

Congress of the United States
Washington, DC 20515

March 2, 2021

The Honorable Robert J. Fenton, Jr.
Senior Official Performing the Duties of Administrator
Federal Emergency Management Agency
500 C Street S.W.
Washington, DC 20472

Dear Acting Administrator Fenton:

We are writing today about a recent development concerning Orange County, California and its efforts to provide COVID-19 vaccines to their qualified residents. We are encouraged that the Federal Emergency Management Agency (FEMA) has allowed Orange County to participate in their vaccination initiative. Providing vaccines to the more than 3 million constituents that live in Orange County is paramount as we have sadly lost almost 4,000 residents due to COVID-19. The county is working hard to help everyone, including its highly vulnerable populations and that work should be commended.

Orange County authorities have been working for almost a year to fight back against the pandemic and have been forced to make tough decisions as the costs mount. It has come to our attention that FEMA has been putting burdensome regulations and, in some cases, provided conflicting guidance related to the requirements for collection of vaccination recipients' health insurance coverage information.

Orange County has received three different directives from FEMA including:

- i) No duty to collect or attempt to collect health insurance information
- ii) Only a good faith effort to collect or attempt to collect health insurance information is required
- iii) Vaccination recipients' health insurance information must be collected both prospectively and retroactively

The most recent guidance from FEMA now requires Orange County to not only collect private insurance information but also mandates the county file claims against the insurance policy and subsequently credit FEMA based on the "value of payments under the guise of programmatic prohibition of duplication of benefits."

The county has concerns with this mandate for multiple reasons:

- i) It is neither cost-effective nor practical. The level of effort to collect health insurance information and substantiate a claim is potentially greater than the amount to be recovered from insurance companies. In order to implement this, the county will have to retroactively attempt to obtain health insurance information and establish a contract with a third party to bill the insurance companies. The cost of such a contract will be charged to FEMA.
- ii) It is inconsistent with federal messaging that vaccinations would be provided for "free." Making a claim against health insurance carriers is inconsistent with the spirit of this messaging and further exposes policy holders to potential premium rate increases based on actuarial claims analysis.

iii) The determination of duplication of benefits is legally incorrect. In order to be “duplication” the program participant - in this case Orange County - must receive the remunerative value more than once. In this case, Orange County receives the FEMA PA benefit (reimbursement of vaccination costs) and the private citizen doesn’t actually receive any benefit from the insurance provider. Duplication fails because there are two separate parties and no actual receipt of benefits by the second party.

iv) Precedent: In similar situations FEMA has had different requirements and ultimately rarely enforced “duplication” requirements. For example:

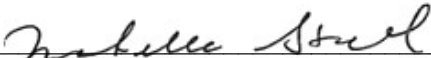
(1) Private Property Debris Removal: FEMA has often provided guidance that collection of property insurance information is required for program participants but does not require sub-grantees to make claims.

(2) Sheltering & Temporary Essential Power (STEP): In the approximately eight to 10 instances the STEP program has been implemented, at no time has FEMA required even the attempt to collect private homeowner property insurance policy information or the pursuit of claims against private insurance for duplication.

Orange County is already facing tight budgets and stretched resources. We must ensure they have the resources to protect our citizens during this pandemic. We cannot allow overly burdensome regulations to add cost or reduce care to our constituents.

We ask that you give full and fair consideration to removing this obstacle of gathering insurance information and billing insurance companies so that the county can more effectively and safely deliver vaccinations to the people of Orange County.

Sincerely,



Michelle Steel
Member of Congress



Young Kim
Member of Congress