

August 1, 2023

Commissioner Robert Goldstein, MD, PhD

c/o William Anderson

Office of the General Counsel

Department of Public Health

250 Washington Street

Boston, MA  02108

**Re.: 105 CMR 158.00 Licensure of Adult Day Health Programs – Proposed Vaccination Requirements**

Dear Commissioner Goldstein,

Thank you for the opportunity to provide testimony on behalf of the MA Adult Day Services Association (MADSA) regarding the Department of Public Health’s (DPH) proposed plan for updated requirements for Covid and Influenza Vaccinations for staff at Adult Day Health Programs (ADH) and other health care facilities.  My name is Michele Keefe, and I am the Executive Director of the Massachusetts Adult Day Services Association (MADSA). I hold a master’s degree in public policy and have worked in management and policy roles in the field of long-term services and supports in a number of settings, including nursing facilities, residential care, assisted living, and Adult Day Health (ADH) for over 20 years.

Adult Day Health Programs make the critical difference for elders and adults with disabilities and family members seeking lower cost community-based care rather than institutional care. These programs are extremely cost effective, providing a six-hour day, with registered nursing care, chronic disease management and monitoring, medication management, social services, personal care, therapeutic activities, caregiver respite, and two meals! ADH Programs continued to provide vital health care services throughout the Covid-19 public health emergency.

MADSA represents the majority of the 135 Adult Day Health Programs statewide. We have done our best here to provide input regarding the proposed regulation on behalf of our members, but the DPH Guidance regarding potential mitigation measures, referenced in the proposed regulation, is not yet available from the Department. **Therefore, we respectfully request that ADH Programs and all Health Care Facilities be given the opportunity to provide additional comments once the Mitigation Guidance is available and *before* any changes to the regulation are finalized.**

MADSA and our members understand that DPH is working in conjunction with CDC recommendations to protect the public, especially those who are most vulnerable.  We commend you for this important work and for all you did during the Covid pandemic.  This is a major new challenge since the end of the federal and state Covid Public Health Emergencies, and we recognize that. As you know, ADH Programs are also very concerned about the safety, health, and well-being of their participants and staff.  **Adult Day Health Programs have and will continue to do all they can to protect their clientele and staff.**  Programs have implemented updated infection control procedures and practices aimed at maintaining the highest level of care possible.

As we understand it, the proposed regulation would require personnel in ADH Programs and other licensed facilities to be vaccinated with *both* the Influenza and COVID-19 vaccines, unless *exempted.* If implemented as proposed, staff may decline the vaccine for any reason and *may be* required by their employer to take mitigation measures to prevent viral infection and transmission.  

**The revisions to 105-CMR-158.030: Administration, include, *but are not limited to*, the following:**

(L) **Requirement for Personnel to Be Vaccinated against Influenza Virus.**

**(3) Each program also shall ensure all personnel are vaccinated against other pandemic or novel influenza virus(es) as specified in guidelines of the Commissioner, unless an individual is exempt from vaccination in accordance with 105 CMR 158.030(L)(6).**

**(6) Exemptions.**

**(a) Subject to the provisions set forth in 105 CMR 158.030(L)(6)(b), a program shall not require an individual to receive an influenza vaccine pursuant to 105 CMR 158.030(L)(2) or (3) if the individual declines the vaccine.**

**(b) For any individual subject to the exemption, a program may require such individual take mitigation measures, consistent with guidance from the Department.**

**(c) An individual who is exempt from vaccination shall sign a statement certifying that they are exempt from vaccination and they received information about the risks and benefits of influenza vaccine.**

**(8) Documentation.**

**(a) A program shall require and maintain for each individual proof of current vaccination against influenza virus pursuant to 105 CMR 158.030(L)(2) and (3), or the individual’s exemption statement pursuant to 105 CMR 158.030(L)(6).**

**(b) Each program shall maintain a central system to track the vaccination status of all personnel.**

**(c) If a program is unable to provide or arrange for influenza vaccination for any individual, it shall document the reasons such vaccination could not be provided or arranged for.**

**(9) Reporting and Data Collection. Each program shall report information to the Department documenting the facility’s compliance with the personnel vaccination requirements of 105 CMR 158.030(L), in accordance with reporting and data collection guidelines of the Commissioner.**

**(M) Requirement for Personnel to Be Vaccinated against Coronavirus Disease 2019 (COVID-19) Caused by the Virus SARS-CoV-2.**

**(2) Each program shall ensure all personnel have received COVID-19 vaccination in the timeframe specified in Department guidelines, unless an individual is exempt from vaccination in accordance with 105 CMR 158.030(M)(5).**

