

Home Care Developments

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MASKING REQUIREMENTS TAKE EFFECT TODAY

As we reported last week, Governor Hochul has announced new masking requirements for all businesses across New York State. Special rules, however, apply to healthcare settings. As explained in a Department of Health-issued “Determination,”

1. *Healthcare settings:*

- a. *Personnel: After careful review and consideration of CDC recommendations for face masks in healthcare settings regulated by the Department, I hereby adopt such recommendations, imposing them as requirements, where applicable. Accordingly, **all personnel, regardless of vaccination status, in a healthcare setting** (i.e., facilities or entities regulated under Articles 28, 36 and 40 of the Public Health Law) shall wear an appropriate face mask in accordance with applicable CDC exceptions, until this determination is modified or rescinded.*
- b. *Visitors to Healthcare Facilities: After careful review and consideration of CDC recommendations, all visitors over age two and able to medically tolerate a face covering/mask shall be required to wear a face covering/mask in health care facilities, regardless of vaccination status, subject to applicable CDC exceptions, and until this determination is modified or rescinded.*

Thus, LHCSAs’ and CHHAs’ employees must wear a mask at all times, regardless of vaccination status. Similarly, all visitors to healthcare providers’ offices must wear a mask.

To the extent a LHCSA also operates a FI, the masking obligation will apply to all employees in the office. In other words, “FI employees” will not be allowed to unmask if all are vaccinated while the LHCSA employees wear masks at all times (regardless of their vaccination status).

Conversely, for entities that are solely fiscal intermediaries, it appears that the general non-healthcare setting rule will apply and the fiscal intermediary will not be treated as a “healthcare setting” for purposes of the masking rules. The general, non-healthcare, requirement per the Department’s Determination is for masks to be worn in all indoor public places unless the business requires proof of full vaccination against COVID-19 as a condition of entry. Per the FAQs (available [here](#)), the foregoing requirements apply to office environments. Thus, this means that in office-based and other covered businesses that do not require vaccination as a condition of entry, all individuals must wear face coverings at all times except when eating, drinking, or alone in an enclosed room.

As to enforcement, the guidance provides that “[a] violation of any provision of this measure is subject to all civil and criminal penalties, including a maximum fine of \$1,000 for each violation” and that “[l]ocal health departments are being asked to enforce these requirements.”

We also remind New York City employers (such as fiscal intermediaries) that they will soon be subject to a mandatory vaccination requirements for their employees (with no masking or testing alternative) under a recent declaration by the Mayor.

If you have any questions about these requirements, please contact us.



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