



The State University  
of New York

**Anta Cissé-Green**

Senior Vice Chancellor for Legal Affairs  
and General Counsel

H. Carl McCall SUNY Building  
353 Broadway, Albany, New York 12246

[www.suny.edu](http://www.suny.edu)

## MEMORANDUM

**DATE:** August 20, 2021

**TO:** Presidents, Health Science Centers  
Chief Executive Officers, SUNY Medical Centers

**FROM:** Anta Cissé-Green, Senior Vice Chancellor and General Counsel

**SUBJECT:** Guidance on Public Health Law Section 16 Orders and the August 18, 2021 DOH  
Mandated COVID-19 Vaccination Policy for Covered Entities

---

### **Statutory Background:**

Public Health Law (“PHL”) § 16 grants the New York State Commissioner of Health (“Commissioner”) broad authority to take action when the Commissioner believes a person is causing, engaging in, or maintaining a condition or activity that constitutes a danger to public health. Under a PHL § 16 order, the Commissioner shall order the person, including any state agency, by written notice to discontinue such dangerous condition or activity or take certain action immediately or within a specified period of less than 15 days.

### **COVID-19 Vaccine Order:**

On August 18, 2021, NYS Department of Health (“DOH”) Commissioner Howard Zucker issued a PHL § 16 order requiring all “Covered Entities,” or general hospitals and nursing homes as defined under PHL § 2801, to require all “Covered Personnel” to be fully vaccinated against COVID-19 (the “Order”).

Impacted Employees. The Order mandates that all “Covered Personnel” receive the first dose of the COVID-19 Vaccine by September 27, 2021.

“Covered Personnel” (also referred to in the Order as “Covered Employee”) includes those employed or affiliated with a Covered Entity, whether paid or unpaid, including but not limited to employees, members of the medical and nursing staff, contract staff, students, and volunteers, who engage in activities such that if they were infected with COVID-19, they could potentially expose, patients, residents, or personnel working for such Covered Entity to the disease. For simplicity, this summary refers to such individuals as a “Covered Employee.”

Exemptions. The Order provides for limited medical and religious exemptions to be granted to such Covered Employee.

- Medical exemptions can be granted where the Covered Employee's licensed healthcare provider certifies that immunization with the COVID-19 vaccine is detrimental to the Covered Employee, based upon a specific pre-existing health condition. In that event, the Covered Employee shall receive a reasonable accommodation only until such immunization is found to no longer be detrimental to the Covered Employee's health.
- The Order also provides for religious exemptions if a Covered Employee holds a genuine and sincere religious belief contrary to the practice of immunization, subject to a reasonable accommodation.

Documenting Vaccination Status. Personnel records or other appropriate records must be updated to include documentation of: (i) the vaccination administered to the Covered Employee, in accordance with applicable privacy laws (ii) any medical or religious exemptions and reasonable accommodations provided to the Covered Employee.

Reporting Vaccination Numbers. Upon DOH's request, Covered Entities must report the number and percentage of Covered Employees vaccinated against COVID-19 and the number of Covered Employees receiving medical or religious exemptions. Additionally, DOH may require all Covered Employees, whether vaccinated or unvaccinated, to wear acceptable face coverings.

Covered Entities must provide Covered Employees with face coverings at no cost to the Covered Employee.

Policy. Covered Entities must develop and implement a policy and procedure to ensure compliance with the provisions of the Order. SUNY anticipates DOH to issue regulations regarding the Order, and System Administration is committed to having one standard policy applicable to all Covered Entities within the SUNY system.

Enforcement of Policy. Enforcement of the Order and the associated SUNY Policy will likely be directed pursuant to forthcoming DOH regulations.

Objections. Covered Entities objecting to this Order can attend a hearing scheduled for September 2, 2021 at 10:00 a.m., to explain their belief that the failure to implement and comply with the requirements of this Order does not constitute a danger to public health. Such Covered Entities must notify DOH by August 23<sup>rd</sup> of their intention to provide testimony at the hearing. Covered Entities in the SUNY System should notify System Administration if they intend to participate in the September 2<sup>nd</sup> hearing.

If you have any questions or concerns about the guidance contained herein, please contact your campus counsel.

cc: Office of General Counsel Attorneys and Staff