Influenza Vaccine Q&As

Below is a series of questions submitted by HCA members and HCA staff to the state Department of Health (DOH) on the new flu mask requirement and DOH’s response. The Q&As have been edited to remove typos, repeated words, etc., but the language is basically the same. HCA hopes to update this document and reminds members to check the DOH website at http://www.health.ny.gov/diseases/communicable/influenza/seasonal/providers/prevention_of_influenza_transmission/ for Frequently Asked Questions (FAQs) and other important materials.

HCA also reminds members to send questions related to the Healthcare Personnel Influenza Vaccination Report to DOH at immunize@health.state.ny.us and questions related to the flu mask requirement to flumaskreg@health.state.ny.us; please copy Andrew Koski at akoski@hcanys.org in your email.

Q. Our Certified Home Health Agency (CHHA) is a hospital-based CHHA. The CHHA is a department of the hospital. The hospital’s employee health services department is responsible for insuring that all health requirements necessary for employment are fulfilled. Our Licensed Home Care Services Agency (LHCSA) is a separate non-profit corporation under the hospital’s umbrella. The responsibility for insuring that all health requirements are satisfied is the same as described above. Do each of the home care agencies have to complete the HERDS reporting regarding influenza vaccination or can it be included in the hospital reports completed by the Employee Health Department at the hospital?

A. Since facilities must submit under their own Permanent Facility Identifier (PFI), reports from facilities with different PFIs cannot be combined into a single report. If a Healthcare Personnel (HCP) works in or is affiliated with more than one facility, then this individual should be counted in the total number of HCP for each facility where he/she works. Another example - several hospitals often fall under the same health care corporation and some are even collocated, but each much file separate surveys.

Q. If an employee of our agency received the vaccination before July of the current year (2013), do they have to repeat for the current flu season?

A. Yes. Influenza vaccination is recommended for each flu season. Influenza vaccine distributed in the northern hemisphere expires on June 30 after each season. Antibody titers that persons might have achieved from the previous year’s vaccination will have waned and need to be boosted with a dose of the current year’s vaccine.

Q. What was determined by the DOH Commissioner to be the current flu season?

A. Because influenza may increase, peak, and decrease at markedly different times in different years, it is not possible to predict ahead of time which weeks the Commissioner will deem influenza to be...
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"prevalent", meaning unvaccinated healthcare workers need to wear masks. We expect that the Commissioner will base the determination on Department surveillance data, and an announcement will be made via various routes at the time. There is more information in the FAQs posted on DOH’s website.

Q. Do managed long term care (MLTC) plans have to report to DOH the flu vaccine status of contracted LHCSA aides?

A. No. The regulation applies to any healthcare facility, residential facility or agency licensed under Article 28 of the Public Health Law (including but not limited to general hospitals, nursing homes, diagnostic and treatment centers, and adult day healthcare facilities), Article 36 of the Public Health Law (including but not limited to certified home health agencies, long term home healthcare programs, acquired immune deficiency syndrome (AIDS) home care programs, licensed home care service agencies, and limited licensed home care service agencies), and any hospice established pursuant to Article 40 of the Public Health Law.

Q. If a CHHA is contracting with a LHCSA for the LHCSA to provide home health or personal care aides, who is responsible for including these aides on the Healthcare Personnel Influenza Vaccination Report - the CHHA or the LHCSA?

A. If a CHHA contracts with a LHCSA to perform CHHA activities, then the CHHA is responsible to ensure that LHCSA staff comply with the regulation while they are performing CHHA activities. This would include maintaining documentation of influenza vaccine status for those LHCSA staff who perform CHHA activities. Therefore, the CHHA needs to report for those contract personnel. The LHCSA is also responsible to ensure that its own employees comply with the regulation, including documenting influenza vaccine status and reporting to the DOH. . . . employees may be reported twice but the intent is to assess the vaccination coverage rate for each facility not each individual.

Q. We are a CHHA that contracts with LHCSAs for HHA service. Who would be responsible to monitor unvaccinated aides compliance with wearing a mask, the LHCSA or the CHHA? If the CHHA is responsible we would need to know the aide’s vaccination status when they are assigned to one of our cases, correct?

