On August 26, 2021, the Public Health and Health Planning Council approved an emergency regulation requiring health care personnel to be fully vaccinated against COVID-19. The emergency regulation is effective immediately and will remain in effect for 90 days, subject to review and renewal.

The emergency regulation supersedes the Section 16 Order issued by the New York
Department of Health ("DOH") on August 18, 2021, which mandated the vaccine for personnel at general hospitals and nursing homes.

The emergency regulation expands the mandate to cover personnel at entities beyond general hospitals and nursing homes to also include diagnostic and treatment centers, public health centers, rehabilitation centers, birth centers, adult care facilities, certified home health agencies, hospices, long-term home health care programs, AIDS home care programs, licensed home care service agencies and limited licensed home care service agencies (collectively “Covered Entities”). Under the regulation, covered personnel is defined as: “all persons 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 other covered personnel, patients or residents to the disease.”

Covered Entities must continuously require personnel to be fully vaccinated against COVID-19. Hospitals and nursing homes must require their current personnel to receive the first dose of the vaccine by September 27, 2021. “Fully vaccinated” for the purpose of this regulation shall be determined by the Department in accordance with applicable federal guidelines and recommendations. All other health care facilities must require their current personnel to receive the first dose of the vaccine by vaccinated by October 7, 2021. Proof of vaccination must be provided and include the manufacturer, lot number(s), date(s) of vaccination, and vaccinator or vaccine clinic site.

Notably, the emergency regulation eliminated the exemption due to a sincerely held religious belief that was included in the proposed emergency regulation and in the Section 16 Order. The emergency regulation provides for a medical exemption so long as it is supported by a certification issued by a licensed physician or certified nurse practitioner opining that the vaccine mandate would be detrimental to the individual’s health based on a pre-existing condition. Covered Entities are required to document the any medical exemptions, including the nature and duration of the medical exemption, and reasonable accommodations provided, in an individual’s medical file, maintained separately from the general personnel file, and ensure that such documentation is immediately available upon request by DOH.

In addition, the emergency regulation requires Covered Entities to develop and implement a policy and procedure to ensure covered personnel are vaccinated for COVID-19 and ensure that such policy and procedure is available to the DOH on request. The emergency regulation also requires Covered Entities, upon the DOH’s request, to report the number and percentage of total covered personnel; the number and percentage that have been vaccinated against COVID-19; and those who have been granted a medical exemption, along with any reasonable accommodation.

Finally, the emergency regulation provides that “[t]he Department may require all personnel, whether vaccinated or unvaccinated, to wear an appropriate face covering for the setting in which such personnel are working in a covered entity. Covered entities shall supply face coverings required by this section at no cost to personnel.”