



State of New York

Executive Chamber

No. 29

EXECUTIVE ORDER

DECLARING A DISASTER EMERGENCY IN THE STATE OF NEW YORK

WHEREAS, on April 26, 2009, the Secretary of the United States Department of Health and Human Services determined that a public health emergency involving 2009 H1N1 influenza exists nationwide, which determination was renewed by the Secretary on July 24, 2009 and October 1, 2009; and

WHEREAS, on June 11, 2009, the World Health Organization declared that 2009 H1N1 influenza had spread around the world to the point where it is now a pandemic; and

WHEREAS, on October 23, 2009, President Barack Obama declared a national emergency pursuant to sections 201 and 202 of the National Emergencies Act (50 U.S.C. 1621, et seq.) given that the rapid increase in illness across the nation may overburden health care resources, and authorized the Secretary of Health and Human Services to exercise the authority under section 1135 of the Social Security Act to waive or modify certain requirements of the Medicare, Medicaid, and State Children's Health Insurance programs and of the Health Insurance Portability and Accountability Act Privacy Rule as necessary to respond to the pandemic; and

WHEREAS, 2009 H1N1 influenza is widespread throughout the State of New York, with at least 75 known deaths including among children and pregnant women, but the true magnitude of cases may be as much as 10 percent of the population or more in some areas; and

WHEREAS, there is evidence that the spread of 2009 H1N1 influenza is increasing in schools; and

WHEREAS, the 2009 H1N1 influenza pandemic is a threat to public health and safety in New York and, if unchecked, will cause personal hardship among the general public throughout the State, including death, hospital overcrowding, shortages of health care workers, and disruptions to businesses and critical infrastructure due to illness-related absenteeism; and

WHEREAS, the seriousness of the 2009 H1N1 influenza pandemic, compounded by the concurrent presence in the community of seasonal influenza disease, constitutes a public health emergency; and

WHEREAS, Public Health Law sections 206(1)(l) and 613(1) authorize the New York State Department of Health and local health departments, respectively, to establish and conduct programs for the voluntary immunization of adults and the immunization of children with parental consent to prevent or minimize the spread of disease and to protect the public health;

WHEREAS, among the factors contributing to the imminence and seriousness of the public health emergency are a shortage of nurses and other trained and licensed personnel able to administer vaccinations to as many people and as quickly as possible, potentially causing hospitals, clinics and other health care providers to be overwhelmed by excessive number of individuals seeking vaccination and patients who become ill with 2009 H1N1 influenza or seasonal influenza; and

WHEREAS, to combat the further spread of 2009 H1N1 influenza, avoid excessive disruptions to the health care system and society in general, and protect the lives, health, safety and welfare of the public, it is necessary to remove or minimize barriers to the voluntary vaccination of as many individuals as possible as quickly as possible against 2009 H1N1 influenza and seasonal influenza, by making available the services, personnel, equipment, and facilities necessary to conduct such vaccinations and facilitating the timely and accurate reporting of vaccinations; and

WHEREAS, it is therefore necessary to facilitate the timely distribution and administration of 2009 H1N1 influenza and seasonal influenza vaccine in various settings throughout the State, and in particular to permit Points of Dispensing (hereinafter "PODs") overseen or approved by the New York State Department of Health or local health departments and operated under the medical supervision of physicians, physician assistants or nurse practitioners certified in accordance with paragraph b of subdivision 3 of section 6902 of the Education Law to utilize certain health professionals, who are not currently authorized to administer vaccinations but who are licensed or certified under specific provisions of the Education Law or the Public Health Law and who will be trained as necessary, to administer 2009 H1N1 influenza and seasonal influenza vaccinations; and

WHEREAS, health professionals licensed or certified under the Education Law or the Public Health Law are authorized to engage in specific scopes of practice, and this Order shall not expand the scopes of practice of these professionals to allow them routinely to administer vaccinations, but rather will allow them to vaccinate only under the extremely limited circumstances described in and for the duration of this Order; and

WHEREAS, records maintained in the New York State Immunization Information System (NYSIIS) and the New York City Citywide Immunization Registry (CIR) are securely maintained and may be disclosed only as provided in law, and this Order shall not alter any existing provision for the security or confidentiality of immunization information; and

WHEREAS, this Order does not authorize any person to be vaccinated without his or her consent or the consent of another person legally authorized to consent on his or her behalf, and does not authorize any minor to be vaccinated without the consent of a person in parental relation to the minor; and

WHEREAS, this Order does not authorize the vaccination of any person under six months of age or for whom the 2009 H1N1 influenza or seasonal influenza is medically contraindicated;

NOW, THEREFORE, I, David A. Paterson, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York, I hereby find, pursuant to Section 28 of Article 2-B of the Executive Law, that a disaster has occurred throughout New York State, for which the affected local governments are unable to respond adequately, and I do hereby declare a State disaster emergency for the entire State of New York.

