

Attachment A

Proposed Amendments to 105 CMR 130.000: Hospital Licensure

105 CMR 130.000 is amended by inserting the following new section as 105 CMR 130.325:

130.325: Requirement that Employees Be Vaccinated Against Influenza

(A) Definitions

(1) For purposes of 105 CMR 130.325, “employee” means an individual who is a volunteer with direct patient contact or an individual employed (whether directly, by contract with another entity, as an independent contractor or as a member of the medical staff) by a hospital, on a part-time or full-time basis, whether or not such individual provides direct patient care.

(2) For purposes of 105 CMR 130.325, the requirement for “influenza vaccine” or “vaccination” means immunization by either influenza vaccine, inactivated or live; attenuated influenza vaccine including seasonal influenza vaccine pursuant to 105 CMR 130.325(B); and/or other influenza vaccine pursuant to 105 CMR 130.325(C).

(B) Each hospital shall ensure that every employee is vaccinated with seasonal influenza vaccine unless such employee declines vaccination in accordance with 105 CMR 130.325(F). When feasible, and consistent with any guidelines of the Commissioner of Public Health or his/her designee, each hospital shall ensure that every employee is vaccinated with seasonal influenza vaccine no later than December 15, 2009 and annually thereafter.

(C) Each hospital also shall ensure that every employee is vaccinated against other pandemic or novel influenza virus(es) as specified in guidelines of the Commissioner or his/her designee, unless such employee declines vaccination in accordance with 105 CMR 130.325(F). Such guidelines may specify:

(1) the categories of employees that shall be vaccinated and the order of priority of vaccination of employees, with priority for those employees with responsibility for direct patient care;

(2) the influenza vaccine(s) to be administered;

(3) the dates by which employees must be vaccinated; and

(4) any required reporting and data collection relating to the employee vaccination requirement of 105 CMR 130.325(C).

(D) Each hospital shall provide every employee with information about the risks and benefits of influenza vaccine.

(E) Each hospital shall notify every employee of the influenza vaccination requirements of 105 CMR 130.325 and shall, at no cost to any employee, provide or arrange for vaccination of all employees who cannot provide proof of current immunization against influenza, as required pursuant to 105 CMR 130.325(B) and (C), unless such employee declines vaccination in accordance with 105 CMR 130.325(F).

(F) Exceptions.

- (1) A hospital shall not require an employee to receive an influenza vaccine pursuant to 105 CMR 130.325(B) or (C) if:
 - (a) the vaccine is medically contraindicated, which means that administration of influenza vaccine to that employee would likely be detrimental to the employee's health;
 - (b) vaccination is against the employee's religious beliefs; or
 - (c) the employee refuses the vaccine.
- (2) An employee who declines vaccination for any reason shall sign a statement declining vaccination and certifying that he or she received information about the risks and benefits of influenza vaccine.

(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 as soon as vaccine becomes available.

(H) Documentation.

- (1) A hospital shall require and maintain in each employee's personnel file a certificate(s) of vaccination against influenza pursuant to 105 CMR 130.325(B) and (C) or the employee's declination statement pursuant to 105 CMR 130.325(F).
- (2) Each hospital shall maintain a central system to track the vaccination status of every employee.
- (3) If a hospital is unable to provide or arrange for influenza vaccination for any employee, it shall document the reasons such vaccination could not be provided or arranged for.

(I) Reporting and Data Collection.

Each hospital shall report information to the Department documenting the hospital's compliance with the employee vaccination requirements of 105 CMR 130.325, in accordance with reporting and data collection guidelines of the Commissioner or his/her designee.

Authority: M.G.L. c. 111, §§ 5, 6, and 51 through 56