

November 4, 2021

Karen Persichilli Keogh
Secretary to Governor Kathy Hochul
Executive Chamber
The Capitol
Albany, New York 12226-2252

Re: NYS IG 0847-012-2021 et. al.

Dear Secretary Persichilli Keogh:

Following the commencement of New York's COVID-19 vaccination program in December 2020, the Offices of the New York State Inspector General and the New York State Department of Health (DOH) received numerous complaints related to the administration of COVID-19 vaccines by hospitals, and colleges and universities of the State University of New York (SUNY). The complaints, which largely alleged that improperly prioritized individuals received vaccinations, were investigated by the Inspector General.¹

In September 2021, the Inspector General reviewed the findings of the investigations with DOH.

The following is a summary of the Inspector General's findings in six investigations and a timeline detailing vaccine eligibility appended to this letter.

Northwell Health

On January 29 and March 25, 2021, the Inspector General received complaints regarding Northwell Health's administration of COVID-19 vaccines. The first complaint alleged that two individuals received vaccinations from Northwell Health on January 16, 2021, despite being ineligible. The second complaint alleged that on February 25, 2021, Northwell Health administered vaccines to ineligible employees of Skanska and other construction companies who had existing contracts with Northwell Health.

Regarding the first complaint, Northwell Health's vice president of the Office of Legal Affairs advised the Inspector General that the two individuals

¹ Due to potential conflicts of interest with respect to these entities, these complaints were investigated by the Inspector General.

were appropriately vaccinated in accordance with DOH guidance in effect on January 16, 2021, which prioritized the vaccination of health care workers and allowed for the vaccination of "any eligible person." He noted that on January 12, 2021, the State extended eligibility to New Yorkers over age 65, which included the two individuals, who were over 70 years of age.² The vice president indicated that since the two individuals were eligible to receive vaccinations, the hospital did not need to exhaust its priority and backup lists.

According to DOH, while there may have been a technical violation of the protocol in this instance, ultimately this did not result in the vaccination of ineligible individuals.

The second complaint alleged that Skanska employees, who were providing construction management for Northwell Health's new hospital building in Nassau County at the time, received vaccinations despite not meeting age or pre-existing conditions criteria. From DOH records, the Inspector General identified two Skanska employees who were vaccinated on February 25, 2021, at Northwell Health's North Shore University Hospital (NSUH), and a third employee, who was vaccinated on March 4, 2021, at Huntington Hospital.³

The vice president of the Office of Legal Affairs advised the Inspector General that at the time of their vaccinations, the three contract employees were working on an NSUH construction project and attending meetings "inside the hospital." According to the vice president, the three were properly vaccinated because they were "effectively part of the hospital workforce, and vaccinating them helped protect these three workers, along with NSUH's employed hospital staff and its patients." He further noted that Northwell Health did not vaccinate all contractor workers who were working on hospital projects at this time.

DOH advised the Inspector General that as prior guidance could be interpreted to cover such contractors as eligible hospital "personnel," DOH was reluctant to find that these Skanska employees did not meet eligibility criteria.

██████████ Hospital

On January 25, 2021, the Inspector General received a complaint alleging that ██████████ Hospital's CEO received a COVID-19 vaccine on January 4, 2021, during phase 1A of the vaccine rollout when he was ineligible. The complaint further alleged that at this time, the CEO was a hospital administrator who had no active medical license, no patient contact, and was telecommuting from home.

DOH vaccine records confirmed that the CEO received his first COVID-19 vaccine on January 4, 2021, and his second vaccine on January 25, 2021, at

² Ari Ephraim Feldman and Nick Reisman, *New Yorkers 65 and Over Now Eligible For COVID-19 Vaccine, Cuomo Announces*, Spectrum News NY 1, <https://www.ny1.com/nyc/all-boroughs/news/2021/01/12/new-yorkers-65-and-over-now-eligible-for-covid-19-vaccine--cuomo-announces>.

³ The vice president of the Office of Legal Affairs advised that the three employees received second vaccinations in March and April 2021, all at Northwell Health hospitals.

██████████ Hospital. The ██████████ Hospital assistant general counsel advised the Inspector General that the hospital had received and investigated a similar complaint about the CEO. According to the assistant general counsel, guidelines in place on January 4, 2021, allowed for vaccines to be offered to other hospital staff after being offered to direct health care staff. The assistant general counsel further advised that as of January 4, all hospital direct care staff had been given the opportunity to be vaccinated but not all chose to do so. Consequently, vaccines were then offered to other hospital staff, which included the CEO. Additionally, according to the assistant general counsel, the CEO serves as the CEO for five area hospitals and often visits these physical locations as part of his job duties.