FURTHER, pursuant to Section 29 of Article 2-B of the Executive Law, I direct the implementation of the State Disaster Preparedness Plan and authorize all necessary State agencies to take appropriate action to assist affected local governments and individuals in responding to and recovering from this public health emergency, to protect state and local property, and to provide such other assistance as is necessary to protect public health and safety.

FURTHER, pursuant to the authority vested in me by Section 29-a of Article 2-B of the Executive Law, to allow adequate staffing and efficient operation of PODs overseen or approved by the New York State Department of Health or local health departments for the purpose of facilitating the timely distribution and administration of 2009 H1N1 influenza and seasonal influenza vaccine to the people of the State of New York without charge to individual vaccinees, to facilitate the timely distribution and administration of 2009 H1N1 influenza and seasonal influenza vaccine in other settings throughout the State, and to protect and preserve health and prevent illness and death, I hereby temporarily suspend or modify, as the case may be, for a period of thirty days, the following specific provisions of statute, rules and regulations, or parts thereof, as compliance with such provisions would prevent, hinder, or delay action necessary to cope with the State disaster emergency:

Subdivision 1 of section 6902 of the Education Law in so far as it limits the execution of medical regimens prescribed by a licensed physician or other licensed and legally authorized health care provider to nurses licensed pursuant to Article 139 of the Education Law, so that, for the purposes of this Executive Order only, physician assistants, specialist assistants, dentists, dental hygienists who have been issued a dental hygiene restricted local infiltration anesthesia/nitrous oxide analgesia certificate, pharmacists, midwives, and podiatrists, which professions are licensed or certified under Articles 131-B, 133, 137, 140 and 141 of the Education Law and advanced emergency medical technicians certified pursuant to Public Health Law Article 30 may administer vaccinations against 2009 H1N1 influenza and seasonal influenza at PODs, provided they first receive training in techniques, indications, precautions, contraindications, infection control practices, and use of personal protective equipment sufficient to provide the basic level of competence for such tasks, as determined by the Commissioner of Health after consultation with the Commissioner of Education;

Paragraph 1 of section 6542 of the Education Law and subdivisions a and b of section 94.2 of Title 10 of the Official Compilation of Codes Rules and Regulations of the State of New York (NYCRR) in so far as they require a physician assistant to be under the supervision of a physician when performing medical services and only allow the physician assistant to perform such acts and duties as are assigned to him or her within the scope of practice of such supervising physician, so that, for the purposes of this Executive Order only, physician assistants may medically supervise PODs and administer vaccinations against 2009 H1N1 influenza and seasonal influenza at PODs pursuant to a non-patient specific order, provided they first receive training in techniques, indications, precautions, contraindications, infection control practices, and use of personal protective equipment sufficient to provide the basic level of competence for such tasks, as determined by the Commissioner of Health after consultation with the Commissioner of Education;

Paragraph 2 of section 6542 of the Education Law and subdivisions a and b of section 94.2 of Title 10 of the NYCRR in so far as they require a specialist assistant to be under the supervision of a physician when performing medical services and only allow the special assistant to perform such acts and duties as are related to the designated medical specialty for which he or she is registered and are within the scope of practice of his or her supervising physician, so that, for the purposes of this Executive Order only, specialist assistants may administer vaccinations against 2009 H1N1 influenza and seasonal influenza at PODs pursuant to a non-patient specific order, provided they first receive training in techniques, indications, precautions, contraindications, infection control practices, and use of personal protective equipment sufficient to provide the basic level of competence for such tasks, as determined by the Commissioner of Health after consultation with the Commissioner of Education;

Section 6601 of the Education Law in so far as it limits the practice of dentistry to the treatment of the mouth and the adjacent tissue, to the exclusion of any other part of the human body, so that, for the purposes of this Executive Order only, dentists may administer vaccinations against 2009 H1N1 influenza and seasonal influenza at PODs pursuant to a non-patient specific order, provided they first receive training in techniques, indications, precautions, contraindications, infection control practices, and use of personal protective equipment sufficient to provide the basic level of competence for such tasks, as determined by the Commissioner of Health after consultation with the Commissioner of Education;

