H1N1_QsAs.pdf):

- **FOR PERSONS WHO HAVE PRESENTED TO THE EMERGENCY DEPARTMENT FOR CARE:**

Under current EMTALA law and regulations, hospitals are permitted to move individuals out of their dedicated emergency departments to another part of the hospital (on the hospital's same campus) in order to provide the required medical screening examination (MSE) and then, if an emergency medical condition is found to exist, to provide stabilizing treatment or arrange for an appropriate transfer. Sometimes hospitals refer to these as "fast-track clinics" and use them either all year round or during surge in demand for emergency department services during the seasonal cold and flu season. The medical screening examination provided in the "clinic" must be performed, consistent with the requirements of the EMTALA provision, by qualified medical personnel who can perform an MSE that is appropriate to the individual's presenting signs and symptoms.

If, prior to directing the individual elsewhere in the hospital, qualified medical personnel in the emergency department completed an appropriate MSE and determined that the individual does not have an emergency medical condition, then the hospital has no further EMTALA obligation to that individual and the issue of moving the individual to an alternate site, either on or off the hospital's campus, would be moot from an EMTALA perspective.

- **FOR THOSE HOSPITALS SEEING A LARGE NUMBER OF PERSONS WHO HAVE NO SYMPTOMS OR CHIEF COMPLAINTS BUT ARE ‘WORRIED’ ABOUT NOVEL H1N1 INFLUENZA :**

The facility can, at some location before the person reaches the emergency department, post signs or staff that direct non-ill persons who would like or need information about the flu to another site on the campus that would not require medical screening, establishment of a medical record or logging in. That location could serve as an education or information distribution center to ease the public’s concerns. If the person insists on going to the ED or if they show some symptoms of illness at the educational site, they should be immediately directed to the ED where they would be entitled to receive an appropriate medical screening exam and treatment as indicated.

The Department recognizes the difficulty that the non-ill presenters create for the emergency department and hopes that this guidance will assist you in caring for the ill and meeting the needs of the non-ill community as well.

Should you have any questions, please e-mail [panflu@health.state.ny.us](mailto:panflu@health.state.ny.us).

Sincerely,

A handwritten signature in black ink that reads "Mary Ellen Hennessy". The signature is written in a cursive style with a large, looped "y" at the end.

Mary Ellen Hennessy  
Director  
Division of Certification and Surveillance