DOH advised the Inspector General that given the information provided by the assistant general counsel, the hospital appeared to provide a sufficient explanation for the administration of vaccines to the CEO.

Roswell Park

On January 11, 2021, the Inspector General received an anonymous complaint alleging that Roswell Park Comprehensive Cancer Center was improperly providing COVID-19 vaccines to then ineligible hospital staff/contractors including non-necessary personal such as those who were not front-line workers.⁴ The complaint further alleged that since Roswell Park does not have an emergency room, it should not have received an allotment of vaccines.

The Inspector General reviewed relevant DOH guidance and found that guidance issued on December 14, 2020, permitted the vaccination of high-risk hospital staff, affiliates, volunteers, and contract staff. In fact, guidance issued prior to the date of the complaint included Federally Qualified Health Centers, EMS employees, medical examiners and coroners, agency staff and residents in congregate living situations, and any staff administering COVID-19 vaccines. Given these findings, the Inspector General found this allegation unsubstantiated.

As for the second allegation, the Inspector General reviewed a list of providers that received vaccine allotments during the first week of distribution and found that more than 15 healthcare facilities that do not provide emergency room care received vaccine allotments during this period. As Roswell Park received its vaccine allotment within the same period as numerous similarly situated facilities, the Inspector General also found this allegation to be without merit. DOH confirmed this complaint lacked merit, advising that the allotment of vaccines to various cancer centers was a health policy decision made by the Vaccine Distribution and Implementation Task Force.

⁴ Given that the complainant was anonymous, the Inspector General was unable to discern times, dates, or individuals who were alleged to have improperly received such vaccinations.

SUNY Stony Brook

On February 25, 2021, the Inspector General received a complaint regarding SUNY Stony Brook Hospital's administration of COVID-19 vaccines. According to the complaint, Stony Brook's Oncology Department distributed vaccines to cancer patients on February 6, 2021. The complaint specifically alleged that: (i) the hospital also distributed vaccines to families of cancer patients who were ineligible to be vaccinated; (ii) [REDACTED] authorized her husband and son to be vaccinated; and (iii) the [REDACTED] told others who were ineligible for the vaccine to go to the Oncology Department and "tell them that [REDACTED] referred them for the vaccine." SUNY Stony Brook received a similar complaint and initiated an internal investigation into these allegations.

SUNY Stony Brook advised the Inspector General that it completed its internal investigation in May 2021. According to Stony Brook's senior managing counsel, SUNY's investigation found that [REDACTED] on February 6, 2021, facilitated two of her subordinate's siblings' receipt of COVID-19 vaccinations. The senior managing counsel further advised that while the two vaccine doses administered to these individuals were deemed to be extra, end of the day/POD doses, Stony Brook concluded that [REDACTED] had not done enough to exhaust Stony Brook's standby list of eligible individuals. As a result of this conduct, on May 11, 2021, [REDACTED] was notified that she would be terminated unless she chose to resign. [REDACTED] subsequently chose to resign effective the end of June 2021. Because [REDACTED] maintained annual leave accruals, she was paid through the end of July 2021. [REDACTED] subordinate was counseled as a result of this incident.

DOH reviewed the hospital's investigation and advised that the actions taken by the hospital indicate that the matter was taken seriously and properly resolved. The Inspector General concurs with this finding.

University of Rochester Medical Center/Strong Memorial Hospital

On February 2, 2021, the Inspector General reviewed a news article describing a DOH investigation of a self-report by the University of Rochester Medical Center (URMC) for providing preferential treatment—access to vaccination clinics for employees on January 14 and 15, 2021—to 26 non-hospital employees, many of whom were hospital donors or board members. The hospital noted that these 26 individuals were eligible to receive a vaccine but should not have received preferential treatment.

At informal meetings on February 3, 2021, and later dates, DOH advised the Inspector General that its ongoing review of this matter found that those individuals who received a vaccine were eligible although inappropriately prioritized. DOH also advised that after the hospital provided to DOH a letter outlining the circumstances surrounding the vaccinations of these individuals, the hospital's internal review, and corrective actions taken, DOH found the hospital's actions sufficient to address the matter.

If you require further information, please contact Special Deputy Inspector General Lynn Tabbott at 518.728.6029.

