

# **Analysis of the Extent to Which State Insurance Laws Mandate Coverage and Payment of Vaccines and Vaccine Administration Fees during Periods of Declared Public Health Emergencies**

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## **Introduction**

This analysis examines whether state insurance laws require health insurers, as a condition of doing business, to pay the costs associated with the administration of immunizations during declared public health emergencies. As is the case with the current H1N1 emergency, a public health emergency triggers nationwide distribution of free vaccine. But even when vaccine is distributed free of charge, its administration poses costs to private physicians and charges can be significant. As a result, the Institute of Medicine has identified vaccine administration as a potential financial barrier to care.<sup>1</sup> Most communities have limited numbers of public health workers and professional health care volunteers, making private sector involvement essential.

Because of the cost, protection against the cost of vaccine administration is a feature of health insurance coverage that many families have come to expect for their children. As a mandatory insurance benefit, immunization has a spotty track record. Routine immunization mandates for adults are virtually non-existent. While nearly 3 dozen states mandate routine immunization coverage of children under 18 to some degree, our previous research suggests that these state mandates in fact are weak; indeed, a study conducted in 2003 concluded that no state mandates immunization coverage in the group health insurance market of immunizations for all children under 18 at levels recommended by the Advisory Committee on Immunization Practices.<sup>2</sup>

A far less predictable cost involves immunization during a public health emergency. Public health emergency-related immunization needs by definition are not predictable and would not be considered “routine” by health insurers. Thus a separate question becomes whether state laws require insurers to cover vaccines and their related administration fees during a declared public health emergency. Even when the vaccine is distributed free of charge (as in the case of the H1N1 influenza vaccine) the vaccine administration fee could represent a major financial barrier for families who cannot gain access to free or reduced priced vaccination sites such as public health agencies, community health centers, and volunteer locations.

## **Research Methods**

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<sup>1</sup> Institute of Medicine, *Calling the Shots* (National Academy Press, Washington D.C. 2000).

<sup>2</sup> Rosenbaum S., Stewart A., Cox M., Mitchell S. *The Epidemiology of U.S. Immunization Law: Mandated Coverage of Immunizations Under State Health Insurance Laws*. July 2003, Available at: <http://gwumc.gwu.edu/sphhs/departments/healthpolicy/CHPR/downloads/Immun%20Final.pdf>

Data collected for this study included state health insurance statutes and regulations; a review of state insurance department websites also was conducted. The review specifically focused on (a) statutory provisions mandating coverage of immunization administration services during a declared public health emergency.

For the purposes of this research, “state” was defined to include the 50 states and the District of Columbia. “Statutory provision” was defined as a statute from the insurance code or regulation from the state’s department of insurance or annotated codes. Mandated coverage of immunization administration entailed any express requirements addressing administration payment of one or more vaccines. “Vaccine” was defined as any ACIP recommended vaccine with a specific focus on influenza and H1N1 vaccines.

Collection of these statutory provisions was compiled via internet research of the following websites: each individual state’s Department of Insurance; and legal searches of state’s insurance, administrative and annotated codes from Westlaw. Key words used were: “vaccine!”, “immuniz!”, “emergency”, and “influenza”.

From the research, a summary table was created (see Table 1) compressing all the data into a chart addressing queries of payment and coverage of administration of vaccines during periods of public health emergencies for adults and children:

Each state received the following coding:

- 0 points if the state is silent or prohibits payment and coverage of vaccine administration costs during periods of public health emergencies.
- 1 point if the state had laws mandating payment and coverage of vaccine administration costs during periods of public health emergencies.

## **Findings**

No state insurance laws address coverage and payment of vaccines and their administration during periods of declared public health emergencies. Although 32 states and the District of Columbia (Table 1) do maintain some level of pediatric immunization mandate, the mandates are, as our previous research has shown, so weak as to leave all states without mandatory coverage of routine immunizations for children under 18. Furthermore, because immunization mandates relate to routine immunization, an insurer would be acting lawfully in our view were it to refuse to pay the administration fee for a vaccine that was administered as a result of a public health emergency, which by definition is not routine.

