

INFLUENZA VACCINATION OF THE HEALTH CARE WORKFORCE:

Developing a Model State Law

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EXECUTIVE SUMMARY

Influenza outbreaks in health care settings throughout the United States have been associated with the unvaccinated health care workforce. Since 1981, the Centers for Disease Control and Prevention (CDC) has recommended that all health care workers (HCWs) receive an annual influenza vaccination. Additionally, the Healthy People objectives established a 60% coverage rate for HCW influenza vaccination by 2010 and 90% coverage by 2020.

Health care facilities that have adopted mandatory influenza vaccination programs have realized increased coverage rates among HCWs; frequently achieving uptake rates up to 99.3%.

This report has two purposes: 1) to analyze all state laws that require health care facilities to develop mandatory influenza vaccination requirements for HCWs, and 2) to recommend a model law for states that choose to update existing policy or develop new procedures. The findings from this study are as follows:

- Twenty states have enacted laws that address mandatory influenza vaccination of certain categories of the health workforce.
- All the laws define the category of HCW governed by the law; however, not all states have adopted a broad definition of HCW.
- All the laws define the health care employer that must comply with the law; although few states have included both acute care hospitals and residential care facilities.
- More than half of the laws require employers to “provide,” “arrange for,” “ensure,” or “offer” influenza vaccinations to HCWs.
- Most of the laws require health care employers to allow HCWs to decline vaccination by signing a declination statement, showing the existence of a medical contraindication, or declaring that the vaccination conflicts with a religious belief.
- Few states address how health care employers must manage the cost of vaccine purchase and administration.
- One state discusses how to address HCWs who do not comply with the vaccination requirement.
- Less than half of the laws require health care employers to administer influenza vaccine in accordance with CDC standards.

The model law incorporates six essential elements of a mandatory vaccination policy, including: 1) a broad definition of the affected employee; 2) a broad definition of the affected employer; 3) health care employer obligations; 4) an identified exemption policy; 5) health care worker obligations; and 6) an identified standard of care.

INTRODUCTION

The Increasing Influenza Vaccination Coverage Among Healthcare Workers Working Group, (Working Group) was established to implement the *HHS Action Plan to Prevent Healthcare-Associated Infections*. The Working Group is co-chaired by the Centers for Disease Control and Prevention (CDC) and the National Vaccine Program Office (NVPO). It includes agency representatives from the Departments of Health and Human Services and Veterans Affairs, the Occupational Safety and Health Administration, and the Joint Commission on Accreditation of Health Care Organizations.

The goals of the Working Group are to: 1) develop and enhance evidence and tools for improving influenza vaccination of health care personnel; 2) enroll stakeholders in the initiative; 3) identify and enhance existing standards for influenza vaccination of health care workers (HCWs); and 4) develop a list of benchmarks for measuring short term, mid-term, and long-term progress towards the Healthy People 2020 objective of increasing influenza vaccination among HCWs.

In 2010, the Working Group asked researchers at The George Washington University Medical Center, Department of Health Policy (GWU), to evaluate the legal environment that encourages the increased uptake of influenza vaccinations among HCWs. The first part of the project produced *Influenza Vaccination of the Health Care Workforce: A Literature Review*, Spring 2011. The review identifies a common definition of HCW; describes the relationship between vaccination of HCWs and disease rates among patients; outlines strategies facilities have implemented to encourage voluntary vaccination among HCWs; explains how school mandates have been used as a tool to increase coverage rates; details mandatory influenza vaccination policies in healthcare facilities; summarizes position statements of professional and government organizations related influenza vaccination of HCWs; and highlights HCW attitudes and beliefs toward influenza vaccination.

This report identifies and analyzes state laws that require members of the health care workforce to accept influenza vaccination as a condition of employment and presents a model state law requiring influenza vaccination. The report is organized as follows: 1) Introduction; 2) Study Methodology; 3) Background; 4) Review of State Laws Requiring Influenza Vaccination of HCWs; and 5) Developing a Model State Law.

Appendices are included as follows: Appendix 1: State Summary Tables; Appendix 2: Excerpts from State Laws and Regulations; Appendix 3: Citations from State Laws and Regulations; Appendix 4: Excerpts from Advisory Committee on Immunization Practice (ACIP) Recommendations and Healthy People 2020 Goals related to Influenza Vaccination of HCWs.

STUDY METHODOLOGY

The study was completed as follows:

- A. Using a standard legal electronic database, researchers identified 20 state laws/regulations that address influenza vaccination of HCWs.
- B. The duties prescribed under the laws were identified and charted. Charts are presented in Appendix 1; pertinent language is provided in Appendix 2, and a list of cited laws is presented in Appendix 3.
- C. The statutory duties were reviewed against a set of six elements developed for this project. The elements outlined below comprise a comprehensive influenza vaccination program for HCWs, and are the basis for the review instrument:
 1. Whether the affected health care workers (HCWs) are defined
 2. Whether the affected health care employers (HCEs) are defined
 3. Whether the HCE obligations are outlined, including:
 - Providing the influenza vaccine to HCWs
 - Choosing appropriate timing for administration
 - Providing education regarding influenza vaccine
 - Providing the influenza vaccine at no cost to HCWs
 - Documentation requirements
 - Reporting requirements
 - Managing non-compliance
 4. Whether the exemption policy is identified, including:
 - Medical contraindication
 - Religious belief
 - Philosophical belief
 - Declination statement
 5. Whether the HCW obligations are outlined, including:
 - Receiving the vaccination
 - Choosing site of administration
 - Providing appropriate documentation
 6. Whether a Standard of Care is identified

The results of the review were charted for each state that has a relevant law and appear in Appendix 1. Researchers drafted a model law requiring influenza vaccination of HCWs. The model incorporates all six essential elements adopted for this study.

BACKGROUND

Since 1981, the Centers for Disease Control and Prevention (CDC) has recommended that all health care workers (HCWs) receive an annual influenza vaccination.¹ Additionally, the Healthy People objectives established a 60% coverage rate for HCW influenza vaccination by 2010 and 90% coverage by 2020.²

Influenza outbreaks in health care settings, attributed to the unvaccinated workforce, have been well described and documented.³ During an average season, 23% of HCWs are infected with the influenza virus, show mild symptoms, and continue to work despite being infectious.⁴ Those with serological evidence of infection do not consistently recall their illness and may continue to work while infectious.⁵ Additionally, during outbreaks, facilities are frequently required to request that staff work additional shifts, or pool workers, in order to replace ill staff.⁶

Outbreaks of nosocomial influenza can affect 3 to 50% of exposed patients and 11 to 59% of exposed workers, resulting in median mortality that ranges from 16% in a general ward setting to 33 to 60% in a transplant setting.⁷ These outbreaks have contributed to patient complications or death and increased economic costs to the health care system.⁸

Over the past 30 years, nosocomial influenza outbreaks have been documented in California, Hawaii, Illinois, New York, Virginia, and West Virginia. Additionally, outbreaks have been documented in Canada, France, and the United Kingdom. In one example, from a 1999 influenza outbreak in an internal medicine ward, 23% of staff became ill. The outbreak resulted in 14 person-days of sick leave, postponement of eight scheduled admissions, suspension of emergency admissions for 11 days and an average additional cost per patient of \$3,798. The total cost of the outbreak was \$34,179.⁹ A 1997 study showed that vaccinating HCWs and reducing absenteeism can save employers \$2.58 for every dollar invested in an influenza vaccination program.¹⁰

¹ Center for Disease Control. Recommendation of the Public Health Service Immunization Practices Advisory Committee: Influenza Vaccine 1980-1981. *Annals of Internal Medicine*. 1980; 93:466-468.

