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**Circular Letter: DHCQ 09-08-520**

**To: Long-Term Care Facility Administrators**

**From: Jean Pontikas**  
**Interim Director, Bureau of Health Care Safety and Quality**

**Date: August 28, 2009**

**Re: EMERGENCY REGULATION - INFLUENZA VACCINATION OF**  
**EMPLOYEES IN LONG-TERM CARE FACILITIES**

This letter is to advise licensed long-term care facilities that on August 12, 2009 the Public Health Council (PHC) approved promulgation of emergency amendments to the long-term care facility licensure regulation (See attachment A, 105 CMR 150.002(D)(8)). The amendments require long-term care facilities to ensure that all employees are vaccinated against (1) seasonal influenza virus, no later than December 15, 2009 and annually thereafter, and (2) novel or pandemic virus (such as H1N1) as directed in guidelines to be issued by the Commissioner of Public Health. Similar amendments also were adopted by the PHC for hospitals and clinics. The amendments are explained below and in the PHC memorandum of August 12, 2009 available on the Department of Public Health's (Department) website [www.mass.gov/dph](http://www.mass.gov/dph).

The amendments were promulgated on an emergency basis to ensure that long-term care facilities begin vaccinating employees as soon as seasonal and H1N1 influenza vaccines become available. The emergency amendments are effective **September 14, 2009**, upon filing with the Office of the Secretary of the Commonwealth and will remain in effect for 3 months. Within this 3 month period, the Department will conduct a public hearing and comment period and return to the PHC for final promulgation of the amendments. Please consult the Department's website for an announcement of the hearing.

Although a seasonal vaccination requirement already exists for long-term care facilities, the language of the regulations has been changed to make it consistent across licensed health care facilities. In addition to employee vaccination programs for seasonal

influenza, the amendments allow the Commissioner of Public Health to issue guidelines as necessary to require long-term care facilities licensed by the Department to ensure that employees are vaccinated against other novel/pandemic influenza virus(es) as vaccines become available, such as H1N1.

## **Background – Vaccination of Health Care Workers**

These emergency amendments are part of the effort to protect workers in health care settings and the patients they care for by making influenza vaccination readily available to all employees. Influenza vaccination is the most effective method of preventing influenza virus infection and its potentially serious complications. The majority of health care workers are not vaccinated against seasonal influenza, despite the recommendation of numerous professional agencies and organizations including the Centers for Disease Control and Prevention (CDC), the National Foundation for Infectious Diseases (NFID), the Infectious Diseases Society of America (IDSA) and The Joint Commission. According to the CDC, only 44% of health care workers received influenza vaccine during the 2006-2007 season.<sup>1</sup>

The Department has developed a coordinated plan to address the unique challenges presented by the emergence of the novel H1N1 virus while continuing to prepare for seasonal influenza. An essential component of this initiative is to ensure that health care workers and consequently their patients are protected from seasonal and H1N1 influenza viruses by being vaccinated.

## **Emergency Amendments: Seasonal Influenza**

The amendments require long-term care facilities to establish programs to ensure that all employees (including medical staff, contractors and certain volunteers) are vaccinated against seasonal influenza virus, no later than December 15, 2009, and annually thereafter.

The amendments require long-term care facilities to notify every employee of the seasonal influenza vaccination requirement and the risks and benefits of vaccination. Long-term care facilities may use a Vaccine Information Statement (VIS) for this purpose. VISs are available at <http://www.cdc.gov/vaccines/pubs/vis/default.htm>. It is the long-term care facility's responsibility to provide a copy of the most up-to-date version of the VIS prior to administering vaccine.

The amendments require long-term care facilities to provide or arrange for vaccination of all employees who cannot provide proof of current immunization against influenza, at no cost to the employee, unless the employee declines vaccination. Employees (such as contractors performing administrative functions) who do not physically work at or come to the licensed long-term care facility site are not required to be vaccinated under these amendments.

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<sup>1</sup> CDC Prevention and Control of Influenza: Recommendations of the Advisory Committee on Immunization Practice (ACIP), 2009.MMWR 2009; 58(Early Release):1-52

A long-term care facility is not required to ensure vaccination of an employee if (a) the vaccine is medically contraindicated for that employee, (b) vaccination is against the employee's religious beliefs, or (c) the employee refuses the vaccine. An employee who declines vaccination must sign a declination statement and certify that he/she received information about the risks and benefits of vaccination. Electronic signatures are acceptable for declination forms. A Sample Influenza Declination Form (Attachment B) and Sample Vaccination Declination Tracking Form (Attachment C) are included for your information.

The amendments provide that a long-term care facility is not required to provide or arrange for influenza vaccination when the vaccine is unavailable for purchase, shipment or administration by a third-party, or if the Commissioner issues an order or guidelines restricting the use of a vaccine.

The amendments require long-term care facilities to (1) maintain a central system to track the vaccination status of each employee including declinations and (2) maintain documentation of vaccination status in each employee's personnel file. The Department interprets the term "personnel file" broadly to include electronic or other individual or aggregate file(s) or document(s) that allows a long-term care facility to easily determine the vaccination status of a particular employee. If a long-term care facility is unable to provide or arrange for influenza vaccination for any employee, it must document the reasons such vaccination could not be provided or arranged. If a contractor is on site, a long-term care facility may accept a blanket statement from the contracting company attesting to the vaccination status of its employees, as long as the contracting company certifies that it is maintaining a central system with the information required by the regulation and can make it available to the long-term care facility or the Department upon request.

The amendments require long-term care facilities to collect and submit data to the Department in accordance with guidelines to be issued by the Commissioner. Specific reporting guidelines for collection and submission of data for the 2009-2010 flu season will be issued shortly in a separate letter.

