

101 CMR 23.00: COVID-19 AND INFLUENZA VACCINATIONS FOR STAFF AT CERTAIN AGENCY FACILITIES

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23.01: Applicability

101 CMR 23.00 applies to certain agency staff.

23.02: Purpose

The purpose of 101 CMR 23.00 is to require certain agency staff to document they have received COVID-19 vaccination and Influenza vaccination, or have taken required mitigation measures, in order to prevent viral infection and transmission.

23.03: Definitions

As used in 101 CMR 23.00, unless the context requires otherwise, terms have the meanings in 101 CMR 23.03.

Agency. The Executive Office of Health and Human Services (EOHHS) or any department, agency, commission, office, board, division, or any other body or facility within EOHHS as set out in M.G.L. c. 6A, § 16, including the Executive Office of Elder Affairs.

COVID-19. Coronavirus Disease 2019, the disease caused by the SARS-CoV-2 virus.

COVID-19 Vaccination. COVID-19 vaccination means being up to date with COVID-19 vaccines as recommended by the Centers for Disease Control and Prevention (CDC).

Influenza Vaccination. Influenza vaccination means immunization by either influenza vaccine, inactivated or live; attenuated and/or other influenza vaccine. It will also mean other pandemic or novel influenza virus(es) as specified in guidelines of the Department of Public Health.

Mitigation Measures. Measures that employees who decline vaccination must take to prevent viral infection and transmission.

23.04: COVID-19 Vaccination and Influenza Vaccination for Certain Agency Staff

- (1) (a) Staff at state-operated hospitals, including hospitals operated by the Department of Public Health and the Department of Mental Health, are required to demonstrate that they have received COVID-19 vaccination unless the exception in 101 CMR 23.04(5) applies.
(b) Staff at state-operated hospitals, including hospitals operated by the Department of Public Health and the Department of Mental Health, are required to demonstrate that they have received the Influenza vaccination unless the exception in 101 CMR 23.04(5) applies.
- (2) (a) Staff at state-operated congregate care facilities, including those operated by the Department of Mental Health, the Department of Developmental Services, and the Department of Youth Services, are required to demonstrate that they have received COVID-19 vaccination unless the exception in 101 CMR 23.04(5) applies.
(b) Staff at state-operated congregate care facilities, including those operated by the Department of Mental Health, the Department of Developmental Services, and the Department of Youth Services, are required to demonstrate that they have received the Influenza vaccination unless the exception in 101 CMR 23.04(5) applies.

(3) Staff Subject to Vaccination Requirement. The following staff are required to document they have obtained COVID-19 vaccination and Influenza vaccination in accordance with implementation guidance issued by EOHHS: all staff regularly reporting, whether part-time or full-time, paid or unpaid, working, interning, or volunteering who physically enter onsite at the agency facility or location, whether or not they have the potential for exposure to patients, residents, clients, or the public, or to infectious materials, including body substances, contaminated medical supplies and equipment, contaminated environmental surfaces, or contaminated air. For illustrative purposes, this includes

(a) staff who physically enter on site at an agency facility or location and who are potentially exposed to infectious agents that can be transmitted to and from staff and patients or residents, including, but not limited to, direct care staff, clinicians, physicians, nurses, nursing assistants, therapists, technicians, dental personnel, pharmacists, laboratory personnel, students and trainees, and contractual personnel; and

(b) staff not directly involved in patient or resident care who physically enter on site at an agency facility or location, whether or not such staff may be potentially exposed to infectious agents that can be transmitted to and from staff and patients or residents (such as administrative, clerical, dietary, housekeeping, human resources, laundry, security, maintenance, or billing staff; chaplains; contractual personnel; volunteers; or any other individual physically entering and working on site at the facility or location).

(4) Staff Not Subject to the COVID-19 Vaccination and Influenza Vaccination Requirement. Staff on leave, such as family medical leave, are not subject to the COVID-19 vaccination and Influenza vaccination requirement in 101 CMR 23.04.

(5) Staff Subject to an Exception from the COVID-19 Vaccination and Influenza Vaccination Requirement.

(a) Staff may decline vaccination and will be granted an exception from the COVID-19 vaccination and Influenza vaccination requirement in 101 CMR 23.04, subject to 101 CMR 23.04(5)(c).

(b) While the expectation is for all staff to receive the COVID-19 vaccination and the Influenza vaccination, any individual who declines to do so is required to take mitigation measures mandated by EOHHS, consistent with guidance from the Department of Public Health.

(c) An individual who declines the vaccination(s) must sign a statement(s) certifying they declined the vaccination(s) and they received information about the risks of declining the vaccination(s).

(6) Documents Necessary to Demonstrate Compliance with the COVID-19 Vaccination and Influenza Vaccination Requirement.

(a) A copy of a completed COVID-19 vaccination and Influenza vaccination record card, subject to verification by the Department of Public Health; or

(b) A copy of the staff member's COVID-19 vaccination and Influenza vaccination status from the Massachusetts Immunization Information System (MIIS); or

(c) A copy of the staff member's COVID-19 vaccination and Influenza vaccination record from their medical records; or

(d) A copy of the staff member's vaccination declinations.

(7) Documentation Collection and Reporting.

(a) Every facility must require and maintain for each individual proof of current vaccination against COVID-19 and influenza or the individual's declination statement.

(b) Each facility must report information regarding vaccination of staff pursuant to Executive Office of Health and Human Services guidelines.

(8) Failure to Comply with the COVID-19 Vaccination and Influenza Vaccination Requirements. Agency staff who fail to comply with the vaccination requirements, or required mitigation measures, will be subject to discipline, up to and including termination. Contracted staff who fail to comply with the vaccination requirements, or mitigation measures, will not be permitted to work at the agency facility or location.

23.05: Implementation and Clarification

(1) Administrative Bulletins. EOHHS may issue administrative bulletins to clarify substantive provisions of 101 CMR 23.00.

(2) Implementation Guidance. EOHHS may develop policies, guidelines, or memoranda to implement 101 CMR 23.00, including specification of the sites subject to the vaccination requirement, vaccination schedules, documentation requirements, frequency, or other process and operational components.

23.06: Severability

The provisions of 101 CMR 23.00 are severable. If any provisions of 101 CMR 23.00 or the applications of such provisions to any person or circumstance are held invalid or unconstitutional, the other provisions of 101 CMR 23.00, or the application of such provisions to any person or circumstance other than that as to which it is held invalid or unconstitutional, will not be affected thereby.

REGULATORY AUTHORITY

101 CMR 23.00: M.G.L. c. 6A, § 16.