

Client Alert

August 26, 2021

Public Health and Health Planning Council Adopts Emergency Regulation Requiring COVID-19 Vaccine for Home Care Personnel

The Department of Health, Codes Committee of the Public Health and Health Planning Council (PHHPC) has adopted the Department's emergency regulation that will require covered entities, including Licensed Home Care Services Agencies (LHCSAs), to continuously require personnel to be fully vaccinated against COVID-19.

Some critical points are included below:

- Under the regulation as adopted, “covered entities” include any Article 28 licensed entity, including but not limited to general hospitals, nursing homes, and diagnostic and treatment centers, any Article 36 entity, including CHHAs, LHCSAs, LTHHCPs, AIDS home care programs, hospices, and adult care facility licensed by the Department of Health. The Consumer Directed Personal Assistant Program (CDPAP) is not explicitly covered by the regulation at this time.
- “Covered personnel” include “all persons employed or affiliated with a covered entity, whether paid or unpaid, including but not limited to employees, members of the medical and nursing staff, contract staff, students, and volunteers, who engage in activities such that if they were infected with COVID-19, they could potentially expose other covered personnel, patients or residents to the disease.”
- The final regulation, unlike the proposed emergency regulation, does not include an exemption for religious reasons. Thus, at this time, the only basis personnel may rely on to be exempt from the mandate is a medical reason. For personnel to claim such exemption, they must present a certification from a licensed physician or a certified nurse practitioner certifying that the vaccine "is detrimental to the health of a member of [the] covered entity’s personnel based upon a pre-existing health condition" of that member. The exemption shall be applicable only until such immunization is found no longer to be detrimental to such personnel member’s health.
- The nature and duration of the medical exemption must be stated in the

personnel employment medical record, or other appropriate record, and must be in accordance with generally accepted medical standards, (see, for example, the recommendations of the Advisory Committee on Immunization Practices of the U.S. Department of Health and Human Services). Any reasonable accommodation may be granted, and must be documented in the personnel record.

- The Department expects covered entities to ensure that any medical exemption request submitted by personnel is valid. Although, this is a tremendous undertaking, the Department expects covered entities to do their due diligence and ensure that any physician certifications are valid and based on "generally accepted medical standards."
- This regulation once effective will supersede Executive Order 16, which mandated the COVID-19 vaccine for certain hospital and nursing staff, and is set to expire 90 days from the date of filing unless renewed.
- The deadline for compliance with the first dose for current personnel is September 27, 2021, for general hospitals and nursing homes, and October 7, 2021, for LHCSA's and all other covered entities absent receipt of an exemption. Generally, documentation of such vaccination shall be made in personnel records or other appropriate records in accordance with applicable privacy laws. To the extent that a personnel member's job function can be performed remotely, a covered entity should permit this.
- Upon the request of the DOH, covered entities will be required report and submit documentation regarding the following:
 - the number and percentage of personnel that have been vaccinated against COVID-19;
 - the number and percentage of personnel for which medical exemptions have been granted; and
 - the total number of covered personnel.
- Covered entities must develop and implement a policy and procedure to ensure compliance with these requirements and submit such documents to the Department upon request.
- Lastly, the Department may require all personnel, whether vaccinated or unvaccinated, to wear an appropriate face covering for the setting in which such personnel are working in a covered entity. Covered entities shall supply face coverings required by this section at no cost to personnel.

Please call us with any questions regarding the adoption of this regulation, or vaccine mandate policies and procedures.

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