

Frequently Asked Questions (FAQ)
Regarding Title 10, Section 2.59
“Regulation for Prevention of Influenza Transmission by
Healthcare and Residential Facility and Agency Personnel”
*****January 2, 2015*****

Please note that FAQ numbers may have changed to accommodate grouping
by subject matter

Overview

**** Revised 1/2/2015 ****

1. Q: When did this regulation go into effect?

A: The original regulation was effective upon publication of the notice of final rulemaking in the State Register on July 31, 2013. An amendment to the regulation was effective upon publication of final rulemaking in the State Register on November 19, 2014.

2. Q: What section of regulations contains the new regulation? Who issued the requirement, and what is the legal basis?

A: The Department proposed this regulation for adoption by the Public Health and Health Planning Council (PHHPC). PHHPC's authority to adopt the regulation is located in Public Health Law Sections 225, 2800, 2803, 3612, and 4010. These provisions are located in a new Section 2.59 of the State Sanitary Code within Title 10 of the New York Codes Rules and Regulations (10 NYCRR) entitled: "Prevention of influenza transmission by healthcare and residential facility and agency personnel." References to Section 2.59 are located in Sections 405.3, 415.19, 751.6, 763.13, 766.11, and 793.5 of 10 NYCRR.

**** Revised 1/2/2015 ****

3. Q: To what kinds of healthcare facilities, residential facilities and agencies does the regulation apply?

A: 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. Every facility and agency regulated under these Articles must have an operating certificate that states the locations and activities for which the facility or agency is licensed.

For example, Programs of All-Inclusive Care for the Elderly (PACE) personnel are covered by this regulation because care is delivered under Article 28 and Article 36 operating certificates.

Likewise, a facility or shelter within the oversight of the Office for Persons with Developmental Disabilities (OPWDD), Office of Mental Health (OMH), Office of Alcohol and Substance Abuse Services (OASAS), Department of Corrections (DOC) or Office for the

Prevention of Domestic Violence (OPDV) is covered by this regulation only if the facility or shelter holds an operating certificate pursuant to Article 28, 36 or 40 of the Public Health Law.

Entities/personnel to which this regulation does NOT apply include (but are not limited to):

- Assisted living facilities
- Adult homes
- Private medical and therapist practices
- Managed Long Term Care programs regulated by Article 44 of the Public Health Law
- Mental/behavioral health facilities regulated by Article 31 of the Public Health Law; however, the regulation does apply to mental/behavioral health units regulated under Article 28
- Personal assistants operating under the Consumer Directed Personal Assistant Program (CDPAP)

If you still don't know whether your facility or agency has an operating certificate issued pursuant to Article 28, 36, or 40 of the Public Health Law, please contact your supervisor, an executive officer of your facility or agency, or your facility's or agency's legal counsel.

4. Q: What are the regulation's main provisions?

A: The regulation requires facilities and agencies as described above to require that personnel who are not vaccinated against influenza wear a surgical or procedure mask while working in areas where patients or residents may be present during the time when the Commissioner determines that influenza is prevalent. These entities also must document the number and percentage of personnel vaccinated against influenza for the current season and provide these data to the Department upon request.

5. Q: What is the purpose of the regulation?

A: The regulation is intended to protect patients and residents from acquiring influenza from infected healthcare workers. Influenza can be severe and cause death in persons with underlying medical conditions. There is a large body of evidence that healthcare workers can pose a risk to patients and residents by transmitting influenza infection. The regulation has the added benefit of protecting healthcare workers who are unvaccinated from acquiring influenza from patients and residents.

6. Q: Had any facilities/residences/agencies in New York State already implemented requirements that unvaccinated healthcare workers wear masks before this regulation was adopted?

A: Yes. Several healthcare facilities across the State instituted policies requiring that unvaccinated healthcare workers wear masks during influenza season before this regulation was adopted.

7. Q: If a facility or agency has policies and procedures in place that are stricter than those outlined in this regulation, can those policies and procedures remain in place?

A: Facilities/residences/agencies are free to implement stricter policies as long as the requirements of this regulation are met.

