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To: Commissioner Robert Goldstein and Members of the Public Health Council

From: Amy Kaplan, Director of Policy and Regulatory Affairs, Department of Public Health Date: September 13, 2023

RE: Informational Briefing on Proposed Rescission of 105 CMR 159.000, *COVID-19 Vaccinations for Certain Staff Providing Home Care Services in Massachusetts*

# Introduction

The purpose of this memorandum is to provide the Public Health Council (PHC) with information about the proposed rescission of 105 CMR 159.000, *COVID-19 Vaccinations for Certain Staff Providing Home Care Services in Massachusetts.*

# Background

This regulation was promulgated by the Department during the COVID-19 public health emergency to require all in-home care workers providing direct care under a state-based program to be vaccinated - with the “full required regimen of vaccine doses” approved or authorized by the FDA or WHO against COVID-19, no later than October 31, 2021. [Subsequent guidance](https://www.mass.gov/info-details/covid-19-public-health-guidance-and-directives#%3A~%3Atext%3DDPH%20Memo%2C%20November%2021%2C%202022) issued by the Department in November 2022 clarified that this requirement shall be interpreted as meaning only the “primary series” of vaccination.

MassHealth and the Executive Office of Elder Affairs (EOEA) are statutorily charged with oversight of this workforce. Examples of these workers include Home Health Aides, Adult Foster Care, Group Adult Foster Care (GAFC), Adult Foster Care (AFC), and Home Care Workers. This requirement was unprecedented in the in-home care sector; prior to this requirement, the industry had not been required to monitor or enforce vaccination requirements. The Department’s action was critical at the time regulation was promulgated, as the vaccination requirements helped promote the safety of health care workers and the populations they serve.

The federal and Massachusetts COVID-19 public health emergencies ended on May 11, 2023, and moving forward, the Department is incorporating COVID-19 response and management into its broader respiratory illness prevention and mitigation strategy for its licensed and certified

facilities and programs. Additionally, on June 5, the Centers for Medicare & Medicaid Services (CMS) [published a final rule](https://www.federalregister.gov/documents/2023/06/05/2023-11449/medicare-and-medicaid-programs-policy-and-regulatory-changes-to-the-omnibus-covid-19-health-care) providing guidance to healthcare employees about unwinding its [interim final rule,](https://www.federalregister.gov/documents/2021/11/05/2021-23831/medicare-and-medicaid-programs-omnibus-covid-19-health-care-staff-vaccination) which had mandated COVID-19 testing, education, and vaccinations, including additional/booster doses.

The Department is also in process of amending licensure regulations for healthcare facilities and emergency medical service (EMS) providers, to align their COVID-19 and influenza vaccination requirements. Under those proposed amendments, Department-licensed settings would require licensees to ensure all personnel are up-to-date with these vaccinations unless an individual declines due to a medical contraindication, religious beliefs, personal reasons, or other reason.

# Proposed Rescission and Planned Guidance

Given that this regulation is now outdated (in requiring only a “primary series,” rather than up- to-date vaccination), the agencies statutorily charged with oversight of home care workers – MassHealth and EOEA – have requested that the Department rescind this regulation.

In lieu of regulation, MassHealth and EOEA will issue guidance to Home Care Agencies, Home Health Agencies, GAFC, AFC, and Home and Community Based Services Providers. This guidance will require providers to have plans in place to educate home care, home health, GAFC agency workers, and other personnel on the importance of vaccination and provide resources and assistance to support workers in becoming vaccinated and staying up-to-date for COVID-19.

MassHealth and EOEA will supplement this guidance with direct communication to this workforce about the importance of vaccinations and staying up to date. Guidance and communications will be issued while this rescission is being put out for public comment.

MassHealth and EOEA recognize that this approach is different than other proposed changes for Department-licensed settings, such as hospitals, outpatient clinics, and long-term care facilities. Distinguishing Department-licensed settings from in-home care service providers is warranted. The structure of the in-home service sector is fundamentally different from the structure and composition of the licensed settings mentioned above. Providers vary in size, organizational and managerial capacity, and are oriented around a workforce who travel to and from home settings, rather than a clinic or office. These providers have always been distinguished from Department- licensed settings.

# Provider Feedback

Home care service providers have consistently shared with MassHealth and EOEA that requiring employees to be immunized is a long way from their baseline (pre-COVID-19) practice and that they do not have the capacity to arrange for vaccine clinics or keep track of workers’ vaccination status. They are, however, committed to supporting the health of their employees and clients, and MassHealth and EOEA will continue to support providers in encouraging their employees to be immunized and follow best practices around infection control to mitigate the spread of respiratory and other illnesses.

# Next Steps

MassHealth and EOEA will issue communications and guidance to in-home care services providers and workers.

The Department will conduct a public comment hearing and will then return to the PHC to report on comments received. Following final approval by the PHC at a future meeting, the Department will file the final rescission with the Secretary of the Commonwealth.

The proposed rescission of 105 CMR 159.000 is attached to this memorandum.