EXECUTIVE ORDER

DECLARING A DISASTER EMERGENCY IN THE STATE OF NEW YORK

WHEREAS, on April 26, 2009, the Secretary of the United States Department of Health and Human Services determined that a public health emergency involving 2009 H1N1 influenza exists nationwide, which determination was renewed by the Secretary on July 24, 2009 and October 1, 2009; and

WHEREAS, on June 11, 2009, the World Health Organization declared that 2009 H1N1 influenza had spread around the world to the point where it is now a pandemic; and

WHEREAS, on October 23, 2009, President Barack Obama declared a national emergency pursuant to sections 201 and 202 of the National Emergencies Act (50 U.S.C. 1621, et seq.) given that the rapid increase in illness across the nation may overburden health care resources, and authorized the Secretary of Health and Human Services to exercise the authority under section 1135 of the Social Security Act to waive or modify certain requirements of the Medicare, Medicaid, and State Children’s Health Insurance programs and of the Health Insurance Portability and Accountability Act Privacy Rule as necessary to respond to the pandemic; and

WHEREAS, 2009 H1N1 influenza is widespread throughout the State of New York, with at least 75 known deaths including among children and pregnant women, but the true magnitude of cases may be as much as 10 percent of the population or more in some areas; and

WHEREAS, there is evidence that the spread of 2009 H1N1 influenza is increasing in schools; and

WHEREAS, the 2009 H1N1 influenza pandemic is a threat to public health and safety in New York and, if unchecked, will cause personal hardship among the general public throughout the State, including death, hospital overcrowding, shortages of health care workers, and disruptions to businesses and critical infrastructure due to illness-related absenteeism; and

WHEREAS, the seriousness of the 2009 H1N1 influenza pandemic, compounded by the concurrent presence in the community of seasonal influenza disease, constitutes a public health emergency; and

WHEREAS, Public Health Law sections 206(1)(l) and 613(1) authorize the New York State Department of Health and local health departments, respectively, to establish and conduct programs for the voluntary immunization of adults and the immunization of children with parental consent to prevent or minimize the spread of disease and to protect the public health;

WHEREAS, among the factors contributing to the imminence and seriousness of the public health emergency are a shortage of nurses and other trained and licensed personnel able to administer vaccinations to as many people and as quickly as possible, potentially causing hospitals, clinics and other health care providers to be overwhelmed by excessive number of individuals seeking vaccination and patients who become ill with 2009 H1N1 influenza or seasonal influenza; and
WHEREAS, to combat the further spread of 2009 H1N1 influenza, avoid excessive disruptions to the health care system and society in general, and protect the lives, health, safety and welfare of the public, it is necessary to remove or minimize barriers to the voluntary vaccination of as many individuals as possible as quickly as possible against 2009 H1N1 influenza and seasonal influenza, by making available the services, personnel, equipment, and facilities necessary to conduct such vaccinations and facilitating the timely and accurate reporting of vaccinations; and

WHEREAS, it is therefore necessary to facilitate the timely distribution and administration of 2009 H1N1 influenza and seasonal influenza vaccine in various settings throughout the State, and in particular to permit Points of Dispensing (hereinafter “PODs”) overseen or approved by the New York State Department of Health or local health departments and operated under the medical supervision of physicians, physician assistants or nurse practitioners certified in accordance with paragraph b of subdivision 3 of section 6902 of the Education Law to utilize certain health professionals, who are not currently authorized to administer vaccinations but who are licensed or certified under specific provisions of the Education Law or the Public Health Law and who will be trained as necessary, to administer 2009 H1N1 influenza and seasonal influenza vaccinations; and

WHEREAS, health professionals licensed or certified under the Education Law or the Public Health Law are authorized to engage in specific scopes of practice, and this Order shall not expand the scopes of practice of these professionals to allow them routinely to administer vaccinations, but rather will allow them to vaccinate only under the extremely limited circumstances described in and for the duration of this Order; and

WHEREAS, records maintained in the New York State Immunization Information System (NYSIIS) and the New York City Citywide Immunization Registry (CIR) are securely maintained and may be disclosed only as provided in law, and this Order shall not alter any existing provision for the security or confidentiality of immunization information; and