### **Emergency Amendments: Novel or Pandemic Influenza (H1N1)**

In addition to requiring that long-term care facilities ensure annual vaccination of all employees against seasonal influenza virus, the amendments authorize the Commissioner of Public Health to issue guidelines as needed to require long-term care facilities to vaccinate all or some employees against novel or pandemic viruses, such as H1N1. The Commissioner is expected to issue guidelines in the coming weeks directing long-term care facilities to ensure that all or some employees are vaccinated against H1N1 influenza. As provided in the amendments, the Commissioner's H1N1 employee vaccination guidelines will address:

- (1) Categories and priority of employees to be vaccinated
- (2) Type of vaccine(s) to be administered
- (3) Date by which employees must be vaccinated
- (4) Data collection and reporting requirements

Once the Commissioner issues guidelines directing long-term care facilities to implement a novel or pandemic (H1N1) employee vaccination program, the amendments require long-term care facilities to comply with the same requirements that apply to seasonal influenza for (1) employee notification of risks and benefits, (2) provision of vaccination without charge to designated employees, (3) declination of vaccination, and (4) documentation of employee vaccination status.

In contrast to seasonal influenza, long-term care facilities are not required to implement a novel or pandemic (H1N1) influenza vaccination program until guidelines have been issued by the Commissioner. This letter does **not** constitute the issuance of guidelines related to H1N1, but rather is intended to inform long-term care facilities about the emergency amendments and the potential H1N1 vaccination obligations that are likely to arise this flu season.

### **Availability of H1N1 Vaccine**

The H1N1 vaccine is now in production, with efficacy and safety studies ongoing. Some doses of H1N1 influenza vaccine will be available starting in October. However, fewer doses are expected to be available than previously projected. All H1N1 vaccine will be supplied by the federal government at no cost to providers in both the public and private sectors. State health departments will be responsible for allocating all doses of H1N1 vaccine.

The first shipments of H1N1 vaccine are likely to be directed to priority populations such as children, pregnant women, those of all ages at higher risk of complications of influenza infection, as well as healthcare workers and emergency medical services personnel with direct patient contact. It is expected that most people will require two doses of vaccine, 3-4 weeks apart. In addition, it is expected that H1N1 vaccine will be able to be co-administered with seasonal flu vaccine. The Department will post the latest guidance about priority groups and all other recommendations related to H1N1 vaccine on the Department flu website <http://www.mass.gov/dph/flu>.

In order to facilitate allocation of H1N1 vaccine to providers in Massachusetts, the Department is developing an on-line system to register all public and private provider sites interested in receiving and administering novel H1N1 vaccine (including private providers, long-term care facilities, local health departments, regional public health coalitions, visiting nurses associations, long-term care facilities, pharmacists and commercial community vaccinators). The Department expects to go live with this registration system in early September. Information about accessing the registration site will be disseminated broadly through email and in collaboration with professional organizations and trade associations, and will be posted on the Department's flu website <http://www.mass.gov/dph/flu>

The task of administering millions of doses of seasonal and pandemic influenza vaccine is enormous. The Department will work closely with health care facilities, agencies, local health officials, and health care professionals to promote and support enhanced seasonal flu long-term care facilities. *Any guidelines issued by the Commissioner requiring long-term care facilities to implement employee vaccination programs for*

*H1N1 will be mailed directly to licensed facilities and posted on the Department's website.*

### **Latest Information on Influenza Outbreak and Vaccination**

You will find helpful information about flu vaccine, including the risks and benefits of getting vaccinated, and H1N1 guidance, on the Centers for Disease Control and Prevention's (CDC's) website at <http://www.cdc.gov/flu>. For the latest updates on influenza also please visit the Department's website at [www.mass.gov/dph/flu](http://www.mass.gov/dph/flu). The Department's latest guidance and requirements about vaccine ordering, storage, provision of information and documentation can be found at <http://www.mass.gov/dph/imm>, and then click on "Vaccine Management." Standing orders for vaccines and long-term care facility protocols can be found by going to <http://www.mass.gov/dph/imm> and clicking on "Model Standing Orders."

### **What Long-Term Care Facilities Should Do Now**

The Department advises long-term care facilities to begin the seasonal influenza vaccination of employees immediately upon receipt of the vaccine. The amendments require long-term care facilities, when feasible, to ensure that all employees have been vaccinated with seasonal influenza vaccine by December 15, 2009. Long-term care facilities are allowed to determine the order in which employees are vaccinated provided that, when feasible, all employees are vaccinated by December 15<sup>th</sup>.

There is still some seasonal influenza vaccine available to purchase from vaccine distributors. Once the vaccination season is under way, the Influenza Vaccine Availability Tracking System (IVATS) becomes operational. IVATS (<http://www.preventinfluenza.org/ivats/>) enables healthcare providers to view at a glance which distributors have vaccine available to sell (See Attachment D - Partial List of Seasonal Flu Distributors). Long-term care facilities can also get helpful information at the Flu Supply News website which lists the phone numbers and website addresses of the vaccine distributors (<http://www.flusupplynews.com/resources.cfm>).

Given the anticipated issuance of H1N1 vaccination guidelines by the Commissioner, the Department also advises long-term care facilities to begin to plan for an additional round of vaccination, with the two-dose H1N1 vaccine. As explained above, the H1N1 vaccine is expected to be available beginning in October.

If you have questions about the emergency amendments, please contact [DPH.DHCQ@massmail.state.ma.us](mailto:DPH.DHCQ@massmail.state.ma.us).

### **Attachments:**

- A. August 12, 2009 Amendments
- B. Sample Influenza Vaccine Declination Form
- C. Sample Vaccination Declination Tracking Form
- D. Partial List of Seasonal Flu Vaccine Distributors