## Discussion

During a declared public health emergency, vaccines presumably would be distributed free of charge by the federal government. But the cost of vaccine administration is considerable, and assuring full population immunization necessitates not only public health workers and volunteers, but also private health care professionals and entities. To date no state mandates coverage of vaccine administration fees during public health emergencies as a basic aspect of public health preparedness, thereby raising questions of how accessible private sector immunization services would be, particularly for larger families.

States might pursue two avenues for assuring individuals and families help with the cost of vaccine administration. One approach might be enactment of an insurance coverage mandate that requires insurers operating in both the individual and group health insurance markets to cover and pay for vaccine administration fees during periods of declared public health emergencies, when the vaccines themselves have been distributed on a nationwide basis.

An alternative approach would be to assess a modest “public health safety” fee assessed against both employers and insurers selling products in the individual and group health markets, which in turn could be used to create a specific fund to underwrite vaccine administration costs whether furnished in public settings or by private health care providers.

Either approach would provide critical financing to help defray the cost of vaccine administration during public health emergencies. The benefit of an insurance mandate is that it would utilize standard insurance claims payment methods for assuring payment to participating providers. Insurers could trigger their claims payment system once a public health emergency is declared, allowing providers whether in- or out-of-network to submit vaccine administration claims on members’ behalf, using specially designed claims forms.

The benefit of the latter approach is that it would eliminate insurance administration complexities while assuring that, because of its structure as a public health preparedness statute rather than as an insurance product mandate, the financing mechanism would reach not only insurance products sold to employers in the group market but also employers who self insure and purchase only administered products, thereby exempting their plans from the reach of state insurance laws.<sup>3</sup> Such a fee could be paid directly to a state public health agency, which in turn could allot funds back to physicians, health care professionals, mass immunization entities and other health care providers in the private sector who acquire and furnish immunization services and who agree to applicable payment conditions such as the elimination of point-of-service charges and acceptance of payment under such a program as payment in full.

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<sup>3</sup> *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.* 514 U.S. 645 (1995); *De Buono v. NYSA-ILA Medical and Clinical Services Fund* 520 U.S. 806

**Table 1: State laws mandating insurance coverage of vaccines for children and adults.**

Routine Immunization of Children		Vaccine Administration During Periods of Public Health Emergency (Children and Adults)
32 States and DC <b>have</b> laws mandating immunization coverage for children.		0 States and DC <b>have</b> laws mandating immunization coverage for adults or children during periods of public health emergency.
State	Age Range	
Arkansas	0-18	
California	0-18	
Colorado	0-12	
Connecticut	0-6	
Delaware	0-17	
District of Columbia	0-17	
Florida*	0-15 + Adult Female	
Georgia	0-5	
Hawaii	0-5	
Illinois	0-15	
Kansas	0	
Louisiana	0-5	
Maryland	Child/Adolescent	
Massachusetts	0-5	
Michigan	Child	
Minnesota	0-18	
Mississippi	0-24 months	
Missouri	0-4	
Montana	0-2	
Nebraska	0-5	
New Jersey	Childhood	
New Mexico	Childhood	
New York	0-18	
North Carolina*	Female 13 or older	
North Dakota	0-4	
Ohio	0-8	
Oklahoma	0-17	
Pennsylvania	Child	
Rhode Island	0-7	
Texas	0-5 + one day	
Virginia*	0-35 months Female 13 and older	
West Virginia	0-16	
Wisconsin	0-5	

Source: GWU/SPHHS/CHSRP analysis of state immunization laws, July 2003 and Winter 2003

\*Exceptions to children only mandate: Florida has immunization coverage for new mothers as part of post-delivery care for new mothers; North Carolina and Virginia have incorporated coverage for adult females as part of ob-gyn care.