



STATE OF NEW YORK DEPARTMENT OF HEALTH

Corning Tower The Governor Nelson A. Rockefeller Empire State Plaza Albany, New York 12237

Richard F. Daines, M.D.
Commissioner

James W. Clyne, Jr.
Executive Deputy Commissioner

October 23, 2009

Dear Administrator:

In August 2009 the State Hospital Review and Planning Council (SHRPC) adopted on an emergency basis 10 NYCRR Subpart 66-3, requiring certain health care facility personnel to be vaccinated with influenza vaccines. I am writing to inform you of my determination pursuant to Section 66-3.2 of those regulations that supplies of seasonal and 2009 H1N1 influenza vaccines are not adequate and that such vaccines are not reasonably available. Therefore, I hereby suspend the requirement for the health care personnel to be vaccinated against both influenza viruses for the current influenza season (through April 1, 2010).

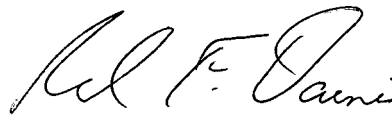
On October 14, 2009, the Centers for Disease Control and Prevention (CDC) issued an update on the availability of the 2009 trivalent seasonal influenza vaccine. According to the CDC, 114 million doses of seasonal vaccine will be brought to market in the U.S. The CDC update stated that "Because the total number of doses that will be made this year is approximately the same as the number of doses that were actually administered last year, an increase in demand cannot be met this season." The Department of Health (DOH) has received numerous calls from hospitals, other regulated facilities, county health departments and members of the public about difficulty in obtaining seasonal influenza vaccine. The national vaccine ordering website indicates that the major influenza vaccine distributors have little or no vaccine available to order. According to the CDC, manufacturers are not able to produce additional 2009 seasonal influenza vaccine.

Supplies of monovalent 2009 H1N1 influenza vaccine have become available from the federal government in the last three weeks. Federal planning scenarios for H1N1 vaccination programs at the time SHRPC adopted Subpart 66-3 showed that 120 million doses of vaccine would be available by the end of October and 200 million doses would be available by the end of November, almost twice the number of doses of seasonal vaccine usually administered. More concrete projections, made available by CDC just prior to the opening of the federal H1N1 vaccine ordering and distribution program, estimated a total of 52.5 million doses available by October 30 and 84.9 million doses available by November 27. However, as of this date, CDC is estimating only 27.7 million doses available by October 30 and 65.9 million doses by November 27, representing a 47% and 22% reduction respectively.

These circumstances set up a dynamic where health care personnel covered under the regulation might compete for vaccine with persons with underlying risk factors for adverse outcome of influenza infection. In a situation where the choice to vaccinate is between health care personnel and persons at risk, I have always held that patients take precedence. Maintaining the health care personnel vaccination requirement would delay persons in need from being vaccinated. For these reasons, I have determined that there will not be sufficient supplies of either vaccine to meet the intent of the regulation in the 2009-2010 influenza season.

The most important consideration driving the need for the regulation requiring health care personnel influenza vaccination is patient safety. Patients in hospitals and other health care settings have the right to expect that they will not be infected by their health care worker with a preventable disease which could be fatal. I believe that New York's experience with mandatory influenza vaccination for health care personnel in 2009 will have a positive impact on the health of New Yorkers this year. The current emergency regulation mandating influenza vaccinations for health care workers will expire on November 11, 2009, and a second emergency regulation would not have the desired effect during the current H1N1 influenza season or the expected seasonal outbreaks expected later this year and in early 2010. Therefore, no new emergency regulations will be promulgated. Instead, the DOH is advancing a permanent regulation requiring health care personnel in these settings to be vaccinated. Draft regulations will be published soon for a period of public comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard F. Daines". The signature is fluid and cursive, with the first name "Richard" being the most prominent.

Richard F. Daines, M.D.
Commissioner of Health