

March 15, 2022

Jeffrey A. Kraut
Chair, Public Health and Health Planning Council
Thomas Holt
Chair, Committee on Codes, Regulations, and Legislation
c/o Executive Secretary, Public Health and Health Planning Council
Empire State Plaza, Corning Tower, Room 1805
Albany, New York 12237

Re: 21-14 Addition of Section 2.61 to Title 10 NYCRR, Amendment of Sections 405.3, 415.19, 751.6, 763.13, 766.11, 794.3 & 1001.11 of Title 10 NYCRR & Sections 487.9, 488.9 and 490.9 of Title 18 NYCRR (Prevention of COVID-19 Transmission by Covered Entities)

Via E-Mail

Dear Mr. Kraut, Mr. Holt, and members of the Public Health and Health Planning Council:

I am writing on behalf of the members of LeadingAge New York -- non-profit and public providers of long-term and post-acute care services -- to offer comments on the above-referenced emergency extension and amendment of the Department's health care personnel vaccination mandate.

The proposed changes in the current regulation and the intent of those changes are not clear from the text of the draft provided to the public on Monday evening. It appears that the only revision to the regulation is the deletion of the phrase "and to have received any booster or supplemental dose as recommended by the CDC" and the insertion of the phrase "and that such personnel receive their subsequent dose(s) according to the CDC or CDC's Advisory Committee on Immunization Practices (ACIP) recommended timeframe" in the following paragraph of the proposed regulation:

Covered entities shall continuously require personnel to be fully vaccinated against COVID-19, absent receipt of an exemption as allowed below. Covered entities shall require all personnel to receive at least their first dose before engaging in activities covered under paragraph (2) of subdivision (a) of this section and that such personnel receive their subsequent dose(s) according to the CDC or CDC's Advisory Committee on Immunization Practices (ACIP) recommended timeframe. Documentation of such vaccination shall be made in personnel records or other appropriate records in accordance with applicable privacy laws, except as set forth in subdivision (d) of this section.

The current version of the regulation, filed January 21, 2022, states:

(c) Covered entities shall continuously require personnel to be fully vaccinated against COVID-19, and to have received any booster or supplemental dose as recommended by the CDC, absent receipt of an exemption as allowed below. Covered entities shall require all personnel to receive at least their first dose before engaging in activities covered under paragraph (2) of subdivision (a) of this section. Documentation of such vaccination shall be made in personnel records or other appropriate records in accordance with applicable privacy laws, except as set forth in subdivision (d) of this section.

The proposed insertion requiring personnel to “receive their subsequent dose(s)” according to CDC and ACIP recommendations could be interpreted in two ways. We’ve been told by Department of Health staff that it is intended to apply only to newly-hired personnel who are working with only their first vaccine dose, while waiting to be eligible for the second dose of their primary series. However, since this sentence refers to “all personnel,” and not just newly-hired personnel, it could be read to require all personnel to receive their “subsequent dose(s)” as recommended by CDC and ACIP, which would include any booster doses. The use of the term “dose(s)” in the sentence, instead of the singular “dose” also suggests that the regulation is referring to booster doses. If it were referring only to the second dose in the primary vaccination series, it would have used the singular form.

To clarify the proposed regulation consistent with the Department’s intent, we recommend the following change:

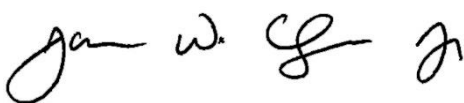
Covered entities shall require all personnel to receive at least their first dose before engaging in activities covered under paragraph (2) of subdivision (a) of this section. **Personnel who commence such activities after receiving only a first dose shall receive any subsequent dose in the primary vaccination series recommended by the CDC or CDC’s Advisory Committee on Immunization Practices (ACIP) in accordance with the CDC’s or ACIP’s recommended timeframe.**

We want to be clear that LeadingAge New York supports vaccination of health care personnel, and our members are doing everything possible to encourage all personnel to be up-to-date (including boosters) in their COVID vaccinations. However, our health system is still experiencing severe staffing shortages, and according to the latest DOH data, approximately one-third of hospital personnel and forty percent of nursing home personnel have *not* received a booster shot. If the state were to mandate COVID booster shots for health care personnel, staffing shortages would be markedly worse, and quality and access to care would suffer.

We would also like to raise a concern regarding the opportunity for the public to comment on proposed regulations and other matters before the committees of this Council. As you know, it is important for the Council to be able to hear from stakeholders about the complex issues that come before it – issues which affect millions of health care consumers, health care personnel, and the public health. We recognize that the Council is often called upon to act on an emergency basis and that the pandemic has strained the Department’s resources. However, when proposed regulations or meetings on complex policy issues are announced with little notice, it is difficult for stakeholders to provide thoughtful input. Where feasible, we would urge the Department and the Council to provide at least 10 days notice of proposed regulations and major policy discussions.

Thank you very much for your consideration of these issues.

Sincerely yours,



James W. Clyne, Jr.
President and CEO

Cc: Colleen Leonard
Lisa Thomson
Kristin Proud
Val Deetz
Adam Herbst
Mark Furnish