



14 NYCRR Part 509
Express Terms

A new Part 509 is added to Title 14 NCYRR as follows:

PART 509

PREVENTION OF INFLUENZA TRANSMISSION

(Statutory Authority: Mental Hygiene Law §§7.07, 7.09, 31.04)

Sec.

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§509.1 Background and Intent.

(a) Influenza is an unpredictable disease that can cause serious illnesses, death, and healthcare disruption during any given year. Recent influenza seasons in New York State have been worse than those experienced a decade ago.

(b) In response to this increased public health threat, New York must take active steps to prevent and control transmission of seasonal influenza. The seriousness of the continuing influenza threat and the failure of the health care system to achieve acceptable vaccination rates through voluntary programs necessitate further action.

(c) Although masks are not as effective as vaccination, evidence indicates that wearing a surgical or procedure mask will lessen transmission of influenza from patients experiencing respiratory symptoms. It is also known that persons incubating influenza may shed the influenza virus before they have noticeable symptoms of influenza. The Centers for Disease Control and Prevention (CDC) recommends that patients who may have an infectious respiratory illness wear a mask when not in isolation and that healthcare personnel wear a mask when in close contact with symptomatic patients. Further, the Infectious Disease Society of America recommends that healthcare personnel who are not vaccinated for influenza wear masks.

(d) Recently, the New York State Department of Health (DOH) adopted regulations at 10 NYCRR Section 2.59 to require all unvaccinated personnel in certain health settings to wear surgical or procedure masks during the time when the Commissioner of Health determines that influenza is prevalent. Specifically, the DOH regulations apply to general hospitals, nursing homes, diagnostic and treatment centers, certified home health agencies, long term home health care programs, acquired immune deficiency syndrome (AIDS) home care programs, licensed home care service agencies, limited licensed home care service agencies and hospices (licensed by DOH under Public Health Law, Articles 28, 36 and 40).

(e) It is critical for the Office of Mental Health to join in a statewide effort to reduce the morbidity and mortality of influenza, by combining efforts and pursuing a common path of prevention and intervention.

§509.2 Legal Base.

(a) Section 7.07 of the Mental Hygiene Law charges the Office of Mental Health with the responsibility for seeing that persons with mental illness are provided with care and treatment, and that such care, treatment and rehabilitation is of high quality and effectiveness.

(b) Section 7.09 of the Mental Hygiene Law gives the Commissioner of the Office of Mental Health the power and responsibility to adopt regulations that are necessary and proper to implement matters under his or her jurisdiction.

(c) Section 31.04 of the Mental Hygiene Law grants the Commissioner of Mental Health the power and responsibility to adopt regulations to effectuate the provisions and purposes of article 31 of such law, including procedures for the issuance and amendment of operating certificates, and for setting standards of quality and adequacy of facilities.

§509.3 Definitions. For the purposes of this Part:

(a) **Facility** shall mean:

(1) a psychiatric center established pursuant to Section 7.17 of the Mental Hygiene Law; including all programs or services operated by, or under the auspices of, such psychiatric center;

(2) a hospital operated pursuant to Part 582 of this Title.

(b) **Influenza season** shall mean the period of time during which influenza is prevalent as determined by the Commissioner of Health.

(c) **Personnel** shall mean all persons employed or affiliated with a facility, as defined in this Section, whether paid or unpaid, including but not limited to employees, members of the medical, nursing, and other treatment staff, contract staff, students, and volunteers, who

engage in activities such that if they were infected with influenza, they could potentially expose patients to the disease.

Section 509.4 Documentation Requirements.

(a) All facilities shall determine and document which persons qualify as "*personnel*" under this Part.

(b) All facilities shall document the influenza vaccination status of all personnel for the current influenza season in a secure file separate from their personnel history folder. Documentation of vaccination must include the name and address of the individual who ordered or administered the vaccine and the date of vaccination.

(c) During the influenza season, all facilities shall ensure that all personnel who have not been vaccinated against influenza for the current influenza season wear a surgical or procedure mask while in areas where patients may be present. Facilities shall supply such masks to personnel, free of charge.

(d) Upon the request of the Office, a facility must report the number and percentage of personnel that have been vaccinated against influenza for the current influenza season.

(e) All facilities shall develop and implement a policy and procedure to ensure compliance with the provisions of this Part. The policy and procedure shall include, but is not limited to, the identification of those areas where unvaccinated personnel must wear a mask pursuant to subdivision (c) of this Section.

(f) For those facilities that are required to comply with 10 NYCRR Section 2.59, compliance with such Section shall be deemed compliance with this Part.