



Advocating for patients. Advancing the profession.

**Presented at Public Hearing on H1N1 Virus
State Assembly Standing Committees on
Health, Labor, Education, Higher Education, and Workplace Safety
October 13, 2009**

The New York State Nurses Association is the largest professional association and union for registered nurses in the Empire State. We have more than 37,000 members in a range of practice settings, from public schools to nursing homes; from hospitals to correctional facilities; from home care to academia.

Regardless of their practice specialties, our members were concerned about the appearance of a novel flu strain last spring. As the epicenter of the outbreak was New York City, nurses wanted to be informed about the spread of the virus, its symptoms, and how to treat infected patients.

Many of our members asked us what should be done to prevent the spread of the infection, as no vaccine was available at the time. We advised them that patients with confirmed or suspected H1N1 influenza should be kept in isolation and those caring for them should use fit-tested N-95 respirators in addition to standard infection control protocols, such as hand washing.

This advice was based on recommendations by the Center for Disease Control and Prevention (CDC). The Occupational Safety and Health Administration (OSHA) requires healthcare employers to identify hazards in their facilities, assess the risk to employees and patients from these hazards, and develop a plan for removing or reducing them. As more research became available on how the H1N1 virus is spread, the airborne mode of transmission was identified as one of the means of spreading the virus. This mode of transmission warrants the use of a fit tested N-95 respirator or better.

It soon became apparent, however, that many healthcare facilities had not done risk assessments, nor kept current with evolving scientific studies which documented the airborne mode of transmission as a contributing factor to the spread of the virus. Furthermore, they did not have enough N-95 respirators. A recently released survey of 190 American hospitals found that 15% did not have respirators available and more than 25% had inadequate or no engineering controls to isolate H1N1 flu patients.

Hospitals in New York told their employees that a surgical mask was sufficient protection when caring for flu patients. This view was supported by guidelines issued by the New York State Department of Health.

A study sponsored by the CDC has since confirmed that the N-95 respirator is the minimum level of protection for healthcare providers, as H1N1 can be transmitted via aerosolized particles that are not blocked by surgical masks. DOH, however, has continued to advise hospitals that surgical masks are acceptable protection.

During the past nine months, the Nurses Association has been concerned about the lack of a broad, coordinated plan for dealing with an influenza pandemic. The commissioner of health did not declare a public health emergency based on the threat of H1N1 influenza. This would have given him broad powers to require vaccinations, set up containment or quarantine areas, and other measures outside the usual reach of government regulation.

This brings me to the issue of mandatory vaccinations for healthcare workers. This requirement was put forward as an emergency regulation at the June meeting of the State Hospital Planning and Review Council and was in effect by mid-August. There was no opportunity for comment or public review. The

Nurses Association did present testimony in July, but was the only organization that was able to do so within the brief time frame.

Oddly enough, the initial version of the emergency regulation did not refer to the H1N1 influenza. It mentions only immunization for the seasonal flu. It is unclear why this year's seasonal flu precipitated an emergency regulation. It was in the revised regulation after verbal conversations that Commissioner Daines added that it was the intent of the regulation to include the H1N1 vaccine, should it become available.

In fact, the state is sending mixed messages about the impact of H1N1. On one hand, the threat to public health is not great enough to close schools, force employers to provide sick pay, or mandate vaccinations for the entire population. On the other hand, the threat is such that healthcare personnel either must be immunized or lose their livelihood and careers. To make vaccinations mandatory the end of the contagion continuum (in the hospital rather than in the community where the flu originates) is not the most effective public health measure to control the spread of the virus and does not deploy limited quantities of vaccine where the greater good could be served.

State officials have commented that healthcare personnel who refuse or object to being vaccinated don't care about their patients' safety. This is insulting to nurses and an effort to divert attention from the real issue: do mandatory vaccination programs make patients any safer than effective voluntary programs?

Voluntary programs have increased acceptance rates within individual facilities up to 80%. But I must explain that these programs involve more than putting a poster on the wall and putting brochures on a table. They require commitment of time and resources; education, incentives, and convenience. But they do get employee buy-in from year to year.

The state's decision to mandate vaccinations may have an unintended negative effect. As vaccinations are not widely available to the public, the surge in influenza cases is likely to tax healthcare facilities that already are short staffed. A number of major hospitals have notified their employees that if they refuse to be vaccinated, they will first be put on unpaid leave and then fired. It makes no sense to remove qualified healthcare personnel from the workforce just when they are most needed.

Patient safety cannot be guaranteed by programs that rely solely on vaccinations to prevent the spread of influenza. Unlike polio, smallpox, or hepatitis, the flu virus is constantly mutating. In some years, the vaccine has been less than 40% effective. Vaccinations must be considered part of comprehensive infection control programs that will benefit both healthcare personnel and their patients.

To help meet the goal of preventing hospital-acquired influenza, the Nurses Association proposes that the state:

- Withdraw the regulation requiring healthcare personnel to receive flu vaccinations;
- Create a task force of stakeholders to assist in the development of a more effective, comprehensive approach to preventing the spread of influenza;
- Revise DOH guidelines on respiratory protection for workers to more clearly state the need for a hazard assessment when selecting the proper level of protection; and
- Establish the N-95 respirator as the minimum level of protection for direct care of patients, residents, and clients who are suspected or confirmed to have an infectious respiratory illness.

Constituent of the American Nurses Association