

Attachment A

Proposed Amendments to
105 CMR 150.002(D)(8): Licensing of Long-Term Care Facilities

105 CMR 150.002(D)(8) is amended as follows:

(8) Requirement that Employees Be Vaccinated Against Influenza Virus.

(a) Definitions.

1. For purposes of 105 CMR 150.002(D)(8), “employee” means an individual who is a volunteer with direct patient contact or an individual employed (whether directly, by contract with another entity, as an independent contractor or as a member of the medical staff) by the facility, on a part-time or full-time basis, whether or not such individual provides direct patient care.

2. For purposes of 105 CMR 150.002(D)(8), the requirement for “influenza vaccine” or “vaccination” means immunization by either influenza vaccine, inactivated or live; attenuated influenza vaccine including seasonal influenza vaccine pursuant to 105 CMR 150.002(D)(8)(b); and/or other influenza vaccine pursuant to 105 CMR 150.002(D)(8)(c).

(b) ~~No later than December 15, 2007 and annually thereafter, e~~Each facility shall ensure that every employee is vaccinated ~~against annually with seasonal influenza virus vaccine~~ unless such employee declines vaccination in accordance with 105 CMR 150.002(D)(8)(f). ~~When feasible, and consistent with any guidelines of the Commissioner of Public Health and his/her designee, each facility shall ensure that every employee is vaccinated with seasonal influenza vaccine no later than December 15, 2009 and annually thereafter.~~

~~1. For the purposes of 105 CMR 150.002 (D) (8), “employee” shall mean an individual employed (whether directly, by contract with another entity or as an independent contractor) by the facility, on a part-time or full-time basis, whether or not such individual provides direct patient care.~~

~~2. For the purposes of 105 CMR 150.002 (D) (8), the requirement for “influenza vaccine” or “vaccination” means immunization by either influenza vaccine, inactivated or live, attenuated influenza vaccine.~~

(c) Each facility also shall ensure that every employee is vaccinated against other pandemic or novel influenza virus(es) as specified in guidelines of the Commissioner or his/her designee, unless such employee declines vaccination in accordance with 105CMR 150.002(D)(8)(f). Such guidelines may specify:

1. The categories of employees that shall be vaccinated and the order of priority of vaccination of employees, with priority for those employees with responsibility for direct patient care;
2. The influenza vaccine(s) to be administered;
3. The dates by which employees must be vaccinated; and
4. Any required reporting and data collection relating to the employee vaccination requirement of 105 CMR 150.002(D)(8)(c).

(~~bd~~) Each facility shall provide every employee with information about the risks and benefits of influenza vaccine.

(~~ce~~) Each facility shall notify every employee of the influenza vaccination requirements of 105 CMR 150.002(D)(8) and shall, at no cost to any employee, provide or arrange for vaccination of all employees who cannot provide proof of current immunization against influenza unless such employee declines vaccination in accordance with 105 CMR 150.002(D)(8)(f).

~~1. Influenza vaccination and the documentation thereof shall take place no later than December 15 of each year.~~

~~2. For an employee who is newly employed after December 1 but before~~

~~April 1, and who cannot provide proof of current immunization against influenza, the facility shall provide or arrange for the vaccination within two weeks of the employee commencing employment.~~

(~~df~~) Exceptions.

1. A facility shall not require an employee to receive an influenza vaccine pursuant to 105 CMR 150.000(D)(8)(b) or (c) if:
 - a. the vaccine is medically contraindicated, which means that administration of influenza vaccine to that employee would likely be detrimental to the employee's health.
 - b. vaccination is against the employee's religious beliefs; or
 - c. the employee refuses the vaccine.
2. An employee who ~~does not get declines~~ vaccination for any reason shall sign a statement certifying that he or she received information about the risks and benefits of influenza vaccine.

(~~eg~~) Unavailability of Vaccine. A facility shall not be required to provide or arrange for influenza vaccination during such times that the vaccine is unavailable for purchase, shipment, or administration by a third party or when complying with an order of the Commissioner of Public Health which restricts the use of the vaccine. A facility shall obtain and administer influenza vaccine in accordance with 105 CMR 150.002(D)(8) as soon as vaccine becomes available.

(~~fh~~) Documentation.

1. ~~The A~~ facility shall require and maintain in each employee's personnel file a certificate(s) of immunization for annual vaccination against influenza virus pursuant to 105 CMR 150.008(D)(8)(b) and

(c), or any employee declination statement pursuant to 105 CMR 150.002(D)(8)(f).

2. Each facility shall maintain a central system to track the vaccination status of every employee.

3. If a facility is unable to provide or arrange for influenza vaccination for any employee, it shall document the reasons such vaccination could not be provided or arranged for.

(i) Reporting and Data Collection.

Each facility shall report information to the Department documenting the hospital's compliance with the employee vaccination requirements of 105 CMR 150.002(D)(8), in accordance with reporting and data collection guidelines of the Commissioner or his/her designee.

Authority: M.G.L. c. 111, §§ 5, 6, and 51 through 56