

STATE OF NEW YORK : DEPARTMENT OF HEALTH

IN THE MATTER

OF

COVERED ENTITIES IN THE PREVENTION
AND CONTROL OF THE 2019 NOVEL
CORONAVIRUS

**ORDER FOR
SUMMARY
ACTION**

WHEREAS the 2019 Novel Coronavirus (“COVID-19”) is an infection associated with fever and signs and symptoms of pneumonia and other respiratory illness that is easily transmitted from person to person, predominantly through droplet transmission, and has significant public health consequences; and

WHEREAS COVID-19 is a global pandemic that, to date, has resulted in 2,195,903 documented cases and 43,277 deaths in New York State alone; and

WHEREAS the Centers for Disease Control and Prevention (CDC) has identified a concerning national trend of increasing circulation of the Delta COVID-19 variant; and

WHEREAS the U.S. Food and Drug Administration (FDA) granted Emergency Use Authorizations (EUA) for Pfizer -BioNTech, Moderna, and Janssen COVID-19 vaccines which have been shown to be safe and effective as determined by data from the manufacturers and findings from large clinical trials; and

WHEREAS while New York State has aggressively promoted vaccination since COVID-19 vaccines first became available in December 2020, current vaccination rates are not high enough to prevent the spread of the Delta variant, which is approximately twice as transmissible as the original SARS-CoV-2 strain; and

WHEREAS data show that unvaccinated individuals are approximately 5 times as likely to be diagnosed with COVID-19 as are vaccinated individuals; and

WHEREAS those who are unvaccinated have over 10 times the risk of being seriously ill and hospitalized with COVID-19; and

WHEREAS since early July, cases have risen 10-fold, and 95 percent of sequenced recent positives in New York State were the Delta variant; and

WHEREAS certain settings, such as healthcare facilities, pose increased challenges and urgency for controlling the spread of this disease because of the vulnerable patient and resident populations that they serve; and

WHEREAS unvaccinated personnel in such settings have an unacceptably high risk of both acquiring COVID-19 and transmitting such virus to colleagues and/or vulnerable patients or residents; and

WHEREAS based upon the foregoing, the Commissioner of Health of the State of New York is of the Opinion that all entities identified in this Order (“covered entities”), must immediately implement and comply with the requirements identified herein, and that failure to do so constitutes a danger to the health, safety, and welfare of the people of the State of New York; and

WHEREAS the Commissioner of Health of the State of New York has determined that requiring covered entities to immediately implement and comply with the requirements set forth herein and cannot be achieved through alternative means, including the adoption of the Public Health and Health Planning Council of emergency regulations, without delay, which would be prejudicial to health, safety, and welfare of the people of the State of New York; and

WHEREAS it therefore appears to be prejudicial to the interest of the people to delay action for fifteen (15) days until an opportunity for a hearing can be provided in accordance with the provisions of Public Health Law Section (PHL) 12-a.

NOW, THEREFORE, THE HEALTH COMMISSIONER HEREBY ORDERS THAT: Pursuant to PHL § 16:

(a) Definitions.

(1) Covered entity shall mean a general hospital or nursing home pursuant to section 2801 of the Public Health Law.

(2) Covered Personnel. All persons employed or affiliated with a covered entity, 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, patients, residents, or personnel working for such entity to the disease.

(3) Fully vaccinated. Covered personnel are considered fully vaccinated for COVID-19 ≥ 2 weeks after receiving either (1) the second dose in a 2-dose series (e.g., Pfizer-BioNTech or Moderna), or (2) a single-dose vaccine (e.g., Johnson & Johnson [J&J]/Janssen), authorized for emergency use or approved by the U.S. Food and Drug Administration, and holds an emergency use listing by the World Health Organization.

(4) Documentation of vaccination shall include:

- (i) a record prepared and signed by the licensed health practitioner who administered the vaccine, which may include a CDC COVID-19 vaccine card;
- (ii) an official record from one of the following, which may be accepted as documentation of immunization without a health practitioner's signature: a foreign nation, NYS Countermeasure Data Management System (CDMS), the NYS Immunization Information System (NYSIIS), City Immunization Registry (CIR), a Department-recognized immunization registry of another state, or an electronic health record system; or
- (iii) any other documentation determined acceptable by the Department. Unless otherwise specified by the Department.
- (iv) The following elements, unless otherwise specified by the Department: manufacturer, lot number(s), date(s) of vaccination; and vaccinator or vaccine clinic site.

(b) Covered entities shall continuously require all covered personnel to be fully vaccinated against COVID-19, with the first dose for current personnel received by September 27, 2021. 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 section (c) of this order.

(c) Limited exemptions to vaccination:

1. Medical exemption. If any licensed physician or certified nurse practitioner certifies that immunization with COVID-19 vaccine is detrimental to a specific member of a covered entity's personnel, based upon a specific pre-existing health condition, the requirements of this section relating to COVID-19 immunization shall be subject to a reasonable accommodation of such health condition only until such immunization is found no longer to be detrimental to the health of such member. The nature and duration of the medical exemption must be stated in the personnel employment medical record and must be in accordance with generally accepted medical standards, (see, for example, the recommendations of the Advisory Committee on Immunization Practices of the U.S. Department of Health and Human Services). Covered entities shall document medical exemptions and any reasonable accommodation in personnel records or other appropriate records in accordance with applicable privacy laws by September 27, 2021, and continuously, as needed, thereafter.
2. Religious exemption. Covered entities shall grant a religious exemption for COVID-19 vaccination for covered personnel if they hold a genuine and sincere religious belief contrary to the practice of immunization, subject to a reasonable accommodation by the

employer. Covered entities shall document such exemptions and such reasonable accommodations in personnel records or other appropriate records in accordance with applicable privacy laws by September 27, 2021, and continuously, as needed, thereafter.

(d) Upon the request of the Department, covered entities must report the number and percentage of covered personnel that have been vaccinated against COVID-19 and the number of personnel for which medical or religious exemptions have been granted by covered entities in a manner and format determined by the Department.

(e) Covered entities shall develop and implement a policy and procedure to ensure compliance with the provisions of Order.

(f) The Department may require all covered personnel, whether vaccinated or unvaccinated, to wear acceptable face coverings for the setting in which they work. Covered entities shall supply acceptable face coverings required by this section at no cost to covered personnel.

FURTHER, I DO HEREBY give notice that any entity that receives notice of and is subject to this Order is provided with an opportunity to be heard at 10:00 a.m. on September 2, 2021, via videoconference, to present any proof that failure to implement and comply with the requirements of this Order does not constitute a danger to the health of the people of the State of New York. If any such entity desires to participate in such a hearing, please inform the Department by written notification to Vaccine.Order.Hearing@health.ny.gov, New York State Department of Health, Corning Tower, Room 2438, Governor Nelson A. Rockefeller Empire

State Plaza, Albany, New York 12237, within five (5) days of their receipts of this Order. Please include in the notification the email addresses of all individuals who will be representing or testifying for the entity at the hearing so that an invitation to access the hearing remotely can be provided.

DATED: Albany, New York
August 18, 2021

NEW YORK STATE DEPARTMENT OF HEALTH

Howard Zucker M.D.

BY: _____

HOWARD A. ZUCKER, M.D., J.D.
Commissioner of Health