Subdivision 1 of section 6828 and subdivision 3 of section 6801 of the Education Law and paragraph 3 of subdivision b of section 63.9 of Title 8 of the NYCRR, in so far as they prohibit pharmacists without a certificate of administration issued by the State Education Department from administering immunizing agents, so that, for the purposes of this Executive Order only, pharmacists without a certificate of administration may administer vaccinations against 2009 H1N1 influenza and seasonal influenza at PODs pursuant to a non-patient specific order, provided they first receive training in techniques, indications, precautions, contraindications, infection control practices, and use of personal protective equipment sufficient to provide the basic level of competence for such tasks, as determined by the Commissioner of Health after consultation with the Commissioner of Education;

Section 7001 of the Education Law in so far as it limits the practice of podiatry to the treatment of the foot, to the exclusion of any other part of the human body, so that, for the purposes of this Executive Order only, podiatrists may administer vaccinations against 2009 H1N1 influenza and seasonal influenza at PODs pursuant to a non-patient specific order, provided they first receive training in techniques, indications, precautions, contraindications, infection control practices, and use of personal protective equipment sufficient to provide the basic level of competence for such tasks, as determined by the Commissioner of Health after consultation with the Commissioner of Education;

Section 6951 of the Education Law in so far as it limits the practice of midwifery to midwives who practice in accordance with written practice agreements with a licensed physician or hospital licensed pursuant to Article 28 of the Public Health Law and in so far as it permits midwives to administer drugs only within the practice of midwifery, so that, for the purposes of this Executive Order only, midwives may administer vaccinations against 2009 H1N1 influenza and seasonal influenza at PODs pursuant to a non-patient specific order, provided they first receive training in techniques, indications, precautions, contraindications, infection control practices, and use of personal protective equipment sufficient to provide the basic level of competence for such tasks, as determined by the Commissioner of Health after consultation with the Commissioner of Education;

Subdivision 2 of section 6951 of the Education Law and section 79-5.6 of Title 8 of NYCRR in so far as they prohibit midwives without a certificate issued by the State Education Department from administering immunizing agents, so that, for the purposes of this Executive Order only, midwives without a certificate may administer vaccinations against 2009 influenza and seasonal influenza at PODs pursuant to a non-patient specific order, provided they first receive training in techniques, indications, precautions, contraindications, infection control practices, and use of personal protective equipment sufficient to provide the basic level of competence for such tasks, as determined by the Commissioner of Health after consultation with the Commissioner of Education;

Subdivision 1 of section 6606 of the Education Law and section 61.9 of Title 8 of the NYCRR in so far as they restrict the practice of dental hygiene to the performance of dental services and require that the practice of dental hygiene be conducted in the office of any licensed dentist or appropriately equipped school or public institution, under the supervision of a dentist, so that, for the purposes of this Executive Order only, dental hygienists who have been issued a dental hygiene restricted local infiltration anesthesia/nitrous oxide analgesia certificate in accordance with section 6605-b of the Education Law and section 61.17 of Title 8 of the NYCRR may administer vaccinations against 2009 H1N1 influenza and seasonal influenza at PODs pursuant to a non-patient specific order, provided they first receive training in techniques, indications, precautions, contraindications, infection control practices, and use of personal protective equipment sufficient to provide the basic level of competence for such tasks, as determined by the Commissioner of Health after consultation with the Commissioner of Education;

Subdivision 7 of section 3001 of the Public Health Law and subdivision b of section 800.15 of Title 10 of the NYCRR in so far as they limit the responsibilities of advanced emergency medical technicians to administration or supervision of initial emergency medical care and transportation of sick or injured persons and in so far as they require advanced emergency medical technicians to treat patients in accordance with applicable State-approved protocols unless authorized to do otherwise for an individual patient by a medical control physician, so that, for the purposes of this Executive Order only, advanced emergency medical technicians may administer vaccinations against 2009 H1N1 influenza and seasonal influenza at PODs pursuant to a non-patient specific order and pursuant to medical direction at such PODs, provided they first receive training in techniques, indications, precautions, contraindications, infection control practices, and use of personal protective equipment sufficient to provide the basic level of competence for such tasks, as determined by the Commissioner of Health after consultation with the Commissioner of Education;

Subdivisions 6 and 7 of section 6527 and subdivisions 4 and 7 of section 6909 of the Education Law in so far as they authorize licensed physicians and certified nurse practitioners to prescribe and order non-patient specific regimens only to registered professional nurses and pharmacists with a certificate of administration, so that, for the purposes of this Executive Order only, licensed physicians and certified nurse practitioners may also prescribe and order non-patient specific regimens to physician assistants and specialist assistants, dentists and dental hygienists who have been issued a dental hygiene restricted local infiltration anesthesia/nitrous oxide analgesia certificate, pharmacists without a certificate of administration, midwives and podiatrists, which professions are licensed or certified under Articles 131-B, 133, 137, 140 and 141 of the Education Law, and to advanced emergency medical technicians certified pursuant to Public Health Law Article 30, and such licensed or certified persons may administer vaccinations against 2009 H1N1 influenza and seasonal influenza at PODs pursuant to such non-patient specific regimens, provided they first receive training in techniques, indications, precautions, contraindications, infection control practices, and use of personal protective equipment sufficient to provide the basic level of competence for such tasks, as determined by the Commissioner of Health after consultation with the Commissioner of Education;