² U.S. Department of Health and Human Services. Healthy People 2020 Topics and Objectives. Available at: <http://www.healthypeople.gov/2020/topicsobjectives2020/default.aspx>. Accessed March 15, 2011.

³ Babcock HM, Gemeinhart N, Jones M, Dunagan C, Woeltje K. Mandatory Influenza Vaccination of Health Care Workers: Translating Policy to Practice. *Clinical Infectious Disease*. 2010; 50.4: 459-464. Available at: <http://cid.oxfordjournals.org/content/50/4/459.full>. Accessed February 21, 2011.

⁴ *Id* at 28.

⁵ Tilburt, JC, Mueller PS, Ottenberg AL, Poland GA, Koenig BA. Facing the challenges of influenza in healthcare settings: The ethical rationale for mandatory seasonal influenza vaccination and its implications for future pandemics. *Vaccine*. September 2008; 26 (4): D27-D30.

⁶ Lundstrom T, Pugliese G, Bartley J, Cox J, Guither C. Organizational and environmental factors that affect worker health and safety and patient outcomes. *American Journal of Infection Control*. 2002; 30:93-106.

⁷ *Id* at 31.

⁸ National Foundation for Infectious Diseases. Call to Action: Influenza Immunization Among Healthcare Workers. Available at: <http://www.nfid.org/publications/>. Accessed March 15, 2011.

⁹ Sartor C, Zandotti C, Romain F, et al. Disruption of services in an internal medicine unit due to a nosocomial influenza outbreak. *Infection Control and Hospital Epidemiology*. 2002; 23(10):615-9.

¹⁰ Anikeeva O, Braunack-Mayer A, Rogers W. (2009). Requiring influenza vaccination for health care workers. *American Journal of Public Health*. 2009; 99 (1): 24-29.

Voluntary Strategies to Increase Vaccination Among Health Care Workers

Healthcare facilities throughout the United States have employed various strategies to encourage voluntary influenza vaccination of HCWs. However, these efforts have not had a significant impact on the overall coverage rate.¹¹ Between 2004 and 2008, the average annual influenza vaccine uptake among HCWs has remained approximately 40% in the United States.^{12 13 14 15 16 17} A 2007 survey of 991 Infectious Disease Consultants indicated that approximately 7% of facilities achieved HCW annual influenza vaccination rates higher than 80%.¹⁸

Healthcare facilities have attempted to increase their HCW vaccination rates using four strategies, including: educational and promotional campaigns, increased access to seasonal influenza vaccine, declination statements, and combination programs.

1. ***Educational and Promotional Campaigns:*** These programs are intended to increase HCW knowledge about influenza vaccination, respond to common HCW concerns regarding vaccine safety and efficacy, and educate facility employers about why HCWs refuse the influenza vaccination. Studies show that campaigns involving only educational components resulted in minimal improvements in coverage.^{19 20 21}
2. ***Increased Immunization Access:*** Facilities have offered workers free vaccination in the workplace. Increased immunization access has proven to be more effective than educational and promotional campaigns alone in increasing HCW influenza vaccination rates.^{22 23 24 25 26}

¹¹ Tosh, PK, Poland, GA. Healthcare worker influenza immunization. *Medscape Infectious Diseases: Expert Column*. Dec. 21, 2007. Available at: <http://www.medscape.org/viewarticle/567336>. Accessed: March 16, 2011.

¹² Polgreen, PM, Polgreen LA, Evans T, Helms C. A statewide system for improving influenza vaccination rates in hospital employees. *Infection Control and Hospital Epidemiology*. May 2009; 30(5): 474-478.

¹³ Tosh, PK, Poland, GA. Healthcare worker influenza immunization. *Medscape Infectious Diseases: Expert Column*. Dec. 21, 2007. Available at: <http://www.medscape.org/viewarticle/567336>. Accessed: March 16, 2011.

¹⁴ Fiore AE, Shay DK, Broder K, et al. Prevention and control of influenza: recommendations of the Advisory Committee on Immunization Practices (ACIP). *Recommendations and Reports*. 2007; *MMWR*: 56(RR06):1-54.

¹⁵ Tosh, PK, Poland, GA. Healthcare worker influenza immunization. *Medscape Infectious Diseases: Expert Column*. Dec. 21, 2007. Available at: <http://www.medscape.org/viewarticle/567336>. Accessed: March 16, 2011.

¹⁶ Reedy AM. Fighting the flu: a vaccination program for healthcare workers. *Oncology Nursing Forum*. 2008; 35(2).

¹⁷ Harper SA, Fukuda K, Uyeki TM, Cox NJ, Bridges CB. Prevention and control of influenza: recommendations from the Advisory Committee on Immunization Practices (ACIP). *Recommendations and Reports*. July 29, 2005; *MMWR*: 54(RR08): 1-40. Available at: <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr54e713a1.htm>. Accessed February 21, 2011.

¹⁸ Polgreen P, Chen Y, Beekmann S, et al. Elements of Influenza Vaccination Programs That Predict Higher Vaccination Rates: Results of an Emerging Infectious Network Survey. *Clinical Infectious Disease*, 2008; 46:14-19.

¹⁹ Ofstead, CL, Tucker SJ, Beebe TJ, Poland GA. Influenza vaccination among Registered Nurses: information receipt, knowledge, and decision-making at an institution with a multifaceted educational program. *Infection Control and Hospital Epidemiology*. February 2008; 29(2); 99-106.

²⁰ Doratotaj S, Macknin ML, Worley SL. A novel approach to improve influenza vaccination rates among health care professionals: a prospective randomized controlled trial. *American Journal of Infection Control*. May 2008; 36(4); 301-303.

²¹ Lam PP, Chambers LW, McDougall DM, McCarthy AE. Seasonal influenza vaccination campaigns for health care personnel: systematic review. *CMAJ*. September 2010; 182(12): E542-E548.

²² Kimura AC, Nguyen CN, Higa JI, Hurwitz EL, Vugia. The effectiveness of Vaccine Day and educational interventions on influenza vaccine coverage among health care workers at Long-Term Care Facilities. *American Journal of Public Health*. April 2007; 97(4): 684-690.

3. **Declination Statements:** Recently, some facilities have required HCWs to sign a form to indicate their receipt or refusal of the influenza vaccination.²⁷ In a survey of 1,000 hospitals, 15% of 555 respondents indicated that the hospital had implemented a declination policy during the 2005-2006 influenza season.²⁸ Studies show that the use of a declination statement alone would not improve vaccination coverage levels.^{29 30 31}
4. **Combination Programs:** Other programs have employed a hybrid approach, incorporating promotional and educational activities, encouragement, and free and accessible vaccines. Two facilities have achieved coverage levels above 75% for HCWs.^{32 33} Several studies show that influenza vaccination rates of HCWs were not significantly improved.^{34 35 36 37}

Reporting and Tracking of HCW Vaccination Rates

Voluntary tracking and public reporting of HCW influenza vaccination rates has recently been explored in Iowa and Maryland. Iowa achieved statewide median HCW vaccination rates from 73% in

²³ Gazmararian JA, Coleman M, Prill M, et al. Influenza vaccination of health care workers: policies and practices in a community setting. *American Journal of Infection Control*. September 2007; 35(7): 441-447.

²⁴ Polgreen PM, Pottinger J, Polgreen L, Diekema DJ, Herwaldt LA. Influenza vaccination rates, feedback, and the Hawthorne Effect. *Infection Control and Hospital Epidemiology*. January 2006; 27(1): 98–99.

²⁵ Healthcare Personnel Influenza Vaccination Requirements. NY State Statute: Public Health Law Sections 2803, 3612, and 4010, Title 10.

²⁶ Salgado, CD, Gianetta ET, Hayden FG, Farr BM. Preventing nosocomial influenza by improving the vaccine acceptance rate of clinicians. *Infect Control and Hospital Epidemiology*. November 2004; 25(11):923-8.