WHEREAS, this Order does not authorize any person to be vaccinated without his or her consent or the consent of another person legally authorized to consent on his or her behalf, and does not authorize any minor to be vaccinated without the consent of a person in parental relation to the minor; and

WHEREAS, this Order does not authorize the vaccination of any person under six months of age or for whom the 2009 H1N1 influenza or seasonal influenza is medically contraindicated;

NOW, THEREFORE, I, David A. Paterson, Governor of the State of New York, by virtue of the authority vested in me by the Constitution and the Laws of the State of New York, hereby find, pursuant to Section 28 of Article 2-B of the Executive Law, that a disaster has occurred throughout New York State, for which the affected local governments are unable to respond adequately, and I do hereby declare a State disaster emergency for the entire State of New York.

FURTHER, pursuant to Section 29 of Article 2-B of the Executive Law, I direct the implementation of the State Disaster Preparedness Plan and authorize all necessary State agencies to take appropriate action to assist affected local governments and individuals in responding to and recovering from this public health emergency, to protect state and local property, and to provide such other assistance as is necessary to protect public health and safety.

FURTHER, pursuant to the authority vested in me by Section 29-a of Article 2-B of the Executive Law, to allow adequate staffing and efficient operation of PODs overseen or approved by the New York State Department of Health or local health departments for the purpose of facilitating the timely distribution and administration of 2009 H1N1 influenza and seasonal influenza vaccine to the people of the State of New York without charge to individual vaccinees, to facilitate the timely distribution and administration of 2009 H1N1 influenza and seasonal influenza vaccine in other settings throughout the State, and to protect and preserve health and prevent illness and death, I hereby temporarily suspend or modify, as the case may be, for a period of thirty days, the following specific provisions of statute, rules and regulations, or parts thereof, as compliance with such provisions would prevent, hinder, or delay action necessary to cope with the State disaster emergency:

Subdivision 1 of section 6902 of the Education Law in so far as it limits the execution of medical regimens prescribed by a licensed physician or other licensed and legally authorized health care provider to nurses licensed pursuant to Article 139 of the Education Law, so that, for the purposes of this Executive Order only, physician assistants, specialist assistants, dentists, dental hygienists who have been issued a dental hygiene restricted local infiltration anesthesia/nitrous oxide analgesia certificate, pharmacists, midwives, and podiatrists, which professions are licensed or certified under Articles 131-B, 133, 137, 140 and 141 of the Education Law and advanced emergency medical technicians certified pursuant to Public Health Law Article 30 may administer vaccinations against 2009 H1N1 influenza and seasonal influenza at PODs, provided they first receive training in techniques, indications, precautions, contraindications, infection control practices, and use of personal protective equipment sufficient to provide the basic level of competence for such tasks, as determined by the Commissioner of Health after consultation with the Commissioner of Education;
Paragraph 1 of section 6542 of the Education Law and subdivisions a and b of section 94.2 of Title 10 of the Official Compilation of Codés Rules and Regulations of the State of New York (NYCRR) in so far as they require a physician assistant to be under the supervision of a physician when performing medical services and only allow the physician assistant to perform such acts and duties as are assigned to him or her within the scope of practice of such supervising physician, so that, for the purposes of this Executive Order only, physician assistants may medically supervise PODs and administer vaccinations against 2009 H1N1 influenza and seasonal influenza at PODs pursuant to a non-patient specific order, provided they first receive training in techniques, indications, precautions, contraindications, infection control practices, and use of personal protective equipment sufficient to provide the basic level of competence for such tasks, as determined by the Commissioner of Health after consultation with the Commissioner of Education;

Paragraph 2 of section 6542 of the Education Law and subdivisions a and b of section 94.2 of Title 10 of the NYCRR in so far as they require a specialist assistant to be under the supervision of a physician when performing medical services and only allow the special assistant to perform such acts and duties as are related to the designated medical specialty for which he or she is registered and are within the scope of practice of his or her supervising physician, so that, for the purposes of this Executive Order only, specialist assistants may administer vaccinations against 2009 H1N1 influenza and seasonal influenza at PODs pursuant to a non-patient specific order, provided they first receive training in techniques, indications, precautions, contraindications, infection control practices, and use of personal protective equipment sufficient to provide the basic level of competence for such tasks, as determined by the Commissioner of Health after consultation with the Commissioner of Education;

