

# Expanded Vaccine Mandate to include Rest Homes, Assisted Living Residences, Hospice Programs and Home Care Workers



September 1, 2021

On August 4<sup>th</sup>, 2021, the Baker-Polito Administration announced a requirement that all nursing home staff demonstrate that they have received and are maintaining vaccination to protect against COVID-19.

As part of an ongoing and continuous effort to protect older adults and vulnerable populations against COVID-19, EOHHS is expanding the vaccine requirement to all staff at **rest homes, assisted living residences (ALRs), hospice programs** and to **home care workers (HCWs) providing in-home, direct care services, under a state contract or state program** subject to approval by the Public Health Council (PHC) at their September meeting.

For rest homes, ALRs, and hospice programs, the requirement applies to all individuals employed directly by the provider/facility as well as certain contractors who regularly enter the facility.

For the purposes of this requirement, the term **Home Care Worker includes individuals providing in-home, direct care who are employed by an agency** that is contracted or subcontracted with the Commonwealth or a Commonwealth-contracted managed care entity, including:

- Home health agencies enrolled in the MassHealth program
- Home care agencies providing services under the state's home care program
- Continuous Skilled Nursing agencies enrolled in the MassHealth program
- Hospice programs (including hospice facilities and hospice agencies that provide services in homes)
- Group Adult Foster Care agencies enrolled in the MassHealth program delivering personal care services that assist individuals with eating, toileting, dressing, bathing, transferring, and mobility.

The requirement also applies to **independent, non-agency-based home care workers** that contract with the Commonwealth to provide in-home, direct care including:

- Independent Nurses enrolled in the MassHealth program
- Personal Care Attendants (PCAs) providing services through the MassHealth program
- Consumer Directed Care (CDC) workers providing services under EOEA's self-directed program

All personnel defined above are **required to demonstrate they have received COVID-19 vaccination by October 31, 2021 unless they qualify for a limited exemption from the requirements.**

## Exemptions

Consistent with other state COVID-19 vaccination requirements, an individual will not be required to provide proof of vaccination:

- If the vaccine is medically contraindicated and the individual's job is such that the employer can offer a reasonable accommodation to avoid risk of contracting/transmitting COVID on the job; or
- If the individual objects to vaccination based on a sincere religious belief and the individual's job is such that the employer can offer a reasonable accommodation to avoid risk of contracting/transmitting COVID on the job.

## Implementation

The implementation of this requirement including reporting, oversight and enforcement will differ dependent on the setting/provider type.

- Rest Homes
  - o Rest Homes will report staff vaccination status monthly, via the Virtual Gateway's Health Care Facility Reporting System (HCFRS).
  - o In alignment with SNFs, the violation for Rest Homes will be defined as each day the facility employs an individual who has not received the COVID-19 vaccination (i.e., per day, per individual staff person not vaccinated) that will then be assessed on a monthly basis for staff who were not fully vaccinated for the entire month.
  - o Consistent with the penalty for skilled nursing facilities (levels I-III), the penalty will be the equivalent to \$50 per violation; DPH will apply a temporary admission freeze if <75% of staff not vaccinated by 10/31/21.
  
- Assisted Living Residences
  - o ALRs will collect and maintain proof of current COVID-19 vaccination and make such information available for EOEA review after October 31, 2021.
  - o EOEA may issue an admission freeze on an ALR if less than 100% of staff who do not otherwise qualify for an exemption, are not vaccinated by October 31, 2021.
  
- Hospice Programs
  - o Hospice programs will collect the vaccination status of each personnel and have available to provide to DPH upon request.
  - o DPH will take appropriate licensure action with any hospice program where there are personnel who are not vaccinated after October 31, 2021.
  
- Home Care Workers
  - o The implementation of the requirement for Home Care Workers will differ based on whether the HCW is employed by an agency or providing services independently under contract with MassHealth, state-contracted managed care entity, or EOEA.
  - o **Agency based workers:**
    - Every employee will be required to submit proof of vaccination to the home care agency (Agency) or documentation that they qualify for an exemption no later than October 31, 2021.
    - The Agency will be required to maintain: i) proof of vaccination for all direct-care staff the Agency employs directly or by contract; and ii) an attestation that all direct care staff have been vaccinated.
    - The Agency's COVID-19 staff vaccination documentation and attestation 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 or a payment withhold.
    - Further details about implementation and enforcement will be set forth in agency/program-specific guidance.
  - o **Non-agency-based workers:**
    - PCAs, MassHealth-enrolled Independent Nurses, and EOEA self-directed CDC workers will be required to provide to their consumer-employer (for PCA or CDCs) or the state agency with which they are contracted or enrolled proof of vaccination or documentation that they qualify for an exemption no later than October 31, 2021.
    - The Consumer-employer will retain the discretion to terminate or decline services from the worker based on vaccination status.
    - Further details about implementation and enforcement will be set forth in agency/program-specific guidance.

**Process**

The relevant regulations implementing this expanded requirement will be brought before the Public Health Council for a vote at the September 8<sup>th</sup> meeting.

Subject to public health council approval, the regulations (except for the ALR regulations not subject to PHC approval) will be promulgated on an emergency basis, effective immediately with a public comment process to follow.

Additional details about implementation and enforcement will be established in agency/program-specific guidance to be issued following PHC approval.