NATIONAL GOVERNORS ASSOCIATION

M E M O R A N D U M

March 18, 2020

To: Governors' Offices
From: Bill McBride, Executive Director
Re: Gubernatorial Actions to Support Medical Surge Capacity

The coronavirus and COVID-19 are spreading across the United States and experts predict significant disruption to the U.S. health care system. With hospitals typically operating at or near 100 percent capacity – particularly during flu season – the availability of facilities, equipment, personnel, and supplies can be limited. Federal- and state-level declarations of emergency provide governors a broad range of authorities to assist the health care system in meeting the surge in demand. The following are a selection of actions that may be within a governor's authority in various instances and settings.

Facilities: On their own recognizance, some hospitals and health care facilities may create additional surge capacity for the increased patient load. They may do this in several ways, including: the early discharge of hospitalized patients who are close to being completely well; the diversion of patients away from overwhelmed facilities; the postponement of elective and non-emergency medical procedures; and the utilization of alternate care facilities. Governors can support these efforts in several ways. Reviews of literature, law, and best practice provide the following options:

- **Promote the availability and utilization of in-home care and telehealth options.** For example, states can consider covering the full continuum of COVID-19 testing and care, including phone consultation, and ensure that Medicaid reimburses for telehealth services statewide, and not just in rural or underserved areas. Call centers may be able to perform front-line triage responsibilities and keep the "worried well" out of inundated facilities.
- **Consider revising regulations** that may limit the functionality and availability of health care facilities, including free-standing emergency care facilities, school-based health centers, retail health clinics, and assisted living residences. This may include: expediting application and code compliance reviews, as well as site surveys; increasing the number of licensed or staffed beds allowed in health care organizations; increasing provider-to-patient ratios and other standards of care parameters[1].
- **Encourage cooperation between hospitals and other health care facilities**, even if they are business competitors. Governors can also promote data-sharing agreements, MOUs, and other collaborative activities to maximize the availability of treatment. They may also consider modifying statutes that govern access to and disclosure of protected medical information.
- **Encourage hospitals to postpone elective procedures** that require short supply resources like ventilators, ICU beds, and other high intensity beds.

Personnel: Research, as well as previous experience, reveals that the health care workforce will be significantly impacted during a pandemic. Exposure to infectious patients, lack of personal

[1] United States Department of Health and Human Services. (n.d.). The Role of the State in MSCC. Retrieved from https://www.phe.gov/Preparedness/planning/mscc/handbook/chapter5/Pages/therole.aspx

protective equipment, and the stress of long hours and intense activity make health care workers vulnerable to disease. Even if they are properly protected with vaccines or antiviral medications (neither of which are currently available for COVID-19), their family members may fall ill and require care at home. Efforts should focus on keeping health care workers healthy and on the job, as well as recruiting additional staff to meet surging need. Governors options include:

- **Confirm liability protection for health care workers.** Liability protections ensure that health care workers, volunteers, and public servants are willing and able to participate in response activities.
- **Adjust professional licensure, permit, or fee requirements** for: state medical, nursing, or other health care providers; out-of-state medical, nursing, or other health care providers; pharmacists; and medical examiners.
- **Consider modifications to regulations or laws** regarding scope of practice, supervision requirements, and other similar measures to allow the maximum number of providers to provide the maximum amount of care, within reason. As an alternative to changing state laws, states can apply for a waiver or modification of Section 1135(b) of the Social Security Act, which can be authorized by the Secretary of Health and Human Services now that both a national emergency and public health emergency have been declared[2].
- **Encourage civilian participation in volunteer programs.** Retired doctors, nurses, allied care professionals, and non-medical volunteers may have the ability to perform key functions across the health care system.

Non-Pharmaceutical Equipment and Supplies: As has already been realized, global demand for both durable and disposable medical equipment, including personal protective equipment (PPE), has increased. The commercial and governmental demands for such products have put immense stress on the supply chain. Although there has been intense public interest in masks and sanitizers, health care facilities, as well as government entities, are finding themselves competing for goggles, gloves, oxygen concentrators, tubing, ventilators, and other respiratory support equipment. Hoarding may further deplete stockpiles. Governors support for the production and distribution of key supplies can include:

- **Encourage group purchasing orders (GPOs)** and other bulk acquisition mechanisms to optimize supply availability and pricing.
- **Engage non-profit entities to facilitate donations** from private sector partners.
- **Ensure delivery of supplies by assisting retailers with "the last mile."** Delivery drivers may not be qualified as "essential personnel" and unable to pass through checkpoints or perimeters at controlled facilities or quarantined areas. Promote collaboration with transportation and policing agencies.
- **Discourage waste, theft, hoarding, and price-gouging.** Clearly communicating with the public about appropriate purchase and use of high-demand supplies may decrease these behaviors.
- **Examine the feasibility of redirecting personal protection/infection control supplies** (e.g., masks, gowns, alcohol and hand gels) from general over-the-counter outlets (e.g., chain drug or big box stores) to clinical care during times of shortage.

[2] Centers for Medicare and Medicaid Services. (March 15 2019). *Additional Emergency and Disaster-Related Policies and Procedures That May Be Implemented Only With a § 1135 Waiver* (p. 6). Retrieved from https://www.cms.gov/About-CMS/Agency-Information/Emergency/Downloads/MedicareFFS-EmergencyQsAs1135Waiver.pdf

Vaccines, Antivirals, and Other Medicines: Lastly, while there is no vaccine or antiviral available for COVID-19 yet, these products are actively being researched and developed for broad public use. Prior to the release of an effective vaccine or antiviral, the WHO recommends that governments identify groups for priority immunization[3]. In 2005, the National Vaccine Advisory Committee and the Advisory Committee on Immunization Practices developed recommendations for vaccine prioritization during influenza pandemic. They recommended that health care workers with direct patient contact receive the first vaccinations, followed by those with the highest risk of complications from infection or specific vulnerabilities. These groups are identified through epidemiologic findings, and for the case of coronavirus, would likely include the elderly as well as those with pre-existing conditions. Pregnant women and the immunocompromised are next on the priority list, followed by key government leaders, critical infrastructure operators, and public health emergency responders[4]. Governors' options to assist the distribution and uptake of effective vaccine include:

- **Consider policies that improve vaccine accessibility**, including those that eliminate cost-sharing and administrative barriers, such as prior authorization. When vaccines are free or low-cost, they are more likely to be utilized.
- **Review mass prophylaxis plans with experts** and review what can be done to expedite dispensing. Governors can work with private sector partners and major employers to develop on-site points of dispensing, similar to at-work flu vaccination programs.
- **Clearly communicate with the public about vaccine safety.** Governors should anticipate and combat vaccine misinformation, and guard against black-marketeering, false advertising, and knock-off products.

Overall, governors have many means to support the enhancement of medical surge capability. Emergency declarations often grant state executives additional powers and governors should examine what additional prerogatives they may be allowed. Efforts to support medical surge capability should be done in concert with other crisis management activities, including information sharing, public information and warning, mass fatality management, and medical countermeasure dispensing.

A detailed description of medical surge capability, as well as associated tasks, planning, and resource requirements, is available here.

For questions or concerns related to the contents of this memo, please contact NGA staff:

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[3] Lister, S. A. (2005). *Pandemic Influenza: Domestic Preparedness Efforts* (p. 23). Retrieved from https://fas.org/sgp/crs/homesec/RL33145.pdf

[4] Lister, S. A. (2005). *Pandemic Influenza: Domestic Preparedness Efforts* (p. 24). Retrieved from https://fas.org/sgp/crs/homesec/RL33145.pdf