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CLIENT ALERT

New York State Department of Health Issues Emergency Regulations Mandating Influenza Vaccines for Health Care Workers

On August 6, 2009, the New York State Hospital Review and Planning Council adopted emergency regulations that require almost all employees of health care facilities to receive influenza vaccinations. These regulations have been filed with the New York State Department of Health and, therefore, are now effective. It is expected that the regulations will be published in the State Register on September 2, 2009 under Title 10 of the New York Codes, Rules, and Regulations, Subpart 66-3 (10 NYCRR 66-3). The emergency regulations, along with analysis of the need for immediate adoption, are available online at http://www.nyhealth.gov/regulations/emergency/docs/2009-08-13_health_care_personnel_influenza_vaccination_requirements.pdf.

Personnel Influenza Immunization Requirements

Health care facilities in New York State are required to notify all personnel of the new vaccination requirements. The facilities also must require that personnel be immunized against influenza virus(es) as a precondition to employment and on an annual basis. As the new regulations do not explicitly exclude certain types of flu vaccine, it is expected that health care facilities will be required to immunize employees from both the "regular" influenza as well as the H1N1 influenza (a/k/a "swine flu"). In fact, the regulations on their face would require vaccination, if available, for additional strains of the influenza viruses.

Covered Personnel

Almost all individuals employed or affiliated with a healthcare facility, whether paid or unpaid, who have direct contact with patients or whose activities could potentially expose patients or others who have direct contact with patients, must be vaccinated. If an employee's worksite is separated from patient care locations and there is no direct contact with patients and if the job activities would not result in regular contact with others who might have direct contact with patients, then the employee is not required to be immunized. Under this test, many administrative and data entry maintenance personnel may be exempt from the requirements.

Individuals for whom the vaccine is “medically contraindicated” are also exempt from the requirements. To be classified as “medically contraindicated,” a New York licensed physician or nurse practitioner must certify that the influenza vaccine should not be given to the individual.

Covered Institutions

Included within the regulations’ definition of a “health care facility” are hospitals, diagnostic and treatment centers, certified home health agencies, long term home health care programs, acquired immune deficiency syndrome home care programs, licensed home care services agencies, and hospices. Although the regulations do not apply to long-term care facilities, adult homes, adult day health care facilities, and enriched housing programs, employees of these institutions are now required by New York Public Health Law Article 21-A to also receive the influenza vaccine every year. These institutions have been required since 2000 to offer the influenza vaccine to their residents and employees.

Health Care Facility Requirements

Existing Personnel: Each health care facility must provide or arrange for influenza vaccination(s), at no cost to its personnel, either at the facility or elsewhere. Personnel may choose to receive influenza vaccination from another source provided it is documented. The vaccinations and documentation thereof must be completed by November 30th of each year.

New Personnel: Personnel newly entering into service at a facility after November 30th but before April 1st of each year shall have his or her status for influenza vaccination(s) determined by the facility and, if found to be deficient, the facility shall provide or arrange for the necessary vaccination(s) at no cost to the new personnel. As above, the individual may use another source for the vaccination if appropriately documented.

Documentation: Health care facilities will be required to document the annual influenza vaccination(s) of all personnel in the individual’s personnel file, including the date and site of administration of the vaccine; the type, dose, manufacturer and lot number of the vaccine; reactions, if any; vaccine information statement given; and the name of the person administering the vaccines. Similar information must be provided for individuals who receive the vaccination off-site.

Reporting Requirements: Each health care facility must collect aggregate data on personnel influenza vaccination(s) status for the period beginning April 1st and ending March 31st of each year to the Department of Health. Required data include but are not limited to: number of personnel immunized by occupation, total number of personnel by occupation, and reason(s) personnel did not receive vaccine. As the reporting will be in a manner “determined by the commissioner,” we can expect further guidance on the regulations in the near future.

If you should have any questions regarding these new regulations, please contact us.

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