Section 6601 of the Education Law in so far as it limits the practice of dentistry to the treatment of the mouth and the adjacent tissue, to the exclusion of any other part of the human body, so that, for the purposes of this Executive Order only, dentists may administer vaccinations against 2009 H1N1 influenza and seasonal influenza at PODs pursuant to a non-patient specific order, provided they first receive training in techniques, indications, precautions, contraindications, infection control practices, and use of personal protective equipment sufficient to provide the basic level of competence for such tasks, as determined by the Commissioner of Health after consultation with the Commissioner of Education;

Subdivision 1 of section 6828 and subdivision 3 of section 6801 of the Education Law and paragraph 3 of subdivision b of section 63.9 of Title 8 of the NYCRR, in so far as they prohibit pharmacists without a certificate of administration issued by the State Education Department from administering immunizing agents, so that, for the purposes of this Executive Order only, pharmacists without a certificate of administration may administer vaccinations against 2009 H1N1 influenza and seasonal influenza at PODs pursuant to a non-patient specific order, provided they first receive training in techniques, indications, precautions, contraindications, infection control practices, and use of personal protective equipment sufficient to provide the basic level of competence for such tasks, as determined by the Commissioner of Health after consultation with the Commissioner of Education;

Section 7001 of the Education Law in so far as it limits the practice of podiatry to the treatment of the foot, to the exclusion of any other part of the human body, so that, for the purposes of this Executive Order only, podiatrists may administer vaccinations against 2009 H1N1 influenza and seasonal influenza at PODs pursuant to a non-patient specific order, provided they first receive training in techniques, indications, precautions, contraindications, infection control practices, and use of personal protective equipment sufficient to provide the basic level of competence for such tasks, as determined by the Commissioner of Health after consultation with the Commissioner of Education;

Section 6951 of the Education Law in so far as it limits the practice of midwifery to midwives who practice in accordance with written practice agreements with a licensed physician or hospital licensed pursuant to Article 28 of the Public Health Law and in so far as it permits midwives to administer drugs only within the practice of midwifery, so that, for the purposes of this Executive Order only, midwives may administer vaccinations against 2009 H1N1 influenza and seasonal influenza at PODs pursuant to a non-patient specific order, provided they first receive training in techniques, indications, precautions, contraindications, infection control practices, and use of personal protective equipment sufficient to provide the basic level of competence for such tasks, as determined by the Commissioner of Health after consultation with the Commissioner of Education;

Subdivision 2 of section 6951 of the Education Law and section 79-5.6 of Title 8 of NYCRR in so far as they prohibit midwives without a certificate issued by the State Education Department from administering immunizing agents, so that, for the purposes of this Executive Order only, midwives without a certificate may administer vaccinations against 2009 influenza and seasonal influenza at PODs pursuant to a non-patient specific order, provided they first receive training in techniques, indications, precautions, contraindications, infection control practices, and use of personal protective equipment sufficient to provide the basic level of competence for such tasks, as determined by the Commissioner of Health after consultation with the Commissioner of Education;
Subdivision 1 of section 6606 of the Education Law and section 61.9 of Title 8 of the NYCRR in so far as they restrict the practice of dental hygiene to the performance of dental services and require that the practice of dental hygiene be conducted in the office of any licensed dentist or appropriately equipped school or public institution, under the supervision of a dentist, so that, for the purposes of this Executive Order only, dental hygienists who have been issued a dental hygiene restricted local infiltration anesthesia/nitrous oxide analgesia certificate in accordance with section 6602-b of the Education Law and section 61.17 of Title 8 of the NYCRR may administer vaccinations against 2009 H1N1 influenza and seasonal influenza at PODs pursuant to a non-patient specific order, provided they first receive training in techniques, indications, precautions, contraindications, infection control practices, and use of personal protective equipment sufficient to provide the basic level of competence for such tasks, as determined by the Commissioner of Health after consultation with the Commissioner of Education;