A. That is correct. The purpose of the regulation is to protect patients from acquiring influenza from healthcare workers and includes home care agencies (CHHAs and LHCSAs) to require personnel who are not vaccinated against influenza to wear a mask during the influenza season while providing patient care. Personnel includes employees and contract staff so this would include the HHA that you contract with from the LHCSA. Both the CHHA and LHCSA are responsible to monitor compliance with this regulation.

Q. How does this regulation apply to the Consumer Directed Personal Assistance Program (CDPAP)? Under CDPAP, the program participant (patient) is the employer and the LHCSA is only the fiscal intermediary. The participant hires, trains, supervises, and terminates their employee. Who will be responsible to enforce the flu vaccine and mask regulation?
A. The regulation applies to any healthcare facility, residential facility or agency licensed under Article 28 of Public Health Law (including but not limited to general hospitals, nursing homes, diagnostic and treatment centers and adult day healthcare facilities), Article 36 of the Public Health Law (including but not limited to certified home health agencies, long term home health care programs, acquired immune deficiency syndrome (AIDS) home care programs, licensed home care services agencies and limited licensed home care services agencies), and any hospice established pursuant to Article 40 of the Public Health Law.

The Consumer Directed Personal Assistance Program does not fall under any of the program areas mentioned above.

Q. Does DOH have any recommendations or suggestions on how to monitor mask wearing compliance in the home care environment? We plan to administer the vaccine to all employees who want it. Those who choose not to receive the vaccine will be required to sign an attestation that they will wear the mask when in the area of patients. We only have to monitor those who do not receive the flu shot. What would be the best way to do this?

A. Compliance and enforcement of these regulatory requirements are the responsibility of the healthcare facilities; residential facilities and agencies. The Flu mask regulations indicate that it is the responsibility of the provider to develop their own protocols related to masking requirement compliance and/or monitoring.

Q. Regarding this new initiative as it pertains specifically to home care….we understand it states “as it pertains to all employees”, but then goes on with “that have direct contact with patients”. How specifically are we to interpret this initiative for all the back office/clerical personnel working in a home health care agency office?

A. We have four FAQs on our website that discuss this issue that I have excerpted below.

**Who must wear a mask under the new regulation?**
The regulation applies to all personnel who are unvaccinated for influenza for the relevant influenza season and:

- are affiliated with a facility or agency licensed under Article 28 of the Public Health Law (including but not limited to general hospitals, nursing homes, diagnostic and treatment centers, and adult day healthcare services), Article 36 of the Public Health Law (including but not limited to certified home health agencies, long term home healthcare programs, acquired immune deficiency syndrome (AIDS) home care programs, licensed home care service agencies, and limited licensed home care service agencies) and hospices licensed under Article 40 of the Public Health Law, and
- are paid or unpaid, including but not limited to employees, members of the medical and nursing staff, contract staff, students, and volunteers, and
- who engage in activities such that if they were infected with influenza they could potentially expose patients or residents to the disease.
Who determines whether someone affiliated with an affected healthcare or residential facility or agency is subject to the new regulation?
The healthcare facility, residential facility or agency makes this determination and is responsible for developing medically appropriate protocols based upon the potential for personnel to expose patients or residents to influenza.

How can it be determined which personnel could potentially expose patients or residents to influenza?
Influenza is transmitted primarily by large-particle respiratory droplets that do not remain suspended in the air. Therefore, personnel could potentially expose patients or residents either through sharing a 6-foot space with a patient (person-to-person contact) or a surface that comes in contact with a patient (equipment-to-patient contact).

Where and when do masks need to be worn by personnel for whom it is required under this regulation?
Masks should be worn wherever and whenever an unvaccinated healthcare worker might expose patients to influenza. This would include, but not be limited to, patient rooms, nurses’ stations, hallways and elevators where patients might be present, cafeterias if patients may be present (except when the unvaccinated healthcare worker is eating), and patients’ homes when providing home care.

Q. Is it a HIPAA violation to inform homecare patients that their homecare worker did NOT receive the influenza vaccine and is, therefore, required to wear a mask?

A. HIPAA limits the ability of covered entities to disclose patient records. In general, an employee’s vaccination record, as maintained by an employer, is not a patient record.

However, if the employer administers the vaccine to its employee, then it is acting as a health care provider to such employee (in addition to being an employer). In that case, the vaccination record is a patient record subject to HIPAA. The employer should obtain the employee’s consent before placing the vaccination record in the employee’s personnel file or disclosing the employee’s vaccination status to another party.

