



One Hundred Eleventh Congress  
U.S. House of Representatives  
Committee on Homeland Security  
Washington, DC 20515

August 13, 2009

The Honorable Janet Napolitano  
Secretary  
U.S. Department of Homeland Security  
Washington, D.C. 20528

Dear Secretary Napolitano:

On July 29, 2009, Deputy Secretary Lute testified at the Committee on Homeland Security's hearing on H1N1 and pandemic influenza, entitled *Beyond Readiness: An Examination of the Current Status and Future Outlook of the National Response to Pandemic Influenza*. During the course of that hearing, Members raised concerns about the applicability of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) within the context of an influenza pandemic. Additionally, concerns were raised about the Department's intention to retain the Federal Emergency Management Agency (FEMA) Disaster Assistance Policy (DAP) 9523.17 – Emergency Assistance for Human Influenza Pandemic, promulgated in March 2007.

In response to a question concerning pandemic influenza and the Stafford Act, Deputy Secretary Lute responded, that "...the Stafford Act may be invoked under certain contingencies, and as may arise in the fall with the pandemic, and we plan for those contingencies and are prepared to respond appropriately." In your response to similar concerns regarding the Stafford Act (posed during the White House-sponsored Flu Summit held on July 9, 2009), you indicated that the Stafford Act would not be applicable in the context of an influenza pandemic. While these two positions are not necessarily contradictory, greater clarity would be helpful.

Concerned about the possibility of a pandemic presented by Avian influenza, the previous Administration and the Homeland Security Council determined that an influenza pandemic with sufficient severity could qualify as an incident sufficient to invoke the type of disaster assistance available under the Stafford Act. Thus, in March 2007, FEMA issued FEMA Disaster Assistance Policy 9523.17, entitled Emergency Assistance for Human Influenza.

To resolve any uncertainty that may arise from the aforementioned statements combined with this FEMA policy, I am writing to request that you seek an opinion from your General Counsel

or otherwise issue a directive clarifying the applicability of the Stafford Act within the context of an influenza pandemic.

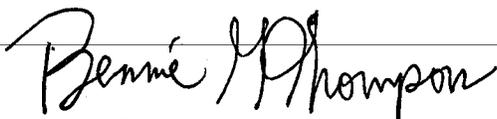
If you undertake such an action and determine that the Stafford Act is applicable under circumstances presented by an influenza pandemic, I request that the FEMA Administrator involve the Department's Chief Medical Officer in updating and clarifying language contained in the prior guidance. As a starting point, I would suggest that the following language be closely examined:

- 1) Section VI A provides background on the likely outcomes of a human influenza pandemic. It appears that the predictions contained in this section are based upon 2007 Avian influenza projections, of particular concern are those predictions relating to morbidity and mortality rates, and the availability of vaccine and other treatments. Additionally, assumptions contained in Section VIC should be revisited given the likelihood of treatment and vaccine availability.
- 2) The guidance permits reimbursement for the use of search and rescue teams. While possible, it is difficult to foresee a scenario in which search and rescue operations would be necessary. An influenza pandemic is unlikely to result in the type of isolation or dislocation that would necessitate search and rescue operations. Reimbursement for such activities may cause undue alarm.
- 3) A practical and logical disconnect appears to exist involving reimbursement for actions necessary to address medical surge capacity. While temporary medical facilities which may become necessary for treatment are eligible for reimbursement, increased administrative and operational costs resulting from increased patient loads are deemed ineligible.

Considering the likelihood of H1N1 occurring at pandemic levels within the United States, clear policy guidance from the Federal government would greatly assist the response efforts of state and local officials. Applicable guidance promulgated prior to the re-opening of schools would be optimal.

I look forward to working with you on this issue. If you have any questions, please contact Cherri Branson, Chief Oversight Counsel or Asha George, Senior Professional Staff, Committee on Homeland Security (202) 226-2616.

Sincerely,



Bennie G. Thompson  
Chairman  
Committee on Homeland Security