²⁷ Occupational Safety and Health Administration. Hepatitis B vaccine declination (mandatory)-1910.1030 App A. Available at: http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=10052. Accessed March 20, 2011.

²⁸ Talbot, TR. Do declination statements increase health care worker influenza vaccination rates? *Clinical Infectious Diseases*. September 2009; 49(5): 773-779.

²⁹ Polgreen PM, Septimus EJ, Parry MF, et al. Relationship of influenza vaccination declination statements and influenza vaccination rates for healthcare workers in 22 US hospitals. *Infection Control and Hospital Epidemiology*. July 2008; 29(7): 675-677.

³⁰ Ribner BS, Hall C, Steinberg JP, et al. Use of mandatory declination form in a program for influenza vaccination of healthcare workers. *Infection Control and Hospital Epidemiology*. April 2008; 29(4): 302-308.

³¹ Bertin M, Scarpelli M, Proctor AW, et al. Novel use of the intranet to document health care personnel participation in a mandatory influenza vaccination reporting program. *American Journal of Infection Control*. February 2007; 35 (1): 33-37.

³² Norton S, Scheifele DW, Bettinger JA, West RM. Influenza vaccination in pediatric nurses: cross-sectional study of coverage, refusal, and factors in acceptance. *Vaccine*. 2008; 26: 2942-2948.

³³ National Foundation for Infectious Diseases. Immunizing Healthcare Personnel Against Influenza: A Report on Best Practices. 2007. Available at: <http://www.nfid.org/HCWtoolkit/report.html>. Accessed February 21, 2011.

³⁴ Zimmerman R, Nowalk MP, Lin CJ, et al. Factorial design for improving influenza vaccination among employees of a large health system. *Infection Control and Hospital Epidemiology*. July 2009; 30(7): 691-697.

³⁵ Ohrt CK, McKinney WP. Achieving compliance with influenza immunization of medical house staff and students. A randomized controlled trial. *JAMA*. March 1992; 267(10): 1377-80.

³⁶ Talbot TR, Dellit TH, Hebden J, Sama D, Cuny J. Factors associated with increased healthcare worker influenza vaccination rates: results from a national Survey of University Hospitals and Medical Centers. *Infection Control and Hospital Epidemiology*. May 2010; 31(5); 456-462.

³⁷ American Medical Directors Association. Survey of Certified Medical Directors, Long Term Care Setting Influenza Education Outreach Activities. 2010. Available at: http://www.amda.com/cmehdirect/webinars/Immunization_12_10.cfm. Accessed: February 24, 2011.

the first season to 93% in the fourth season.³⁸ The Maryland Healthcare Personnel Immunization Initiative reported that the state averaged 78.1% influenza vaccination coverage of HCWs during the 2009-2010 influenza season.³⁹

Mandatory Influenza Vaccination Policies in Health Care Facilities

In September 2004, Virginia Mason Hospital, an acute care hospital in Seattle, Washington became the first facility to implement a mandatory seasonal influenza vaccination program.⁴⁰ Today, approximately 300 facilities across the United States have implemented similar vaccination policies. Currently, three local health departments, Cook County Health & Hospitals System in Illinois, Garland Health Department in Texas, and RiverStone Health in Montana have HCW influenza vaccination mandates.^{41 42}

The mandatory programs have realized record levels of seasonal influenza vaccination among HCWs. Coverage rates have reached 99.3% in several health systems.^{43 44 45 46 47}

State Law and Influenza Vaccination of Health Care Workers

As of Summer 2011, twenty states had enacted laws that require health facilities to develop influenza vaccination requirements for the workforce. None of the laws have been challenged in any state or federal court; even though some HCWs have argued that the requirements are unconstitutional.

They claim the laws violate their: 1) 14th Amendment due process rights; 2) right to the “free exercise” of religion under the First Amendment; 3) right to “freedom of contract” between employer and employee under the Fifth and 14th Amendments; and 4) right to privacy and bodily autonomy as a matter of substantive due process under the 14th Amendment. However, there is sufficient judicial precedent

³⁸ Helms C, Polgreen P, Polgreen L, et al. Voluntary reporting of employee influenza vaccination rates by acute care hospitals in Iowa: The impact of a four year provider-based statewide performance improvement project. *Vaccine*. April 2011; 29(18):3483-3488.

³⁹ Maryland Health Care Commission. Healthcare-Associated Infections: Health Care Worker Seasonal Influenza Vaccinations. Available at: http://mhcc.maryland.gov/consumerinfo/hospitalguide/hospital_guide/reports/healthcare_associated_infections/healthcare_associated_infections_detail.asp. Accessed April 1, 2011.

⁴⁰ Rosenbaum S. When Worlds Collide: Public Health and Union Rights in Virginia Mason Hospital vs. Washington State Nurses Association. *Public Health Reports*. September-October 2008.

⁴¹ Immunization Action Coalition. IAC’s Honor Roll for Patient Safety: Institutional Mandates. Available at: <http://www.immunize.org/honor-roll/>. Accessed February 17, 2011.

⁴² Data obtained from Deputy Director of the National Vaccine Program Office. August 29, 2011.

⁴³ Keller DM. Hospital Reaches Near 100% Flu Vaccination Rate of Staff With Mandate. *Medscape Medical News*. November 8, 2010. Available at: <http://www.medscape.com/viewarticle/732085>. Accessed February 17, 2011.

⁴⁴ Vaccination for Seasonal Flu is Now Mandatory for Loyola Employees. *Loyola Medicine*. September 2, 2009. Available at: http://www.loyolamedicine.org/News/News_Releases/news_release_detail.cfm?var_news_release_id=973441018.

⁴⁵ Belote, B. St. John’s gives Nearly All of Its Workers the Flu Shot. *Kspr.com*. February 21, 2011. Available at: <http://www.kspr.com/news/local/kspr-st-johns-gives-nearly-every-workers-the-flu-shot-20110221,0,1025298.story>. Accessed February 17, 2011.

⁴⁶ Karanfil, LV, Bahner J, Hovatter J, Thomas WL. Championing Patient Safety through Mandatory Influenza Vaccination for All Healthcare Personnel and Affiliated Physicians. *Infection Control and Hospital Epidemiology*. April 2011; 32(4):375-9.

⁴⁷ Feemster KA, Prasad P, Smith MJ, et al. Employee designation and health care worker support of an influenza vaccine mandate at a large pediatric tertiary care hospital. *Vaccine*. 2011; 29: 1762-1769.

surrounding compulsory public health laws that limit individual autonomy and freedoms in favor of broader public health protections to help determine how a court would analyze these claims.

Beginning with the landmark U.S. Supreme Court decision in *Jacobson v Massachusetts*,⁴⁸ courts have ruled that states have the authority to exercise their 10th Amendment “police powers” to require immunizations⁴⁹ and that the threat posed by transmissible disease trump individual autonomy to refuse health care. Courts continue to rely on *Jacobson*, because vaccine-preventable diseases threaten the public and the means to prevent transmission have “a real and substantial relation to the protection of the public health and the public safety.”⁵⁰

Several cases that have weighed religious freedoms against public health and safety recognize that the freedom to practice religious beliefs without government interference is a core principle of U.S. society. Nonetheless, the Constitution’s “free exercise clause” does not permit this freedom to supersede important public interests. Indeed, courts have supported the Constitution which does not require states to include religious exemptions in school entry vaccination requirements.⁵¹

Also relevant are prior rulings related to the meaning of the Contract Clause. Although the Constitution protects the right of individuals to enter into agreements with others without government interference, courts have ruled that states may also limit and regulate contracts in the interest of the public’s welfare,⁵² and essentially placing protection of the public against individual economic interests.