*** Revised 1/2/2015 ***

8. Q: When should mask wear begin and how long must it continue?

A: Mask wear begins when the Commissioner of the New York State Department of Health declares influenza to be prevalent within New York State. Because influenza activity begins, peaks, and ends at different times in different years, exact dates cannot be given. At a minimum, the Commissioner will likely designate influenza “prevalent” when Department surveillance determines that influenza activity is widespread in the State. As examples, the dates of widespread activity are provided in the table below:

Influenza Season	Dates “Widespread”	# Weeks “Widespread”
2007-2008	January 12 – April 19	15
2008-2009 (H1N1 pandemic)	January 31 – April 11 June 6 – July 11	17
2009-2010	October 3 – December 12	11
2010-2011	December 25 – April 9	16
2011-2012	March 10 – May 19	11
2012-2013	November 24 – April 20	22
2013-2014	December 14 – May 24	24
2014-2015	December 6 – ?	?

Additionally, the Commissioner might designate influenza “prevalent” in specific areas of the state depending upon temporal and geographic activity and might designate influenza prevalent when it is present in the state but not considered widespread, based on characteristics of the influenza season (e.g. intensity of activity, severity of illness).

9. Q: Who must wear a mask under the new regulation?

A: 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.

*** Revised 1/2/2015 ***

10. Q: Where and when do masks need to be worn by personnel for whom it is required under this regulation?

A: During the influenza season, unvaccinated personnel must wear a surgical or procedure mask while in areas where patients or residents are typically present, except that:

- (1) when personnel provide services outside the home of a patient or resident, and not inside a healthcare or residential facility, mask wear is not required, unless mask wear is required by standard and transmission-based infection control precautions;
- (2) personnel who provide speech therapy services may remove the mask when necessary to deliver care, such as when modeling speech; and
- (3) for any person who lip reads, personnel may remove the mask when necessary for communication.

Areas where patients or residents are typically present might include, but are not limited to, patient or resident rooms, open nurses' stations where patients or residents can approach personnel, hallways and elevators where patients or residents are typically present, cafeterias if patients are typically present (except when the unvaccinated healthcare worker is eating), and patients' homes when providing home care.

*** *New 1/2/2015* ***

11. Q: Are registration, reception, and front desk staff considered "personnel" under this regulation?

A: Yes, because persons presenting for care are considered patients or residents.

*** *Revised 1/2/2015* ***

12. Q: Who is considered a patient or resident for the purposes of this regulation?

A: A patient or resident, for the purposes of this regulation, is defined as any person receiving services from a healthcare or residential facility or agency, including but not limited to persons receiving inpatient or outpatient care, overnight residents, adult day health care participants, and home care and hospice patients, as well as any person presenting for registration or admission at a healthcare or residential facility or agency. Recent patients or residents who have been discharged are no longer considered patients or residents.

*** *New 1/2/2015* ***

13. Q: If a Women, Infants, and Children (WIC) program operates on the premises of a healthcare facility licensed under Article 28, are the WIC staff considered covered personnel?

A: If the WIC staff are not employed by the licensed healthcare facility and do not otherwise operate as contract staff of the licensed healthcare facility, they are not covered personnel. However, WIC staff would be covered under the regulation if they are providing services within the confines of the Article 28 healthcare facility in areas where patients seeking Article 28 services are typically present.

*** *New 1/2/2015* ***

14. Q: Are providers of Early Intervention (EI) services covered by the regulation requiring health care workers to wear a mask if they have not received vaccination for influenza? If so, in what areas/settings would unvaccinated personnel be required to wear masks?

A: EI providers who are not employed by, or under contract/affiliated with, a facility licensed under Article 28 of the Public Health Law are not covered by this regulation. The Department understands that some entities, such as county health departments, are both

licensed to provide Article 28 services and also approved to provide EI services. In such cases, the regulation does not apply to EI providers who are providing EI services in settings outside of the Article 28 healthcare facility, such as the homes of EI children and families. However, EI providers would be covered under the regulation if they are providing services within the confines of the Article 28 healthcare facility in areas where patients seeking Article 28 services are typically present.

