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| 1 | **Question:** What is HHS’s process for approving and issuing Emergency Medical Treatment and Labor Act (EMTALA) waivers for hospitals that have implemented hospital disaster protocols in response to an emergency?  
**Answer:** There are 4 prerequisites for a hospital waiver of EMTALA sanctions under HHS’s authority under Section 1135 of the Social Security Act. They are as follows:  
(1) the President has declared an emergency or disaster under the Stafford Act or the National Emergencies Act,  
(2) the Secretary of HHS has declared a Public Health Emergency (PHE) under Section 319 of the Public Health Service Act,  
(3) the Secretary of HHS has invoked his authority under Section 1135 of the Social Security Act and authorized CMS to waive sanctions for certain EMTALA violations that arise as a result of the circumstances of the emergency, and  
(4) the hospital in the affected area has implemented its hospital disaster protocol  
**NOTE:** There is no Section 1135 waiver in place, at this time. |
| **Medicare Fee-For-Service Payment Policy and Billing** | |
| 1 | **Question:** Will Medicare cover and pay for a surgical mask to prevent the spread of/infection from swine [H1N1] flu, if prescribed by a physician?  
**Answer:** No. There is no Medicare benefit category that would allow for separate coverage of a surgical mask. |
| 2 | **Question:** Will Medicare pay for diagnostic tests for swine [H1N1] flu (e.g., nasal swabs) for beneficiaries?  
**Answer:** Under Part B, Medicare will cover diagnostic tests as set forth in 42 CFR 410.32 and other existing policies. We note, however, the Social Security Act does contain exclusions that would bar payment if an item or service was provided free of charge or in other circumstances. |
| 3 | **Question:** States are distributing CDC's Strategic National Stockpile (SNS) drugs to hospitals. We are looking for official guidance from a "billing" perspective to share with our members. How should hospitals handle billing for services that involve the use of SNS provided drugs?  
**Answer:** For services rendered to Medicare fee-for-service (FFS) beneficiaries, standard Medicare FFS billing rules apply. This would include following existing policy on no cost items, such as SNS drugs. Hospitals and all providers should work with their other payers to determine the acceptable way to bill those payers for services related to free drugs/tests. |
| 4 | **Question:** Is it permissible for a hospital to triage individuals with suspected cases of H1N1 flu virus infection (swine-origin influenza A) to an alternative site for evaluation under EMTALA? If so, how do we bill for these services?  
**Answer:** Under current Emergency Medical Treatment and Labor Act (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 services rendered to Medicare fee-for-service (FFS) beneficiaries, standard Medicare FFS billing rules apply. Hospitals should work with their other payers to determine if special billing rules may apply.