

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

3256--A

2009-2010 Regular Sessions

I N S E N A T E

March 13, 2009

Introduced by Sens. DUANE, ADDABBO, DILAN, HASSELL-THOMPSON, KRUEGER, MONSERRATE, ONORATO, PERKINS, STAVISKY -- (at request of the Department of Health) -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- reported favorably from said committee and committed to the Committee on Codes -- reported favorably from said committee and committed to the Committee on Finance -- 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 Section 2190 of the public health law is REPEALED.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,

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

LBD05617-06-9

1 housekeeping, laundry, arranging for medical care, and assistance with
2 daily living.

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

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

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

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

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

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

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

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

53 S 2194. [Employee] PERSONNEL immunization. 1. Every long-term care
54 facility shall notify [every employee] ALL PERSONNEL of the immunization
55 requirements of this article and [request that the employee agree to]

1 REQUIRE THAT PERSONNEL be immunized against influenza virus [and pneumo-
2 cocal disease].

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

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

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

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

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

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

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

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

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

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

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

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