Additionally, EI providers must comply with the standards for health, safety and sanitation issued by the Department for the EI program. EI providers who are otherwise required to be approved by another state agency to provide health or human services must comply with the health, safety and sanitation standards issued by such other agency. Influenza vaccination is recommended according to the Department's *Health and Safety Standards for the Early Intervention Program*. Providers who refuse influenza vaccination must provide documentation of refusal.

*** New 1/2/2015 ***

15. Q: Are daycare staff and children who participate in “intergenerational programs” — in which daycare staff and children regularly travel to a healthcare facility licensed under Article 28, such as a nursing home — covered by the regulation?

A: Yes, daycare staff and children who participate in intergenerational programs that involve regular, repeated contact with facility patients/residents are considered to be affiliated with the facility, similar to facility volunteers. This means that unvaccinated day care staff and children would be required to wear masks in areas of the licensed healthcare facility where residents are typically present, during the period of time that the Commissioner declares influenza prevalent. Unvaccinated children who are unable to wear a mask should not be allowed to participate in intergenerational programs during the period of time that the Commissioner declares influenza to be prevalent.

Immunization

*** New 1/2/2015 ***

16. Q: What is an “influenza vaccine” or a “vaccine” for the purposes of this regulation?

A: “Influenza vaccine” or “vaccine,” for the purposes of this regulation, means a vaccine currently licensed for immunization and distribution in the United States by the Food and Drug Administration (FDA), for active immunization for the prevention of influenza disease caused by influenza virus(es), or authorized for such use by the FDA pursuant to an Emergency Use Authorization or as an Emergency Investigational New Drug application.

17. Q: Can a home care agency administer flu shots to their employees?

A: Yes, a home care agency may provide vaccines to their staff. The agency must follow New York State Education Department, Office of the Professions Guidelines for “Non-Patient Specific Standing Orders and Protocol Guidelines” found at <http://www.op.nysed.gov/prof/nurse/immunuguide.htm> and the agency must be capable of properly storing the vaccine. Additional questions may be directed to the NYS Department of Health, Bureau of Immunization at 518-473-4437. Additional information can be found at the following webpages:

- <http://www.immunize.org/clinic/>

- <http://www.immunize.org/vis/>

18. Q: If a person did not receive an influenza vaccine but already had influenza this influenza season, is that person still required to wear a mask?

A: Yes. Influenza vaccines are designed to protect against three or four strains of the influenza virus. Having had influenza during a season does not protect against the other strains circulating that year. It is usually not clinically indicated to determine the strain of virus during a case of influenza, and it would be unreasonably burdensome to ask facilities, residences, and agencies to monitor which strains have infected unvaccinated personnel. Therefore, personnel should wear masks regardless of whether they have had influenza one or more times during the current influenza season.

19. Q: It takes one to two weeks after vaccination to develop protective immunity. Do covered personnel need to wear a mask during that period?

A: No, it is not required that persons wear a mask during the weeks immediately after vaccination. It may be difficult for facilities, residences, and agencies to track which employees need to wear masks by various vaccination dates and to enforce mask wear under such conditions. Therefore, wearing a mask during the weeks immediately after vaccination is not required. However, facilities, residences, and agencies can voluntarily implement stricter policies than required by this regulation. Personnel are encouraged to become vaccinated well before influenza season to avoid this problem.

20. Q: Why doesn't NYSDOH require all healthcare facilities to offer influenza vaccination free of charge to personnel?

A: The Joint Commission on Accreditation of Health-Care Organizations approved an infection-control standard requiring 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. Public Health Law Article 21-A requires nursing homes, adult homes, enriched housing programs, and adult day healthcare programs to provide or arrange for influenza vaccination to employees, and many long term care facilities have voluntarily chosen to offer influenza vaccine free of charge to these employees.

