

Rhode Island Becomes First State to Require Flu Shots of All Health Care Workers

By Joseph J. Lynett

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The Rhode Island Department of Health now requires seasonal flu vaccines for all health care workers, including volunteers, who have direct patient contact. Health care workers may obtain a medical exemption from the requirement. Health care workers also may refuse to be vaccinated, but they must provide written notice of their refusal to their employer prior to December 15th of each year. However, during any declared period of widespread flu outbreak, unvaccinated workers must wear surgical facemasks whenever they have direct patient contact, or face a fine. The Service Employees International Union New England, No. 1199, which represents health care workers in Rhode Island, has objected to the new vaccination requirement as a violation of the rights of providers and is considering whether to challenge it.

Vaccination Requirement

Under the new rule, health care workers must obtain an annual seasonal flu vaccine, unless they obtain a medical exemption or otherwise refuse the vaccine. Exemptions and statements of objection must be submitted to the employing health care facility annually by December 15th. Health care workers are not required to explain their refusal to obtain an annual seasonal influenza vaccination, and health care facilities are prohibited from inquiring into the basis of such refusal.

If health care workers do not obtain the vaccine, either because they are medically exempt or have refused it, they must wear surgical facemasks when engaged in direct patient contact during periods when the flu is widespread, as declared by the Director of the Rhode Island Department of Health. Health care workers who fail to do so are subject to a \$100 fine per violation and possible professional sanction, such as reprimand, suspension or revocation of the health care provider's license.

These regulations do not apply to patients' family members or friends who visit or assist in the care of that patient in a health care facility.

Reporting Requirements

Health care facilities must develop a specific plan to require annual influenza vaccination of all health care workers. The vaccination is at no cost to the health care workers. Health care facilities also must maintain a program to track and record influenza vaccination levels among health care workers, including vaccinations obtained outside of the formal health care facility program. Health care facilities must report to the Rhode Island Department of Health:

- the number of health care workers who are eligible for vaccination;
- the number of health care workers who received vaccination; and
- the number of health care workers who decline annual influenza vaccination for medical or personal reasons.

Health care facilities that refuse to require unvaccinated workers to wear a surgical facemask during direct patient contact also are subject to a \$100 fine per violation.

Implications

Rhode Island health care facilities should develop and implement an influenza vaccination program for their workers, if they have not already done so. Health care facilities also should develop procedures for reporting the required information to the Rhode Island Department of Health and a vaccination refusal form for those employees or volunteers who decline the vaccination. Rhode Island

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employers who already mandate flu vaccination for their employee need to review their existing policy to determine whether it complies or exceeds a specific limitation set forth in the new regulation.

Many health care employers have established mandatory flu vaccination policies for their employees. Employers that require employees receive flu vaccinations, or are considering establishing such a requirement, should carefully consider reasonable accommodation issues under the American with Disabilities Act and Title VII (i.e., religious accommodation) and analogous state and local law when designing these policies.

Jackson Lewis attorneys are available to answer inquiries regarding this and other workplace developments and to assist in developing and reviewing policies and procedures.

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