

S T A T E O F N E W Y O R K

8133--A

2009-2010 Regular Sessions

I N A S S E M B L Y

May 5, 2009

Introduced by M. of A. GOTTFRIED -- (at request of the Department of Health) -- read once and referred to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to immunization of health care workers and repealing section 2190 of such law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The article heading of article 21-A of the public health
2 law, as added by chapter 580 of the laws of 1999, is amended to read as
3 follows:
4 LONG-TERM CARE RESIDENT AND
5 [EMPLOYEE] PERSONNEL IMMUNIZATION ACT
6 S 2. Section 2190 of the public health law is REPEALED.
7 S 3. Section 2191 of the public health law, as added by chapter 580 of
8 the laws of 1999, is amended to read as follows:
9 S 2191. Definitions. For the purposes of this article:
10 1. "Long-term care facility" or "facility" means a residential health
11 care facility as defined in section twenty-eight hundred one of this
12 chapter, adult home as defined in subdivision twenty-five of section two
13 of the social services law or enriched housing program as defined in
14 subdivision twenty-eight of section two of the social services law,
15 adult day health care program in accordance with regulations of the
16 department, and any other facility providing residential housing for
17 five or more persons over the age of sixty-five unrelated to the opera-
18 tor and supportive services including, but not limited to, food service,
19 housekeeping, laundry, arranging for medical care, and assistance with
20 daily living.

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 2. ["Documentation" means written evidence from an individual's health
2 care provider indicating the date and place when the individual received
3 the influenza vaccine or the pneumococcal vaccine.

4 3.] "Medically contraindicated" means [influenza or pneumococcal
5 vaccine should not be administered to an individual because it may be
6 detrimental to the individual's health if the individual receives the
7 vaccine] A PHYSICIAN LICENSED TO PRACTICE IN THE STATE OF NEW YORK OR A
8 NURSE PRACTITIONER CERTIFIED TO PRACTICE IN THE STATE OF NEW YORK CERTI-
9 FIES THAT IMMUNIZATION WITH INFLUENZA OR PNEUMOCOCCAL VACCINE IS DETRI-
10 MENTAL TO THE INDIVIDUAL'S HEALTH. MEDICAL CONTRAINDICATION SHALL
11 CONTINUE UNTIL SUCH IMMUNIZATION IS FOUND NO LONGER TO BE DETRIMENTAL TO
12 THE INDIVIDUAL'S HEALTH.

13 [4. "Employee" means an individual employed (whether directly, by
14 contract with another entity or as an independent contractor) by a long-
15 term care facility, on a part-time or full-time basis.] 3. "PERSONNEL"
16 MEANS ALL PERSONS EMPLOYED OR AFFILIATED WITH A FACILITY, WHETHER PAID
17 OR UNPAID, INCLUDING BUT NOT LIMITED TO EMPLOYEES, MEMBERS OF THE
18 MEDICAL STAFF, CONTRACT STAFF, STUDENTS, AND VOLUNTEERS, WHOSE ACTIV-
19 ITIES ARE SUCH THAT IF THEY WERE INFECTED WITH INFLUENZA, THEY COULD
20 POTENTIALLY EXPOSE RESIDENTS, OR OTHERS WHO HAVE DIRECT CONTACT WITH
21 RESIDENTS, TO INFLUENZA. PERSONNEL SHALL NOT MEAN THOSE WHO REGULARLY
22 VISIT SPECIFIC PATIENTS IN THE FACILITY OR THOSE WHO REPRESENT COMMUNITY
23 GROUPS DURING OCCASIONAL VISITS TO THE FACILITY.

24 S 4. Section 2192 of the public health law, as added by chapter 580 of
25 the laws of 1999, is amended to read as follows:

26 S 2192. Long-term care resident and [employee] PERSONNEL immunization
27 required. Except as provided in section twenty-one hundred ninety-five
28 of this article, every long-term care facility in this state shall
29 require residents [and employees] to be immunized for influenza virus
30 and pneumococcal disease [in accordance with regulations of the commis-
31 sioner] AND PERSONNEL TO BE IMMUNIZED FOR INFLUENZA VIRUS.

32 S 5. Subdivision 2 of section 2193 of the public health law, as added
33 by chapter 580 of the laws of 1999, is amended to read as follows:

34 2. Every long-term care facility shall document the annual immuniza-
35 tion against influenza virus and immunization against pneumococcal
36 disease for each resident. THE FACILITY SHALL DOCUMENT THE DATE, SITE
37 OF ADMINISTRATION, TYPE OF VACCINE, DOSE, MANUFACTURER AND LOT NUMBER OF
38 THE VACCINE, REACTIONS IF ANY, VACCINE INFORMATION STATEMENT GIVEN, AND
39 THE NAME OF THE PERSON ADMINISTERING THE VACCINE. IF ANY RESIDENT
40 RECEIVES AN INFLUENZA VACCINATION FROM OTHER THAN FACILITY STAFF, THE
41 FACILITY SHALL DOCUMENT THE DATE, TYPE OF VACCINE, DOSE AND NAME OF THE
42 PERSON ORDERING OR ADMINISTERING THE VACCINE, OR AN OFFICIAL RECORD FROM
43 THE FACILITY WHERE THE VACCINATION WAS RECEIVED. Upon finding that a
44 resident is lacking such immunization or the long-term care facility or
45 individual is unable to provide documentation that the individual has
46 received the appropriate immunization, the long-term care facility shall
47 provide or arrange for immunization. Immunization and the documentation
48 thereof shall take place no later than November thirtieth of each year.