Subdivision 7 of section 3001 of the Public Health Law and subdivision b of section 800.15 of Title 10 of the NYCRR in so far as they limit the responsibilities of advanced emergency medical technicians to administration or supervision of initial emergency medical care and transportation of sick or injured persons and in so far as they require advanced emergency medical technicians to treat patients in accordance with applicable State-approved protocols unless authorized to do otherwise for an individual patient by a medical control physician, so that, for the purposes of this Executive Order only, advanced emergency medical technicians may administer vaccinations against 2009 H1N1 influenza and seasonal influenza at PODs pursuant to a non-patient specific order and pursuant to medical direction at such PODs, provided they first receive training in techniques, indications, precautions, contraindications, infection control practices, and use of personal protective equipment sufficient to provide the basic level of competence for such tasks, as determined by the Commissioner of Health after consultation with the Commissioner of Education;

Subdivisions 6 and 7 of section 6527 and subdivisions 4 and 7 of section 6909 of the Education Law in so far as they authorize licensed physicians and certified nurse practitioners to prescribe and order non-patient specific regimens only to registered professional nurses and pharmacists with a certificate of administration, so that, for the purposes of this Executive Order only, licensed physicians and certified nurse practitioners may also prescribe and order non-patient specific regimens to physician assistants and specialist assistants, dentists and dental hygienists who have been issued a dental hygiene restricted local infiltration anesthesia/nitrous oxide analgesia certificate, pharmacists without a certificate of administration, midwives and podiatrists, which professions are licensed or certified under Articles 131-B, 133, 137, 140 and 141 of the Education Law, and to advanced emergency medical technicians certified pursuant to Public Health Law Article 30, and such licensed or certified persons may administer vaccinations against 2009 H1N1 influenza and seasonal influenza at PODs pursuant to such non-patient specific regimens, provided they first receive training in techniques, indications, precautions, contraindications, infection control practices, and use of personal protective equipment sufficient to provide the basic level of competence for such tasks, as determined by the Commissioner of Health after consultation with the Commissioner of Education;

Paragraphs a and b of subdivision 2 of section 6801 of the Education Law and subparagraphs (vii) and (xi) of paragraph 4 of subdivision b of section 63.9 of Title 8 of the NYCRR in so far as they require licensed pharmacists administering immunizing agents pursuant to a non-patient specific regimen to report such administrations to patients' attending physicians and provide information to patients on the importance of having a primary health care practitioner, so that, for purposes of this Executive Order only, licensed pharmacists administering vaccinations against 2009 H1N1 influenza and seasonal influenza at PODs need not provide information to patients on the importance of having a primary health care practitioner or report such administration to patients' attending physicians, and may instead report the vaccination to the CIR or NYSIIS;

Subdivision 22 of section 6802 of the Education Law and subparagraph (ii) of paragraph 1 of subdivision b of section 63.9 of Title 8 of the NYCRR in so far as they authorize licensed pharmacists to administer vaccines pursuant to a non-patient specific order only if such order is issued by a physician or certified nurse practitioner who has a practice site in the county or a county adjoining the county where the vaccination is to be administered, so that, for the purposes of this Executive Order only, licensed pharmacists may administer vaccinations against 2009 H1N1 influenza and seasonal influenza at PODs or in other settings pursuant to a non-patient specific order issued by any physician licensed in the State of New York or any nurse practitioner certified in the State of New York, without regard to such physician or nurse practitioner's practice location, provided that such pharmacists continue to receive adequate supervision as determined by the Commissioner of Health after consultation with the Commissioner of Education;

Subdivision 22 of section 6802 of the Education Law and paragraph 2 of subdivision b of section 63.9 of Title 8 of the NYCRR in so far as they limit the authority of pharmacists with a certificate of authorization to administer immunizing agents to permit such administration only to individuals who are 18 years of age or older, so that, for the purposes of this Executive Order only, pharmacists may also administer vaccinations against 2009 H1N1 influenza and seasonal influenza for patients between six months and 18 years of age, whether at PODs or in other settings;
Paragraph 3 of subdivision a of section 64.7 of Title 8 of the NYCRR in so far as it requires a registered professional nurse authorized to administer immunization agents pursuant to a non-patient specific order to be currently certified in cardio-pulmonary resuscitation (CPR), so that, for the purposes of this Executive Order only, registered professional nurses whose certification has lapsed but who remained licensed may administer vaccinations against 2009 H1N1 influenza and seasonal influenza at PODs, provided they are first trained in CPR and provided further that at least two CPR certified staff are present on site at the time;

