

Client Alert

September 20, 2021

New York DOH Issues FAQs For Vaccine Mandate

The New York State Department of Health (“DOH”) has posted Frequently Asked Questions (FAQs) Regarding the August 26, 2021 – Prevention of COVID-19 Transmission by Covered Entities Emergency Regulation. The FAQs can be accessed here: <https://hca-nys.org/wp-content/uploads/2021/09/FAQs-for-10-NYCRR-section-2.61-9-18-2143.pdf>

Of significance, the FAQs confirm that fiscal intermediaries and personal assistants are not covered by the vaccination mandate. However, we believe that LHCSAs who are also operating as fiscal intermediaries should assess operating conditions and interactions of fiscal intermediary and LHCSA staff to determine if the mandate applies because the FAQs state that Covered Entity Personnel includes employees and non-employee 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.”

Personnel may include members of the workforce who have no direct patient or resident contact if the workforce member engages in activities such that if they were infected with COVID-19, they could potentially expose other covered personnel. DOH did not specifically address the application of the Emergency Regulation to office staff. However, we note that the regulation is intended to reduce exposure by personnel who are not vaccinated against COVID-19, and do not have a medical exemption, to other covered personnel, in addition to reducing exposure to patients and residents of facilities, agencies, and programs. We recommend that Covered Entities assess each office staff member’s role and interactions to determine whether an office staff member should be vaccinated. Interactions could include distributing PPE to caregivers, having common bathrooms, cafeterias or other shared spaces.

The FAQs state that employees who receive an exemption from the vaccination requirements are not required to undergo weekly COVID-19 testing and that antibodies and evidence of a prior COVID-19 infection will not be acceptable in lieu of vaccination. It appears from the language of the FAQs that unvaccinated personnel with medical exemptions can continue normal job responsibilities so long as they comply with all applicable requirements for PPE, including masking.

The FAQs state that only people who have received a complete series of a COVID-19 vaccine that is either approved or authorized for emergency use by the U.S. Food and Drug Administration (FDA) or the World Health Organization (WHO) are considered to be “fully vaccinated.” Current lists of vaccine authorized by the FDA and WHO are available at <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-vaccines> and <https://covid19.trackvaccines.org/agency/who/>.

The DOH has provided 2 forms that can be used to request an exemption on the basis of medical

reasons. (<https://www.health.ny.gov/forms/doh-5077.pdf>) and (<https://www.schools.nyc.gov/docs/default-source/default-document-library/medical-request-for-immunization-exemption-english>) These forms can be adapted for use by covered entities.

The FAQs do not address the religious exemption and the lawsuits filed against the state on September 14, 2021. There the court placed a temporary restraining order on the applicability of the regulations and “ordered that DOH is barred from interfering in any way with the granting of religious exemptions going forward, or with the operation of exemptions already granted.” An in-person oral argument will be held at September 28, 2021 which will address whether the temporary restraining order should be converted into a preliminary injunction.

If you have any questions, please do not hesitate to reach out to our office.

DISCLAIMER

The information contained herein is provided by Glaser & Weiner, P.C. for informational purposes only. These materials should not be considered as, or as a substitute for, legal advice and they are not intended to nor do they create an attorney-client relationship. Because the materials included here are general, they may not apply to your individual legal or factual circumstances.

The information contained herein may be modified or rendered incorrect by future legislative or judicial developments. You should not take (or refrain from taking) any action based on the information you obtain from these materials without first obtaining professional counsel. It is possible that under the laws, rules or regulations of certain jurisdictions, this may be construed as an advertisement or solicitation. © 2020 Glaser & Weiner, P.C. All Rights Reserved.



REPRESENTING HOME HEALTH CARE AGENCIES
IN NEW YORK STATE

68 South Service Road ♦ Suite 100 ♦
Melville, NY 11747

P: 516.304.5858 ♦ F: 516.304.5855
www.glaserweiner.com

ATTORNEY ADVERTISING