Paragraphs a and b of subdivision 2 of section 6801 of the Education Law and subparagraphs (vii) and (xi) of paragraph 4 of subdivision b of section 63.9 of Title 8 of the NYCRR in so far as they require licensed pharmacists administering immunizing agents pursuant to a non-patient specific regimen to report such administrations to patients' attending physicians and provide information to patients on the importance of having a primary health care practitioner, so that, for purposes of this Executive Order only, licensed pharmacists administering vaccinations against 2009 H1N1 influenza and seasonal influenza at PODs need not provide information to patients on the importance of having a primary health care practitioner or report such administration to patients' attending physicians, and may instead report the vaccination to the CIR or NYSIIS;

Subdivision 22 of section 6802 of the Education Law and subparagraph (ii) of paragraph 1 of subdivision b of section 63.9 of Title 8 of the NYCRR in so far as they authorize licensed pharmacists to administer vaccines pursuant to a non-patient specific order only if such order is issued by a physician or certified nurse practitioner who has a practice site in the county or a county adjoining the county where the vaccination is to be administered, so that, for the purposes of this Executive Order only, licensed pharmacists may administer vaccinations against 2009 H1N1 influenza and seasonal influenza at PODs or in other settings pursuant to a non-patient specific order issued by any physician licensed in the State of New York or any nurse practitioner certified in the State of New York, without regard to such physician or nurse practitioner's practice location, provided that such pharmacists continue to receive adequate supervision as determined by the Commissioner of Health after consultation with the Commissioner of Education;

Subdivision 22 of section 6802 of the Education Law and paragraph 2 of subdivision b of section 63.9 of Title 8 of the NYCRR in so far as they limit the authority of pharmacists with a certificate of authorization to administer immunizing agents to permit such administration only to individuals who are 18 years of age or older, so that, for the purposes of this Executive Order only, pharmacists may also administer vaccinations against 2009 H1N1 influenza and seasonal influenza for patients between six months and 18 years of age, whether at PODs or in other settings;

Paragraph 3 of subdivision a of section 64.7 of Title 8 of the NYCRR in so far as it requires a registered professional nurse authorized to administer immunization agents pursuant to a non-patient specific order to be currently certified in cardio-pulmonary resuscitation (CPR), so that, for the purposes of this Executive Order only, registered professional nurses whose certification has lapsed but who remained licensed may administer vaccinations against 2009 H1N1 influenza and seasonal influenza at PODs, provided they are first trained in CPR and provided further that at least two CPR certified staff are present on site at the time;

Clause (d) of subparagraph (iii) of paragraph 4 of subdivision a of section 64.7 of Title 8 of NYCRR in so far as it requires registered professional nurses administering immunizing agents pursuant to a non-patient specific regimen to report such administration to patients' attending physicians, so that, for the purposes of this Executive Order, registered professional nurses may administer vaccinations against 2009 H1N1 and seasonal influenza at PODs without reporting such administrations to patients' attending physicians, and may instead report the vaccination to the CIR or NYSIIS;

Paragraph a of subdivision 3 of section 2168 of the Public Health Law in so far as it requires the express written consent of the vaccinee for inclusion of information regarding immunizations administered to persons 19 years of age or older in the NYSIIS and the CIR, so that, for the purposes of this Executive Order only, the Commissioner of Health may include adult immunization information for 2009 H1N1 influenza and seasonal vaccination at PODs in NYSIIS without consent of the vaccinee, and the New York City Commissioner of Health and Mental Hygiene may include adult immunization information for 2009 H1N1 influenza and seasonal influenza vaccination at PODs and for 2009 H1N1 influenza vaccination in other settings in the CIR without consent of the vaccinee, provided that nothing in this paragraph shall be read to permit the vaccination of any person without his or her consent or the consent of another person legally authorized to provide such consent, or to permit the vaccination of any minor without the consent of a person in parental relation to the minor;

