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### Memorandum

**TO:** Rest 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 rest 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*.

#### Overview:

All rest homes must ensure that all personnel are fully vaccinated against COVID-19 by October 31, 2021, unless such administration is medically contraindicated, which means administration of COVID-19 vaccine is likely to be detrimental to the individual's health, 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 rest home. Personnel may not otherwise decline the vaccine. As of October 31, 2021, rest 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. To meet this requirement, rest homes should make every effort to ensure that all personnel have received at least the first dose of COVID-19 vaccine, if they are receiving a two-dose series by October 1, 2021.

#### Facility Documentation:

Rest 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 rest home must document that it has engaged in an appropriate individualized determination that the exemption is valid and that the rest 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 rest 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:**

Rest homes must use DPH's Health Care Facility Reporting System (HCFRS) to report cumulative monthly COVID-19 vaccination for residents and personnel through the COVID-19 Vaccination Module. DPH will use data submitted through the monthly COVID-19 vaccination modules for enforcement purposes and to provide consistent reporting and comparable data across facilities. HCFRS 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

Facilities can access the HCFRS COVID-19 vaccination modules by logging into the Virtual Gateway as they would for any of the other required reporting or find more information at the following link: <https://www.mass.gov/guides/how-to-set-up-initial-access-to-the-hcfrs>

Rest homes must complete the vaccination module by the last day of each month, no later than 11:59 PM, beginning on October 31, 2021. Details about the specific information required to be reported and format may be found in Appendix A. Beginning Sunday, October 31, 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 regulation.

**Enforcement Action:**

This guidance serves as notice that if a facility fails to comply with the regulation, 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)<sup>1</sup>:

- DPH will impose a penalty of \$50 per day for a failure to report by October 31, 2021 and the last day of each month thereafter;
- After October 31, 2021 and each month thereafter, 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 for the entire duration of the month being reported.
- If a facility fails to ensure that 75% of personnel or more are vaccinated as of October 31, 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.

DPH strongly encourages all rest homes in Massachusetts to monitor the Centers for Disease Control and Prevention (CDC) website for up-to-date information and resources:

- 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>.

**Attachment:** Appendix A

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<sup>1</sup> If a Rest Home has reason to dispute the penalty, they may request Administrative Review.