



**MURIEL BOWSER**  
**MAYOR**

January 3, 2022

The Honorable Phil Mendelson  
Chairman, Council of the District of Columbia  
John A. Wilson Building  
1350 Pennsylvania Avenue, NW, Suite 504  
Washington, DC 20004

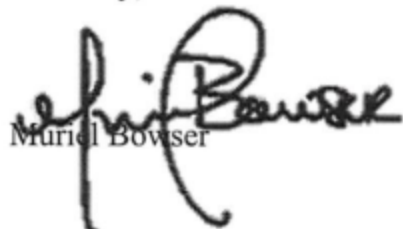
Dear Chairman Mendelson:

Enclosed for consideration and approval by the Council is the "Health Care Facility Required Vaccinations Regulations Approval Resolution of 2022," which will approve a rulemaking to add a new Chapter 112 (Health Care Facility-Required Vaccinations) to Subtitle B (Public Health and Medicine) of Title 22 (Health) of the District of Columbia Municipal Regulations. This rulemaking mandates that all health care facilities require their employees to obtain mandatory vaccinations against COVID-19. Exemptions may be granted to persons who demonstrate a religious or medical basis. The rulemaking further provides enforcement action in the event of violation.

The rulemaking, consistent with measures that have been proposed for all licensed and certified health professionals and unlicensed health workers, is critical because data has shown that the vast majority of new infections of SARS-CoV-2 is among unvaccinated persons. Lack of vaccination for these health care providers can easily lead to the spread of SARS-CoV-2 among vulnerable patients cared for by these health care providers and among the pool of health care providers. Unvaccinated health care providers cannot be permitted to remain a major potential source of the spread of SARS-CoV-2. Prompt action is required to protect District residents, visitors, and persons providing health care in the District of Columbia by preventing and controlling the spread of a contagious disease for which effective vaccines exist.

I urge the Council to take prompt and favorable action on the enclosed proposed resolution.

Sincerely,

  
Muriel Bowser

  
Chairman Phil Mendelson  
at the request of the Mayor

A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To approve proposed rules to add a new Chapter 112 (Health Care Facility-Required Vaccinations) to Title 22 (Health), Subtitle B (Public Health and Medicine) of the District of Columbia Municipal Regulations.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Health Care Facility Required Vaccinations Regulations Approval Resolution of 2022".

Sec. 2. Pursuant to section 5(j) 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(j)), the Council approves the rules proposed by the Director of the Department of Health to add a new Chapter 112 to Subtitle B (Public Health and Medicine) of Title 22 (Health) of the District of Columbia Municipal Regulations.

Sec. 3. Transmittal.

The Council shall transmit a copy of this resolution, upon its adoption, to the Mayor, the Director of the Department of Health, and the Administrator of the Office of Documents and Administrative Issuances.

Sec 4. Fiscal impact statement.

31           The Council adopts the fiscal impact statement in the committee report as the fiscal  
32   impact statement required by section 4a of the General Legislative Procedures Act of 1975,  
33   approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

34           Sec. 5. Effective date.

35           This resolution shall take effect immediately.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL  
KARL A. RACINE



Legal Counsel Division

**MEMORANDUM**

**TO:** Ronan Gulstone  
Director  
Office of Policy and Legislative Affairs

**FROM:** Brian K. Flowers *BKF*  
Deputy Attorney General  
Legal Counsel Division

**DATE:** December 38, 2021

**SUBJECT:** "Health Care Facility-Required Vaccinations Regulations  
Approval Resolution of 2022".  
(AE-21-629)

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**This is to Certify that** this Office has reviewed the above-referenced legislation and has found it to be legally sufficient. If you have any questions regarding this certification, please do not hesitate to contact me at 724-5524.

*Brian K. Flowers*

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Brian K. Flowers


Government of the District of Columbia  
Office of the Chief Financial Officer



Fitzroy Lee  
Acting Chief Financial Officer

**MEMORANDUM**

**TO:** The Honorable Phil Mendelson  
Chairman, Council of the District of Columbia

**FROM:** Fitzroy Lee  
Acting Chief Financial Officer 

**DATE:** December 28, 2021

**SUBJECT:** Fiscal Impact Statement – Health Care Facility-Required Vaccinations  
Regulations Approval Resolution of 2022

**REFERENCE:** Draft Introduction as provided to the Office of Revenue Analysis on  
October 1, 2021

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**Conclusion**

Funds are sufficient in the fiscal year 2022 through fiscal year 2025 budget and financial plan to implement the resolution.