Finally, competent individuals have the right to refuse medical treatment. However, courts have ruled that patient autonomy may be restricted when government can demonstrate that the interests of the public exceed the extent of individual intrusion.⁵³

Thus, it is highly likely that a court would hold that a law requiring influenza vaccination as a condition of employment in the health care context is a proper use of state authority.

⁴⁸ 197 U.S. 11 (1905)

⁴⁹ *Zucht v King*, 260 U.S.174 (1922)

⁵⁰ *Boone v Boozman*, 217 F. Supp. 2d. 938 (E.D. Ark. 2002) *Brock v Boozman*, No 4:01CV00760 SWW, 2002 U.S. Dist. LEXIS 15479 (E.D. Ark. August 12, 2002)

⁵¹ *Prince v Massachusetts*, 321 U.S. 158 (1944).

⁵² *Williamson v Lee Optical Co.*, 348 U.S. 483 (1955); *West Coast Hotel Co. v Parrish*, 300 U.S. 379 (1937); *Muller v Oregon*, 208 U.S. 412 (1908)

⁵³ *Cruzan v Director, Missouri Department of Health*, 497 U.S. 261 (1990).

STATE LAWS REQUIRING INFLUENZA VACCINATION OF HCWs

As of June 2011, nearly half of the states (20 states) have enacted laws to require health care employers to develop and implement influenza vaccination programs for identified categories of HCWs. The 20 states are: Alabama, Arkansas, California, District of Columbia, Illinois, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New York, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, and Virginia.

For purposes of this study, researchers have identified the six key components of a comprehensive mandatory HCW influenza vaccination program, including:

- 1) Definition of the affected HCWs
- 2) Definition of the affected HCEs
- 3) Explanation of HCE obligations
 - i. Choosing appropriate timing for vaccine administration
 - ii. Providing the influenza vaccine to HCWs
 - iii. Providing the influenza vaccine at no cost to the HCW
 - iv. Documenting the immunization status of HCWs
 - v. Reporting data to authorized public health officials
 - vi. Outlining permissible exemptions
 - vii. Managing non-compliance,
- 4) Explanation of HCW obligations
 - i. Receiving the vaccination
 - ii. Choosing site of administration
 - iii. Submitting appropriate documentation;
- 5) Identifying the exemption policy
- 6) Identifying the applicable standard of care

The following table and analysis describes how the 20 states address each element of a comprehensive HCW influenza vaccination program.

ELEMENTS OF COMPREHENSIVE MANDATORY HCW INFLUENZA VACCINATION POLICY

STATE	AFFECTED HCW	AFFECTED EMPLOYER		EMPLOYER OBLIGATIONS							EXEMPTIONS				HCW OBLIGATIONS			STANDARD	
		LTC, Nursing, & Home Health	Acute Care Hospital	Vaccine Provision	Timing of Administration	Education	Cost	Documentation	Reporting	Non-Compliance	Medical	Religious	Philosophical	Declinations	Choice of site administration	Receive vaccination	Documentation	CDC/ACIP	Other
ALABAMA	■	■		■	■	■		■			■	■		■				■	■
ARKANSAS	■	■		■				■	■	■	■	■		■		■			
CALIFORNIA	■		■	■			■	■	■					■		■	■	■	
D.C.	■	■		■	■			■						■	■	■	■	■	
ILLINOIS	■	■	■	■	■	■		■			■	■		■			■		
KENTUCKY	■	■		■	■	■	■	■						■				■	
MAINE	■	■	■	■				■	■	■	■	■	■	■	■	■	■		
MARYLAND	■	■	■	■	■	■		■			■	■		■				■	
MASS.	■		■	■	■	■	■	■	■		■	■		■			■		■
N. HAMPSHIRE	■	■	■	■	■				■		■	■	■				■	■	
N. YORK	■	■		■	■	■		■			■	■		■		■	■	■	
N. CAROLINA	■	■		■	■			■			■	■		■		■	■		■
OKLAHOMA	■		■	■		■	■	■			■			■	■	■	■	■	
PENNSYLVANIA	■	■		■				■			■	■		■	■	■	■	■	
RHODE ISLAND	■	■			■	■		■	■		■	■				■	■	■	
S. CAROLINA	■	■			■			■			■			■		■			
TENNESSEE	■		■	■		■					■			■			■		
TEXAS	■	■													■				■
UTAH	■	■		■			■	■			■			■		■			
VIRGINIA	■		■																
TOTAL	20/20	15/20	9/20	16/20	11/20	9/20	5/20	16/20	6/20	2/20	15/20	11/20	2/20	15/20	4/20	12/20	12/20	10/20	4/20

SOURCE: GWU/SPHHS, DEVELOPING A MODEL STATE LAW, SUMMER 2011

Element One: Defining the Affected HCW

All categories of individuals who may expose patients to influenza should be included in a comprehensive vaccination program. The proposed definition of HCWs considers the following factors, including whether the individual:

- has direct exposure to patients or infectious materials including: body substances, contaminated medical supplies and equipment, environmental surfaces or air;
- has the potential for indirect exposure to patients or infectious materials, including: body substances, contaminated medical supplies and equipment, environmental surfaces or air; and
- is paid or unpaid, an employee, contractor, volunteer, visitor, or student.

State policymakers might consider adopting the following definition of HCW:

“Health Care Worker” means all persons, whether paid or unpaid, including but not limited to employees, staff, contractors, clinicians, emergency medical technicians, ambulance drivers, volunteers, students, trainees, clergy, home health care providers, dietary and housekeeping staff, and others whose occupational activities involve direct or indirect contact with patients or contaminated material in a healthcare, home healthcare, or clinical laboratory setting.

Findings from Review of State Laws

All 20 states that address mandatory vaccination of HCWs, 20 identify the category of HCW affected by the law. The following are examples of how states define the affected worker.

California, Illinois, Kentucky, Massachusetts broadly defines the HCWs governed by the policy. While California does not specify covered workers; the language is similar in scope, as shown below:

California

Aerosol Transmissible Diseases . . .

Health care worker. A person who works in a health care facility, service or operation, or who has occupational exposure in a public health service . . .

Illinois

Definitions . . .

Health care employee- All paid and unpaid persons working in health care settings who have the potential for exposure to infectious materials, including body substances, contaminated medical supplies and equipment, contaminated environmental surfaces, or contaminated air. Health care employees include, but are not limited to, physicians, nurses, nursing assistants, therapists, technicians, emergency medical services employees, pharmacists, laboratory employees, and

persons not directly involved in patient care (e.g., clerical, dietary, housekeeping, maintenance and volunteers) but potentially exposed to infectious agents that can be transmitted to and from health care employees.

Massachusetts

Requirement that Personnel be Vaccinated Against Influenza Virus . . .

(a) Definitions. (1) . . . personnel means an individual or individuals employed by or affiliated with the hospital, whether directly, by contract with another entity, or as an independent contractor, paid or unpaid, including but not limited to employees, members of the medical staff, contract employees or staff, students, and volunteers who either work at or come to the licensed hospital site, whether or not such individual(s) provide direct patient care . . .

Kentucky and Maine confine governed employees to those who are compensated, while Maryland includes volunteers:

Kentucky

"Full-time employee" means an employee who is compensated on a salary basis for a standard biweekly pay period . . .

"Part-time employee" means an employee who is compensated on a biweekly basis for hours worked and whose hours worked average less than 100 hours of work per month.

Maine

Authority of department . . .

C. "Employee" means any person who performs a service for wages or other remuneration for a designated health care facility.

Maryland

Volunteer health program . . .

The facility shall urge that volunteers, defined as individuals who spend an average of 8 hours per week or more in the institution patient care areas and who receive no pay or benefits, accept annual influenza vaccination and tuberculin testing as considered necessary by the facility. The facility shall give appropriate health care information to such volunteers to provide maximum protection to residents.

