



Responding to the Surge in Pediatric Hospitalizations: How Emergency Declarations Strengthen Public Health Capabilities and Medical Surge Capacities

Background

Since October 2022, [pediatric hospitals across the US have been operating at full \(or near-full\) capacity](#) due to a sharp and concerning surge in pediatric hospitalizations due to [pediatric respiratory syncytial virus](#) (RSV), COVID-19, and influenza. The confluence of these respiratory conditions is threatening healthcare delivery systems and potentially limiting the capacities of pediatric-serving health facilities including but not limited to hospitals, community health centers, free and charitable clinics, urgent care, and pharmacies. Additionally, ongoing workforce shortages across the healthcare sector are being felt by frontline workers, many of whom are already at their breaking points due to the COVID-19 pandemic.

Despite this pediatric surge in respiratory illnesses, the United States Government (USG) has yet to declare an emergency or move forward with a national response to support children's hospitals and health facilities – limiting the level of flexibilities available to support capacity needs.

This document is intended for pediatric providers to increase their understanding of emergency declarations, and how such authorizations can support medical surge capacities and capabilities during the current surge in pediatric hospitalizations, and other disasters. This document summarizes how emergencies are declared at the national, state, and local levels, and provides information about how flexibilities provided under various declaration types can be used to support pediatric hospitals and communities as they navigate this pressing issue.

Different types of emergency declarations

There are various options for declaring an emergency at the national (federal), state, or local levels. These authorities are described below. (Source for Federal declaration types: <https://www.macpac.gov/subtopic/federal-emergency-authorities/>)

Federal declaration types

In total, there are three declaration types that the federal government may use when declaring an emergency in response to a disaster, disease, or disorder that threatens public health and/or national security. Federal declarations provide flexibilities and support that can be applied across the entire geography for which the declaration is made, including up to the entire nation.

- Under the **Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act)**, [the President can declare a major disaster or major emergency \(also known as a Federal Disaster Declaration\)](#). This type of declaration requires that a governor or chief executive first request federal assistance under the Stafford Act. Once declared, the Stafford Act authorizes the federal government to:
 - Provide financial and other assistance to state, local, and tribal governments
 - Provide personnel to support response, recovery, and mitigation efforts
 - Give FEMA the authority to coordinate the administration of disaster relief to affected jurisdictions



- Under the **National Emergencies Act**, [the President can declare a National Emergency](#). This type of declaration does not require a formal request from state government. Furthermore, this declaration does not provide any specific authorities, therefore the President must specify which authorities are to be active when the specific national emergency declaration is made. One important authority type that the President can activate under a National Emergency is 1135 waivers. 1135 waivers ensure flexibilities in the form of waivers or modifications of certain requirements to Medicare, Medicaid, and State Children’s Health Insurance Programs are made.
- Under Section 319 of the **Public Health Service Act**, [the Secretary of the US Department of Health and Human Services \(HHS\) can declare a Public Health Emergency \(PHE\)](#) for the duration of the emergency or 90 days (whichever occurs first). This type of declaration does not require a formal request from state or local government. Once declared, the Secretary has the authority to:
 - Provide grants or appropriate other funds via the Public Health Emergency Fund,
 - Enter into contracts with the private sector,
 - Modify the practice of telemedicine with regard to services provided (e.g., audio-only), payment rates, billing, or state licensure requirements [as was observed during COVID-19](#).
 - Make personnel available to support the response,
 - Waive sanctions related to submission of data or reports required by statute, or
 - Waive authorities related to Medicare, Medicaid, and State Children’s Health Insurance Programs (i.e., 1135 waivers)

State or local declaration types

While each state and territory has different laws and regulations related to emergency declarations, a general overview of the different types of declarations that can be made by local and/or states are below.

- In every state and territory, Governors have the authority to enact Emergency Declarations or declare a State of Emergency within their jurisdiction. These are often declared in the form of an Executive Order and [establish expectations around how available resources and powers will be used to support local communities](#) during the disaster period.
- In some states or territories, state or local health officials have the authority to declare a Public Health or Health Emergency (though this authority varies, and the declaration title may vary). This type of declaration may allow local or state agencies to access state and/or federal resources to support response, recovery, or mitigation efforts.

What emergency declarations do for state and local capabilities

Emergency declarations in the form of request for federal support are made by state and local officials when it is determined that [“the disaster is of such severity and magnitude that effective response is beyond the capabilities of the state and the local governments and that supplemental federal assistance is necessary.”](#) In other words, emergency declarations can be the first step towards ensuring that necessary assistance (e.g., funding, personnel, resources, etc.) to support response and recovery efforts can be procured by affected areas.

