

Health Care Personnel in New York Must Get Flu Vaccination or Wear a Mask

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The New York State Department of Health has adopted regulations to prevent influenza transmission by employees of healthcare and residential facilities and health care agencies. Covered health care facilities and agencies are required to develop and implement policies and procedures to ensure compliance with the new regulation.

The facilities and agencies covered by the new regulation include general hospitals, nursing homes, diagnostic and treatment centers, any agency established pursuant to Article 36 of the Public Health Law, including, but not limited to, certified home health agencies, long-term home health care programs, acquired immune deficiency syndrome (AIDS) home care programs, licensed home care service agencies, and limited licensed home care service agencies; and hospices as defined in section 4002 of the Public Health Law.

The regulations apply to all personnel employed or affiliated with covered health care facilities or agencies, whether or not they are paid. These include members of the medical and nursing staff, contract staff, students and volunteers who engage in activities such that if they were infected by influenza, they could potentially expose patients or residents to the disease.

During flu season, to prevent transmitting the flu, the new regulations require most employees at covered facilities and agencies to receive the flu vaccination or wear a mask while in area where patients or residents may be present. The regulations require covered facilities and agencies to document the vaccination status of covered personnel and to report to the state Department of Health, upon request, the number and percentage of personnel that have been vaccinated against the flu for the current flu season.

The regulations also require covered facilities and agencies to develop and implement policies and procedures to ensure compliance with the new regulation. The policies must include identification of those areas where unvaccinated personnel must wear a mask.

In light of the new regulations, covered health care facilities and agencies should take the following actions:

Identify and document which personnel are covered by the new regulation;

Identify and document which areas of the facility require personnel to wear a mask if they are not vaccinated;

Document vaccination status of all covered personnel; and

Develop and implement policies and procedures to ensure compliance with the regulations, as well as compliance with applicable federal medical confidentiality requirements of the Americans with Disabilities Act (ADA) and/or HIPAA.

If you have questions about these new regulations, please contact Jackson Lewis Partner Joe Lynett, at (914) 514-6146 or lynnettj@jacksonlewis.com, or the Jackson Lewis attorney with whom your regularly work.

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