

DEPARTMENT OF HEALTH

NOTICE OF SECOND EMERGENCY RULEMAKING

The Director of the District of Columbia Department of Health, pursuant to the authority set forth in section 1 of An Act to Authorize the Commissioners of the District of Columbia to make regulations to prevent and control the spread of communicable and preventable diseases, approved August 11, 1939 (53 Stat. 1408, D.C. Official Code §§ 7-131 *et seq.* (2018 Repl.)), Mayor's Order 98-141, dated August 20, 1998, section 5(a) of the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48, D.C. Official Code § 44-504(a) (2012 Repl.)), Mayor's Order 84-105, dated June 19, 1984, section 14 of the Clinical Laboratory Act of 1988, effective March 16, 1989 (D.C. Law 7-182, D.C. Official Code § 44-213 (2015 Repl.)), Mayor's Order 89-211, dated September 15, 1989, section 17 of the Nurse Staffing Agency Act of 2003, effective March 10, 2004 (D.C. Law 15-74, D.C. Official Code § 44-1051.17 (2012 Repl.)), and Mayor's Order 2004-83, dated May 21, 2004; hereby gives notice of the adoption of an emergency rulemaking to add a new Chapter 112 (Health Care Facilities-Required Vaccinations) to Title 22 (Health), Subtitle B (Public Health and Medicine) of the District of Columbia Municipal Regulations.

The purpose of the emergency rulemaking is to mandate health care facilities to: (1) require their employees, contractors, or volunteers to obtain vaccinations for COVID-19, which is caused by the severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), and (2) impose SARS-CoV-2/COVID-19-related obligations on health care facilities.

Emergency action is necessary because the spread of a contagious disease such as COVID-19, caused by SARS-CoV-2, is an imminent threat to the health, safety, and welfare of District residents, visitors, and persons providing and receiving health care in the District of Columbia. Data available to the Department of Health indicates an alarming number of health professionals who are licensed, registered, or certified by the Department of Health to provide emergency medical services, and unlicensed personnel are not vaccinated against COVID-19. Lack of vaccination for the employees of health care facilities can easily lead to the spread of SARS-CoV-2 among vulnerable patients receiving care at these health care facilities and among the pool of health care workers. The vast majority of new cases of SARS-CoV-2 is among unvaccinated persons. Unvaccinated employees of health care facilities cannot be permitted to remain a major potential source of the spread of SARS-CoV-2. Moreover, it is vital for persons working in health care facilities to be vaccinated against COVID-19 in order to protect themselves, so that the ability of the District's health care system to robustly respond not only to COVID-19 cases, but to all health care needs, is protected. Immediate action is required to protect District residents, visitors, and persons providing and receiving health care in the District of Columbia by preventing and controlling the spread of a contagious disease for which effective vaccines currently exist.

A Notice of Emergency and Proposed Rulemaking was published in the *District of Columbia Register* on October 22, 2021 at 68 DCR 011146. Those emergency rules were adopted on October 7, 2021, and will expire one hundred twenty (120) days from the date of adoption, on February 4, 2022.

This Notice of Second Emergency Rulemaking has been amended from the Notice of Emergency and Proposed Rulemaking by removing the dates from subsection 11200.1 and deleting the prior version of subsection 11200.2, since the prior version of subsection 11200.2 and the dates in the prior version of subsection 11200.1 are no longer relevant to the implementation of the vaccination requirement. This Notice of Second Emergency Rulemaking is needed to prevent any lapse in the vaccination mandate for employees, contractors, volunteers, and other credential holder of a health care facility while the forty-five (45)-day period of review by the Council of the Notice of Final Rulemaking is pending. Therefore, this emergency rulemaking action is necessary to maintain the status quo and preserve the vaccination mandate after the expiration of the previous emergency rules on February 4, 2022.

This emergency rule was adopted on January 12, 2022 and became effective immediately on that date. The emergency rule will expire one hundred and twenty (120) days from the date of adoption (*i.e.*, on May 12, 2022), or upon publication of a Notice of Final Rulemaking in the *District of Columbia Register*, whichever occurs first.

A new Chapter 112 HEALTH CARE FACILITIES-REQUIRED VACCINATIONS, is added to Subtitle B, PUBLIC HEALTH AND MEDICINE, of Title 22, HEALTH, of the District of Columbia Municipal Regulations, to read as follows:

Chapter 112 HEALTH CARE FACILITIES-REQUIRED VACCINATIONS

11200 VACCINATION REQUIREMENT

11200.1 No health care facility may hire, employ, contract with, or grant privileges or credentials to, or continue to employ, contract with, or grant privileges or credentials to any person who is required to be vaccinated against COVID-19 in compliance with § 230 of Subtitle B (Public Health and Medicine) of Title 22 (Health) of the District of Columbia Municipal Regulations (“DCMR”), absent the grant of an exemption pursuant to § 231 of Subtitle B (Public Health and Medicine) of Title 22 (Health) of the DCMR, who has not either:

- (a) Received the first dose of the Pfizer-BioNTech COVID-19 vaccine, and received the second dose of the Pfizer-BioNTech COVID-19 vaccine within the time period established in the dosing schedule for the vaccine; or
- (b) Received the first dose of the Moderna COVID-19 vaccine, and received the second dose of the Moderna COVID-19 vaccine within the time period established in the dosing schedule for the vaccine; or
- (c) Received one (1) dose of the Janssen COVID-19 vaccine.