**Background**

The resolution will approve proposed emergency rules mandating health care facilities<sup>1</sup> to require their employees, contractors, and volunteers to obtain vaccinations against COVID-19 unless exempt. Health care facilities will not be able to employ, contract with, or grant privileges or credentials to anyone who has not received the first dose of the vaccine by September 30, 2021 and any required second dose within the vaccine's dosing schedule. An exemption is available from the Director of the Department of Health (DOH) for persons with religious beliefs or medical conditions.<sup>2</sup> Health care facilities must obtain written proof of vaccination or exemption and maintain documentation thereof.

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<sup>1</sup> Including 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, renal dialysis facility, nurse staffing agency, clinical laboratory, tissue bank, and home support agency

<sup>2</sup> District of Columbia Municipal Regulations Title 22, Section 231, effective August 22, 2021  
<https://dcregs.dc.gov/Common/DCR/Issues/IssueDetailPage.aspx?issueID=889>

The Honorable Phil Mendelson

FIS: "Health Care Facility-Required Vaccinations Regulations Approval Resolution of 2022," Draft

Introduction as provided to the Office of Revenue Analysis on October 6, 2021

DOH may take enforcement action against facilities that fail to comply with the rules, including suspending a license to operate or imposing a civil fine.

### **Financial Plan Impact**

Funds are sufficient in the fiscal year 2022 through fiscal year 2025 budget and financial plan to implement the bill. DOH has already issued emergency rules requiring licensed health care professionals and employees of health care facilities to be vaccinated against COVID-19 as a condition of licensure or registration or to apply to receive a waiver under the exemption rules. DOH can enforce the proposed rules on health care facilities within existing resources.



**DEPARTMENT OF HEALTH**  
**NOTICE OF FINAL 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 a final rulemaking to add a new Chapter 112 (Health Care Facility-Required Vaccinations) to Title 22 (Health), Subtitle B (Public Health and Medicine) of the District of Columbia Municipal Regulations.

The purpose of the final 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.

Final rulemaking 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.

An emergency version of this rule was adopted on October 7, 2021, and became effective immediately on that date. A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on October 22, 2021 at 68 DCR 011146 to immediately preserve and promote the health, safety, and welfare of the public for the reasons addressed above. Comments were received

from Disability Rights DC at University Legal Services (“DRDC”) during the allotted thirty (30)-day public comment period. DRDC was supportive of the rulemaking and requested the following changes:

- **Regarding sections 11200.1 and 11200.2, DRDC commented that the rules fail to require any protections be in place when an exemption request is pending or granted. DRDC proposed to require unvaccinated health care facility staff with pending or granted exemption requests to undergo weekly COVID-19 testing and present proof of their negative test in order to continue employment.** The Director did not accept this comment. The Director has adopted detailed regulations at section 230 *et seq.* of Subtitle B (Public Health and Medicine) of Title 22 (Health) of the DCMR on requesting exemptions, which are also applicable to pending or granted exemption requests. The present rules at sections 11200.1 and 11200.2 are clear that exemptions requests must be granted – and not pending – in order for the health care facility to hire, employ, contract with, or grant privileges or credentials to any person who is required to be vaccinated against COVID-19 in compliance with section 230 of Subtitle B (Public Health and Medicine) of Title 22 (Health) of the DCMR. Moreover, the present rules at section 11200.4 allow an employer to impose stricter requirements, such as requiring that unvaccinated employees, contractors, volunteers, and privilege or credential recipient of a health care facility be tested regularly for COVID-19; and requiring employees, contractors, volunteers, and privilege or credential recipients to provide the Department of Health and the employer with a negative test to continue the employment if an exemption is granted.
- **Regarding section 11200.4, DRDC recommended that the rules mirror the Centers for Medicare and Medicaid Services interim final rules’ requirement mandating Medicare and Medicaid certified providers to develop additional precautions for all unvaccinated staff.** The Director did not accept this comment. The Director gave great consideration in creating these final rules and finds the current provisions to be appropriate to protect patients’ health, safety, and welfare. Independent of this rulemaking, Medicare and Medicaid facilities must comply with CMS’ rulemaking to develop additional protections for unvaccinated staff. As such, the Director determined there is no need for this rulemaking to duplicate the CMS rulemaking.

After careful consideration of all comments, no changes have been made to the Notice of Emergency and Proposed Rulemaking that was published in the *D.C. Register* on October 22, 2021. Following the required forty-five (45)-day Council review period, the rules were deemed approved by the D.C. Council on \_\_\_\_\_ and will be effective upon publication of this notice in the *D.C. Register*.

**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, after October 8, 2021, 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 on or before September 30, 2021, 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 on or before September 30, 2021, 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 on or before September 30, 2021.
- 11200.2 No health care facility may, after November 8, 2021, 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 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 received a second dose of the Pfizer-BioNTech COVID-19 vaccine, or a second dose of the Moderna COVID-19 vaccine, as required under § 11200.1.
- 11200.3 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.
- 11200.4 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.