Documentation and Reporting

*** Revised 1/2/2015 ***

21. Q: What must be reported to NYSDOH?

A: Aggregate data on personnel influenza vaccination(s) status, including the total number of each category of personnel, the number vaccinated for the current influenza season, the number that declined vaccination, and the number with unknown vaccination status, must be reported annually to NYSDOH. The report is hosted on the Health Electronic Response Data System (HERDS) and will be due by May 1, 2015. Reporting information and instructions are available on the NYSDOH web page about this regulation (<http://www.health.ny.gov/FluMaskReg>), and questions may be sent to immunize@health.ny.gov.

*** Revised 1/2/2015 ***

22. Q: What constitutes adequate documentation of influenza immunization for the purposes of this regulation?

A: Any of the following forms of influenza vaccine documentation would be acceptable under the regulation:

- (1) a document, prepared by the licensed healthcare practitioner who administered the vaccine, indicating that one dose of influenza vaccine was administered, and specifying the vaccine formulation and the date of administration. Either paper or electronic documentation is acceptable. The following forms of electronic submission are acceptable under the regulation:
 - A New York State Immunization Information System (NYSIIS) or Citywide Immunization Registry (CIR) record viewed or printed out; or
 - An electronic medical record viewed or printed out; or
 - An electronic statement sent by email from the healthcare practitioner who administered the vaccine stating the date the vaccine was administered and the vaccine formulation.

or

- (2) for personnel employed by a healthcare employer other than the healthcare or residential facility or agency in which he or she is providing service, a written or emailed attestation by the employer that the employee(s) named in the attestation have been vaccinated against influenza for the current influenza season, and that the healthcare employer maintains documentation of vaccination of those employees;

or

- (3) for student personnel, an attestation by the professional school that the student(s) named in the attestation have been vaccinated against influenza for the current influenza season, and that the school maintains documentation of vaccination of those students.

*** New 1/2/2015 ***

23. Q: How should the vaccine formulation be documented for the purposes of this regulation?

A: The specific influenza vaccine that was administered must be documented. Acceptable documentation would include any of the following elements:

- Vaccine brand name (e.g., Fluzone), or
- Vaccine generic name (e.g., live attenuated influenza vaccine), or
- Other generally accepted designation (e.g., “LAIV” or “IIV”), or
- Vaccine manufacturer and lot number.

*** Revised 1/2/2015 ***

24. Q: Must the documentation include the lot # of the vaccine?

A: Not necessarily. Vaccine lot number is one of several acceptable elements to document vaccine formulation, but it is not required for the purposes of this regulation if at least one other acceptable element is documented. Healthcare providers who administer vaccines should continue to follow national standards for documenting vaccines administered to their patients.

*** Revised 1/2/2015 ***

25. Q: Does “self-attestation” suffice as documentation that influenza vaccination was obtained elsewhere?

A: No. Documentation must be prepared by the individual who ordered or administered the vaccine, either by providing such documentation directly to the facility or agency (with the consent of the person vaccinated) or by providing a vaccination card or similar record to the person vaccinated, who can then present it to the facility or agency.

The “attestation” that is allowed under the amendments to the regulation refers to a written or emailed attestation by an employer or school provided to a covered healthcare facility or agency stating that the employer or school holds acceptable documentation; it does not allow an individual to self-attest to vaccination.

HIPAA

26. Q: Does HIPAA require that a facility, agency or other institution obtain an individual’s consent before disclosing his or her immunization information, for purposes of either:

(a) Information sharing between facilities, agencies, or other institutions that share personnel such as professional schools, or between groups within such an institution (such as Employee Health and unit managers responsible for enforcement)?

or

(b) Placing an indicator on the individual’s badge, or any similar visual indicator, which identifies his or her vaccination status?

A: If an individual consents to his or her vaccination status being shared in a particular manner, such as those outlined above, there is no HIPAA violation. If the individual’s immunization is administered by his or her facility, agency, or other institution, consent could be obtained at the time of immunization. In the case of immunizations administered elsewhere, consent could be obtained when the individual provides his or her immunization documentation.

Depending on how immunization information is collected and stored, an individual’s consent may not be required to disclose such information. Please consult with legal counsel for your facility or agency to determine whether, based on your facility’s or agency’s procedures, your immunization records constitute “protected health information” for purposes of HIPAA, or whether other privacy laws may apply.

