

MANDATORY VACCINATIONS FOR HEALTHCARE IN NEW YORK: PHHPC PITCHES A CURVE BALL

Coronavirus Guidance Update - Healthcare
August 27, 2021

Earlier this week, the Public Health and Health Planning Council (PHHPC) Special Committee on Codes, Regulations and Legislation, and Special Full Public Health and Health Planning Council Meeting, convened a [Special Meeting](#) to consider a regulation for emergency adoption regulation requiring covered entities to require their personnel to be fully vaccinated against COVID-19. As reported, the original proposal would have included a medical exemption, for those personnel for whom COVID-19 vaccination would be detrimental to the individual's health, based on a pre-existing health condition, and a religious exemption, for those personnel with a genuine and sincere religious belief contrary to the practice of immunization.

What a difference a day makes! On the eve of the Special Meeting, PHHPC circulated an amendment removing the religious exemption option. As revised, the proposal passed unanimously. As revised and subsequently approved, only those personnel with a medical exemption are exempt from the mandatory vaccination requirements. The medical exemption requires a certification from a licensed physician or certified nurse practitioner in accordance with generally accepted medical standards, for example, the recommendations of the Advisory Committee on Immunization Practices of the U.S. Department of Health and Human Services.

Under the proposed regulation, the term "covered entity" encompasses any facility within the statutory definition of a "hospital," which includes general hospitals, nursing homes, and diagnostic and treatment centers, among others; "Article 36" home care agencies, which include CHHAs (certified home health agencies), LTHHCPs (long-term home health care programs), and LHCSAs (licensed home care service agencies), among others; hospices; and adult care facilities. The term "personnel" means whether paid or unpaid, including but not limited to employees, members of the medical and nursing staff, contract staff, students, and volunteers, who engage in activities such that if they were infected with COVID-19, they could potentially expose other covered personnel, patients or residents to the disease. These definitions have not changed from the initial version of the proposed regulation.

The emergency regulation requires covered entities to develop and implement a policy and procedure to comply with the mandatory vaccination requirements and to submit documents to the Department of Health upon request. Healthcare employers

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in New York, when faced by an employee's request for a medical or disability-based exemption, must remember their obligations under the federal Americans With Disabilities Act of 1990, as amended, and the New York State Human Rights Law, and the New York City Human Rights Law – which prohibit employment discrimination on the basis of disability – concerning reasonably accommodating the employee's request.

Mandatory vaccination requirements continue to develop quickly. We will provide more information in future posts and additional information on changes as they occur. Please check back often for updates using this link: <https://www.hodgsonruss.com/newsroom-news-53.html>.

If you have questions regarding mandatory vaccination initiatives or how they may affect your healthcare operations, please contact [Jane Bello Burke](#) (518.433.2404), [David Stark](#) (716.848.1369), or any member of Hodgson Russ's [Healthcare Practice](#).