

September 24, 2021

D. Randy Kuykendall, MLS
Director, Health Facilities Division
Colorado Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246

Re: CHA Comments on Vaccine Mandate Emergency Rules and Department Guidance

Director Kuykendall:

On August 30, the Colorado Board of Health adopted Emergency Rule 6 CCR 1011-1 Chapter 2, General Licensure Standards and the COVID-19 Vaccine, requiring regulated health facilities to ensure employees are fully vaccinated against COVID-19. We appreciate the Department's willingness to engage with CHA and our 100-plus member hospitals and health systems to refine the implementation expectations for the emergency rule.

CHA submits the following feedback on the emergency rule and guidance issued by the Department as of September 23, 2021, and in anticipation of the final rulemaking hearing scheduled for Oct. 21, 2021:

- **Postpone and consider withdrawing final rulemaking entirely.**

CHA believes vaccines are among the best tools we have to protect staff and our patients. It is why the Association joined with 18 other leading health care organizations across the state to issue a statement that all health care employees should become vaccinated and expressing support for health care organizations that independently adopt policies requiring COVID-19 vaccination for employees and staff.¹ And it is why CHA has worked so closely with Department staff to implement the emergency rule and serve as a liaison between hospitals and the State.

However, the necessity for state-level action was likely nullified by President Biden's announcement just ten days after adoption of the emergency rule.² While it remains to be seen what the federal requirements entail, we can safely anticipate more information will be released within the 120 days that emergency rules are applicable in Colorado.

At a minimum, the final rulemaking process should be postponed from Oct. 21 to allow time for the federal requirements to be made available. It's likely that these requirements will be duplicative, if not conflicting. Once a comparative analysis can be completed, if Department staff in collaboration with health care leaders believe state level action remains necessary, only then should further final action be taken by the Board of Health.

¹ <https://cha.com/colorado-health-care-community-urges-additional-actions-to-protect-colorado-communities-from-covid-19/>

² <https://www.whitehouse.gov/covidplan/>

- **Align state and federal requirements as soon as possible.**

While CHA understands the urgency of implementing this regulation, it will be duplicative with – and potentially more burdensome than – federal vaccine mandates that will apply to Medicare providers and/or to large employers. CHA recommends the Department align all state requirements for the emergency rule with the federal regulations as information comes available so as not to disadvantage Colorado health care employers in a severe nation-wide health professional shortage. In addition, Colorado hospitals have concerns that implementing the state mandate in advance of as-yet-undefined federal rules will contribute to increased health care worker flight due to the abundance of positions elsewhere in the country without existing vaccine mandates.
- **Reduce the threshold for which facilities face civil penalties.**

The current emergency regulation requires 100 percent of staff to be vaccinated or have an approved exemption, and CDPHE has authority to take a variety of enforcement actions against hospitals failing to meet this threshold.³ While CHA appreciates the 100 percent vaccination goal and anticipates hospital policies will reflect this objective (consistent with their approach to flu vaccination), the Association recommends this regulation align with the existing facility mandate for employee flu vaccines, which prohibits penalties unless facilities drop below 90 percent compliance.⁴ In addition to aligning with existing law, this would provide much-needed flexibility to hospitals already facing severe staffing shortages in the face of increasing need for hospital care.
- **Maintain waiver flexibilities to ensure Colorado hospitals can continue to provide critical health care services.**

CHA values the existing waiver process put in place by CDPHE last week, and requests that waiver flexibility remain in place, particularly for communities and facilities with high vaccine resistance wherein a one-size-fits-all vaccine mandate could endanger patients' ability to access necessary medical services or force harmful delays in patient care.
- **Eliminate the pre-shift rapid testing requirement.**

The additional Department guidance released last week included requirements for twice-weekly PCR tests, as well as rapid testing prior to each shift for unvaccinated employees. CHA recommends the rapid testing requirement be removed due to limited availability and increased cost of testing materials, as well as additional staff that would be necessary to administer rapid tests at shift change for all unvaccinated employees. CHA members have concerns that this requirement would detract from hospitals' ability to focus clinical resources on patient care.

³ C.R.S. 25-1.5-103 (2)(b.5)- "Enforcement activity" means the imposition of remedies such as civil money penalties; appointment of a receiver or temporary manager; conditional licensure; suspension or revocation of a license; a directed plan of correction; intermediate restrictions or conditions, including retaining a consultant, department monitoring, or providing additional training to employees, owners, or operators; or any other remedy provided by state or federal law or as authorized by federal survey, certification, and enforcement regulations and agreements for violations of federal or state law.

⁴ 6 CCR 1011-1 Chapter 2 (11.2.3)

- **Coordinate state and federal data submission requirements to reduce unnecessary duplication.**

Currently, hospitals submit vaccine data elements to the federal National Healthcare Safety Network (NHSN). Consistent with our request for state-federal alignment, CHA anticipates additional reporting requirements with the implementation of the national vaccine mandate. CHA recommends CDPHE work with the Association to examine all data reporting elements in order to eliminate duplicative requirements and remove unnecessary ones.

CHA values the Department's intense work with stakeholders to ensure effective implementation of the Board's emergency rule and would be happy to discuss any additional follow-up items or seek additional member feedback on request.

Regards,



Joshua Ewing
Vice President of Legislative Affairs

cc:

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