



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

August 26, 2009

RE: Health Care Worker Mandatory Influenza Immunization

Dear Administrator:

On August 13, 2009 an emergency regulation went into effect, which requires that all personnel of certain health care settings receive annual vaccinations against influenza by November 30 of each year unless they have a medical contraindication to the vaccination or the State Commissioner of Health determines that there is an insufficient supply of vaccine for the year. The primary purpose of this regulation is to protect the health and safety of vulnerable patients, whose risk of serious adverse effects from influenza is high. An added benefit is to maintain a healthy workforce during flu season.

The new regulation applies to:

- Hospitals
- Diagnostic and treatment centers licensed under Article 28,
- Home care services agencies licensed under Article 36 of the Public Health Law including:
 - ◆ Certified home health agencies
 - ◆ Licensed home care services agencies
 - ◆ Long-term home health programs including AIDS home care programs
- Hospice programs certified under Article 40 of the Public Health Law.

Personnel who must be vaccinated against influenza include all those affiliated with the employer, paid or unpaid, who have direct contact with patients or whose activities are such that they pose a risk of transmission of influenza to patients or to those who provide direct care to patients. "Personnel" is defined as anyone affiliated with any organization (noted above), including but not limited to employees; members of the medical staff, including attending physicians; contract staff; students and volunteers.

The organization is responsible for determining which individual members of the employer's personnel pool fall into the group requiring vaccination consistent with the regulation. Additionally, the organization is responsible for identifying the measures that are needed to protect patients from influenza transmission from personnel who are exempt due to a medical contraindication. The organization covered by these regulations which provides the vaccination must provide it at no cost to

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their personnel. However, personnel are free to receive their vaccinations wherever they please as long as they provide documentation to the organization. The organization should confer with their Human Resources office and counsel to determine what actions to take for personnel who fail to meet the mandatory requirement; we suggest that organizations examine their existing policies for mandatory rubella, rubeola, measles, and TB testing for guidance.

Nursing homes, adult homes, enriched housing programs, adult day health care programs and any other facility providing residential housing and supportive services to 5 or more persons over the age of 65 who are unrelated to the operator continue to be governed by the requirements of Article 21-A of the Public Health Law, which remains unchanged from last year.

If the novel H1N1 vaccine is released as a fully licensed vaccine, as expected, this regulation will also require immunization against H1N1 as well as seasonal influenza this coming season. Further information will be provided when the Department receives updates on the vaccine, its licensure status and availability this fall.

The regulation and current version of the Question & Answer document are attached in anticipation of any further questions you may have. Please check the Health Provider Network (HPN) for updates.

Sincerely,



Mark Kissinger
Deputy Commissioner
Office of Long Term Care



Richard M. Cook
Deputy Commissioner
Office of Health Systems Management

Attachments