

101 CMR 23.00: COVID-19 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 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. The full required regimen of vaccine doses of a vaccine approved or authorized for use by the Food and Drug Administration (FDA) or the World Health Organization (WHO) to provide acquired immunity against COVID-19. COVID-19 vaccination is the full required regimen as determined by the FDA, Centers for Disease Control and Prevention (CDC), or WHO.

23.04: COVID-19 Vaccination for Certain Agency Staff

(1) Vaccination Requirement.

- (a) 1. Staff at the Chelsea and Holyoke Soldiers' Homes are required to demonstrate that they have received COVID-19 vaccination by October 10, 2021, unless an exception in 101 CMR 23.04(3) or an exemption in 101 CMR 23.04(4) applies.
- 2. As of October 10, 2021, all new staff at the Chelsea and Holyoke Soldiers' Homes must demonstrate that they have received COVID-19 vaccination prior to reporting for work, unless an exception in 101 CMR 23.04(3) or an exemption in 101 CMR 23.04(4) applies.
- 3. Unless an exception in 101 CMR 23.04(3) or an exemption in 101 CMR 23.04(4) applies, staff shall maintain COVID-19 vaccinations in accordance with the CDC's Advisory Council on Immunization Practices recommendations as those recommendations may be updated (*e.g.*, staff shall obtain all recommended boosters) and demonstrate that they have done so in accordance with 101 CMR 23.04(5).
- (b) 1. 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 by November 15, 2021, unless an exception in 101 CMR 23.04(3) or an exemption in 101 CMR 23.04(4) applies.
- 2. As of November 15, 2021, all new staff at state-operated hospitals, including hospitals operated by the Department of Public Health and the Department of Mental Health, must demonstrate that they have received COVID-19 vaccination prior to reporting for work unless an exception in 101 CMR 23.04(3) or an exemption in 101 CMR 23.04(4) applies.

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3. Unless an exception in 101 CMR 23.04(3) or an exemption in 101 CMR 23.04(4) applies, staff shall maintain COVID-19 vaccinations in accordance with the CDC's Advisory Council on Immunization Practices recommendations as those recommendations may be updated (*e.g.*, staff shall obtain all recommended boosters) and demonstrate that they have done so in accordance with 101 CMR 23.04(5).
- (c) 1. 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 by November 15, 2021, unless an exception in 101 CMR 23.04(3) or an exemption in 101 CMR 23.04(4) applies.
 2. As of November 15, 2021, all new 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, must demonstrate that they have received COVID-19 vaccination prior to reporting for work unless an exception in 101 CMR 23.04(3) or an exemption in 101 CMR 23.04(4) applies.
 3. Unless an exception in 101 CMR 23.04(3) or an exemption in 101 CMR 23.04(4) applies, staff shall maintain COVID-19 vaccinations in accordance with the CDC's Advisory Council on Immunization Practices recommendations as those recommendations may be updated (*e.g.*, staff shall obtain all recommended boosters) and demonstrate that they have done so in accordance with 101 CMR 23.04(5).
- (d) EOHHS may require staff at additional agencies designated by the Secretary to receive COVID-19 vaccination.

(2) Staff Subject to Vaccination Requirement. The following staff are required to document they have obtained COVID-19 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 on-site 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).

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

(4) Staff Subject to an Exemption from the COVID-19 Vaccination Requirement. The following staff shall be granted an exemption from the COVID-19 vaccination requirement in 101 CMR 23.04:

- (a) staff who verify and document the vaccine is medically contraindicated, which means administration of the COVID-19 vaccine to that individual would likely be detrimental to the individual's health, provided such staff are able to perform their essential job functions with a reasonable accommodation that is not an undue burden on the agency; or
- (b) staff who hold a sincere religious belief against vaccination, provided such staff are able to perform their essential job functions with a reasonable accommodation that is not an undue burden on the agency.

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(5) Documents Necessary to Demonstrate Compliance with the COVID-19 Vaccination Requirement.

- (a) A copy of a completed COVID-19 vaccination record card, subject to verification by the Department of Public Health;
- (b) A copy of the staff member's COVID-19 vaccination status from the Massachusetts Immunization Information System (MIIS); or
- (c) A copy of the staff member's COVID-19 vaccination record from his or her medical records.

(6) Failure to Comply with the COVID-19 Vaccination Requirement. Agency staff who fail to comply with the COVID-19 vaccination requirement will be subject to discipline, up to and including termination. Contracted staff who fail to comply with the COVID-19 vaccination requirement 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.