11200.2 A health care facility shall maintain documentation confirming that each employee, contractor, volunteer, and privilege or credential recipient of a health care facility who is required to be vaccinated against COVID-19 in compliance with § 230 of Subtitle B (Public Health and Medicine) of Title 22 (Health) of the DCMR has

received the required COVID-19 vaccination, or has been granted an exemption pursuant to § 231 of Subtitle B (Public Health and Medicine) of Title 22 (Health) of the DCMR.

11200.3 A health care facility may impose COVID-19 vaccination requirements on its employees, contractors, volunteers, and those to whom it grants credentials or privileges that are stricter than the requirements imposed by this section, such as requiring vaccination against COVID-19 by a date earlier than required by this section, or requiring that unvaccinated employees, contractors, volunteers, and privilege or credential recipient of a health care facility be tested regularly for COVID-19.

11201 APPLICABLE FACILITIES

11201.1 For purposes of this chapter, the term “health care facility” shall include the following:

- (a) An ambulatory surgical facility, assisted living residence, community residence facility, group home for persons with intellectual disabilities, home care agency, hospice, hospital, maternity center, nursing home, or renal dialysis facility, as defined in § 2 of the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501(a) (2012 Repl.));
- (b) A nurse staffing agency, as defined in § 2 of the Nurse Staffing Agency Act of 2003, effective March 10, 2004 (D.C. Law 15-7; D.C. Official Code § 44-1051.02(7) (2012 Repl.));
- (c) A clinical laboratory, as defined in § 2(3) of the Clinical Laboratory Act of 1988, effective March 16, 1989 (D.C. Law 7-182; D.C. Official Code § 44-201(3) (2015 Repl.));
- (d) A tissue bank, as defined in § 3 of the District of Columbia Tissue Bank Act, effective September 10, 1962 (76 Stat. 534; Pub. L. 87-656; D.C. Official Code § 7-1541.02(4)); and
- (e) A home support agency, as defined in § 9999.1 of Chapter 99 (Home Support Agencies) of Subtitle B (Public Health and Medicine) of Title 22 (Health) of the DCMR.

11202 PROOF OF COVID-19 VACCINATION

11202.1 Each employee, contractor, volunteer, and privilege or credential recipient of a health care facility must provide written proof to the health care facility, by the dates set forth in §§ 11200.1 and 11200.2, that they have obtained the required

COVID-19 vaccination, or have been granted an exemption under § 231 of Subtitle B (Public Health and Medicine) of Title 22 (Health) of the DCMR.

11202.2 A health care facility shall require each of its employees, contractors, volunteers, and privilege or credential recipients to provide written proof, by the dates set forth in §§ 11200.1 and 11200.2, that they have received the required COVID-19 vaccination, or been granted an exemption under § 231 of Subtitle B (Public Health and Medicine) of Title 22 (Health) of the DCMR.

11202.3 A health care facility shall be subject to enforcement, as described in § 11203, for its failure to obtain written proof of vaccination, or written proof of the grant of an exemption, for each employee, contractor, volunteer, and privilege or credential recipient who is required to be vaccinated in accordance with § 230 of Subtitle B (Public Health and Medicine) of Title 22 (Health) of the DCMR.

11203 ENFORCEMENT

11203.1 A health care facility that fails to comply with the requirements of §§ 11200 or 11202 shall be subject to disciplinary and enforcement actions, which may result in the revocation, suspension, or denial of a facility's license, registration, or certification, a civil fine, or other penalties in accordance with the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-509 (2012 Repl.)), the Clinical Laboratory Act of 1988, effective March 16, 1989 (D.C. Law 7-182; D.C. Official Code § 44-212 (2015 Repl.)), or the Nurse Staffing Agency Act of 2003, effective March 10, 2004 (D.C. Law 15-74; D.C. Official Code §§ 44-1051.07 and 44-1051.18 (2012 Repl.)), whichever is applicable.

11203.2 The Department of Health may, by written or electronic correspondence, direct a health care facility that has not complied with the requirements of §§ 11200 or 11202 to either become fully compliant by a date set forth in the correspondence, or to surrender its license, registration, or certification by that date, and may impose a fine or other disciplinary action.

11203.3 If a health care facility has not complied with the requirements of §§ 11200 or 11202, the Department of Health may deny its application for the renewal of a license, certification, or registration, or may impose a fine or other disciplinary action for non-compliance, or both.