This has been observed during past disasters when the emergency overwhelmed local and/or state resources, such as Hurricane Harvey, the December 2021 Tornado Outbreak, and COVID-19. The



assistance that becomes available following a major declaration can vary, but [according to FEMA, may include the following](#):

- **Individual Assistance** – assistance provided to eligible individuals or households
- **Public Assistance** – assistance provided to state and/or local governments, certain private companies, and/or nonprofit organizations supporting emergency work and/or recovery work (e.g., repairing damaged facilities)
- **Hazard Mitigation Assistance** – assistance provided to state and local governments, certain private companies and/or nonprofit organizations supporting efforts to prevent long-term impacts caused by natural hazards

In addition to national emergency declarations, local and state emergency declarations can also be useful tools to expand legal and operational resources and strengthen medical capacity. These types of emergency declarations, declared by government officials, can help to [organize which agencies are responsible for leading components of the response \(as well as the overall response\), and articulate which \(if any\) state rules, regulations, or requirements may be waived for the duration of the emergency](#).

In the case of the current surge in pediatric hospitalizations, as of December 2022, several state and local agencies, or Governors have declared emergencies in their jurisdictions. For example, on November 14, 2022, Governor Kate Brown of Oregon [issued Executive order No. 22-23](#), declaring an emergency due to the surge in pediatric respiratory infections (and hospitalizations) in the state. The declaration authorized the following in order to respond to, control, mitigate, and recover from the surge in pediatric hospitalizations:

- Deploying emergency volunteer health care professionals
- Designating emergency health care centers
- Option to request assistance through the Emergency Management Assistance Compact (EMAC) and the Pacific Northwest Management Assistance Arrangement
- Option to utilize state personnel, equipment, and facilities if requested by the Department of Emergency Management
- Option to waive rules or adopt temporary rules if recommended by the state Public Health Director

As demonstrated above, emergency declarations have the potential to massively expand state and local capabilities to effectively respond to a public health threat. If declared at the national level, there is even greater potential for assistance opportunities.

While not directly connected to emergency declarations at the local, state, or national level, emergency declarations *may* facilitate deployment of supplies from the Strategic National Stockpile (SNS) in that emergency declarations might make deployment of SNS product easier. [The SNS is a federal stockpile](#) intended to **supplement** the supply needs of states, tribal nations, territories, and major metropolitan areas during a public health emergency. In other words, the SNS is not intended to continuously provide supplies to jurisdictions, rather, it is a “[short-term, stopgap buffer when the immediate supply of \[medical countermeasures\] may not be available or sufficient](#)”. While it is not clear whether the SNS has pediatric-specific MCMs or other supplies (e.g., PPE), pediatric hospitals may place SNS supply requests with their local health department to better understand what support may be provided.



Advocating for an emergency declaration

For the first half of December 2022, nearly half of all US states are reporting that more than 75% of their pediatric beds are occupied, indicating that their hospital capacity is extremely strained and limited.

Given the lack of a national emergency declaration, with uncertainty of when or if one will be declared, it is important for pediatric-serving health facilities to understand how they can advocate for local and/or state declarations in order to open up assistance and help strengthen surge capacity. Furthermore, the declaration of local and state emergencies demonstrates the severity of an event, and can influence the declaration of a national emergency. In other words, a high number of local or state emergency declarations can help gain national attention and momentum, ultimately trigger a national emergency.

There are several pediatric associations advocating for the Biden administration to declare a Public Health Emergency to support the national response to the surge in pediatric hospitalizations, including the [American Academic of Pediatrics \(AAP\)](#) and the [Children's Hospital Association](#). Pediatric health facilities can leverage their partnerships with such associations to identify opportunities for support and/or sign onto letters of support or other advocacy opportunities.

Additionally, pediatric hospitals should be prepared to advocate for their local or state authorities to enact emergency declarations. This will include articulating the severity of the situation through data points, explaining the implications of operating at full capacity, and the challenges of moving to a crisis standards of care model if the situation does not improve. Potential opportunities to advance this include:

- Work with your local Health Care Coalition (HCC) to communicate where assistance is needed, such as equipment and supplies, personnel, funding, or licensure waivers. HCCs work closely with local and state health departments and may be able to advocate for their members' (i.e., pediatric healthcare facilities) needs.
- Track and/or share data that communicates the severity of the issues. For example, track daily bed utilization rates to demonstrate how strained your facility's capacity is due to the surge in pediatric hospitalizations.
- Identify which methods of assistance were the most useful during the COVID-19 pandemic, and advocate for similar assistance. It *may* be more feasible for local or state agencies to provide assistance in certain areas versus others.
- Document resource requests to partners and to the county to show that resource needs are greater than local capacity.
- Advocate for an extension on existing COVID-19 related policies. In Massachusetts, for example, [Governor Barker extended a COVID-19 related policy](#) allowing acute care hospitals to use alternative spaces to help facilities manage pediatric medical surge associated with RSV.

