

105 CMR 159.000: COVID-19 VACCINATIONS FOR CERTAIN STAFF PROVIDING HOME CARE SERVICES IN MASSACHUSETTS

Section

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159.001: Definitions

The following terms as used in 105 CMR 159.000 shall have the following meanings, unless the context or subject matter clearly requires a different interpretation:

Accountable Care Organization (ACO). An entity that enters into a population-based payment model contract with the MassHealth Agency as an accountable care organization, wherein the entity is held financially accountable for the cost and quality of care for an attributed or enrolled member population.

Accountable Care Partnership Plan. A type of ACO with which the MassHealth agency contracts under its ACO program to provide, arrange for, and coordinate care and certain other medical services to members on a capitated basis and is approved by the Massachusetts Division of Insurance as a health-maintenance organization (HMO) and is organized primarily for the purpose of providing health care services.

Continuous Skilled Nursing Provider. A provider of Continuous Skilled Nursing services pursuant to 130 CMR 403.00: *Home Health Agency*.

COVID-19. Coronavirus Disease 2019, the disease caused by the SARS-CoV-2 virus.

COVID-19 Vaccination. The full required regimen of vaccine doses of a vaccine approved or authorized for use by the Food and Drug Administration (FDA) or the World Health Organization (WHO). COVID-19 vaccination is the full required regimen as determined by the FDA, Centers for Disease Control or Prevention (CDC), or WHO.

Group Adult Foster Care Provider. An agency enrolled as a MassHealth provider of Group Adult Foster Care services.

Home and Community-Based Services Waiver Provider. A provider of home and community-based waiver services pursuant to 130 CMR 630.00: *Home- and Community-based Services Waiver Services* and that provides one or more of the following services as defined therein: home health aide, homemaker, occupational therapy, personal care, physical therapy, respite services, skilled nursing services, speech/language therapy, supportive home care aide.

Home Care Agency. MassHealth enrolled agencies that provide direct care to clients in a home-based setting. For the purposes of 105 CMR 159.000, MassHealth enrolled agencies consist of the following provider types either enrolled directly through MassHealth or through a contract with a MassHealth Managed Care Entity: Home Health providers, Continuous Skilled Nursing providers, Group Adult Foster Care providers, and Home and Community-Based Services Waiver providers. Home Care Agency also includes agencies that contract with an Aging Service Access Point, as defined under M.G.L. c. 19A, § 4(b) to provide Home Care Services pursuant to 651 CMR 3.00: *Home Care Program* and M.G.L. c. 19A, § 4, or that contract with a Senior Care Organization to provide personal care, home health aide, supportive home care aide, and homemaker services as defined in 651 CMR 3.00.

Home Care Agency Worker. An individual employed or contracted by a Home Care Agency, as defined herein, providing direct care services to clients in a home-based setting. For purposes of Home and Community-based Services Waiver providers, a Home Care Agency Worker is a worker that provides one or more of the following services in a home health setting: home health aide, homemaker, occupational therapy, personal care, physical therapy, respite services, skilled nursing services, speech/language therapy, supportive home care aide.

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Home Health Provider. A provider of Home Health services pursuant to 130 CMR 403.00: *Home Health Agency*.

Integrated Care Organization (ICO) (also known as a One Care plan). An organization with a comprehensive network of medical, behavioral health care, and long-term services and supports providers that integrates all components of care, either directly or through subcontracts, and has contracted with the Executive Office of Health and Human Services (EOHHS) and the Centers for Medicare and Medicaid Services (CMS) and been designated as an ICO to provide services to dual eligible individuals under M.G.L. c. 118E.

Independent Nurse. A nurse providing Independent Nursing Services pursuant to 130 CMR 414.000: *Independent Nurse*.

Managed Care Organization (MCO). Any entity with which the MassHealth agency contracts under its MCO program to provide, arrange for, and coordinate care and certain other medical services to members on a capitated basis, and is approved by the Massachusetts Division of Insurance as a health maintenance organization (HMO), and is organized primarily for the purpose of providing health care services.

MassHealth Agency. The Executive Office of Health and Human Services acting pursuant to Title XIX of the Social Security Act (42 U.S.C. 1396a *et seq.*), Title XXI of the Social Security Act (42 U.S.C. 1397aa *et seq.*), M.G.L. c. 118E, and other applicable laws and waivers to provide and pay for medical services to eligible members.

MassHealth Managed Care Entity. For the purposes of this regulation, a Managed Care Organization, an Accountable Care Partnership Plan, an Integrated Care Organization, or a Senior Care Organization.

Non-agency Based Home Care Worker. An Independent Nurse, a Personal Care Attendant, and any home care worker not employed or contracted by a Home Care Agency who provides direct care services to clients in a home-based setting pursuant to 651 CMR 3.00: *Home Care Program*.

Personal Care Attendant (PCA). An individual providing personal care services under the MassHealth PCA program pursuant to 130 CMR 422.000: *Personal Care Attendant Services*.

