



NEW YORK STATE REGULATIONS NOW REQUIRE INFLUENZA VACCINATIONS FOR HEALTH CARE WORKERS

Effective as of August 13, 2009, certain health care facilities in New York State must notify and require their personnel to be immunized against influenza virus(es) as a precondition to employment and on an annual basis. At this time, the New York Department of Health (DOH) is requiring vaccination against only seasonal flu, but DOH anticipates that once the H1N1 ("swine flu") vaccine becomes available, personnel will be required to get vaccinated against H1N1 as well. Facilities must ensure that existing personnel be vaccinated by November 30 of each year. New personnel hired after November 30 but before April 1 of the following calendar year, must also receive the required vaccination(s). These emergency regulations are codified under Title 10 of the New York Codes, Rules, and Regulations, Subpart 66-3.

Covered facilities must provide, or arrange for the provision of, nationally recommended influenza vaccines to their personnel, at no cost, and document the vaccination status of its personnel. While staff may choose to be vaccinated elsewhere, they must provide the facility with written proof meeting certain requirements.

If there is a shortage in the supply of vaccines, the Commissioner of Health may suspend the requirement and/or delay the deadline for compliance. DOH has stated that currently, there is a more than adequate supply of seasonal flu vaccine for the 2009-10 season, however, the supply of H1N1 vaccine is not known at this time.

Covered Facilities

Facilities required to comply with these new regulations include:

- § general hospitals,
- § diagnostic and treatment centers,
- § certified home health agencies,
- § long term home health care programs,
- § acquired immune deficiency syndrome (AIDS) home care programs,
- § licensed home care services agencies, and
- § hospices.

Long term care facilities, such as nursing homes, adult homes and adult day treatment facilities are not governed by this regulation, but must instead comply with Article 21-A of the Public Health Law, which imposes less stringent vaccine requirements for its employees, contractors and residents. Article 21-A requires that nursing homes "offer" flu vaccines every year. Nursing homes may, however, choose to be more restrictive and require flu vaccines of their staff.

Covered Personnel

Covered personnel consist of those who are employed or affiliated with a facility, whether paid or unpaid, including, but not limited to:

- § employees,
- § members of the medical staff,
- § contract staff,
- § students, and
- § volunteers.

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Whether a facility has to actually provide vaccinations to students and residents who rotate through the facility depends on the facility's agreement with the school. Frequently, such agreements require the school to ensure that their students are appropriately immunized.

Exempt Personnel

Personnel who (i) do not have direct contact with patients and (ii) do not engage in activities that could potentially expose patients or others who have direct contact with patients, are not required to be vaccinated under these regulations. These exempt individuals may include personnel (A) whose job site is physically separated from patient care locations and with no direct contact with patients; and (B) whose job activities involve only infrequent and/or incidental direct contact with others who have direct contact with patients, and such infrequent and/or incidental direct contact is unlikely to transmit influenza. For example, administrative, data entry, and building or property maintenance staff who meet criteria (A) and (B) listed above may be exempt.

Medical exemptions are available when the vaccine is medically contraindicated for that individual as certified by a physician, physician assistant or nurse practitioner licensed or certified to practice in New York State. Only medical contraindications recognized by the Advisory Committee on Immunization Practices are permitted as exemptions for immunization at this time. DOH stated that it will create a medical exemption form that facilities may use to document medical exemptions for DOH surveyors. In the case of an exemption, the health care facility must, on a case-by-case basis, evaluate what steps an individual who has not been vaccinated must take in order to reduce the risk of transmitting influenza to patients.

Religious exemptions are not allowed; only medical exemptions are permitted. If a covered individual refuses to be vaccinated, the facility may, but is not required to, reassign the individual if a position meeting the exemption requirements above is available. However, the facility must comply with the requirements, just as for TB and measles.

Documentation and Reporting Requirements

Facilities must retain, in the personnel file, detailed information about each individual's vaccination, or reasons for the individual's exemption. The regulations also require facilities to collect certain aggregate data on the status of personnel vaccinations for the period starting April 1 of each calendar year through March 31 of the following calendar year, which data must be reported to DOH by May 1 of the latter year.

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If you have any questions, please contact the GWT attorney with whom you regularly consult.

About Garfunkel, Wild & Travis, P.C.

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