



August 26, 2021

Jeffrey A. Kraut, Chair
Public Health and Health Planning Council

Howard Zucker, MD, JD
Commissioner of Health

NYS Department of Health
Corning Tower - 14th Floor
Empire State Plaza
Albany, New York 12237

Dear Chairman Kraut, Members of the PHHPC, and Commissioner Zucker:

I write on behalf of the Home Care Association of New York State (HCA) regarding the emergency regulation before the Public Health and Health Planning Council seeking to mandate vaccination of hospital, long term care facility, clinic and home health care personnel in New York State.

HCA is the statewide association comprised of over 300 health care organizations providing all levels of home and community based care. HCA includes certified home health agencies, licensed home care services agencies, managed long term care plans, hospices, long term home health care programs, waiver programs, consumer directed programs/fiscal intermediaries, and an array of allied support services.

HCA comments will focus on the emergency regulation as it relates to home and community based services. It is imperative that, as the Council and Department consider these regulations, you simultaneously consider the urgent factors in the home care environment critical to the very same goals as these regulations in protecting and promoting health and safety. This letter will explain these factors and provide our recommendations.

Home care and hospice have been vital sectors in the COVID-crisis, with pivotal roles in pre-acute, post-acute, primary, long-term and overall public health intervention. Throughout the pandemic, home care and hospice have worked these multiple systemic and patient care roles to help ensure care, safety and broader health system-functionality. Like all sectors, home care and hospice has been heroic in this effort.

HCA pledges our unwavering commitment to continue to work with the state, the localities, the federal government and all sectors to promote the vaccination of the workforce and patient population, as well as other patient/worker safety measures to contain COVID and its variants, and promote the public health.

Essential Issues and Recommendations

I. Workforce Shortage Emergency and Considerations - Home care and hospice agencies throughout the state have characterized the longstanding, structural workforce shortages in this sector to have worsened to emergency levels. This includes emergency shortages in home care/hospice nurses, home health aides and therapists. The epidemiologic, personal, social and economy-wide impacts of the pandemic have left home care and hospice providers experiencing unprecedented reductions in workforce capacity and inability to recruit of new staff, severe curtailment in new recruitment and training capabilities, and serious implications for patient access. Eighty-five percent (85%) of providers surveyed by HCA reported such serious exacerbations

of worker shortages; 65% experienced increase in referrals from hospitals and other settings, and 76% of agencies reported challenges in accepting these new referrals, mostly because of reduced workforce availability. Meanwhile, as referral of earlier, more complex and intensive discharges from hospitals has been on the rise, the overall public outcry for access to home-based services, including to avoid or reduce institutional stays, has driven care demand to the highest levels ever.

If the Council moves to mandate vaccination in home care, it must consider the impact on this already decimated workforce and the unsustainability of a worsened situation. Because of the in-home, one-on-one nature of home care (versus congregate care), combined with all of the clinical, cultural, scheduling and other considerations necessary to appropriately match workers with patients, the loss of worker access in home care and hospice essentially can equate to the loss of care. Tens of thousands of home care patients across NYS are considered under the Health Department's standards to be "Level-One" priority patients, meaning that they cannot go without care or risk health emergency and likely hospitalization. Hospice patients, especially in NYS where access is usually with days, even hours, left to life, cannot afford any service loss.

With vaccination rates especially challenged among minority and cultural/ethnic communities who, for a host of reasons, are reticent to vaccinate, and with many particularly in the home health aide workforce (responsible for the daily home care of hundreds of thousands of New Yorkers) identifying in these communities, there is grave concern about worker departure and even further loss of home care service and access without consideration of these issues and of the timing and approach taken in this or any proposed vaccination policy. For example, agencies achieving higher rates of vaccination have found that it may take a minimum of five individual counseling/education/support sessions per worker to reach a comfort level for vaccination. This not only necessitates a longer lead-time for vaccination, it also further redirects the time of peers and agency clinicians from the direct care services, for which they are needed, to supporting the vaccination counselling effort.

Ultimately, the current step in vaccination policy that you are considering, and its goals of public health protection, need to be founded on a balance between immediacy, breadth and actual efficacy. Policies and approaches that fail to consider the well-established and well-known factors above (and those subsequently to be outlined in this letter), and that drive away access, can inadvertently defeat the "good" of this effort by the attempted pursuit of "the perfect."

Accordingly, we urge that any vaccination policy that the Council adopts, take the workforce shortage emergency and the compounding factors described above into account into the course, parameters and considerations that you adopt. The ramifications for patients and the broader system, particularly the hospital sector, could well exacerbate the existing crisis. Please work with us.