Sincerely,



Robyn Adair
Acting Inspector General

Cc: Elizabeth Fine, Esq.
Counsel to the Governor

Kathy S. Marks, Esq.
General Counsel
New York State Department of Health

Addendum

Timeline of Vaccine Eligibility in New York State

Over the course of the COVID-19 pandemic, DOH issued guidance for health care facilities receiving vaccine allotments. The guidance established a classification system to determine vaccination eligibility and priority. The classifications, which were primarily based on recipients' employment, age, medical conditions, and housing or living conditions, were initially prioritized in phases.

- Phase 1 targeted healthcare workers (clinical and non-clinical) in patient care settings and provided the highest priority to those working in Intensive Care Units, Emergency Departments, and Emergency Medical Services (EMS). Also included in this phase were long-term care facility (LTCF) workers who regularly interacted with residents and most at-risk long-term care facility patients, among many others.
 - Phase 1A
 - Week 1 (December 14, 2020)⁵ allowed for “high-risk hospital staff, affiliates, volunteers and contract staff, following the clinical risk assessment guidance” to be vaccinated. The clinical risk assessment guidance directed healthcare facilities to identify staff and contractors who work where patients with COVID-19 were provided with direct care, aerosolizing procedures are performed, or exposure to the public occurs in an uncontrolled way (reception areas, cafeterias, etc.). High-risk staff were further ranked according to age and known high-risk medical conditions or were randomly selected to be vaccinated if a facility received insufficient doses to vaccinate all eligible employees.
 - Week 2 (December 21, 2020) provided for the vaccination high-risk hospital staff, including at OMH psychiatric centers; EMS personnel; medical examiners and coroners; certain funeral workers; health care or other high-risk direct care essential staff working in LTCFs and long-term congregate settings overseen by OPWDD, OMH, and OASAS; persons living in LTCFs and in long-term congregate settings overseen by OPWDD and OMH.
 - Week 3 (December 28, 2020) eligibility was expanded to include high-risk hospital and Federally Qualified Health Centers (FQHC) staff, including OMH psychiatric centers; agency staff and residents in congregate living

⁵ Although DOH did not label Week 1 with a date, week 2 was labeled December 21, 2020. It is therefore presumed that Week 1 began one week prior.

situations run by OPWDD, OMH and OASAS; urgent care providers, and any staff administering COVID-19 vaccinations.

- Week 4 (January 4, 2021) made eligible all outpatient/ambulatory front-line, high-risk health care providers who provided direct in-person patient care or other staff in a position where they had direct contact with patients, such as receptionists, of any age; and all front-line, high-risk public health workers who had direct contact with patients. On January 9, 2021, DOH also issued guidance for providers with vaccine doses “remaining at the end of the day or clinic.” This guidance required providers to maintain a daily standby list of eligible individuals who were to be notified of open vaccine appointments on short notice. The guidance further stated that providers could take other steps to “bring additional eligible recipients” to a facility or clinic before a vaccine’s acceptable use period expired. Only when vaccine doses remained at the close of business/end of a vaccine clinic and “no one from the priority population can come in before the doses expire” did DOH authorize providers to administer vaccines to “other public-facing employees.”
 - Phase 1B (January 11, 2021) added other essential workers and those 75 years of age and older to the eligible classifications. This included education workers, first responders, public safety workers, transit workers, correction officers, court officers, teachers/school staff, in-person college instructors, childcare workers, public-facing grocery store workers, and individuals living and working in homeless shelters, among others.
- On January 12, 2021, individuals 65 and older, among others, also became eligible to receive the vaccine.
- On February 15, 2021, eligibility was expanded to include New Yorkers with certain comorbidities and underlying conditions.
- On March 10, 2021, New Yorkers 60 years of age and older became eligible to receive a vaccine.
- On March 17, 2021, government employees, public-facing nonprofit workers, and essential building service workers became eligible to be vaccinated.
- On March 23, 2021, eligibility was expanded to include New Yorkers 50 years of age and older.

- On March 30, 2021, New Yorkers 30 years of age and older became eligible to receive a vaccine.
- On April 6, 2021, New Yorkers 16 years of age and older became eligible to receive a vaccine.
- On May 6, 2021, eligibility was expanded to include all individuals 16 years of age and older who reside in the United States.
- On May 21, 2021, eligibility was expanded to include individuals 12 years of age and older who reside in the United States.

As vaccine eligibility expanded, so too did the number of facilities receiving vaccines. Pharmacies, doctors' offices, State, and federally-operated facilities began to receive vaccine doses along with DOH guidance on the eligible populations they were responsible for vaccinating.