Enforcement

27. Q: How will these regulatory requirements be enforced by facilities and agencies?

A: Each organization must comply with this regulation, just as the organization ensures that healthcare personnel must be immunized against measles and rubella.

28. Q: Who will be monitoring hospitals and diagnostic and treatment centers for compliance?

A: The NYSDOH Office of Primary Care and Health Systems Management (OPCHSM) has oversight responsibility for all covered providers.

29. Q: How should my facility or agency monitor compliance with mask wear for unvaccinated staff?

A: Healthcare facilities, residential facilities and agencies are expected to monitor compliance with this regulation as they would compliance with other infection prevention and control activities (e.g., hand hygiene, Standard and Transmission-based Precautions) and employee health requirements (e.g., tuberculin skin testing, measles and rubella vaccination/immunity status).

30. Q: What can be the consequences for non-compliant personnel?

A: Each facility and agency will be expected to follow its own personnel policies and procedures regarding discipline.

Masks and Mask Wear

31. Q: When wearing a mask under this regulation, how often does the mask need to be changed?

A: Masks should be changed:

- after leaving the room or completing care of a patient or resident on isolation precautions;
- whenever it is soiled or might have become soiled; or
- per the protocols of the facility or agency.

32. Q: What types of masks can be worn to meet the requirements of this regulation?

A: This regulation requires use of either surgical or procedure masks. Per the U.S. Food and Drug Administration, such masks may be labeled surgical, laser, isolation, dental, or medical procedure facemasks. A face shield is not required. Use of N95 respirators to meet the requirements of this regulation is neither required nor recommended, although N95 respirators should be used when indicated for other reasons.

33. Q: If a person has a medical contraindication to influenza vaccination, does that person have to wear a mask?

A: Yes. The purpose of this regulation is to prevent influenza transmission to patients or residents, and therefore applies regardless of the reason a person is not vaccinated.

34. Q: Will personnel with a medical contraindication to influenza vaccination need to be reassigned for the duration of the flu season?

A: No. Such personnel will be required to wear a mask during the influenza season. However, reassignment of such personnel to an area where patients or residents are not typically present would avoid the requirement that such personnel wear masks.

35. Q: What effect will this regulation have on unvaccinated healthcare personnel who have a medical contraindication to prolonged mask wear?

A: NYSDOH is not aware of any medical contraindication to wearing a surgical mask for any length of time. For those few healthcare personnel who cannot receive influenza immunization or who refuse to do so (for any reason), and who also are unable or refuse to wear a mask of the type required by this regulation, facilities and agencies may develop policies for reassignment to duties for which mask wear is not required, during the time when influenza is declared prevalent.

36. Q: Can you define what constitutes a documented medical contraindication to wearing a mask of the type required by this regulation?

NYSDOH is not aware of any medical contraindications to wearing a mask of the type required by this regulation. If a covered person is unimmunized and reports an inability to wear a mask (thereby raising the issue of re-assignment during the time when influenza is declared prevalent), it is up to the facility or agency to determine whether documentation will be required and, if so, what type is acceptable.

**** Revised 1/2/2015 ****

37. Q: Will facilities and agencies be reimbursed for the cost of providing masks?

A: No. The masks provided to personnel under this regulation are considered infection control consumables, similar to personal protective equipment (PPE) and alcohol hand rub, and as such will not be reimbursed. Healthcare and residential facilities and agencies shall supply surgical or procedure masks required by this section at no cost to personnel.

38. Q: Are Home Care personnel expected to change masks from house to house?

A: Yes.

**** Revised 1/2/2015 ****

39. Q: Are masks required in areas of a facility or agency that are technically public, but in which patients, residents, or clients are usually not present? (For example, cafeterias not frequented by patients, open lobby areas, etc.)