Element Two: Defining the Affected Employer

A broad range of employers will be affected by a comprehensive mandatory HCW influenza vaccination policy, and should be identified. These employers include, but are not limited to: acute care hospitals, nursing homes, skilled nursing facilities, physician's offices, urgent care centers, outpatient clinics, home health care, emergency medical services, schools, correctional facilities, rehabilitation centers, chronic care facilities, long-term care facilities, assisted living facilities, specialty care assisted living facilities, comprehensive care facilities, extended care facilities, and adult day care facilities.

State policymakers might consider adopting the following definition of employer:

“Employer” means a person or entity that has control over the wages, hours and working conditions of Health Care Workers in settings that include, but are not limited to acute care hospitals, adult day programs or facilities, ambulatory surgical facilities, child day care facilities, correctional facilities, home health care agencies, hospices, intermediate care facilities, long-term care facilities, nursing homes, outpatient clinics, physicians' offices, rehabilitation centers, residential health care facilities, skilled nursing facilities, urgent care centers, dialysis centers, and occupational health centers.

Findings from Review of State Laws

All 20 states address the types of healthcare employers that are required to develop a seasonal influenza vaccine program. The following are examples of how states approach identifying the affected employer. Eleven (AL, AR, DC, KY, NY, NC, PA, RI, SC, TX, and UT) states define the affected employer as a long-term care, nursing or home health facility. Five (CA, MA, OK, TN, and VA) states define the affected employer as an acute care hospital, and four (IL, ME, MD, and NH) states address both types of facilities.

Alabama limits the employer covered by the influenza vaccination requirement to residential settings while Illinois and Maine expand the relevant settings to include: ambulatory surgical treatment centers, freestanding emergency centers, hospitals, home health agencies, and hospice programs.

Alabama

Flu and pneumonia vaccination program . . .

Long term care facility. The term includes a skilled nursing facility, intermediate care facility, specialty care assisted living facility or dementia care facility, or an assisted living facility licensed under this chapter.

Illinois

Definitions . . .

Health care setting: A facility licensed under the Alternative Health Care Delivery Act; An ambulatory surgical treatment center, as defined in the Ambulatory Surgical Treatment Center Act; An assisted living facility, a shared housing

establishment, or a board and care home, as defined in the Assisted Living and Shared Housing Act; A community living facility, as defined in the Community Living Facilities Licensing Act; A life care facility, as defined in the Life Care Facilities Act; A long-term care facility, as defined in the Nursing Home Care Act; A freestanding emergency center, licensed under the Emergency Medical Services (EMS) Systems Act; A home health agency, home services agency or home nursing agency, as defined in the Home Health, Home Services, and Home Nursing Agency Licensing Act; A hospice care program or voluntary hospice program, as defined in the Hospice Program Licensing Act; A hospital, as defined in the Hospital Licensing Act;

Maine

Authority of department . . .

“Designated health care facility” means a licensed nursing facility, residential care facility, intermediate care facility for the mentally retarded, multi-level health care facility, hospital or home health agency.

Massachusetts

Definitions for Sections 51 to 56 . . .

"Hospital", any institution, however named, whether conducted for charity or for profit, which is advertised, announced, established or maintained for the purpose of caring for persons admitted thereto for diagnosis, medical, surgical or restorative treatment which is rendered within said institution.

North Carolina

Definitions . . .

"Nursing home" means a facility, however named, which is advertised, announced, or maintained for the express or implied purpose of providing nursing or convalescent care for three or more persons unrelated to the licensee. A "nursing home" is a home for chronic or convalescent patients, who, on admission, are not as a rule, acutely ill and who do not usually require special facilities such as an operating room, X-ray facilities, laboratory facilities, and obstetrical facilities. A "nursing home" provides care for persons who have remedial ailments or other ailments, for which medical and nursing care are indicated; who, however, are not sick enough to require general hospital care. Nursing care is their primary need, but they will require continuing medical supervision.

Element 3: Defining Employer Obligations

A comprehensive mandatory vaccination program should feature employer activities that have proven to be effective at increasing vaccine uptake among the health care workforce. The proposed employer requirements incorporate the following activities:

- provide the vaccine
- determine the appropriate timing of the vaccination
- educate the HCW about the importance of influenza vaccination
- ensure that the HCW is not required to pay for the vaccination
- document the immunization status of the HCW
- report vaccination rates to the appropriate public health authority
- manage non-compliance.

Findings from Review of State Laws

All 20 states address at least one obligation of the employer implementing the HCW influenza vaccination program.

Vaccine Provision: Vaccine uptake among HCWs has increased when the vaccination is easily accessible at the workplace. State policymakers might consider adopting the following language to describe vaccine provision requirements:

Provide or arrange for influenza vaccination, at no cost to Health Care Workers, either at the facility or at an alternate location chosen by the Health Care Worker.

Sixteen (AL, AR, CA, DC, IL, KY, ME, MD, MA, NH, NY, NC, OK, PA, TN, and UT) of the 20 states address how employers must make vaccine available to workers. Employers must “provide,” “arrange for,” “ensure,” or “offer” influenza vaccinations to HCWs. Examples from Arkansas, District of Columbia, Illinois, and Tennessee follow:

In Arkansas, the facility is not solely responsible for the provision of the vaccine; the Department of Health may also play a role.

Arkansas

Implementation . . .

The Department of Health shall provide vaccines, supplies, and staff necessary for the immunizations of . . . employees as provided for in this subchapter.

District of Columbia

Immunizations . . .

[E]ach facility shall ensure that each employee has either received immunization against influenza virus or has refused such vaccination.

Illinois

Influenza Vaccination . . .

Each health care setting shall notify all health care employees of the influenza vaccination provisions of this Part and shall provide or arrange for vaccination of all health care employees who accept the offer of vaccination.

Tennessee

Basic Services . . .

The facility shall have an annual influenza vaccination program which shall include at least: The offer of influenza vaccine to all staff and independent practitioners or accept documented evidence of vaccination from another vaccine source or facility.

Timing of Administration: State policymakers might consider specifying a timeline for the administration of influenza vaccine to affected HCWs. The time frame will vary by region and ensure the most effective delivery of the influenza vaccine.

State policymakers might consider adopting the following language to describe the timing of vaccine administration:

[Each Health Care Employer shall] require that all Health Care Workers receive influenza vaccinations as a precondition to employment and on an annual basis . . . no later than [_____] of each year.

Eleven (AL, DC, IL, KY, MD, MA, NH, NY, NC, RI, and SC) of the 20 states address the timing of vaccine administration. An example from the District of Columbia follows:

District of Columbia

Immunizations . . .

Except as provided in subsection 3222.9, each resident and each employee shall, no later than November 30 [th] of each calendar year or six (6) weeks after the vaccination becomes readily available in the District of Columbia, whichever is later, undergo immunization for influenza virus as required pursuant to subsection 3222.2.

Education: A comprehensive HCW influenza policy uses educational materials to inform HCWs of the benefits of influenza vaccinations. State policymakers might consider adopting the following language to describe educational requirements:

[E]ach Health Care Employer in this state shall establish influenza vaccination requirements as follows . . . provide all Health Care Workers with education about the benefits of influenza vaccine and potential consequences of influenza illness. Nine (AL, IL, KY, MD, MA, NY, OK, RI, and TN) of the 20 states require employers to provide influenza vaccine-related education to HCWs. The example from Illinois shows that the state defines the content of the educational program:

Illinois

Influenza vaccination . . .

Each health care setting shall provide all health care employees with education about the benefits of influenza vaccine and consequences of influenza illness. Information provided shall include the epidemiology, modes of transmission, diagnosis, treatment and non-vaccine infection control strategies.

