

Chapter 264: IMMUNIZATION REQUIREMENTS FOR HEALTHCARE WORKERS

SUMMARY: Healthcare workers are at risk for exposure to and possible transmission of vaccine preventable diseases due to their contact with patients, or infectious material from patients. The health and safety of the health care workers and the patients they care for is an essential area of concern.

This rule is issued pursuant to the statutory authority of the Department of Human Services to require immunization of the employees of designated health care facilities as set forth in 22 M.R.S.A. §802, as amended by P.L. 2001, Ch. 185. It prescribes the dosage for required immunizations and defines responsibilities, exclusion periods, record keeping and reporting requirements for officials of hospitals and healthcare facilities.

1. Definitions

- A. "Certificate of Immunization" means a written statement from a physician, nurse or health official who has administered an immunization agent to an employee, specifying the vaccine administered and the date it was administered. Secondary school or collegiate health records, having been compiled and maintained as an official document based on certificates of immunization, which provide at a minimum the month and year that the immunization was administered and/or which contain copies of laboratory evidence of immunity, may also be accepted as proof of immunization.
- B. "Chief administrative officer" means the person designated as the president, chief executive officer, administrator, director or otherwise the senior official of a designated health facility.
- C. "Declination" means a formal process where an individual makes an informed choice declining Hepatitis B vaccination, following standards and procedures established by the federal Occupational Safety and Health Administration (OSHA) regulations (29 CFR 1910.1030(f)(2)(iv) (effective July 6, 1992).
- D. "Designated Healthcare Facility" means a licensed nursing facility, residential care facility, Intermediate Care Facility for the Mentally Retarded (ICF/MR), multi-level health care facility, hospital, or home health agency.
- E. "Disease" means the following conditions which may be preventable by immunization agent:
 - (1) Rubella (measles)
 - (2) Rubella (German measles)

- (3) Hepatitis B
 - (4) Seasonal Influenza
 - (5) Mumps
 - (6) Varicella (chickenpox)
 - (7) 2009 Novel H1N1 Influenza.
- F. "Employee" means a person who performs a service for wages or other remuneration for a designated health facility.
- G. "Exemption" means a formal procedure to procure discharge from requirement to vaccinate.
- H. "Immunization agent" means a vaccine, antitoxin, or other substances used to increase an individual's immunity to disease.
- I. "Public Health Official" means a local health officer, the Director of the Maine Center for Disease Control and Prevention, or a designated employee or agent of the Maine Department of Health and Human Services.

2. Immunizations Required

- A. Except as otherwise provided by law, each Designated Healthcare Facility in the State of Maine shall require for all employees proof of immunization or documented immunity against:
- (1) Rubeola (measles)
 - (2) Mumps
 - (3) Rubella (German measles)
 - (4) Varicella (chicken pox)
 - (5) Hepatitis B.
- B. In accordance with 29 CFR 1910.1030(f)(1)(i) (effective July 6, 1992) of the Occupational Safety and Health Administration (OSHA) regulations, Designated Healthcare Facilities shall make available the Hepatitis B vaccine to all health care workers with a risk of occupational exposure, at no cost to the employee.
- C. All Designated Healthcare Facilities shall adopt and implement a policy that recommends and offers annual immunizations against seasonal influenza to all personnel who provide direct care to residents of the facility.

- D. All Designated Healthcare Facilities shall adopt and implement a policy that recommends and offers immunization against 2009 Novel H1N1 Influenza to all personnel who provide direct care to residents of the facility.
- E. No chief administrative officer may permit any employee to be in attendance at work without a certificate of immunization for each disease or other acceptable evidence of immunity to each disease, or documentation of exemption or declination.

3. **Exceptions and Declinations**

An employee who does not meet the immunization/immunity requirement may be permitted to attend work under the following conditions:

- A. The employee presents to the designated healthcare facility a physician's written statement that immunization against one or more of these diseases is medically inadvisable. If the statement does not include all diseases, the employee must meet the immunization/immunity requirements for any diseases not covered by the statement.
- B. The employee states in writing an opposition to immunization because of a sincere religious belief or for philosophical reasons.
- C. Declination for Hepatitis B pursuant to OSHA Regulations: An exemption is available to an employee who declines Hepatitis B vaccination in accordance with the applicable regulations established by the Occupational Safety and Health Administration.