Clause (d) of subparagraph (iii) of paragraph 4 of subdivision a of section 64.7 of Title 8 of NYCRR in so far as it requires registered professional nurses administering immunizing agents pursuant to a non-patient specific regimen to report such administration to patients' attending physicians, so that, for the purposes of this Executive Order, registered professional nurses may administer vaccinations against 2009 H1N1 and seasonal influenza at PODs without reporting such administrations to patients' attending physicians, and may instead report the vaccination to the CIR or NYSIS;

Paragraph a of subdivision 5 of section 2168 of the Public Health Law in so far as it requires the express written consent of the vaccinee for inclusion of information regarding immunizations administered to persons 19 years of age or older in the NYSIS and the CIR, so that, for the purposes of this Executive Order only, the Commissioner of Health may include adult immunization information for 2009 H1N1 influenza and seasonal vaccination at PODs in NYSIS without consent of the vaccinee, and the New York City Commissioner of Health and Mental Hygiene may include adult immunization information for 2009 H1N1 influenza and seasonal influenza vaccination at PODs and for 2009 H1N1 influenza vaccination in other settings in the CIR without consent of the vaccinee, provided that nothing in this paragraph shall be read to permit the vaccination of any person without his or her consent or the consent of another person legally authorized to provide such consent, or to permit the vaccination of any minor without the consent of a person in parental relation to the minor;

Paragraph 2 of subdivision a of section 66-1.2 of Title 10 of the NYCRR in so far as it defines the CIR to include records of vaccinations of persons 19 years of age and older with written consent, so that, for the purposes of this Executive Order only, the registry may include adult immunization information for 2009 H1N1 influenza and seasonal vaccination at PODs and for 2009 H1N1 influenza vaccination in other settings in the CIR without consent of the vaccinee, provided that nothing in this paragraph shall be read to permit the vaccination of any person without his or her consent or the consent of another person legally authorized to provide such consent, or to permit the vaccination of any minor without the consent of a person in parental relation to the minor;

Paragraph 6 of subdivision a of section 66-1.2 of Title 10 of the NYCRR in so far as it defines registrants to include those persons 19 years of age or older receiving immunizations who provide written consent to have their immunizations recorded in the system, so that, for the purposes of this Executive Order only, consent of the vaccinee is not required to record adult immunization information for 2009 H1N1 influenza and seasonal influenza vaccination at PODs in NYSIS or to record adult immunization information for 2009 H1N1 influenza and seasonal influenza vaccination at PODs and 2009 H1N1 influenza vaccination in other settings in the CIR, provided that nothing in this paragraph shall be read to permit the vaccination of any persons without his or her consent or the consent of another person legally authorized to provide such consent, or to permit the vaccination of any minor without the consent of a person in parental relation to the minor;

Paragraph 3 of subdivision a of section 29.2 of Title 8 of the NYCRR in so far as it makes it an act of professional misconduct for the professions listed within that section to fail to maintain and retain a record for each patient which accurately reflects the evaluation and treatment of the patient, so that, for the purposes of this Executive Order only, persons practicing the professions listed within that section who are authorized to administer vaccinations pursuant to this Order are not required to maintain and retain such record for those to whom they administer vaccinations against 2009 H1N1 influenza or seasonal influenza at PODs;

Clause (f) of subparagraph (iii) of paragraph 4 of subdivision a of section 64.7 of Title 8 of the NYCRR in so far as it requires a registered professional nurse administering an immunizing agent pursuant to a non-patient specific regimen to ensure that a record of all persons immunized is recorded, maintained, and retained in accordance with paragraph 3 of subdivision a of Section 29.2 of the regulations of the Board of Regents of the State Education Department, so that, for the purposes of this Executive Order only, registered professional nurses are not required to ensure that such a record is maintained and retained for those to whom they administer vaccinations against 2009 H1N1 influenza or seasonal influenza at PODs;