In Rhode Island, the education of HCWs must be conducted through a partnership between the employer and an external organization, as the language below demonstrates:

Rhode Island

Regulations . . .

Educational materials. The department, in conjunction with the department of elderly affairs, shall make available educational and informational materials to all facilities with respect to vaccination against influenza virus . . .

Cost: Employers have encouraged increased HCW vaccination by offering free vaccination in the workplace. State policymakers might consider adopting the following language to describe policies regarding cost:

[E]ach Health Care Employer in this state shall establish influenza vaccination requirements as follows . . . provide or arrange for influenza vaccination, at no cost to Health Care Workers.

Five (CA, KY, MA, OK, and UT) of the 20 states, address how facilities will manage the cost of the influenza vaccination. Three states (CA, MA, and OK) require the employer to cover the cost of the vaccine:

California

Required actions of general acute care hospitals . . .

By July 1, 2007, the department shall require that each general acute care hospital, in accordance with the Centers for Disease Control guidelines, take all of the following actions: (a) Annually offer onsite influenza vaccinations, if available, to all hospital employees at no cost to the employee.

Massachusetts

Definitions . . .

Each hospital shall notify all personnel of the influenza vaccination requirements...and shall, at no cost to any personnel, provide or arrange for vaccination of all personnel who cannot provide proof of current immunization against influenza.

Oklahoma

Employee and/or worker health examinations . . .

Each hospital shall have an annual influenza vaccine program . . . that shall include at least the following: (1) The offer of influenza vaccination onsite, at no

charge to all employees and/or workers in the hospital or acceptance of documented evidence of current vaccination from another vaccine source or hospital.

Kentucky and Utah require the employee or third parties to pay for the vaccination. In these states, the employer is not obligated to purchase the vaccine or cover the associated administration costs.

Kentucky

Immunization requirements for long-term care facilities . . .

A long term care facility may charge a third party . . . or an employee for the cost of: (a) Vaccine; and (b) Administration of the vaccine.

Utah

Immunization offer and exemption . . .

Each long-term health care facility shall make available to all employees an influenza immunization during the recommended vaccine season. The facility shall be deemed to have made influenza immunization available if the facility documents that each employee on staff had the opportunity to receive an influenza immunization under their existing health plan coverage. If the employee does not have health plan coverage for influenza immunization, then the facility shall be deemed to have made influenza immunization available if the facility documents that each employee on staff had the opportunity to receive an influenza immunization at a cost to the employee that is at or below that charged by their local health department.

Documentation: A comprehensive mandatory HCW influenza program must ensure that accurate and complete records are maintained for each affected HCW. State policymakers might consider adopting the following language to describe facility documentation requirements:

In accordance with this section, each Health Care Employer in this state shall establish influenza vaccination requirements as follows . . . maintain completed and signed Certificates of Influenza Immunization for one year;

Sixteen (AL, AR, CA, DC, IL, KY, ME, MD, MA, NY, NC, OK, PA, RI, SC, and UT) of the 20 states address an employer’s obligation to document HCWs vaccinations. Examples from Arkansas and Kentucky follow:

Arkansas

Documentation . . .

Nursing homes must maintain a current log or list of residents and employees in their facility and document that each have been immunized. The log must include, at minimum, the individual’s name, date of birth, type of vaccine and date administered. Additionally, the reason or reasons vaccine were not administered to any resident or employee must be documented in the log or list.

Kentucky

Immunization requirements for long-term care facilities . . .

Section 4. Health Records. (1) A long-term care facility shall maintain an immunization health record for each employee or resident that shall document: (a) The immunization status of the employee or resident for influenza virus and pneumococcal disease; (b) The date that the employee or resident received counseling on the risks and benefits of the vaccine; (c) The date the employee or resident was requested to be immunized against influenza virus and pneumococcal disease; and (d) The date the employee or resident was vaccinated against each disease. (2) If after being advised of the risks and benefits of the vaccine, an employee, resident, or legal guardian of a resident refuses to be vaccinated, as provided in KRS 209.552(5), a long-term care facility shall document in the health record: (a) The date each vaccine was offered; (b) Each vaccine that was not administered; and (c) The reason each vaccine was refused.

Reporting: A comprehensive mandatory HCW influenza vaccination program should require employers to share HCW vaccination data with appropriate state and/or local health departments. State policymakers might consider adopting the following language to describe reporting requirements:

Each Health Care Employer shall collect aggregate data on Health Care Worker influenza vaccination status for the period beginning [_____] and ending [_____] of each year. The Health Care Employer must report the data to an authorized State Health Official by [_____] of the same year in a manner determined by the authorized State Health Official. Required data will include, but not be limited to, number of Health Care Workers immunized by occupation, total number of Health Care Workers by occupation, and reason(s) Health Care Workers did not receive an influenza vaccination.

Six (AR, CA MA, ME, NH, and RI) of the 20 states require employers to report HCW vaccination data to a public health agency. Excerpts from Arkansas and Massachusetts follow:

Arkansas

Implementation . . .

Each nursing home facility in this state shall... document and report annually immunizations against influenza virus for full-time and part-time employees...

Massachusetts

Reporting and Data Collection . . .

(I) Reporting and Data Collection. Each hospital shall report information to the Department documenting the hospital's compliance with the personnel vaccination requirements of 105 CMR 130.325, in accordance with reporting and data collection guidelines of the Commissioner or his/her designee.

Non-Compliance: A comprehensive mandatory HCW influenza vaccination program should include procedures to address HCWs who fail to comply with the vaccination

requirements. State policymakers might consider adopting the following language to describe procedures to address non-compliance:

Each Health Care Employer shall . . . determine the steps Health Care Workers who are not vaccinated pursuant to this section must take to reduce the risk of transmitting influenza to patients.

Of the 20 states, only Arkansas and Maine address non-compliance. Arkansas details how employers that fail to comply with the vaccination requirements will be sanctioned:

Arkansas

Personnel and Training . . .

The Office of Long-Term Care will monitor and enforce the rules and regulations to assure compliance with the law. Any nursing home which does not enforce the provisions of this act will be in violation of Ark. Code Ann. § 20-10-205 and 206 and will be subject to the punishment set down in Ark. Code Ann. § 20-10-206 for that violation.

Maine is the only state that outlines required sanctions against unvaccinated workers: 1) an HCW may be excluded from work when a public health official determines that the worker poses a “clear danger to the health of others,” 2) the employer is not required to continue to pay an excluded worker, unless otherwise provided for by law, contract, or collective bargaining agreement, and 3) when a public health official determines the existence of a public health threat, unvaccinated employees must be excluded from work for one incubation period:

Maine

Immunization Requirements for Health Care Workers . . .

1. Exclusions from the Workplace

A. Exclusions 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 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. 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.

C. 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 serological evidence of immunity. Employees without serological 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.

Element 4: Exemption Policy

States may offer five options to HCWs who wish to decline influenza vaccination as follows: 1) any medical contraindication when it can be reasonably predicted that the HCW will experience an adverse health impact from the vaccine, 2) a religious belief that opposes the vaccination, 3) a philosophical belief that opposes the vaccination, and 4) through the signing of a declination statement to indicate the receipt or refusal of the vaccination. Additionally, employers and HCWs may choose to decline vaccination when public health officials determine that a shortage of vaccine requires the suspension of the program.

State policymakers might consider permitting HCWs to refuse vaccination only if a medical contraindication is documented by a licensed health care provider:

A Health Care Employer shall not require a Health Care Worker to receive an influenza vaccine if:

1) the Health Care Worker presents to the Health Care Employer a licensed health care provider's written statement indicating that the Health Care Worker has a condition contraindicated for immunization;

Model language is provided below for states that wish to expand opt-out possibilities:

A Health Care Employer shall not require a Health Care Worker to receive an influenza vaccine if . . .