How a national emergency could support response efforts

National emergency declarations are a critical resource to ensuring capacity, support, and liability protection is available to health facilities across the nation as they work to provide critically needed care to hospitalized children. Throughout the course of the COVID-19 pandemic, the flexibilities provided to the healthcare sector under national emergency declarations were instrumental in advancing healthcare facilities' abilities to meet the needs of their communities – especially those who are historically under resourced. A description of how national emergency declarations were used during COVID-19, to give a sense of how a national emergency could support response efforts to the surge in pediatric hospitalizations, is below.



On January 31, 2020, under Section 319 of the Public Health Service Act, the Secretary of Health and Human Services (HHS) declared a public health emergency in response to COVID-19. Later, on March 13, 2020, the president proclaimed the COVID-19 outbreak in the United States a national emergency, under authority of Sections 201 and 301 of the National Emergencies Act and consistent with section 1135 of the Social Security Act.

These declarations of a national public health emergency helped to ensure flexibilities were available during COVID-19 surges that overwhelmed hospitals across the country. For example, the Secretary of HHS was authorized under Section 1135 of the Social Security Act to waive or modify certain requirements of the Medicare, Medicaid, and State Children's Health Insurance Programs. More specifically, the [Secretary's ability to waive or modify these programs can](#) 1) ensure sufficient healthcare items and services are available to meet the needs of those enrolled in Social Security Act programs throughout the course of the emergency, and 2) that providers who provide services can be reimbursed and exempted from sanction¹.

According to the [Centers for Medicare & Medicaid Services \(CMS\)](#), examples of 1135 waivers or modifications can include:

- Preapproval requirements,
- Requirements that physicians and other healthcare professionals be licensed in the state in which they are providing services, so long as they have equivalent licensing in another state,
- Limitations on payment for healthcare items and services provided to Medicare Advantage enrollees by non-network providers,
- Deadlines for performance of required activities,
- Certain conditions of participation or other certification requirements, and
- [Certain sanctions](#) under the Emergency Medical Treatment and Active Labor Act (EMTALA), HIPPA laws, or section 1877(g) (Stark) relating to limitations on physician referral.

During a nationally declared disaster or emergency, 1135 Waivers become an invaluable asset to healthcare providers in jurisdictions where their local or state officials have also declared a state of emergency. Through these waivers, [providers are offered relief via modifications or exemptions](#) that ensure flexibilities to certain regulations to help the healthcare sector navigate response, recovery, and mitigation efforts. Without a national emergency declaration, however, these waivers do not become available to affected jurisdictions, an underlying reason why hospital associations, coalitions, and other pediatric groups are pushing for the HHS Secretary and Presidential Administration to move forward with an emergency proclamation.

Operationally, a waiver to [Section 1135](#) of the Social Security Act could allow for easier movement or transfer of patients, use of new spaces for care, creation of offsite triage to manage capacity challenges, adaptation to workforce shortages, and licensure reciprocity to enable cross-state care, including telehealth. Because pediatrics is a specialty practice, staffing of pediatric clinicians has been a major gap for the surge response. A national emergency declaration or PHE could allow telemedicine flexibilities so that clinicians across state lines that may be less stressed could virtually assist those in other states.

Although [HHS Secretary Xavier Becerra has shared that flexibilities that have been in place during the COVID-19 PHE are available for the response to RSV and flu](#), providers may be hesitant to use those flexibilities, especially in cases where liability protection may not be clear. This is especially true for states

¹ So long as services are absent of any fraud or abuse.



in which a state-level emergency declaration for COVID-19, which would provide additional protections, is no longer in place.

Ultimately, an emergency declaration to establish a national response to the surge in pediatric respiratory illnesses would have a similar effect to that of COVID-19, allowing “[hospitals, physicians, and other health care providers to share resources in a coordinated effort to care for their community and have access to emergency funding to keep up with the growing demands, specifically related to workforce support.](#)”

Healthcare Ready continues to **monitor potential concerns for supply chain disruptions and impacts on healthcare services on our [Pediatric Surge in Respiratory Illness response page](#), listing resources and previous situation reports.**