Subparagraph ix of paragraph 4 of subdivision b of section 63.9 of Title 8 of NYCRR in so far as it requires a pharmacist administering an immunizing agent pursuant to a non-patient specific regimen to ensure that a record of all persons immunized is recorded, maintained, and retained in accordance with paragraph 3 of subdivision a of Section 29.2 of the regulations of the Board of Regents of the State Education Department, so that, for the purposes of this Executive Order only, pharmacists are not required to ensure that such a record is maintained and retained for those to whom they administer vaccinations against 2009 H1N1 influenza or seasonal influenza at PODs;
Sections 1 and 3 of chapter 198 of the Laws of 1978 and section 402 of Chapter 170 of the Laws of 1994 in so far as they limit provision of services in school-based health centers to preschool and school-age children residing in the area served by school districts and boards of cooperative educational services, so that, for the purposes of this Executive Order only, staff of school-based health centers who are lawfully authorized to administer vaccinations may also administer vaccinations against 2009 H1N1 influenza and seasonal influenza at such centers to adults;

Paragraph j of subdivision 1 of section 414 of the Education Law in so far as it limits provision of services in school-based health centers to preschool and school-age children, so that, for the purposes of this Executive Order only, staff of school-based health centers who are lawfully authorized to administer vaccinations may also administer vaccinations against 2009 H1N1 influenza and seasonal influenza at such centers to adults; and

Paragraph 22 of subdivision a of section 700.2 of Title 10 of the NYCRR in so far as it prohibits any health care services provided in an elementary or secondary school to students during regular school hours from qualifying as part-time clinics under Title 10 of the NYCRR and Article 28 of the Public Health Law, so that, for the purposes of this Executive Order only, part-time clinics may be operated in elementary or secondary schools, permitting the administration of vaccinations against 2009 H1N1 influenza and seasonal influenza to children and adults during regular school hours, subject to the approval of the New York State Department of Health.

FURTHER, I have designated John R. Gibb, Director of the State Emergency Management Office, as the State Coordinating Officer of this event.

GIVEN under my hand and the Privy Seal of the State in the City of Albany this twenty eighth day of October in the year two thousand nine.

BY THE GOVERNOR

[Signature]

Secretary to the Governor
STATE OF NEW YORK – DEPARTMENT OF HEALTH

INTEROFFICE MEMORANDUM

To: All County EMS Coordinators, EMS Agencies
From: Lee Burns, Acting Deputy Director, Bureau of EMS
Subject: Executive Order No. 29
Date: October 30, 2009

October 28, 2009, Governor Patterson signed Executive Order No. 29 declaring a state disaster emergency for the entire State of New York in response to the H1N1 Influenza virus. This is an Article 2-B declaration that allows the governor to suspend or amend certain laws.

Part of Executive Order No. 29 modifies Part 800.15 subdivision b, allowing certified advanced EMTs at the Critical Care and Paramedic levels to administer H1N1 and seasonal influenza vaccines but only under certain parameters.

1. The advanced EMTs must be operating at a POD (Points of Distribution) established and operated by the county or local health department.
2. The advanced EMTs must first receive training in techniques, indications, precautions, contraindications, infection control practices, and use of PPE that is sufficient to provide a basic level of competence as determined by the Commissioner of Health and after consultation with the Commissioner of Education.
3. This Executive Order and subsequently the ability for advanced EMTs to vaccinate will expire after 30 days, unless it is extended by the Governor.

Local health departments have already identified health care providers capable of administering vaccinations at their planned PODS. If necessary, the local health department will expand this capability by contacting and utilizing advanced EMTs. If the local plan includes the use of advanced EMTs, training will be conducted at the local level by the local health department or its designee using an approved program.

While working at a POD, advanced EMTs will be operating under the medical direction of the assigned medical director for the POD. Additionally, the use of EMS providers at PODs can not negatively impact the availability of EMS response in the local community.
Executive Order - Questions and Answers

1. What is the purpose of this Declaration and why was it issued now?

The Declaration is intended to provide the New York State Department of Health and local health departments throughout the state the flexibility needed to ensure that once vaccine supplies become more abundantly available, New York is able to quickly and efficiently vaccinate as many individuals as possible. We are now beginning to see the numbers of persons sick with the flu increase – we have seen several schools close and several deaths have been reported. While nationally vaccine availability has been limited to date, we anticipate that the supply will begin to increase significantly over the coming weeks. The Declaration puts in place the needed resources and flexibility to be able to respond quickly and efficiently.