A: Each facility and agency is responsible for defining the locations where masks are to be worn, guided by the language in the regulation that states that personnel must “wear a surgical or procedure mask while in areas where patients or residents are typically present” and, therefore, a likelihood exists that patients could be exposed to influenza. Personnel could potentially expose patients or residents either through sharing a 6-foot space with an individual (person-to-person contact) or a surface that comes in contact with an individual (equipment-to-person contact).

To use the example of hospital cafeterias, there may be some hospitals where the cafeterias are used almost exclusively by employees and other personnel, even if not officially designated as employee areas, and patients are not typically present. In that situation, it could be permissible not to require mask use while in the cafeteria. On the other hand, there may be other hospitals where it’s typical to see patients eating or visiting with family members in the hospital cafeterias. In those facilities, mask use by unvaccinated personnel would be required (except while eating). Similar reasoning should be applied to other common areas of facilities.

*** Revised 1/2/2015 ***

40. Q: Are healthcare personnel required to wear masks while out in the community with patients or residents, such as while on outings with facility residents or while travelling on public transportation or shopping with home healthcare patients?

A: This regulation is based on the reasonable expectation that patients and residents should not be exposed to influenza in their homes or medical care facilities by the personnel they rely upon to care for them. However, when they choose to leave the home or facility and interact with the general public in the community, they are potentially exposing themselves to influenza from any number of sources. The risk of exposure from the healthcare provider is essentially subsumed by the risk of general community exposures. Therefore, when personnel provide services outside the home of a patient or resident, and not inside a healthcare or residential facility, mask wear is not required by this regulation. Personnel may still need to wear masks if indicated as part of Standard or Transmission based precautions.

Covered Personnel

41. Q: Does “personnel” to whom this regulation applies include visitors, such as family members?

A: No. This regulation does not apply to visitors to facilities, such as family members of patients or residents. Facilities which have visitors are encouraged to establish policies for when visitor restrictions should be put in to place to limit transmission of influenza. Many facilities do impose restrictions on visitors during influenza season, and facilities are in the best position to determine what restrictions are appropriate. It would be impractical and disruptive to require facilities to check documentation of vaccination on visitors.

42. Q: Who determines whether someone affiliated with a covered facility or agency is subject to the new regulation?

A: Each 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.

43. Q: How can it be determined which personnel could potentially expose patients, residents, or clients to influenza?

A: 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 an individual (person-to-person contact) or a surface that comes in contact with an individual (equipment-to-person contact).

44. Q: Are food service workers affected by this regulation?

A: Food service workers are affected if they meet the criteria for personnel who could potentially expose patients or residents to influenza. Influenza is typically spread by droplets and occasionally by contaminated hard surfaces. Influenza is not typically spread by food, and the chance of a patient or resident becoming infected via contaminated food or plates is considered low and probably negligible. Therefore, food service workers who only work in a kitchen in an area of a facility where patients or residents are not typically present and who do not come into close proximity with patients or residents while at their work station or

while traveling to or from their work station would not be affected. The intent of this regulation is to focus on common modes of transmission, such as infected personnel who could directly expose patients or residents to respiratory droplets. Therefore, food service workers who work in a cafeteria where patients or residents might be present would be affected, and food service workers who deliver trays to patient or resident units or who stock kitchens on patient or resident units would be affected.

45. Q: Do staff members who routinely interact with personnel who could potentially expose patients or residents to influenza but who don't meet such criteria themselves need to wear a mask?

A: No. The requirement only applies to personnel who could themselves directly expose patients or residents to influenza.

46. Q: Must students, trainees and others wear a mask if they are temporarily rotating through a facility, are unvaccinated against influenza, and could potentially expose patients or residents to the disease?

A: Yes.

47. Q: Does the regulation apply to pharmacists?

A: The regulation applies if the pharmacist works in a facility or agency to which the regulation applies and the pharmacist meets the criteria of identified personnel.

**** Revised 1/2/2015 ****

48. Q: Does the regulation apply to speech therapists and speech pathologists?

A: Yes, speech therapists and speech pathologists who are unvaccinated must wear a mask. However, personnel providing speech therapy services may remove the mask only during those times when it is necessary to deliver care, such as during modeling of speech.

