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Memorandum

TO: Nursing Home Administrators
FROM: Elizabeth Daake Kelley, MPH, MBA, Director
Bureau of Health Care Safety and Quality
SUBJECT: COVID-19 Personnel Vaccination Requirement
DATE: September 24, 2021

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 long-term care facilities serve in caring for Massachusetts residents.

The purpose of this guidance is to inform nursing homes about how to ensure all personnel are fully vaccinated, report vaccination data for their facility and explain the enforcement action for facilities who do not comply pursuant to the amendments to 105 CMR 150.000, *Standards for Long-Term Care Facilities*. This guidance replaces the memorandum released on August 16, 2021 and provides updates on facility documentation requirements.

Overview:

All nursing homes must ensure that all personnel are fully vaccinated against COVID-19 by October 10, 2021, 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 and the individual is able to perform their essential job functions with a reasonable accommodation that is not an undue burden on the nursing home. Personnel may not otherwise decline the vaccine. As of October 10, 2021, nursing homes shall ensure that all new personnel are fully vaccinated or qualify for an exemption from the requirement as described herein prior to being hired or otherwise affiliated with the facility. In order to meet this requirement, nursing homes should ensure that all personnel have received at least the first dose of COVID-19 vaccine, if they are receiving a two-dose series by September 1, 2021.

Facility Documentation:

Nursing homes 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

Declination statements from personnel must include but are not limited to each individual who declines vaccination due to medical contraindication or a sincerely held religious belief signing a statement 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 nursing home must document that it has engaged in an appropriate individualized determination that the exemption is valid and that the nursing home 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 facilities work with their legal counsel to ensure they conduct an appropriate process. As part of this individualized determination nursing homes should incorporate clinical considerations beyond standard infection control requirements (e.g. testing frequency). For example:

- requiring additional testing that goes above currently required DPH surveillance or outbreak testing guidance; and
- avoiding direct care for residents 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.

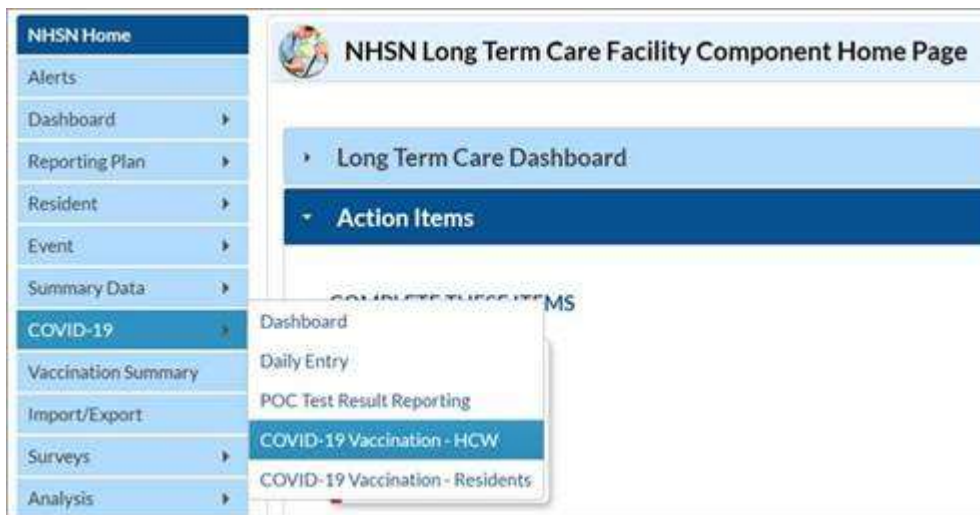
DPH supports staff using personal protective equipment as outlined in the Comprehensive PPE Guidance and does not endorse clinical considerations that deviate from this guidance. For example, while N95 respirators should be worn when caring for a patient with confirmed or suspected COVID-19, the available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

Reporting:

Nursing homes must use the Centers for Disease Control and Prevention (CDC) National Healthcare Safety Network (NHSN) to report cumulative weekly COVID-19 vaccination for residents and personnel through the Long-Term Care Facility Component. DPH will use data submitted through the weekly COVID-19 vaccination modules to provide consistent reporting and comparable data across facilities. NHSN data can be used to monitor COVID-19 vaccination trends over time, identify facilities with lower resident and/or personnel vaccination rates, and inform planning and implementation decisions regarding vaccine supply and distribution.

Training, data collection forms, and instructions can be found on the following NHSN website under 'HCP & Resident COVID-19 Vaccination': <https://www.cdc.gov/nhsn/ltc/weekly-covid-vac/index.html>

Facilities can access the COVID-19 vaccination modules by logging into NHSN (via Secure Access Management Service) as they would for any of the other NHSN reporting (cdc.gov). On the NHSN Home page, select the 'COVID-19' option on the left-hand navigation bar. Personnel and resident data should be entered by selecting 'COVID-19 Vaccination-HCW' and 'COVID-19 Vaccination-Residents' respectively. This reporting is separate from the 'Daily Entry' where facilities enter weekly case counts and supply data. For reference, please see the image below:



Nursing homes must complete the two vaccination modules each week, no later than Sunday at 11:59 PM, in alignment with the CMS weekly deadline. Beginning Sunday, October 10, 2021, DPH will use submitted information to identify if all personnel are fully vaccinated, unless otherwise exempt, at each facility to assess compliance with the amendments to 105 CMR 150.000.

Enforcement Action:

This guidance serves as notice that if a facility fails to comply with the amendments to 105 CMR 150.000, including the reporting requirements set forth in this or subsequent guidance, it will be subject to the following penalties pursuant to G.L. c. 111, § 73 and 105 CMR 153.024(C)¹:

- DPH will impose a penalty of \$50 for a failure to report by October 10, 2021;
- DPH will impose a penalty of \$50 per day for each member of the facility's personnel who is not fully vaccinated against COVID-19.
- If a facility fails to ensure that 75% of personnel or more are vaccinated as of October 10, 2021 then DPH shall have the authority to issue an Admissions Freeze. The Admissions Freeze will not be lifted until facility demonstrates to the Department that the rate of fully vaccinated personnel is 75% or higher.

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

¹ If a Nursing Home has reason to dispute the penalty, they may request Administrative Review.

DPH strongly encourages all health care facilities in Massachusetts to monitor the Centers for Medicare & Medicaid Services (CMS) website and the Centers for Disease Control and Prevention (CDC) website for up-to-date information and resources:

- CMS website: <https://www.cms.gov/About-CMS/Agency-Information/Emergency/EPRO/Current-Emergencies/Current-Emergencies-page>
- CDC website: <https://www.cdc.gov/coronavirus/2019-ncov/hcp/facility-planning-operations.html>
 - For reference, since first responders are part of the COVID-19 response, 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>.