In brief, this Emergency Declaration is effective for 6 months unless it is rescinded by the Governor at an earlier date; the suspensions of law in the executive order are effective for 30 days. The executive order puts in place the following to assure that State and local health departments have the resources and flexibility to quickly implement community-based flu vaccine programs. More specifically, this declaration allows for the following:

- An expanded number of trained health care personnel will be legally able to administer flu vaccine (seasonal and 2009 H1N1) in state and local health department sponsored flu vaccine programs or Points of Dispensing (PODs). In this way, multiple patients from multiple providers can be immunized at a single centralized site. This is a much more efficient mechanism for safe vaccination of large numbers of individuals. Physician assistants, specialist assistants, dentists, dental hygienists who have been issued a special anesthesia/analgesia certificate, pharmacists without a certificate authorizing them to administer vaccinations, podiatrists, midwives, and advanced emergency medical technicians have been authorized to immunize people at these vaccine program for 2009 H1N1 and seasonal influenza provided they first receive training approved by the Commissioner of Health. Nurses and pharmacists with a certificate authorizing them to administer vaccines are already authorized to do so under existing law.

- Specially trained physician assistants, in addition to licensed physicians and certified nurse practitioners, will be permitted to supervise state or locally sponsored flu vaccine programs without being under the direct supervision of a physician.

- Physicians and certified nurse practitioners will be allowed under this executive order to prescribe and order “non patient-specific” regimens authorizing vaccination by the health care workers who will be vaccinating individuals at large flu vaccine programs. Thus one order may be written for all individuals who are seen at a specific location for the purpose of being vaccinated against seasonal or 2009 HiN1 flu rather than requiring that each individual have a unique patient order for the vaccine.

- The executive order makes provisions that will allow schools to be used as vaccination sites for adults. These provisions will allow adults to be immunized in school-based health clinics that ordinarily serve children only and for state health department authorized part-time clinics to be
operated by hospitals in elementary or secondary schools. School districts have the ability to allow use of their facilities for mass vaccination programs under existing law.

- Certified pharmacists will be permitted to immunize all individuals age 6 months and older and may immunize individuals under the non-patient specific order of a licensed physician or certified nurse practitioner from anywhere in New York State rather than only those physicians or nurse practitioners who practice in the same or an adjoining county as the pharmacy. This will increase the number of locations that a child or adult may be vaccinated.

- Registered nurses with current CPR certification may administer immunizations pursuant to a non-patient specific orders under existing law. The executive order will permit registered nurses trained but not certified in CPR to administer vaccinations at PODs, provided at least 2 CPR certified staff are present on site.

2. How will vaccinations provided at PODS be reported? How will an individual’s physician be made aware that the individual has been vaccinated?

PODs will be authorized to record the immunization of children and adults for 2009 H1N1 and seasonal influenza in the New York State Immunization Information System (NYSIIS) and the New York City Immunization Registry without consent. Providers in other settings in New York City will also be able to record 2009 H1N1 immunizations in the City Immunization Registry without consent. This will permit timely reporting to the federal government and effective monitoring for adverse events.

3. What provisions are made under the Executive Order to streamline and reduce paperwork and reporting for individuals vaccinated at PODs?

Pharmacists and registered nurses vaccinating individuals at PODS will not be required to keep a record of and report immunizations performed under a non-patient specific order to the patient’s attending physician. Similarly, pharmacists administering immunizations at PODs will not be required to provide patients they immunize with information regarding the importance of having a primary care physician. Instead, vaccine records for individuals vaccinated at PODs will be maintained through the State and City immunization registries.

4. How will this executive order improve New York’s 2009 H1N1 immunization program?
The executive order will increase the number of individuals who may legally vaccinate individuals and will expand the type and thus number of sites where state and local health departments may sponsor large community-based vaccine programs and in turn ensure that as many New Yorkers are vaccinated as quickly as possible, once vaccine supplies become more readily available.

5. What protections are there for individuals who are vaccinated at these sites?

This executive order describes limited circumstances under which the specified types of health care providers will be authorized to administer vaccine. This executive order is limited to seasonal and 2009
H1N1 vaccination, is effective for a 30-day period and requires that the individuals authorized to administer vaccine may only do so once they have receive training in the following: techniques, indications, precautions, contraindications, infection control practice and the use of personal protective equipment. This training must meet a basic level of competence to administer vaccine as determined by the Commissioner of Health after consultation with the Commissioner of Education.

