



**Commonwealth of Massachusetts**  
**Executive Office of Health and Human Services**  
**Office of Medicaid**  
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**MassHealth**  
**HCBS Waiver Provider Bulletin 14**  
**October 2021**

**TO:** Acquired Brain Injury (ABI) and Moving Forward Plan (MFP) Waiver Providers Participating in MassHealth

**FROM:** Amanda Cassel Kraft, Acting Assistant Secretary for MassHealth

**RE:** **Expanded Vaccine Requirement to Include Home Care Agency Workers**

## **Introduction**

On September 1, 2021, the Baker-Polito Administration announced a vaccine requirement for all rest homes, assisted living residences (ALRs), hospice programs, and home care workers providing in-home, direct care services under a state contract or state program as part of a continued effort to protect older adults and more vulnerable populations against COVID-19. On September 8, 2021, the Massachusetts Department of Public Health (DPH) promulgated 105 CMR 159.000: *COVID-19 Vaccinations for Certain Staff Providing Home Care Services in Massachusetts*, a new regulation that requires certain home care workers to receive the COVID-19 vaccine. As described in that regulation, the vaccine requirement applies to Home Care Agency Workers (HCAWs), which is defined, in part, as individuals who are employed by a Home and Community-based Waiver Services provider pursuant to [130 CMR 630.000](#) and who provide one or more of the following services as defined therein: home health aide, homemaker, occupational therapy, personal care, physical therapy, respite services, skilled nursing services, speech/language therapy, supportive home care aide. See 105 CMR 159.000. This vaccine requirement also applies to Non-Agency (self-employed) Home and Community-based Services Waiver providers. See Id.

To implement this requirement for Home and Community-based Services Waiver providers, all HCAW's as defined above, as well as all Non-Agency Home and Community-based Services Waiver providers that provide in-home, direct care services **must complete the full required regimen of COVID-19 vaccine doses, or document that they qualify for an exemption, by October 31, 2021.**

*As of October 31, 2021, a state agency shall not enroll a non-agency home and community-based services waiver provider as defined above if they are not fully vaccinated unless they qualify for an exemption from the requirements.*

## **Exemptions**

### **Home and Community-based Services Waiver Provider Agencies:**

In accordance with 105 CMR 159.000, a home and community-based services waiver provider agency (Agency) is required to provide an exemption from the vaccine requirement under the following circumstances:

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- If the vaccine is medically contraindicated, meaning that administration of a COVID-19 vaccine to that individual would likely be detrimental to the individual's health, and the individual can provide documentation demonstrating their need for this exemption, and the individual is able to perform their essential job functions with a reasonable accommodation that is not an undue burden on the Agency; or
- If the individual objects to vaccination on the basis of a sincerely held religious belief and the individual can provide documentation demonstrating their sincerely held religious belief, and the individual is able to perform their essential job functions with a reasonable accommodation that is not an undue burden on the Agency.

***Non-Agency (Self-Employed) Home and Community-based Services Waiver Providers:***

In accordance with 105 CMR 159.000, non-agency (self-employed) home and community-based services waiver providers are exempt from the vaccine requirement under the following circumstances:

- If the vaccine is medically contraindicated, meaning that administration of a COVID-19 vaccine to that individual would likely be detrimental to the individual's health, and the individual can provide documentation demonstrating their need for this exemption; or
- If the individual objects to vaccination on the basis of a sincerely held religious belief, and the individual can provide documentation demonstrating their sincerely held religious belief.

**Implementation**

The implementation of this requirement includes reporting, oversight, and enforcement as described below.

***Agency Providers:***

- Every HCAW will be required to submit proof of completing the full required regimen of COVID-19 vaccine doses to the Agency or documentation that they qualify for an exemption no later than October 31, 2021.
- 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.
- Agencies are required to collect and maintain proof of vaccination or exemption for all HCAWs the Agency employs directly or by contract.
- The Agency's COVID-19 HCAW vaccination documentation will be subject to audit by the relevant state agency with which the Agency contracts and/or has a provider agreement.
- Agencies found noncompliant through an audit will be subject to a financial penalty.

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- Additionally, Agencies may be required to submit regular reporting to MassHealth to ensure compliance with the COVID-19 vaccine requirement and MassHealth reserves the right to implement updated reporting requirements in the future.

***Non-Agency (Self-Employed) Home and Community-based Services Waiver Providers:***

- Every non-agency (self-employed) home and community-based services waiver provider will be required to complete a MassHealth Home and Community-based Services Waiver Non-Agency (Self-Employed) Provider COVID-19 Vaccine Attestation Form and share this form with the waiver participant(s) they support by October 31, 2021.
- The waiver participant or their representative has the right to ask a non-agency provider for proof of vaccination or exemption.
- If a non-agency provider is not vaccinated, the waiver participant and/or representative may determine whether to have the non-agency provider who is not vaccinated continue to provide their services or to select a new provider for their services.
- The non-agency provider's COVID-19 vaccination documentation will be subject to audit by MassHealth.
- Non-agency providers that do not submit a COVID-19 Vaccine Attestation Form upon request will be subject to financial penalty.

**Regulatory Process**

The new DPH regulation 105 CMR 159.000: *COVID-19 Vaccinations for Certain Staff Providing Home Care Services in Massachusetts* was promulgated on an emergency basis on September 8, 2021, and is effective immediately with public comment process to follow.

**MassHealth Website**

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**Questions**

If you have any questions about the information in this bulletin, please contact the Disability and Community Services HCBS Provider Network Administration Unit.

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The University of Massachusetts Medical School Disability and Community Services HCBS Provider Network Administration Unit is open 9 a.m. to 5 p.m. ET, Monday through Friday, excluding holidays.