



March 29, 2013

Ms. Katherine Ceroalo,
DOH, Bureau of House Counsel
Regulatory Affairs Unit, Room 2438
Empire State Plaza Tower Building, Albany, NY 12237,

RE: I.D. No. HLT-07-13-00020-P, Prevention of Influenza Transmission by Healthcare and Residential Facility and Agency Personnel

Dear Ms. Ceroalo;

I am writing on behalf of LeadingAge New York to provide comments on the proposed amendments of sections 2.59, 405.3, 415.19, 751.6, 763.13, 766.11 and 793.5 of Title 10 NYCRR; Prevention of Influenza Transmission by Healthcare and Residential Facility and Agency Personnel. LeadingAge NY represents nearly 500 not-for-profit and public providers of long term care (LTC) and senior services throughout the state, including nursing homes, home health, assisted living program providers, and continuing care retirement communities.

LeadingAge New York supports the Department of Health's (DOH's) ongoing efforts to address the serious public health issue of influenza. It is critical that our vulnerable elderly are protected, to the highest degree possible, from communicable diseases and illness. At the same time, we raise concerns about the approach outlined in these proposed regulation changes and respectfully suggest it be withdrawn or significantly amended.

First of all, the regulation is overly broad in that it requires anyone, whether it be a volunteer, secretary, maintenance worker, present in an area with residents/patients during an influenza outbreak to wear a procedure/surgical mask. Not only is this overly broad, but it will also be difficult to implement and enforce, particularly in a home care setting. Further, more definition is required regarding the criteria for the prevalence of influenza. At the same time, there is no way to control for visitors, like resident families.

While vaccination is a critical and effective tool in the public health arsenal, there remains some concern and debate about mandatory vaccinations, which this regulation indirectly tries to achieve. Many providers do a great deal of education on this and still have employees decline vaccination. There are compelling reasons to get the vaccination, but individuals may have very legitimate reasons to refuse and should continue to have that option. The alternative being proposed of having to wear a mask at work, however, is problematic.

Wearing a surgical mask when working with the elderly poses challenges; for those whom are hearing impaired, it makes it more difficult for them to hear and understand the worker. For individuals with dementia, the masks may be confusing and frightening, and may make it difficult for the individual to recognize the worker. The masks take away from the home-like environment that facilities are trying to achieve, and are likely to be frightening to visitors. Consider being served at a restaurant by someone wearing a mask; you would probably walk out. Finally, the privacy rights of the workers need to be considered. For example, someone who may not become vaccinated for medical or religious reasons would have that personal fact "red flagged" to the public.

While the DOH analysis of the costs assume minimal dollar impact, it fails to account for the fact that the worker is likely to change masks frequently throughout the day, particularly if working in homecare. This will drive the cost of up significantly at a time when most providers are simply trying to stay in business.

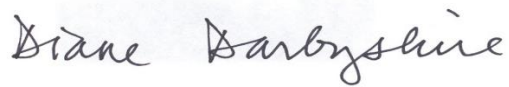
Obviously, the proposed regulation is well intended to encourage vaccination and attempt to prevent transmission. We wonder, however, if it might also discourage people from working or volunteering in these settings. There are other jobs of similar pay that don't have this requirement.

All stakeholders need to be working together to encourage vaccination. The state can play a vital role in negotiating lower vaccine prices to assist providers in purchasing the vaccine and reward those organizations that demonstrate high rates of employee vaccination compliance. More coordinated education efforts between DOH and other stakeholders can play a vital role in increasing the vaccination rates among health care workers. This education can also emphasize other critical infection control measures, including the importance of proper hand washing.

We respectfully request that DOH consider alternative methods to encourage and reward vaccination, rather than the approach outlined in this proposed regulation. LeadingAge New York is happy to work with DOH to help encourage providers and their employees to take action on this critical public health issue.

If you have any questions regarding the contents of this letter, you may contact me at 518-867-8828 or ddarbyshire@leadingageny.org.

Sincerely,

A handwritten signature in cursive script that reads "Diane Darbyshire". The signature is written in black ink on a white background.

Diane Darbyshire, LCSW

Senior Policy Analyst