In short, if your home care agency is not vaccinating its employees, the vaccination records are simply personnel records not subject to HIPAA. If it is vaccinating its employees, then the vaccination records are patient records, and the patient-employee’s consent is required.

Q. What happens if a speech therapist is providing services at home and cannot wear a mask as it will interfere with speech therapy being effective?

A. The agency should consider using a speech therapist that has gotten a flu shot.
Q. Are we required to offer the vaccination at our agency site or is reimbursement for the vaccination from our agency sufficient?

A. No. However, the Joint Commission on Accreditation of Health Care Organizations has approved an infection control standard that requires accredited organizations to offer influenza vaccinations to staff, including volunteers and licensed independent practitioners with close patient contact. The standard became an accreditation requirement beginning January 1, 2007.

Q. Does the requirement apply to home care staff that provide services in an assisted living facility?

A. Yes, just as when they provide services at a private home.

Q. If a home health aide who has not been vaccinated during the influenza season is accompanying a patient to a location outside of the home (i.e. medical appointment, shopping), does the aide need to wear a mask?

A. No.

Q. While the Healthcare Personnel Influenza Vaccination Report: Frequently Asked Questions released in August mentions that DOH has developed a form for documenting a declination of influenza vaccine (see page 3) and use of this form is optional, is a home care agency required to have written documentation for staff that decline the influenza vaccine?

A. This is not a requirement.

Q. What if masks frighten home care patients?

A. Agencies should: (i) ensure that all staff members who are willing and able are vaccinated; (ii) consider what they do when masks must be worn for other reasons; (iii) work with staff at their agency who address the psychosocial concerns of clients; and (iv) educate and, to the extent possible, reassure their patients.

Q. As a CHHA, our census with our contracted LHCSAs fluctuates. So even though we have active contracts one or more of our LHCSAs, we might have zero (0) patients from one of the LHCSAs on our census. Are we to get copies of their employees’ vaccination status and all pertinent documents, even if they currently have no patient on census for our agency?

A. The requirement is regarding reporting of the personnel flu vaccine status, not related to patient status.

Q. If a LHCSA contracts with a CHHA for aide services, does the LHCSA have to submit information to the CHHA that includes the immunization status of its aides, including the name and address of the individual who ordered or administered the vaccine and the date of the vaccination?
A. Yes. Such information can be provided by the LHCSA to the CHHA in a spreadsheet.

Q. Can the LHCSA attest to the immunization status of its aides and submit the attestation to its contracted CHHAs?

A. No, this would not meet the rule’s requirements.

Q. I understand that Licensed Home Care Services Agencies (LHCSAs) must now provide documentation to the Certified Home Health Agencies (CHHAs) of the immunization status of its aides, including the name and address of the individual who ordered or administered the vaccine and the date of the vaccination and that this information can be submitted on a spreadsheet. Does the LHCSA need to also provide CHHAs with other documentation including copies of Declinations and Exemptions?

A. No.

Q. What can a home care agency do if a patient insists on using an aide who has not been vaccinated and the patient does not want the aide to wear a mask?

A. The agency should advise the patient of the influenza vaccine requirement, that the aide cannot continue to provide services without a mask and that the patient will have to utilize an aide who has been vaccinated.

Q. Does the aide still have to meet the influenza requirements if the patient has been vaccinated?

A. Yes.

Q. When should the mask be changed? How long can it be worn?

A. There is no time period for when it should be changed; however, it should be changed if it is taken off to eat or drink and when the aide visits another patient. If the mask becomes moist, it is considered soiled and must be changed.

Q. Do home health aide trainees who complete their supervised practical training requirements at an assisted living facility have to be immunized or wear a mask?

A. Yes.

Q. I understand that Licensed Home Care Services Agencies (LHCSAs) must now provide documentation to Certified Home Health Agencies (CHHAs) on the immunization status of its aides, including the name and address of the individual who ordered or administered the vaccine and the date of the vaccination and that this information can be submitted on a spreadsheet. Does the LHCSA need to also provide CHHAs with documentation including copies of declinations and medical exemptions?
A. Please see question #16 in the September 2013 updated DOH Frequently Asked Questions document. This lists the reporting requirements.