Paragraph 2 of subdivision a of section 66-1.2 of Title 10 of the NYCRR in so far as it defines the CIR to include records of vaccinations of persons 19 years of age and older with written consent, so that, for the purposes of this Executive Order only, the registry may include adult immunization information for 2009 H1N1 influenza and seasonal vaccination at PODs and for 2009 H1N1 influenza vaccination in other settings in the CIR without consent of the vaccinee, provided that nothing in this paragraph shall be read to permit the vaccination of any person without his or her consent or the consent of another person legally authorized to provide such consent, or to permit the vaccination of any minor without the consent of a person in parental relation to the minor;

Paragraph 6 of subdivision a of section 66-1.2 of Title 10 of the NYCRR in so far as it defines registrants to include those persons 19 years of age or older receiving immunizations who provide written consent to have their immunizations recorded in the system, so that, for the purposes of this Executive Order only, consent of the vaccinee is not required to record adult immunization information for 2009 H1N1 influenza and seasonal influenza vaccination at PODs in NYSIIS or to record adult immunization information for 2009 H1N1 influenza and seasonal influenza vaccination at PODs and 2009 H1N1 influenza vaccination in other settings in the CIR, provided that nothing in this paragraph shall be read to permit the vaccination of any persons without his or her consent or the consent of another person legally authorized to provide such consent, or to permit the vaccination of any minor without the consent of a person in parental relation to the minor;

Paragraph 3 of subdivision a of section 29.2 of Title 8 of NYCRR in so far as it makes it an act of professional misconduct for the professions listed within that section to fail to maintain and retain a record for each patient which accurately reflects the evaluation and treatment of the patient, so that, for the purposes of this Executive Order only, persons practicing the professions listed within that section who are authorized to administer vaccinations pursuant to this Order are not required to maintain and retain such record for those to whom they administer vaccinations against 2009 H1N1 influenza or seasonal influenza at PODs;

Clause (f) of subparagraph (iii) of paragraph 4 of subdivision a of section 64.7 of Title 8 of the NYCRR in so far as it requires a registered professional nurse administering an immunizing agent pursuant to a non-patient specific regimen to ensure that a record of all persons immunized is recorded, maintained, and retained in accordance with paragraph 3 of subdivision a of Section 29.2 of the regulations of the Board of Regents of the State Education Department, so that, for the purposes of this Executive Order only, registered professional nurses are not required to ensure that such a record is maintained and retained for those to whom they administer vaccinations against 2009 H1N1 influenza or seasonal influenza at PODs;

Subparagraph ix of paragraph 4 of subdivision b of section 63.9 of Title 8 of NYCRR in so far as it requires a pharmacist administering an immunizing agent pursuant to a non-patient specific regimen to ensure that a record of all persons immunized is recorded, maintained, and retained in accordance with paragraph 3 of subdivision a of Section 29.2 of the regulations of the Board of Regents of the State Education Department, so that, for the purposes of this Executive Order only, pharmacists are not required to ensure that such a record is maintained and retained for those to whom they administer vaccinations against 2009 H1N1 influenza or seasonal influenza at PODs;

Sections 1 and 3 of chapter 198 of the Laws of 1978 and section 402 of Chapter 170 of the Laws of 1994 in so far as they limit provision of services in school-based health centers to preschool and school-age children residing in the area served by school districts and boards of cooperative educational services, so that, for the purposes of this Executive Order only, staff of school-based health centers who are lawfully authorized to administer vaccinations may also administer vaccinations against 2009 H1N1 influenza and seasonal influenza at such centers to adults;

Paragraph j of subdivision 1 of section 414 of the Education Law in so far as it limits provision of services in school-based health centers to preschool and school-age children, so that, for the purposes of this Executive Order only, staff of school-based health centers who are lawfully authorized to administer vaccinations may also administer vaccinations against 2009 H1N1 influenza and seasonal influenza at such centers to adults; and

Paragraph 22 of subdivision a of section 700.2 of Title 10 of the NYCRR in so far as it prohibits any health care services provided in an elementary or secondary school to students during regular school hours from qualifying as part-time clinics under Title 10 of the NYCRR and Article 28 of the Public Health Law, so that, for the purposes of this Executive Order only, part-time clinics may be operated in elementary or secondary schools, permitting the administration of vaccinations against 2009 H1N1 influenza and seasonal influenza to children and adults during regular school hours, subject to the approval of the New York State Department of Health.

FURTHER, I have designated John R. Gibb, Director of the State Emergency Management Office, as the State Coordinating Officer of this event.



G I V E N under my hand and the Privy Seal of the
State in the City of Albany this twenty
eighth day of October in the year two
thousand nine.

BY THE GOVERNOR

David A. Paterson

Laurence Schwartz
Secretary to the Governor