**** New 1/2/2015 ****

49. Q: Does the regulation apply to unvaccinated personnel who care for individuals who lip read or who interact with personnel who lip read?

A: Yes. Unvaccinated personnel who care for individuals or interact with personnel who lip read must wear masks when in areas where patients or residents are present. However, those personnel may remove the mask only during those times when it is necessary to deliver care, such as when communicating with a person who lip reads.

50. Q: Which contractors are covered personnel?

A: Contractors must comply with this regulation if they (1) function as employees or staff of the regulated facility or agency; or (2) are under the facility's or agency's direct control. This includes, but is not limited to nurses and other healthcare professionals contracted to provide care to patients or residents.

Contractors who do not meet this definition are considered visitors and are NOT subject to this regulation. Examples of contractors who are NOT subject to this regulation include, but are not limited to:

- contracted construction/plumbing/electrical workers hired for a specific job(s)
- medical equipment vendors

- snack vending machine service personnel
- one-time or sporadically occasional entertainers hired by contract
- EMS, ambulance, or other transportation services personnel in a contract relationship with a covered facility or agency, but who do not meet the definition of functioning as employees or staff of the facility or agency or being under the facility's or agency's direct control
- lab and radiology technicians who provide services to an agency or facility by contract (e.g., enter a nursing home intermittently to draw blood or perform X-rays), but who do not meet the definition of functioning as employees or staff of the contracting facility or agency, or who are not under that facility's or agency's direct control, are not personnel of the contracting agency or facility. However, if the technician is simultaneously an employee of another agency or facility covered by the regulation, such as a hospital, the technician is covered as personnel of that agency or facility.

*** Revised 1/2/2015 ***

51. Q: Which volunteers are covered personnel?

A: Volunteers who have a formal relationship with the facility or agency and who provide regularly scheduled volunteer services must comply with the regulation. Volunteers who do not meet this definition are considered visitors and are not required to wear a mask.

Examples of individuals who are NOT subject to this regulation include:

- one-time or sporadically visiting volunteers, such as entertainers or one-time or sporadically visiting school groups (although covered facilities should carefully consider the prudence of allowing groups of children to visit areas where patients or residents might be present when influenza is prevalent).
- participants in the NYS Long Term Care Ombudsman Program

52. Q: Are accrediting organization personnel covered personnel?

A: The terms of the regulation do not apply to accrediting organization personnel. However, the Department is reaching out to the accrediting organizations to urge them to adopt similar policies for their personnel who visit health care facilities

53. Q: Are DOH employees covered personnel?

A: The terms of the regulation do not apply to DOH employees. However, the Department has applied the same requirements to DOH employees when they enter regulated health care facilities through personnel policies.

54. Q: Are registration, reception, and front desk staff covered personnel?

A: Yes. Registration, reception, and front desk staff who interact with persons presenting for registration/admission are considered covered personnel because persons presenting for registration or admission will become patients or residents at some point during the process.

*** New 1/2/2015 ***

55. Q: Are private companions and private duty healthcare providers covered by the regulation while working in licensed healthcare facilities or patient homes?

A: If a person is providing private duty healthcare services, and those services are being

provided in a licensed healthcare facility or agency, the Department expects the private duty provider to coordinate those services with, and receive approval from, the licensed healthcare facility or agency. Such approval constitutes an affiliation with the healthcare facility or agency. Therefore, private duty healthcare providers must comply with the regulation.

Private companions who do not provide healthcare services (i.e. hired by the patient/resident or family member to provide companionship only) are not considered to be affiliated with the facility or agency and therefore are not required to comply with regulation. However, they are encouraged to do so in the interest of protecting the patients or residents of the licensed healthcare facility or agency.

County Health Departments

56. Q: Are county health departments covered by the regulation?

A: County health department programs that are licensed pursuant Article 28, Article 36, or Article 40 of the Public Health Law are covered by the regulation.

57. Q: Which staff in county health departments are covered by the regulation?

A: Staff in county health departments who carry out Article 28, 36 or 40 program functions or who encounter patients seeking those program services are covered when they are in areas where patients are typically present.