4. **Certification of Immunization and Proof of Immunity**

A. **Certificate of Immunization**

To demonstrate proper immunization against each disease, an employee shall present the designated healthcare facility with a Certificate of Immunization from a physician, nurse or health official who has administered the immunizing agent(s) to the employee. Physicians within their own practice may authorize their own employees to issue a certificate of immunization on behalf of the physician. The certificate shall specify the immunizing agent, and the date(s), including month and year, on which it was administered. Physicians, having reviewed official patient records created by another practitioner which indicate that a particular patient has received an immunization on a specified date, demonstrating at a minimum the month and year the immunization was given, may certify that the immunization was given. Adequately prepared secondary and/or collegiate school health records will also be considered acceptable for the purpose of meeting this requirement.

B. **Proof of Immunity**

To demonstrate that an employee is immune to any of the diseases, the employee shall present the hospital/facility with laboratory evidence demonstrating immunity, or other acceptable evidence of immunity. (See 7-B Individual Health Records.)

5. Immunization Dosage

- A. The following schedule contains the minimally required number of doses for the immunizing agents addressed under these rules:
- (1) **Rubeola (Measles):** Two (2) doses of live measles vaccine given after the first birthday, with a minimum of four weeks separating the 2 doses.
 - (2) **Mumps:** Two (2) doses of live mumps vaccine given after the first birthday.
 - (3) **Rubella (German Measles):** Two (2) doses of live rubella vaccine given after the first birthday.
 - (4) **Varicella (Chickenpox):** Two (2) doses of live varicella vaccine given after the first birthday, with a minimum of four weeks separating the 2 doses.
 - (5) **Hepatitis B:** Three (3) doses of hepatitis B vaccine, the first two given one month apart and the third given five months after the second.
 - (6) **Influenza:** Annual dose of inactivated influenza vaccine or live attenuated influenza vaccine.
 - (7) **2009 Novel H1N1 Influenza:** one dose of inactivated influenza vaccine or live attenuated influenza vaccine against 2009 novel H1N1 influenza.
- B. Any such immunizing agent must meet the standards for biological products which are approved by the United States Public Health Service.

6. Exclusions from the Workplace

A. Exclusion by order of Public Health Official

An employee not immunized or otherwise immune from a disease shall be excluded from the worksite, when in the opinion of a public health official, the employee's continued presence at work poses a clear danger to the health of others. The documented occurrence of a single case of rubeola (measles), mumps, rubella (German measles) or varicella (chickenpox) in a designated healthcare facility or amongst its employees may be interpreted as a clear danger to the health of others.

The chief administrative officer shall exclude the employee during the period of danger or for one incubation period following immunization of the employee, when one or more cases of disease are present.

B. The following periods are defined as the "period of danger:"

- (1) **Measles:** 15 days from the onset of symptoms from the last identified case

- (2) **Mumps:** 18 days from the onset of symptoms from the last identified case
 - (3) **Rubella:** 23 days from the onset of symptoms from the last identified case
 - (4) **Varicella:** 16 days from the onset of symptoms from the last identified case.
- C. Except as otherwise provided for by law, contract or collective bargaining agreement, an employer will not be responsible for maintaining an employee in pay status as a result of this rule.
- D. When a public health official determines there are reasonable grounds to believe a public health threat exists, an exempted employee may be immunized or tested for serologic evidence of immunity. Employees without serologic evidence of immunity and those who become immunized against the disease in question at the time of a documented case or cases of disease must be excluded from the work site during one incubation period.

7. **Records and Record Keeping**

A. **Designated Record Keeping**

The chief administrative officer in each designated healthcare facility shall be responsible for the maintenance of employee immunization records. The chief administrative officer may designate a person to be responsible for record keeping.

B. **Individual Health Records**

Each designated healthcare facility shall adopt a uniform, permanent health record for maintaining information regarding the health status of each employee. The immunization status of each employee with regard to each disease shall be noted on the employee's health record. The health record of each employee shall include at a minimum the month and year that each immunizing agent was administered.

Where an exception has been granted for medical or religious reason, the written request for exemption must be on file with the employee health record. Where laboratory or other acceptable evidence of immunity has been submitted, a copy of the documentation must also be on file.

C. **List of Non-Immunized Employees**

The chief administrative officer or his/her designee in each designated healthcare facility shall keep a listing of the names of all employees within the facility who are not currently immunized or do not have documented serological immunity against each disease. This list shall include the names of all employees with authorized exemptions from immunization as well as any who are otherwise not known to be immune and shall state the reason that the employee is not immune. The purpose of the list is to provide an efficient means to rapidly contact non-immunized employees in the event of disease outbreaks and exclude them from the workplace as necessary.

