

NEW YORK
state department of
HEALTH

Nirav R. Shah, M.D., M.P.H.
Commissioner

Sue Kelly
Executive Deputy Commissioner

July 17, 2013

Dear Chief Executive Officer/Administrator/Operator:

The New York State Public Health and Health Planning Council (PHHPC) recently adopted the “Prevention of Influenza Transmission by Healthcare and Residential Facility and Agency Personnel” regulation, under its authority located in Public Health Law Sections 225, 2800, 2803, 3612 and 4010. The final regulation, which is unchanged from the version that underwent public comment, was filed as a Notice of Adoption with the Department of State on July 11, 2013; it will become effective upon publication in the *State Register* on July 31, 2013. Therefore, the regulation will be in effect for the coming 2013-2014 influenza season starting this fall. These regulatory provisions are located in a new Section 2.59 of the State Sanitary Code within Title 10 of the New York Codes Rules and Regulations (10 NYCRR). References to Section 2.59 will be located in Sections 405.3, 415, 19, 751.6, 763.13, 766.11 and 793.5 of 10 NYCRR.

The regulations apply to all personnel in healthcare and residential facilities and agencies whose job activities are such that they could expose patients or residents to influenza. These terms are defined as follows:

- “Personnel” means all persons employed or affiliated with a healthcare or residential facility or agency, whether paid or unpaid, including, but not limited to employees, members of the medical or nursing staff, contract staff, students and volunteers, who engage in activities such that if they were infected with influenza, they could potentially expose patients or residents to the disease.
- “Healthcare and residential facilities and agencies” means:
 - (1) any facility or institution included in the definition of a “hospital” as defined in Section 2801 of the Public Health Law, including, but not limited to general hospitals, nursing homes, and diagnostic and treatment centers;
 - (2) 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 services agencies, and limited licensed home care service agencies; and
 - (3) hospices as defined in Section 4002 of the Public Health Law.

The regulations require that facilities document the influenza vaccination status of all personnel to which the regulations apply each year and require unvaccinated personnel to wear a

surgical mask at all time while in areas where patients or residents may be present during periods that the Commissioner of Health determines that the influenza season is underway. These terms are defined as follows:

- “Influenza season” for the purposes of this section, shall mean the period of time during which influenza is prevalent as determined by the Commissioner.
- All healthcare and residential facilities and agencies shall determine and document which persons qualify as “personnel” under these provisions.
- All healthcare and residential facilities and agencies shall document the influenza vaccination status of all personnel for the current influenza season in each individual’s personnel record or other appropriate record. Documentation of vaccination must include the name and address of the individual who ordered or administered the vaccine and the date of vaccination.
- During the influenza season, all healthcare and residential facilities and agencies shall ensure that all personnel not vaccinated against influenza for the current influenza season wear a surgical or procedure mask while in areas where patients or residents may be present. Healthcare and residential facilities and agencies shall supply such mask to personnel, free of charge.

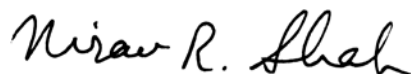
Facilities must develop policies and procedures to implement these requirements and must provide a report to the New York State Department of Health (Department) on the influenza vaccination status of personnel upon request. The applicable regulatory terms are as follows:

- Upon the request of the Department, a healthcare or residential facility or agency must report the number and percentage of personnel that have been vaccinated against influenza for the current influenza season.
- All healthcare and residential facilities and agencies shall develop and implement a policy and procedure to ensure compliance with the provisions of these provisions. The policy and procedure shall include, but is not limited to, identification of those areas where unvaccinated personnel must wear a mask.

The final express terms of the 10 NYCRR Section 2.59, the Assessment of Public Comment, and a Frequently Asked Questions (FAQ) document are available at www.health.ny.gov/FluMaskReg. The Department is also planning technical assistance sessions in person and by webinar to further explain the provisions in the regulations and what is expected of your facility in order to comply.

Should you have further questions, you may contact the Department at: FluMaskReg@health.state.ny.us.

Sincerely,

A handwritten signature in black ink that reads "Nirav R. Shah". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Nirav R. Shah, M.D., M.PH.
Commissioner of Health