6. What types of health care providers will be authorized to vaccinate at these sites?

The following health care providers, when appropriately trained, will be authorized to participate in school and community-based flu vaccine programs:

- Physician assistants, specialist assistants, dentists, dental hygienists who have been issued a special anesthesia/analgnesia certificate, pharmacists without a certificate of administration, podiatrists, midwives, and advanced emergency medical technicians. Nurses and pharmacists with a certificate of administration are already authorized to participate in these types of activities under existing law.

7. Under this executive order will anyone be required to be immunized?

No. There is nothing included in the declaration that requires anyone to be immunized without their express consent or the consent of someone legally authorized to consent for them.

8. Can this executive order be renewed?

Yes. Executive Law § 29-a(2) authorizes suspension of law and regulation in a declared state disaster emergency for a maximum of 30 days, and permits the Governor to extend the suspension for additional periods not to exceed 30 days.

9. How does Governor Paterson’s Declaration differ from the President Obama’s recent declaration?

President Obama’s recent declaration is designed to help hospitals respond more quickly to surging numbers of pandemic H1N1 cases and pertains to certain requirements under Medicare, Medicaid and the State Child Health Insurance Program and to certain provisions of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule. While the President’s declaration is similar to Governor Paterson’s declaration in that the intent is to assure the federal government and the state have the flexibility needed to respond efficiently and effectively as the pandemic progresses. The President’s declaration in no way impacts individual health care worker laws and regulations regarding how and where they may practice – which is the basis of Governor Paterson’s Declaration.

10. Are there any provisions made in the executive order to ensure that cost is not a barrier to vaccination for New Yorkers?

Yes. The executive order very specifically states that vaccine provided at these large vaccination sites must be provided without charge to the individual who is being vaccinated. It may be possible for insurers to be billed an administration fee, when appropriate, but no individual may themselves be charged a fee for the vaccination.
11. Does or will this declaration impact the availability of flu vaccine?

No. H1N1 vaccine availability is a function of production capacity by the various companies that have been authorized by the FDA to manufacture H1N1 vaccine. What the executive order provides is the flexibility needed so that New York is prepared to accept and use vaccine when in fact it becomes more readily available in greater quantities.

12. Will immunization records from these large scale vaccine programs be confidential?

Yes. This order does not change any existing provisions for the security or confidentiality of immunization information that is maintain in either New York State’ Immunization Registry (NYSiIS) or in the New York City Citywide Immunization Registry (CIR).

13. Under what authority can the Governor issue this type of declaration?

The Governor may declare a disaster emergency by executive order whenever he finds that a disaster has occurred, or may be imminent, to which local governments are unable to respond adequately. Executive Law § 28(1). “Disaster” is defined as the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made causes, including, but not limited to, epidemic. Executive Law §20(2)(a).

14. Have other States issued similar declarations?

Yes. New York joins nine states that have taken emergency action or are in the process of declaring a public health emergency related to the H1N1 outbreak this fall. Similar declarations have been issued by:

- Massachusetts, which recently passed an emergency regulation authorizing their Commissioner of Public Health to issue an order designating people who may administer H1N1 vaccine and under what conditions;
- Louisiana, where an “Emergency Order and Protocol for the Administration of Influenza vaccination by pharmacists;
- North Carolina is allowing retired nurses to vaccinate under the supervision of an RN;
- Minnesota recently amended their statute to extend the authority of the commissioner of heath to respond to local requests to expand the categories of persons authorized to administer vaccine;
- Maine has issued a proclamation of civil emergency to respond to the potential dangers of H1N1 influenza and to facilitate a statewide vaccination campaign;
- Nebraska proclaimed a state of emergency in April 2009, which remains in effect this fall to respond to H1N1 influenza;
- Wisconsin is operating under a declared Public Health Emergency, which directs the Wisconsin Department of Health Services to take all necessary and appropriate measures to prevent and respond to H1N1 influenza;
- Ohio issued an emergency proclamation allowing 17,000 Ohio EMTs to administer the H1N1 vaccine to Ohioans and to allow the transfer of antiviral medications and supplies to Ohio communities;
- Illinois is in the process of declaring an emergency to have extra personnel for vaccinating priority groups and expanding the scope of practice