D. Required Reports**1. Routine Reporting**

The chief administrative officer of each designated healthcare facility is responsible for submitting a summary report on the immunization status of all employees by December 15 of each calendar year, on a form prescribed by the Department, to the Director of the Maine CDC of the Department of Health and Human Services. The summary report will include the following information at a minimum: Specific information identifying the facility; the chief administrative officer; the total number of employees; the number of employees born on or after January 1, 1957; and the number of employees identified by vaccine type as either immunized, serological proof of immunity, exempt, having declined hepatitis B vaccine, or out of compliance. The summary report may be constructed so as to reflect meaningful data by groupings within the facility (e.g., pediatric unit). Each report shall be signed by the hospital/facility's chief administrative officer as a certification that the information is accurate.

2. Reporting on 2009 Novel H1N1 Influenza A and Influenza

The chief administrative officer of each designated healthcare facility is responsible for submitting a summary report on a form prescribed by the Department, to the Director of the Maine CDC by December 15, 2009, March 15, 2010, and June 15, 2010 on the number of employees who are vaccinated and the total number of employees who are offered the vaccine for 2009 Novel H1N1 Influenza.

3. Maine CDC Sample Survey

The Maine CDC will, from time to time, select a sample of employee health records for the purpose of comparing reported results against the criteria delineated in these rules. The results of this sample survey will be shared with the chief administrative officer of the designated healthcare facility for the purpose of identifying problem areas that may be occurring in the maintenance of their employee health records. Any published or unpublished reports of such sampling of employee health records shall not identify individual employees and/or designated healthcare facilities, directly or indirectly.

STATUTORY AUTHORITY: 22 M.R.S.A. §802

EFFECTIVE DATE:

April 16, 2002

NON-SUBSTANTIVE CORRECTIONS:

May 13, 2002 - corrected the spelling of DEPARTMENT in header, page 1

May 10, 2004 - spacing, capitalization and punctuation only

EFFECTIVE DATE:

October 6, 2009 to January 4, 2010: filing 2009-531 (EMERGENCY)

December 8, 2009 – filing 2009-644

Standard Interpretations / OSHA's position on mandatory flu shots for employees.

OSHA requirements are set by statute, standards and regulations. Our interpretation letters explain these requirements and how they apply to particular circumstances, but they cannot create additional employer obligations. This letter constitutes OSHA's interpretation of the requirements discussed. Note that our enforcement guidance may be affected by changes to OSHA rules. Also, from time to time we update our guidance in response to new information. To keep apprised of such developments, you can consult OSHA's website at <http://www.osha.gov>.

November 9, 2009

The Honorable Marcy Kaptur
One Maritime Plaza 6th Floor
Toledo, OH 20515-4146

Dear Congresswoman Kaptur:

Thank you for your letter enclosing correspondence from your constituent Mrs. Tara Fisher. Specifically, Mrs. Fisher would like to know whether her employer can mandate that she accept a flu shot. Her employer has threatened the employees with mandatory time off if they do not accept the flu shots.

In April 2009, a Novel H1N1 influenza A (genetically distinct from seasonal flu virus) strain of swine origin was identified. Unlike previous seasonal influenza viruses, this pandemic influenza virus disproportionately infects a wider age-range of people. Based on the Centers for Disease Control and Prevention's (CDC's) recommendations, the Occupational Safety and Health Administration (OSHA) has guidelines for employers to assist them in the development of a framework in preparing their workplaces in order to minimize transmission of a pandemic virus.

OSHA does expect facilities providing healthcare services to perform a risk assessment of their workplace and encourages healthcare employers to offer both the seasonal and H1N1 vaccines. It is important to note that employees need to be properly informed of the benefits of the vaccinations. However, although OSHA does not specifically require employers to take the vaccines, an employer may do so. In that case, an employee who refuses vaccination because of a reasonable belief that he or she has a medical condition that creates a real danger of serious illness or death (such as serious reaction to the vaccine) may be protected under Section 11(c) of the Occupational Safety and Health Act of 1970 pertaining to whistle blower rights.

In addition, OSHA recommends that Mrs. Fisher visit both CDC's and OSHA's websites for additional information on the flu vaccine at: <http://www.cdc.gov/h1n1flu> and <https://www.osha.gov/dsg/topics/pandemicflu/index.html>. Also, enclosed is the OSHA Fact Sheet on Section 11(c).

We hope your constituent finds this information helpful. If you have any further questions, please feel free to contact Janna Bergquist in the Department

10/14/2019

OSHA's position on mandatory flu shots for employees. | Occupational Safety and Health Administration

of Labor's Office of Congressional and Intergovernmental Affairs at (202) 693-4600.

Sincerely,

Jordan Barab

Acting Assistant Secretary

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DEPARTMENT OF LABOR**

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