II. Applicability of Vaccination Policy - Must be Level Application - The emergency proposal in home care/hospice applies to some portions of the system, but not all. If the Council and the Department adopt this policy but leave wide gaps in applicability, it creates the incentive for worker migration to positions where vaccination is not required. For example, the list of home care entities to which the proposed mandate would apply only includes public health law article 36 certified and licensed home care entities, and article 40 hospice. Yet, there are entities and delivery mechanisms under other portions of the public health law, the social services law, mental hygiene law, elder law, insurance law, education law, and where in-home care services are being delivered and yet no vaccination is required. Added to this are non-direct care positions in other parts of the economy, including in unregulated professional practices, where mandates would not be applied, and as a result would provide natural incentives for migration (and thus worker loss) from home care/hospice to these settings.

It is not the place of this letter or the Council's deliberation to posit here societal-wide vaccination mandates; but these prior points demonstrate that the vaccination policy that is being proposed and considered at today's Council meeting creates gaps that will very likely worsen the already-serious workforce and service capacity loss in home care/hospice, at the very time that demand and need are skyrocketing. The prospects are of statewide concern, and the impacts potentially severely adverse.

III. Accompany Vaccination Policy with Urgent Support for Workforce and Service Capacity - The home care system is already in dire need of proactive fiscal and programmatic support given the impacts of the pandemic, especially the workforce emergency. It is imperative that any adoption of the emergency regulation be accompanied by the Council's direction that the state co-time critical supports for home care and hospice providers, workforce and workforce capacity efforts. HCA urges that the Council and Department address actions, both immediate and from anticipated funds from the Federal Medicaid Matching Percentage increase budgeted in the 2021-22 state fiscal plan at \$1.6 Billion, to the urgent support of the agencies and workforce. Additional immediate actions the Department and state can take to help ameliorate impact and support an effective vaccination policy are further cited below.

IV. Table Yet-to-be Implemented 2020 State Budget Pre-pandemic MRT Reforms that are Regressive to the Current Environment, Needs and Goals - Actions formulated in the 2020 pre-pandemic budget planning, and then (without rethinking) were adopted in the "virtual" budget process, are completely out of context in the post-pandemic world, and are currently highly regressive to existing service and workforce urgencies in home care. HCA urges that actions to implement these measures be tabled. The Council could greatly assist this current vaccine effort and mitigate workforce and agency impact by calling for suspension of these measures. These pre-pandemic actions should be suspended for reevaluation of appropriateness and reconsideration of merit by the new Governor and Legislature in the upcoming Legislative Session. These pre-pandemic items include the so-called "Independent Assessor" (IA) for home care/managed long term care, and the "Request for Offers" that would reduce Medicaid home care agency capacity in the state. Not only are these measures now completely counter to the urgent need for home care and hospice in the pandemic era, but, for example, this Independent Assessor entity is going to have to directly compete with home care and hospice agencies for their nurses in an environment where the already-existing nursing shortage jeopardizes access, and where the vaccine mandate being contemplated is already risking further diminished nursing resources. The RFO for home care agencies is going to upend service and workforce amidst the existing workforce capacity problems and already-occurring migration to other areas of the job economy, as well as the major, trending increases in home care-hospice demand.

V. Continue COVID-era Regulatory Flexibility - With the state's "end" of the declared public emergency has begun a rescinding of key areas of regulatory and procedural flexibility that were essential during the emergency. Although the epidemiological indicators associated with the declaration of the emergency were deemed to have abated, the pandemic's impact on health system itself very much remains. Home care agencies are already extremely concerned about the ability to resume under the pre-pandemic regulatory structure, and the consequences of worker loss and other management of the vaccine mandate makes this all the more difficult. HCA asks the Council and the Administration, as part of this emergency regulatory consideration, to maintain critical areas of health regulatory flexibility granted in COVID, and to explore permanent regulatory change to support efficiencies and innovative practices developed under the regulatorily flexed period.

VI. Clarify and Facilitate the Process for Exemption from Vaccination - The emergency regulation before the Council today allows for medical exemptions from vaccination, under defined circumstances. HCA asks that regulations provide for a clear, discernable process for agencies and workers to determine if and how to qualify, and to also support fiscal and replacement staffing coverage for any testing requirements the exemption may necessitate.

VII. Establish Workable Time Frames - In consideration of all of the issues raised here with regard to the workforce shortages, the increasing demand for service, the access and operation concerns, and other, it is vital that adequate lead time be provided for employees - especially those who are deeply reticent and/or fearful to vaccinate - to be further counseled and supported to vaccinate, and for agencies to work with employees toward this goal. The proposed October 7 date is provided no allowances for phase-in or for work with the unvaccinated worker populations, and risks the larger good of the policy's intentions by risking worker flight, and with it, harm to service access and even sustainability of many agencies. HCA urges the reset and reconsideration of the implementation process to work **with** the provider and worker community to reach vaccination goals in an efficacious and viable manner.

HCA appreciates this opportunity to provide the Council and the Department with comment on these emergency regulations. HCA emphasizes our commitment to working in proactive collaboration with the Council and the Department to further the public health goals of vaccination, worker and patient safety, defeat of this pandemic, and ultimately the quality and accessible care of medically needy New Yorkers.

HCA is eager to work with you.

Sincerely,



Al Cardillo
President and CEO