



The Commonwealth of Massachusetts  
Executive Office of Health and Human Services  
Department of Public Health  
250 Washington Street, Boston, MA 02108-4619

DEVAL L. PATRICK  
GOVERNOR

TIMOTHY P. MURRAY  
LIEUTENANT GOVERNOR

JUDYANN BIGBY, MD  
SECRETARY

JOHN AUERBACH  
COMMISSIONER

**Circular Letter: DHCQ 09-10-523**

**TO:** Clinic Chief Executive Officers  
Dialysis Center Chief Executive Officers  
Hospital Chief Executive Officers  
Long Term Care Facility Administrators

**FROM:** Alice Bonner, Director, Bureau of Health Care Safety and Quality 

**DATE:** October 21, 2009

**RE: COMPLIANCE WITH REGULATIONS REGARDING INFLUENZA VACCINATION OF EMPLOYEES WHEN VACCINE IS UNAVAILABLE**

Emergency regulations filed by the Department of Public Health (MDPH) on September 14, 2009 require licensed clinics, dialysis centers, hospitals and long-term care facilities to (1) offer their employees vaccination against seasonal influenza annually, and (2) authorize the Commissioner of Public Health to issue guidelines to require these health care facilities to offer their employees vaccination against novel or pandemic viruses such as swine-origin influenza A H1N1. Facilities were initially alerted to these regulations in circular letters sent in late August (DHCQ 09-08-518, DHCQ 09-08-519, and DHCQ 09-08-520). The circular letters and regulations 105 CMR 130.000: Hospital Licensure; 105 CMR 140.000 Licensure of Clinics; and 105 CMR 150.000 Licensing of Long-Term Care Facilities are available on the DPH website at [www.mass.gov/dph](http://www.mass.gov/dph).

The Department has received a number of questions about compliance with the regulations if there is not influenza vaccine available. The amendments address this question in 105 CMR 130.325 (G), 105 CMR 140,150 (G) and 105 CMR 150.002 (D) (8) (g), "Unavailability of Vaccine". The citation below is from the hospital regulations, but the language is identical for all facilities:

**(G) Unavailability of Vaccine. A hospital shall not be required to provide or arrange for influenza vaccination during such times that the vaccine is unavailable for purchase, shipment, or administration by a third party, or when complying with an order of the Commissioner which restricts the use of the vaccine. A hospital shall obtain and administer influenza vaccine in accordance with 105 CMR 130.325 or as soon as vaccine becomes available.**

Facilities should maintain documentation of their efforts to obtain vaccine and comply with these regulations. If you have any questions concerning the regulations, please contact the Bureau of Health Care Safety and Quality at [DPH.DHCQ@massmail.state.ma.us](mailto:DPH.DHCQ@massmail.state.ma.us)

I would also like to take this opportunity to thank you and all of your staff for the critically important work that you are doing during these challenging times to maintain a healthy workforce and protect the health and safety of patients.