2) the Health Care Worker presents to the Health Care Employer a written statement indicating that the worker opposes the administration of the vaccine based upon a sincere religious belief;

3) the Health Care Worker presents to the Health Care Employer a written statement indicating that the worker opposes the administration of the vaccine based upon a philosophical belief;

4) the Health Care Worker signs a statement certifying receipt of information about the risks and benefits of influenza vaccine, including but not limited to the symptoms, transmission, and potential impact of influenza on patient and personal health; or

5) an authorized State Health Official determines that there is an insufficient supply of vaccine given the number of workers to be vaccinated or the vaccine is not reasonably available.

Findings from Review of State Laws

Fifteen (AL, AR, IL, ME, MD, MA, NH, NY, NC, OK, PA, RI, SC, TN, and UT) of the 20 states include possibilities for exemption from influenza vaccination requirements. All 15 states permit exemptions for medical contraindication; 15 (AL, AR, CA, IL, MD, MA, NY, NC, OK, PA, SC, TN, and UT) states allow declination statements; 11 (AL, AR, IL, ME, MD, MA, NH, NY, NC, PA, and RI) states recognize religious exemptions; and two (ME and NH) states accept philosophical exemptions. Below are examples of different approaches:

Alabama

Flu and pneumonia vaccination program . . .

(g) No individual . . . or employee, shall be required to receive vaccine under this section if the vaccine is medically contraindicated, if the vaccine is against the individual's religious beliefs, or if the individual refuses the vaccine after being full informed of the health risks of not being immunized.

New Hampshire

Immunizations by Hospitals, Residential Care Facilities, Adult Day Care Facilities, and Assisted Living . . .

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.

Arkansas, Maine, and New Hampshire have enacted religious exemptions that require the individual to provide written statements regarding the sincerity of their religious belief that is contrary to immunization requirement, or to provide a notarized statement from a church official discussing the opposition to the immunization.

Arkansas

1. Medical: Only a letter issued by the MEDICAL DIRECTOR, DIVISION OF COMMUNICABLE DISEASE/IMMUNIZATION, stating the vaccine or vaccines for which an individual is exempt is to be accepted as a valid medical exemption by the Nursing Home. Statements from a private physician are not to be accepted by the Nursing Home without this letter.

2. Religious: The Arkansas Department of Health's standard form for religious exemptions must be submitted to the Division of Communicable

Disease/Immunization. A notarized statement is required from a Pastor or church official that the individual is a member or adherent of a recognized church or religious denomination whose tenets are opposed to immunization.

Maine

Authority of department . . .

Employees are exempt from immunization otherwise required by this subchapter or by rules adopted by the department pursuant to this section under the following circumstances . . .

B. A religious or philosophical exemption is available to an employee who states in writing a sincere religious or philosophical belief that is contrary to the immunization requirement of this subchapter.

New Hampshire

Immunizations by Hospitals, Residential Care Facilities, Adult Day Care Facilities, and Assisted Living . . .

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

(B) The employee states in writing an opposition to immunization because of a sincere religious belief or for philosophical reasons.

Element 5: HCW Obligations

A comprehensive mandatory vaccination program should outline the obligations of the affected HCW. The proposed language describing HCW obligations considers the following factors, including whether the HCW:

- received an influenza vaccination or
- presented adequate documentation as proof of immunization or
- documented an exemption
- chose an appropriate location to receive the influenza immunization

State policymakers might consider adopting the following language to describe the obligations of HCWs:

Health Care Workers shall receive influenza vaccination or comply with exceptions and submit completed and signed Certificate of Influenza Immunization to Health Care Employer by [_____] of each year.

Findings from Review of State Laws

Fourteen (AR, CA, DC, ME, NH, NY, NC, OK, PA, RI, SC, TN, TX, and UT) of the 20 states address health care worker obligations for influenza immunization. Examples from Maine and New Hampshire are provided below:

Maine

Immunization Requirements for Health Care Workers . . .

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 with their own practice may authorize their own employees to issue a Certificate of Immunization on behalf of the physician.

New Hampshire

Immunizations by Hospitals, Residential Care Facilities, Adult Day Care Facilities, and Assisted Living . . .

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 . . .

Four (DC, ME, OK, and PA) of the fourteen states allow HCWs to choose the site of administration, as shown below:

District of Columbia

Immunizations . . .

Employee may obtain the required immunization from a medical provider of his or her choice. If . . . the employee obtains such immunization from a provider other than the facility, the . . . employee shall provide the facility, no later than November 30 [th] or six (6) weeks after the vaccination becomes readily available in the District of Columbia, whichever is later, with documentation of the immunization. The facility shall record such documentation within twenty-four (24) hours of its receipt.

Element 6: Standard of Care

The Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention is a federally sponsored board that advises the CDC on immunization practices for the civilian population. The ACIP standards are widely accepted. The recommendations, updated annually, are considered the principal nationwide practice standard. States should consider using the ACIP standard when developing a HCW influenza vaccination program.

State policymakers might consider adopting the following language to describe the standard that should be followed when administering an influenza vaccine:

The influenza vaccinations shall be provided and updated in accordance with the latest recommendations of the Advisory Committee on Immunization Practices (ACIP) of the Centers for Disease Control and Prevention (CDC). To the extent that the ACIP recommendations may differ from the terms of this section, the ACIP recommendations shall control.

Findings from Review of State Laws

Thirteen (AL, CA, DC, MD, MA, NH, NY, NC, OK, PA, RI, and TX) of the 20 states identify standards for influenza immunization. Ten (AL, CA, DC, MD, NH, NY, OK, PA, and RI) of the 12 states have adopted the ACIP recommendations. In addition to CDC recommendations, Alabama references the Federal Occupational Safety and Health Administration (OSHA).

Two (MA and NC) of the 12 states recommend guidelines by the Commission for Public Health (or Commissioner of Public Health). Texas recommends guidelines consistent with the Texas Board of Human Services. Examples from Alabama, Maryland, Massachusetts, North Carolina, and Texas follow:

Alabama

Personnel and Training . . .

(b) Establish vaccination requirements for employees that are consistent with current recommendations from the Federal Centers for Disease Control and Prevention (CDC) and the Federal Occupational Safety and Health Administration (OSHA) (as a minimum will require annual influenza vaccinations).

Maryland

Immunization against influenza virus and pneumococcal disease . . .

In accordance with the recommendations established by the Advisory Committee on Immunization Process of the United States Centers for Disease Control and Prevention that are in effect at the time the related institution conducts the immunizations . . .

Massachusetts

Definitions . . .

(b) When feasible, and consistent with any guidelines of the Commissioner of Public Health or his/her designee, each hospital shall ensure that all personnel are vaccinated with seasonal influenza vaccine no later than December 15, 2009 and annually thereafter.

North Carolina

Immunizations of employees . . . of Adult Care Homes . . .

(f) Notwithstanding any other provision of law to the contrary, the Commission for Public Health shall have the authority to adopt rules to implement the immunization requirements of this section...

Texas

Required Immunization for Nursing Homes . . .

The board by rule shall require nursing homes to offer, in accordance with an immunization schedule adopted by the board . . .

In addition to the elements described above, Illinois authorizes facilities to develop influenza vaccination policies that address more requirements than are outlined in the law:

Illinois

Influenza Vaccination . . .

Health care settings may choose to develop and implement more stringent influenza vaccination policies, strategies or programs designed to improve health care employee vaccination rates than those required by this Part and that are consistent with existing law and regulation.

MODEL LAW

The *Uniform Act on Influenza Vaccination of Health Care Workers* addresses all six elements of a comprehensive law including: affected employees, affected employers, employer obligations, employee obligations, exemption policies, and standards.

In addition, for each state, researchers completed “customized drafting” tools to aid state policymakers in revising or drafting legislation related to vaccination of HCWs against influenza.

