

# Home Care Developments

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## DOH's Dear Administrator Letter Offers Relief to Providers Regarding Religious Exemptions

The New York Department of Health ("DOH") has issued a Dear Administrator Letter ("DAL"), stating, "**beginning November 22, 2021**, all covered entities must ensure that covered 'personnel' under the Department's August 26, 2021 – Prevention of COVID-19 Transmission by Covered Entities Emergency Regulation [the "Vaccine Mandate Regulation"] who were previously granted religious exemptions have documentation of either a first dose COVID-19 vaccination or a valid medical exemption.'

As providers know, since the Second Circuit upheld the Vaccine Mandate Regulation, covered agencies were required to come into compliance and ensure that covered healthcare personnel were vaccinated in accordance with the Vaccine Mandate Regulation. The Second Circuit's decision, issued on a Friday night, left many providers in a difficult position because they did not have time to remove their caregivers with religious exemptions from field work. Since that time, many efforts have been made to urge the State to issue some sort of relief that would excuse those providers who were unable to come into compliance with the Second Circuit's decision right away. Today's DAL arguably provides that relief. While the DOH's DALs are not binding on OMIG, OMIG will often accept DALs and defer to them in audits. Thus, this DAL should be helpful in the event that OMIG seeks to recover any monies billed and paid for cases worked by unvaccinated caregivers who were working under a religious exemption, at least until November 22, 2021. Providers who have not removed their unvaccinated caregivers from cases should immediately move towards compliance.

This DAL, however, does not provide any relief to covered providers who have been employing caregivers and office staff without a religious or medical exemption since October 7, the date that the Vaccine Mandate Regulation went into effect.

The DOH's DAL also states that "Facilities should have a process in place to consider reasonable accommodation requests from covered personnel based on sincerely held religious beliefs consistent with applicable Federal and State laws, including Equal Employment Opportunity (EEO) laws such as Title VII of the Civil Rights Act and NYS Human Rights Law, and their applicable guidance." As we have noted in the past, although the Vaccine Mandate Regulation does not permit the granting of a religious exemption to covered personnel, the DOH cannot preclude the employer from complying with the Title VII and New York Human Rights Law requirements, which require employers to consider provision of reasonable accommodations for sincerely held religious beliefs. While, practically speaking, there is unlikely to be a reasonable accommodation for a caregiver who refuses to vaccinate due to religious reasons, for purposes of complying with federal and State employment laws, providers must ensure that they are at least engaging in the interactive process and considering the provision of reasonable accommodations to every employee who requests one due to religious reasons. The reasonable accommodation process must be followed for all employees, even though the outcome of such process might end up to be the same; termination of employment for refusal to vaccinate. Human Resources departments should work closely with the Directors of Patient Services to ensure that the clinical and employment requirements are being followed in these religious accommodation cases.

If you need any assistance with compliance with the DAL or the vaccine mandate, please do not hesitate to reach out.



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