



Department of Health

KATHY HOCHUL
Governor

JAMES V. McDONALD, M.D., M.P.H.
Acting Commissioner

MEGAN E. BALDWIN
Acting Executive Deputy Commissioner

May 24, 2023

DHDTC DAL
NH: DAL 23-09
DHCBS: DAL #23-02
DACF: DAL # 23-22

Dear Chief Executive Officers, Nursing Home Operators and Administrators, Adult Care Facility Administrators, Home Care and Hospice Administrators, and Local Health Department Commissioners/Directors:

On April 18 and 19, 2023, the Food and Drug Administration (“FDA”) and the Centers for Disease Control and Prevention (“CDC”), respectively, updated and simplified their COVID-19 vaccine guidance and amended authorizations and recommendations to allow the current bivalent mRNA COVID-19 vaccine to be used in place of the original monovalent mRNA COVID-19 vaccine primary series. In addition, on May 1, 2023, the Federal Government announced that the United States Department of Health and Human Services will start the process to end their vaccination requirements for healthcare facilities certified by the Centers for Medicare and Medicaid Services.

At this time, the New York State regulatory requirement 10 NYCRR Section 2.61 (Prevention of COVID-19 Transmission by Covered Entities - 10 NYCRR Section 2.61) that personnel in covered entities be fully vaccinated against COVID-19 is being recommended for repeal by the New York State Department of Health (“the Department”) subject to consideration by the Public Health and Health Planning Council (“PHHPC”). Effective immediately, the Department will cease citing providers for failing to comply with the requirements of 10 NYCRR Section 2.61 while the repeal is under consideration by PHHPC. The Department may, however, continue to seek sanctions against providers based on previously cited violations that allegedly occurred.

Healthcare facilities licensed under Article 28 and programs licensed under Article 36 and under Article 40 of the Public Health Law (PHL) and adult care facilities licensed under Article 7 of the Social Services Law (SSL) and regulated by the Department of Health, should individually consider how to implement their own internal policies regarding COVID-19 vaccination while remaining in compliance with applicable state and federal laws.

Questions or concerns concerning this DAL can be addressed to hospinfo@health.ny.gov, covidnursinghomeinfo@health.ny.gov, covidadultcareinfo@health.ny.gov, or covidhomecareinfo@health.ny.gov based on the specific covered entity.

Sincerely,

Eugene P. Heslin, MD, FAAFP
First Deputy Commissioner and Chief Medical Officer