49 S 6. Section 2194 of the public health law, as added by chapter 580 of
50 the laws of 1999, is amended to read as follows:

51 S 2194. [Employee] PERSONNEL immunization. 1. Every long-term care
52 facility shall notify [every employee] ALL PERSONNEL of the immunization
53 requirements of this article and [request that the employee agree to]
54 REQUIRE THAT PERSONNEL be immunized against influenza virus [and pneumo-
55 cocal disease].

1 2. The long-term care facility shall [require documentation of] DOCU-
2 MENT THE annual immunization against influenza virus [and immunization
3 against pneumococcal disease for each employee] OF ALL PERSONNEL IN ITS
4 PERSONNEL FILES, INCLUDING THE DATE, SITE OF ADMINISTRATION, TYPE OF
5 VACCINE, DOSE, MANUFACTURER AND LOT NUMBER OF THE VACCINE, REACTIONS IF
6 ANY, VACCINE INFORMATION STATEMENT GIVEN, AND THE NAME OF THE PERSON
7 ADMINISTERING THE VACCINE. IF ANY PERSONNEL MEMBER RECEIVES AN INFLUENZA
8 VACCINATION FROM OTHER THAN FACILITY STAFF, THE FACILITY SHALL DOCUMENT
9 IN THE PERSONNEL FILE THE DATE, TYPE OF VACCINE, DOSE AND NAME OF THE
10 PERSON ORDERING THE ADMINISTERING OF THE VACCINE. Upon finding that [an
11 employee] ANY PERSONNEL MEMBER is lacking such immunization or the long-
12 term care facility or individual is unable to provide documentation that
13 the individual has received the appropriate immunization, the long-term
14 care facility [must] SHALL provide or arrange for immunization, AT NO
15 COST TO THE PERSONNEL MEMBER. Immunization and the documentation there-
16 of shall take place no later than November thirtieth of each year.

17 3. [An individual who is newly employed as an employee] A PERSONNEL
18 MEMBER NEWLY ENTERING INTO SERVICE AT A FACILITY after November thirti-
19 eth but before April first shall have his or her status for influenza
20 [and pneumococcal] immunization determined by the facility, and if found
21 to be deficient, the facility shall provide or arrange for the necessary
22 immunization, AT NO COST TO THE NEW PERSONNEL MEMBER.

23 S 7. Section 2195 of the public health law, as added by chapter 580 of
24 the laws of 1999, is amended to read as follows:

25 S 2195. Exceptions. 1. No [individual] RESIDENT OR PERSONNEL MEMBER
26 shall be required to receive either an influenza vaccine or pneumococcal
27 vaccine if the [vaccine] VACCINATION is medically contraindicated, or if
28 it is against his or her religious beliefs[, or].

29 2. NO RESIDENT SHALL BE REQUIRED TO RECEIVE EITHER AN INFLUENZA
30 VACCINE OR PNEUMOCOCCAL VACCINE if he or she refuses the [vaccine]
31 VACCINATION after being fully informed of the health risks of such
32 action.

33 3. NO RESIDENT SHALL BE REQUIRED TO RECEIVE PNEUMOCOCCAL VACCINE IN A
34 PARTICULAR YEAR IF THE COMMISSIONER DETERMINES THAT AN ADEQUATE SUPPLY
35 OF SUCH VACCINE IS NOT AVAILABLE THAT YEAR.

36 4. NO RESIDENT OR PERSONNEL MEMBER SHALL BE REQUIRED TO RECEIVE INFLU-
37 ENZA VACCINE IF THE COMMISSIONER DETERMINES THAT AN ADEQUATE SUPPLY OF
38 SUCH VACCINE IS NOT AVAILABLE THAT YEAR.

39 S 8. Subdivision 1 of section 2196 of the public health law, as added
40 by chapter 580 of the laws of 1999, is amended to read as follows:

41 1. The commissioner [shall] MAY promulgate regulations relating to the
42 immunization requirements of this article, taking into consideration the
43 recommendations of the FEDERAL centers for disease control and
44 prevention ADVISORY COMMITTEE ON IMMUNIZATION PRACTICES.

45 S 9. Section 2196 of the public health law is amended by adding a new
46 subdivision 4 to read as follows:

47 4. ANNUALLY EACH FACILITY SHALL COLLECT AGGREGATE DATA ON PERSONNEL
48 INFLUENZA VACCINATION STATUS AND RESIDENT INFLUENZA AND PNEUMOCOCCAL
49 DISEASE VACCINATION STATUS FOR THE PERIOD APRIL FIRST TO MARCH
50 THIRTY-FIRST AND REPORT THAT DATA TO THE DEPARTMENT BY MAY FIRST OF EACH
51 YEAR.

52 S 10. This act shall take effect September 1, 2010.