Senior Care Organization (SCO). A managed care organization that participates in MassHealth under a contract with the MassHealth agency to provide coordinated care and medical services through a comprehensive network to eligible members 65 years of age or older.

159.010: COVID-19 Vaccination for Certain Agency Staff

(A) Each Home Care Agency shall ensure all Home Care Agency Workers have received COVID-19 vaccination no later than October 31, 2021, unless an individual is subject to an exemption in accordance with 105 CMR 159.010(D). Consistent with any guidelines and schedule established by MassHealth or the Executive Office of Elder Affairs, as applicable, each Home Care Agency shall ensure that all Home Care Agency Workers maintain COVID-19 vaccination in accordance with CDC's Advisory Council on Immunization Practices recommendations as those recommendations may be updated (*e.g.* Home Care Agency Workers shall obtain all recommended boosters).

(B) Each Home Care Agency shall provide all Home Care Agency Workers with information about the risks and benefits of COVID-19 vaccination.

(C) Each Home Care Agency shall notify all Home Care Agency Workers of the COVID-19 vaccination requirements of 105 CMR 159.010 and shall provide information to all Home Care Agency Workers who cannot provide proof of current immunization against COVID-19 on how they can obtain a free vaccination unless an individual is subject to an exemption in accordance with 105 CMR 159.010(D).

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(D) Exceptions.

(1) A Home Care Agency shall exempt Home Care Agency Workers from the COVID-19 vaccination requirement in 105 CMR 159.010(A) if:

- (a) the vaccine is medically contraindicated, which means administration of COVID-19 vaccine to that individual would likely be detrimental to the individual's health; provided, that the individual provides supporting documentation; or
- (b) the individual objects to vaccination on the basis of a sincerely held religious belief; and
- (c) the individual is able to perform their essential job functions with a reasonable accommodation that is not an undue burden on the Home Care Agency.

(2) An individual who declines vaccination due to medical contraindication or a sincerely held religious belief shall sign a statement certifying he or she received information about the risks and benefits of COVID-19 vaccination.

(E) Documentation.

(1) A Home Care Agency shall require and maintain for each Home Care Agency Worker proof of current COVID-19 vaccination pursuant to 105 CMR 159.010(A) or the individual's declination statement pursuant to 105 CMR 159.010(D) as applicable.

(2) Each Home Care Agency shall maintain an attestation that all Home Care Agency Workers have received current COVID-19 vaccination in accordance with 105 CMR 159.010(A) or (D) as applicable.

(F) Reporting and Data Collection. Each Home Care Agency shall make available upon request documentation demonstrating the Home Care Agency's compliance with the Home Care Agency Worker vaccination requirements of 105 CMR 159.010(E), in accordance with reporting and data collection guidelines of MassHealth or the Executive Office of Elder Affairs, as applicable.

159.020: COVID-19 Vaccination for Non-agency Based Home Care Workers

(A) Consistent with any guidelines and schedule established by MassHealth or the Executive Office of Elder Affairs, as applicable, each Non-Agency Based Home Care Worker shall document no later than October 31, 2021 that they have received COVID-19 vaccination, unless such a Non-agency Based Home Care Worker is subject to an exemption in accordance with 105 CMR 159.020(B). Each Non-agency Based Home Care Worker shall maintain COVID-19 vaccination in accordance with CDC's Advisory Council on Immunization Practices recommendations as those recommendations may be updated (*e.g.* Non-agency Based Home Care Workers shall obtain all recommended boosters).

(B) Exceptions.

(1) An employer or the contracting entity, as applicable, shall exempt Non-Agency Based Home Care Workers from the COVID-19 vaccination requirement in 105 CMR 159.020(A) if:

- (a) the vaccine is medically contraindicated, which means administration of COVID-19 vaccine to that individual would likely be detrimental to the individual's health; provided, that the individual provides supporting documentation; or
- (b) the individual objects to vaccination on the basis of a sincerely held religious belief; and
- (c) the individual is able to perform their essential job functions with a reasonable accommodation that is not an undue burden on the employer or contracting entity, as applicable.

(2) An individual who declines vaccination due to medical contraindication or a sincerely held religious belief shall sign a statement certifying he or she received information about the risks and benefits of COVID-19 vaccination.

(C) Documentation.

(1) A Non-agency Based Home Care Worker shall maintain individual proof of current COVID-19 vaccination pursuant to 105 CMR 159.020(A), or the individual's declination statement pursuant to 105 CMR 159.020(B).

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(2) Each Non-agency Based Home Care Worker shall make available upon request documentation demonstrating that he or she has received current COVID-19 vaccination in accordance with 105 CMR 159.020(A) or the individual's declination statement pursuant to 105 CMR 159.020(B) and guidelines of MassHealth or the Executive Office of Elder Affairs, as applicable.

159.030: Severability

The provisions of 105 CMR 159.000 are severable. If any provision in 105 CMR 159.000 is declared unconstitutional or invalid by a court of competent jurisdiction, the validity of the remaining portions shall not be so affected.

REGULATORY AUTHORITY

105 CMR 159.000: M.G.L. c. 111, §§ 3 and 6.