

**New York State
Pre-Event Smallpox Vaccination Program
Health Insurance Summary**

The Department of Health has received many questions regarding Workers' Compensation and health insurance coverage for those who are vaccinated under the Pre-event Smallpox Vaccination Program. The following summarizes the coverage that should be available to vaccinated health care workers, including public health workers, and their families.

Workers' Compensation

The pre-event vaccination is intended to permit health care workers to vaccinate others who will need to be vaccinated and/or to respond to or care for persons suspected of being infected with smallpox who seek care. Medical costs of vaccine adverse events should be covered by Workers' Compensation insurance. Neither the fact that it is an inoculation against smallpox nor the voluntary nature of it will necessarily defeat a claim for Workers' Compensation benefits due to vaccine adverse events, assuming the claimant otherwise meets the requirements for a compensable claim.

Coverage for lost wages will depend upon the application of Workers' Compensation Law Sections 12, 14 and 15 to a claimant's particular situation. Sections 14 and 15 permit reimbursement for lost wages at no more than 2/3 of the employee's average weekly wage, capped at \$400 per week. The method for determining average weekly wage can vary; generally, it is determined using 52 weeks of wages for the year preceding the date of disability. Section 12 provides that no compensation for lost wages will initially be allowed for the first seven (7) days of disability. However, compensation is allowed for disability ranging from seven (7) to fourteen (14) days; and if a work related injury results in disability of more than fourteen (14) days, compensation will be allowed from the first date of disability. The federal Centers for Disease Control has advised that normally vaccinees may feel ill to the extent of being unable to work for one or two days approximately one week after vaccination. Some employers are making alternate arrangements to assure that their employees are paid for such days. For example, the New York State Governor's Office of Employee Relations has approved payment of wages without use of sick leave for New York State employees who suffer a non-compensable vaccine adverse event. Health Research, Inc. has agreed to follow a similar procedure.

Workers' Compensation insurance for medical costs and lost wages due to secondary transmission of infection among work colleagues should be available similarly, assuming an otherwise compensable claim. Such transmissions are expected to be extremely rare if they happen at all.

Whether Workers' Compensation insurance coverage is available to volunteers and contractors is determined based upon the specific facts of each case. The Workers'

Compensation Board will examine who has the right to control the work, the method of payment, who furnishes the equipment, the right to discharge and the nature of the work involved. The mere fact that a contract designates a party as an independent contractor or that there is not a contract with a volunteer will not alone determine if coverage is provided.

The Workers' Compensation Board provides information for injured workers through its website at www.wcb.state.ny.us. The Workers' Compensation Board also has an Advocate for Injured Workers who may be contacted at 1-800-580-6665.

Individual and Group Health Insurance

Costs of medical treatment for vaccine adverse events generally should be covered for those with comprehensive health insurance. New York State Insurance Department Regulations at 11 NYCRR Section 52.16(c) prohibit any health insurance policy (both indemnity and HMO) from limiting or excluding coverage by type of illness, accident, treatment or medical condition with certain enumerated exceptions. The exceptions or exclusions in the Regulation are permitted, but not required, to be included in a health insurance policy at the discretion of the insurance company or HMO. The Regulation would not permit an insurer or HMO to impose a blanket exclusion of coverage for services required to treat smallpox vaccine adverse events. This means that the insurance company or HMO must determine coverage of any health care services provided to an insured or member as a result of vaccine adverse events in the same way that the company or HMO would determine coverage of any other illness, accident, treatment or medical condition. All the policy provisions that would apply to other conditions and situations would apply to services resulting from vaccine adverse events as well. For example, any pre-certification or pre-authorization requirements imposed on services under the policy would continue to apply. Therefore, it is important for vaccinees to consult their health insurance policies to determine what services are and are not covered and how to access those services.

As noted earlier, it is expected that medical costs of vaccine adverse events to health care workers will be covered by Workers' Compensation coverage. Under the Insurance Regulation noted above, health insurance policies are not required to cover services that are covered by a Workers' Compensation policy. So, to the extent that vaccine adverse events are compensable under Workers' Compensation coverage, they may not be covered under health insurance policy. This would apply to the health care worker-vaccinee. Insurers and HMOs could not rely on the Workers' Compensation exclusion in their health insurance policies to deny coverage of health care services provided to family members of the health care worker-vaccinee or hospitalized patients who are impacted by secondary transmissions. In general, family members with comprehensive insurance policies issued in New York State should be covered for treatment of any vaccine related side effects.

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