



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES  
ATTORNEY GENERAL

DIVISION OF STATE COUNSEL  
LITIGATION BUREAU

May 31, 2023

**By ECF**

Honorable Miroslav Lovric  
United States Magistrate Judge  
United States District Court  
Northern District of New York  
15 Henry Street  
Binghamton, New York 13901

Re: *Dr. A., et al., v. Hochul, et al.*, 21-CV-1009 (DNH)(ML)

Dear Judge Lovric:

I write in response to Plaintiffs' letter dated May 22, 2023 [ECF No. 74] to provide a status update in this matter. First, as indicated in Plaintiffs' letter, Plaintiffs have withdrawn their appeal of the denial of their second motion for a preliminary injunction. Because the pendency of this appeal was the sole basis for the stay of the District Court proceedings, Defendants would join in any application to lift the stay at this time.

Second, the Department of Health recently announced that the regulation at issue in this action, 10 NYCRR 2.61 ("Section 2.61"), is in the process of being repealed, subject to consideration by the Public Health and Health Planning Council ("PHHPC"). The Department has also announced that, effective immediately, it will cease citing providers for failing to comply with the requirements of Section 2.61 while the repeal is under consideration by the PHHPC. The Department may, however, continue to seek sanctions against providers based on previously-cited violations. On May 24, 2023, the Department issued a "Dear Administrator Letter" to apprise providers of these developments, a copy of which is attached.

In light of these developments, Defendants request that, rather than a pre-motion conference, the parties be permitted to file a further status report on or before August 30, 2023. The repeal of Section 2.61 would not only obviate the need for further motion practice but would render the Complaint, which seeks declaratory and injunctive relief related to Section 2.61, moot. Submission of a further status report in approximately ninety days will allow for the necessary notice and comment period and consideration of the repeal by the PHHPC at their August meeting.

Thank you for your consideration of this request.

Respectfully submitted,

**s/ Ryan W. Hickey**

Ryan W. Hickey

Assistant Attorney General

(518) 776-2616

Ryan.Hickey@ag.ny.gov

cc: All counsel of record (via ECF)



## Department of Health

**KATHY HOCHUL**  
Governor

**JAMES V. McDONALD, M.D., M.P.H.**  
Acting Commissioner

**MEGAN E. BALDWIN**  
Acting Executive Deputy Commissioner

May 24, 2023

DHDTTC DAL  
NH: DAL 23-09  
DHCBS: DAL #23-02  
DACF: DAL # 23-22

Dear Chief Executive Officers, Nursing Home Operators and Administrators, Adult Care Facility Administrators, Home Care and Hospice Administrators, and Local Health Department Commissioners/Directors:

On April 18 and 19, 2023, the Food and Drug Administration ("FDA") and the Centers for Disease Control and Prevention ("CDC"), respectively, updated and simplified their COVID-19 vaccine guidance and amended authorizations and recommendations to allow the current bivalent mRNA COVID-19 vaccine to be used in place of the original monovalent mRNA COVID-19 vaccine primary series. In addition, on May 1, 2023, the Federal Government announced that the United States Department of Health and Human Services will start the process to end their vaccination requirements for healthcare facilities certified by the Centers for Medicare and Medicaid Services.

At this time, the New York State regulatory requirement 10 NYCRR Section 2.61 (Prevention of COVID-19 Transmission by Covered Entities - 10 NYCRR Section 2.61) that personnel in covered entities be fully vaccinated against COVID-19 is being recommended for repeal by the New York State Department of Health ("the Department") subject to consideration by the Public Health and Health Planning Council ("PHHPC"). Effective immediately, the Department will cease citing providers for failing to comply with the requirements of 10 NYCRR Section 2.61 while the repeal is under consideration by PHHPC. The Department may, however, continue to seek sanctions against providers based on previously cited violations that allegedly occurred.

Healthcare facilities licensed under Article 28 and programs licensed under Article 36 and under Article 40 of the Public Health Law (PHL) and adult care facilities licensed under Article 7 of the Social Services Law (SSL) and regulated by the Department of Health, should individually consider how to implement their own internal policies regarding COVID-19 vaccination while remaining in compliance with applicable state and federal laws.

Questions or concerns concerning this DAL can be addressed to [hospinfo@health.ny.gov](mailto:hospinfo@health.ny.gov), [covidnursinghomeinfo@health.ny.gov](mailto:covidnursinghomeinfo@health.ny.gov), [covidadultcareinfo@health.ny.gov](mailto:covidadultcareinfo@health.ny.gov), or [covidhomecareinfo@health.ny.gov](mailto:covidhomecareinfo@health.ny.gov) based on the specific covered entity.

Sincerely,

A handwritten signature in black ink, appearing to read "Eugene P. Heslin".

Eugene P. Heslin, MD, FAAFP  
First Deputy Commissioner and Chief Medical Officer