Appendix 1 provides a series of tables that summarize each state’s language and compares it to the proposed model language for each element.

UNIFORM ACT ON INFLUENZA VACCINATION OF HEALTH CARE WORKERS

SECTION 1. DEFINITIONS.

In this Act:

1) “Certificate of Influenza Immunization” means a written statement indicating the influenza vaccination status of a Health Care Worker. The Certificate shall specify the vaccine administered and the date of administration, or the reason the Health Care Worker was exempt from the influenza vaccination requirement. The Certificate shall be signed by the licensed health care provider who administered the vaccine. If the Health Care Worker is exempt from the influenza vaccination requirement, the Certificate shall be signed by both the Health Care Worker and a designated Health Care Employer. Secondary school or collegiate health records that provide the month and year of administration or laboratory evidence of immunity may be submitted as proof of immunity.

2) “Employer” means a person or entity that has control over the wages, hours and working conditions of Health Care Workers in settings that include, but are not limited to acute care hospitals, adult day programs or facilities, ambulatory surgical facilities, child day care facilities, correctional facilities, home health care agencies, hospices, intermediate care facilities, long-term care facilities, nursing homes, outpatient clinics, physicians’ offices, rehabilitation centers, residential health care facilities, skilled nursing facilities, urgent care centers, dialysis centers, and occupational health centers.

3) “Health Care Worker” means all persons, whether paid or unpaid, including but not limited to employees, staff, contractors, clinicians, emergency medical technicians, ambulance drivers, volunteers, students, trainees, clergy, home health care providers, dietary and housekeeping staff, and others whose occupational activities involve direct or indirect contact

with patients or contaminated material in a healthcare, home healthcare, or clinical laboratory setting.

4) “Shall or Must” means that compliance is mandatory.

SECTION 2. SUBSTANCE OF THE ACT.

a) In accordance with this section, each Health Care Employer in this state shall establish influenza vaccination requirements as follows:

1) require that all Health Care Workers receive influenza vaccinations as a precondition to employment and on an annual basis, in accordance with the latest recommendations of the Advisory Committee on Immunization Practices (ACIP) of the Centers for Disease Control and Prevention (CDC) no later than [_____] of each year. To the extent that the ACIP recommendations may differ from the terms of this section, the ACIP recommendations shall control;

2) notify all Health Care Workers of the immunization requirements of this section;

3) provide all Health Care Workers with education about the benefits of influenza vaccine and potential consequences of influenza illness;

4) provide or arrange for influenza vaccination, at no cost to Health Care Workers, either at the facility or at an alternate location chosen by the Health Care Worker, by [_____] of each year;

5) determine whether Health Care Workers hired after [_____] of each year, have received the required influenza vaccination. If the Health Care Worker has not received the influenza vaccination, the Health Care Employer shall provide or arrange for influenza vaccination, at no cost to Health Care Workers. The Health Care Worker may receive the

vaccination either at the facility or at an alternate location chosen by the Health Care Worker, before employment or within one week of employment;

6) maintain completed and signed Certificates of Influenza Immunization for one year;

b) A Health Care Employer shall not require a Health Care Worker to receive an influenza vaccine if:

1) the Health Care Worker presents to the Health Care Employer a licensed health care provider's written statement indicating that the Health Care Worker has a condition contraindicated for immunization;

2) the Health Care Worker presents to the Health Care Employer a written statement indicating that the worker opposes the administration of the vaccine based upon a sincere religious belief;

3) the Health Care Worker presents to the Health Care Employer a written statement indicating that the worker opposes the administration of the vaccine based upon a philosophical belief;

4) the Health Care Worker signs a statement certifying receipt of information about the risks and benefits of influenza vaccine, including but not limited to the symptoms, transmission, and potential impact of influenza on patient and personal health; or

5) an authorized State Health Official determines that there is an insufficient supply of vaccine given the number of workers to be vaccinated or the vaccine is not reasonably available.

c) Each Health Care Employer shall collect aggregate data on Health Care Worker influenza vaccination status for the period beginning [_____] and ending

[_____] of each year. The Health Care Employer must report the data to an authorized State Health Official by [_____] of the same year in a manner determined by the authorized State Health Official. Required data will include, but not be limited to, number of Health Care Workers immunized by occupation, total number of Health Care Workers by occupation, and reason(s) Health Care Workers did not receive an influenza vaccination.

d) determine the steps Health Care Workers who are not vaccinated pursuant to this section must take to reduce the risk of transmitting influenza to patients.

e) In accordance with subsections a) and b) of this section, Health Care Workers shall receive influenza vaccination or comply with exceptions and submit completed and signed Certificate of Influenza Immunization to Health Care Employer by [_____] of each year.

SECTION 3. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

SECTION 4. SHORT TITLE.

This Act may be cited as the Uniform Act for Influenza Vaccination Requirements of Healthcare Workers.

SECTION 5. SEVERABILITY CLAUSE.

The provisions of this Uniform Act are severable. If any provision of this Act or its application is held invalid, that invalidity shall not affect other provisions or applications of this Act which can be given effect without regard to the provision or application that has been held to be invalid.

SECTION 6. EFFECTIVE DATE.

a) The provisions of this Act shall apply to any Affected Employee and Affected Employer in this state on or after:

OPTIONS 1) Date of enactment

2) A date (x) days after the date of enactment

3) (X) days after (insert description of regulation or other guidance) is issued by
(insert name of administering agency)

CONCLUSION

Outbreaks of influenza in health care facilities have been attributed to unvaccinated HCWs. The outbreaks contribute to patient complications or death and increased economic costs to the health care system. When health care facilities implement mandatory influenza vaccination programs for HCWs, vaccine uptake increases to levels not realized with voluntary methods. Mandatory vaccination policies have been endorsed by government agencies, as well as professional and non-profit organizations.

The findings from this study suggest that nearly half of the United States have enacted laws that require a broad range of health care employers to develop and implement mandatory influenza vaccination programs for HCWs. The laws vary in the extent to which they incorporate the six elements of a comprehensive mandatory HCW influenza program or policy.

All the laws define the category of HCW governed by the law. However, not all states have adopted a broad definition of HCW. These limitations may affect the total number of HCWs who will have ensured access to the vaccine. Similarly, all 20 laws define the health care employer that must comply with the law. The laws are variable and do not include all health care employers that manage HCWs. Most of the laws regulate residential care facilities, while approximately half include acute care hospitals.

While more than half of the laws require employers to “provide,” “arrange for,” “ensure,” or “offer” influenza vaccinations to HCWs, they rarely address how an employer must manage the cost of vaccine purchase and administration. Facilities may experience barriers to program implementation if financial responsibilities are not clearly outlined.

Exemption policy is one of the frequently debated components of a mandatory HCW influenza vaccination program, and most of the laws permit HCWs to decline the vaccination. More than half of the laws allow HCWs to opt-out of the requirement by signing a declination statement, by showing the existence of a medical contraindication, or by declaring that the vaccination conflicts with a religious belief. The inclusion of a non-medical exemption presents barriers to increasing uptake.

Finally, only one state discusses how to address HCWs who do not comply with the vaccination requirement. The law does not permit a facility to terminate or sanction an employee as an independent management decision. In this case, HCWs may be excluded from the workplace only if a public health official determines that the worker is a clear danger to the health of others. The lack of clearly defined sanctions may undermine the effectiveness of vaccination requirements.

State policymakers might consider the following: 1) require every health care employer operating in the state to participate in immunization requirements to ensure that all patients are protected; 2) identify strategies to assist health care employers in the purchase and distribution of influenza vaccine for HCWs; 3) draft exemption policies that permit HCWs to opt-out only for a medical contraindication; and 4) draft clear policies and procedures to address appropriate sanctions for noncompliant HCWs.