The Commonwealth of Massachusetts

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Department of Public Health

Bureau of Health Care Safety and Quality

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**Memorandum**

**TO:** Hospice Programs

**FROM:** Elizabeth D. Kelley, MPH, MBA, Director

Bureau of Health Care Safety and Quality

**SUBJECT:** Updated COVID-19 Personnel Vaccination Requirement

**DATE:** November 21, 2022

The Massachusetts Department of Public Health (DPH) continues to work with state, federal and local partners to address the Coronavirus Disease 2019 (COVID-19) pandemic. DPH understands the important role that hospice programs serve in caring for Massachusetts residents.

**COVID-19 Primary Series Vaccination Requirement:**

Pursuant to the hospice licensure regulations [(105 CMR 141.201(D)),](https://www.mass.gov/doc/105-cmr-141-licensure-of-hospice-programs/download) hospice programs must ensure that all personnel have completed the full required regimen of vaccine doses against COVID-19 unless such administration is medically contraindicated, which means administration of COVID-19 vaccine is likely to be detrimental to the individual’s health, provided that the individual provides supporting documentation, or the individual objects to vaccination on the basis of a sincerely held religious belief. If the individual seeks an exemption for either medical or religious reasons, the individual must be able to perform their essential job functions with a reasonable accommodation that is not an undue burden on the hospice program. Personnel may not otherwise decline the vaccine. Hospice programs shall ensure that all new personnel have completed the full required regimen of vaccine doses against COVID-19 or qualify for an exemption from the requirement as described herein prior to being hired or otherwise affiliated with the facility.

Hospice programs must ensure that all eligible personnel have completed the primary series of COVID-19 vaccine in accordance with the Centers for Medicare and Medicaid Services (CMS) requirements[[1]](#footnote-1). While not required, all hospice program personnel are strongly encouraged to stay up to date with COVID-19 vaccines, which means an individual has received all doses in the primary series and received the most recent booster dose recommended for the individual by the CDC.

Any individual who has been granted a reasonable accommodation by their employer based on medical contraindication or a sincerely held religious belief is exempt from the requirement to receive the primary series. Hospice programs must ensure that personnel who have not yet received their primary series and who have not been granted a reasonable accommodation receive the primary series as soon as possible. All new personnel must have received the primary series at the time of hiring.

**Hospice Program Documentation:**

Hospice programs shall require and maintain for each individual proof of current vaccination against COVID-19 or the individual’s declination statement, and a central system to track the vaccination status of all personnel. The proof of current vaccination and central system must be made available to DPH upon request. Individual proof of current vaccination may include but is not limited to:

* Copy of CDC Vaccination Card
* Copy of MA Immunization Information System (MIIS) Vaccination Record
* Copy of vaccination from their electronic health record
* COVID19 [SmartHealthcard](https://www.mass.gov/massachusetts-vaccination-records) from the Commonwealth’s massvaxrecords public portal

Declination statements from personnel must include but are not limited to a signed declination statement from each individual who declines vaccination due to medical contraindication or a sincerely held religious belief certifying he or she received information about the risks and benefits of COVID-19 vaccine.

Appropriate documentation of a medical exemption must be issued by a licensed independent practitioner who has a practitioner/patient relationship with the individual and the documentation must support the finding that the COVID-19 vaccine is medically contraindicated, which means that the vaccine would likely be detrimental to the person’s health.

For every individual who has submitted a request for exemption, the hospice program must document that it has engaged in an appropriate individualized determination that the exemption is valid, and that the hospice program has determined that the individual is able to perform their essential job functions with a reasonable accommodation that is not an undue burden on the employer. DPH recommends that hospice programs work with their legal counsel to ensure they conduct an appropriate process. As part of this individualized determination hospice programs should incorporate clinical considerations beyond standard infection control requirements (e.g. testing frequency). For example:

* requiring point of care testing for unvaccinated staff prior to beginning each shift.
* avoiding direct care for patients who are confirmed or suspected to be infected with COVID-19, are immunocompromised or are not fully vaccinated; and
* refraining from working after a close contact or exposure.

DPH supports staff using personal protective equipment as outlined in the Comprehensive PPE Guidance and does not endorse clinical considerations that deviate from this guidance. For example, while N95 respirators should be worn when caring for a patient with confirmed or suspected COVID-19, the available evidence does not support using N95 respirators as daily PPE as a substitute for direct care staff being vaccinated against COVID-19.

**Reporting:**

Hospice programs must collect COVID-19 vaccination information from each personnel subject to this requirement and make it available upon request to DPH.

Hospice programs must update their vaccination status information by the last day of each month. Details about the specific information required to be available for DPH review may be found in Appendix A. DPH will use requested information to identify if all personnel have completed the primary series of COVID-19 vaccine, unless otherwise exempt, at each hospice program to assess compliance with the regulation.

**Enforcement Action**:

This guidance serves as notice that if a hospice program fails to comply with the regulation, including the data collection requirements set forth in this or subsequent guidance, it will be subject to the following penalties pursuant to G.L. c. 111, § 57D and 105 CMR 141.131[[2]](#footnote-2):

* After February 28, 2022, DPH may take licensure action which may include suspension, revocation or refusal to renew.

The Bureau may revise, change, update, or rescind this memorandum at any time.

DPH strongly encourages all hospice programs in Massachusetts to monitor the Centers for Disease Control and Prevention (CDC) website for up-to-date information and resources:

* CDC website: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/facility-planning-operations.html>
  + For reference, the CDC healthcare personnel exposure guidance may be found here: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/guidance-risk-assesment-hcp.html>

Additionally, please visit DPH’s website that provides up-to-date information on COVID-19 in Massachusetts:  <https://www.mass.gov/2019coronavirus>.

**Attachment**: Appendix A

1. QSO-22-07 ALL Long-Term Care and Skilled Nursing Facility (cms.gov) [↑](#footnote-ref-1)
2. If a Hospice Program has reason to dispute the penalty, they may request Administrative Review. [↑](#footnote-ref-2)