**(5) Exemptions.**

1. **Subject to the provisions set forth in 105 CMR 158.030(M)(5)(b), a program shall not require an individual to receive a COVID-19 vaccine pursuant to 105 CMR 158.030(M)(2) if the individual declines the vaccine.**
2. **For any individual subject to the exemption, a program may require such individual take mitigation measures, consistent with guidance from the Department.**
3. **An individual who is exempt from vaccination shall sign a statement certifying that they are exempt from vaccination and they received information about the risks and benefits of COVID-19 vaccine.**

**(7) Documentation.**

1. **A program shall require and maintain for each individual proof of current vaccination against COVID-19 virus pursuant to 105 CMR 158.030(M)(2), or the individual’s exemption statement pursuant to 105 CMR 158.030(M)(5).**
2. **Each program shall maintain a central system to track the vaccination status of all personnel.**
3. **If a program is unable to provide or arrange for COVID-19 vaccination for any individual, it shall document the reasons such vaccination could not be provided or arranged for.**

**(8) Reporting and Data Collection. Each program shall report information to the Department documenting the program’s compliance with the personnel vaccination requirements of 105 CMR 158.030(M) in accordance with reporting and data collection guidelines of the Commissioner.**

**Goals of Proposed Amendments, per DPH, as stated in their presentation to the Public Health Council. “The Department approached these amendments with the following goals:**

* Emphasize the importance of both influenza and COVID-19 vaccination among this workforce, due to higher risk of exposure, to prevent missed days of work due to illness, and to maximize availability to care for patients.
* Reducing risk to patients of COVID-19 and influenza infection and potential serious complications.
* Maximize vaccination while providing flexibility to personnel to be exempt from vaccination.
* Update outdated language which currently only addresses the “primary series” of COVID-19 vaccine.
* Close pre-existing gaps and inconsistencies in vaccine requirements, by including all health care facilities and Emergency Medical Service providers in this process, as all serve vulnerable and immunocompromised patients.”

**MADSA Questions/Comments Regarding Proposed Changes to Vaccination Requirements - Adult Day Health Licensure Regulation 105 CMR 158.00:**

1. **Fully staffing Adult Day Health (ADH) programs and all healthcare facilities/settings continues to be a major challenge.** 
   1. Although DPH is attempting to provide a universal policy, adding additional requirements for ADH Programs, at this time, may pose a barrier to hiring.
   2. This may further limit Programs’ ability to provide critical ADH services.
   3. As Adult Day Health Programs compete for employees from the same labor pool as other health and long-term care providers, it is also vital that the costs of state mandates, such as these, are recognized and that programs are reimbursed by MassHealth and all payers for all actual costs in the marketplace.
2. **ADH clientele live in the community, sometimes with family or caregivers.** 
   1. ADH participants, their family members, and caregivers are out and about in their communities and therefore could be exposed to the Flu or Covid in many different settings, not just at their ADH Programs.
   2. Therefore, will this policy be effective and meet DPH’s goals and should ADH Programs be part of this policy given that fact?
3. **Section 105 CMR 158.030, in the proposed regulation states, “For any individual subject to the exemption, a program may require such individual take mitigation measures, consistent with guidance from the Department.”**

**It is impossible to comment on this item without knowing, specifically, which “mitigation” strategies would be allowed/required in the case of staff vaccination exemptions and the associated time frame requirements.**

* 1. For example, if ADH Programs choose to require mitigation for those staff who refuse the vaccinations, *would masks be recommended year-round, seasonally, or just during community outbreaks etc.?*
  2. MADSA would have concerns about requiring year-round masking for those staff who refuse Covid vaccines, for example, as this could be another barrier to hiring, and may also limit the staff-to-participant connections, which are so vital to ADH services.
  3. Additionally, if the DPH Guidance calls for removing staff members, who opt out of vaccines from direct care tasks, as a mitigation strategy this would be impossible in ADH Programs. All ADH staff must be able to provide some direct care.
  4. Would a specialized air purification system be an acceptable form of mitigation?
  5. If testing would be an acceptable mitigation strategy, how exactly would that be implemented?  We are doubtful that most ADH programs would have the capacity to implement a widespread and ongoing surveillance program, for example, and the costs would be prohibitive.
  6. MADSA would have strongly preferred to see the proposed mitigation information and draft Guidance before testifying about the proposed regulation.
  7. We again respectfully request that ADH Programs and all Health Care Facilities be given the opportunity to provide additional comments once this Guidance is available and ***before*** any changes to the regulation are finalized.

1. **Finally, Adult Day Health Programs continue to be very vulnerable right now.**  They are just starting to stabilize and work on regrowth.  While we understand DPH’s important goals, **adding additional administrative and operational burdens,** such as documenting and tracking staff vaccination status at this time, will be very **challenging.**

Thank you again for the opportunity to provide feedback regarding this proposed regulation.

Sincerely,

Michele Keefe

Executive Director

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