

STATE OF MAINE

IMMUNIZATION REQUIREMENTS FOR HEALTHCARE WORKERS

**10-144 CODE OF MAINE RULES
CHAPTER 264**



Maine Department of Health and Human Services
Maine Center for Disease Control and Prevention
11 State House Station
Augusta, Maine 04333-0011

EMERGENCY ROUTINE TECHNICAL RULE
Effective August 12, 2021

**10-144 DEPARTMENT OF HEALTH AND HUMAN SERVICES
MAINE CENTER FOR DISEASE CONTROL AND PREVENTION**

Chapter 264: IMMUNIZATION REQUIREMENTS FOR HEALTHCARE WORKERS

Purpose: This rule is issued pursuant to the statutory authority of the Department of Health and Human Services to establish procedures for the control and prevention of communicable diseases as set forth in 22 MRS § 802(1)(D) in addition to its authority to require immunization of the employees of designated healthcare facilities as set forth in 22 MRS §802. This rule requires employees of Designated Health Facilities to reduce the risk for exposure to, and possible transmission of, vaccine-preventable diseases resulting from contact with patients, or infectious material from patients. It prescribes the dosage for required immunizations and defines responsibilities, exclusion periods, record keeping and reporting requirements for officials of hospitals and healthcare facilities. This rule also requires employees of Designated Health Care Facilities, Dental Health Practices, and EMS Organizations to become immunized to COVID-19.

1. Definitions

- A. **Certificate of Immunization** means a written statement from a physician, nurse, physician assistant, or health official who has administered an immunization to an employee, specifying the vaccine administered and the date it was administered. Secondary school or collegiate health records, having been compiled and maintained as an official document based on certificates of immunization, which provide at a minimum the month and year that the immunization was administered and/or which contain copies of laboratory evidence of immunity, may also be accepted as proof of immunization.
- B. **Chief Administrative Officer** means the person designated as the president, chief executive officer, administrator, director or otherwise the senior official of a Designated Healthcare Facility, Dental Health Practice, or EMS Organization.
- C. **Declination** means a formal process where an individual makes an informed choice declining Hepatitis B vaccination, following standards and procedures established by the federal Occupational Safety and Health Administration (OSHA) regulations (29 CFR § 1910.1030(f)(2)(iv) (effective July 6, 1992).
- D. **Dental Health Practice** means, for the purpose of this rule, any practice where dentists (whose scope of practice is defined in 32 MRS §18371) and dental hygienists (defined in 32 MRS §18374) provide oral health care to patients in the State of Maine.
- E. **Designated Healthcare Facility** means a licensed nursing facility, residential care facility, Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID), multi-level healthcare facility, hospital, or home health agency subject to licensure by the State of Maine, Department of Health and Human Services Division of Licensing and Certification.

- F. **Disease** means the following conditions which may be preventable by immunization:
1. Rubeola (measles);
 2. Mumps;
 3. Rubella (German measles);
 4. Varicella (chicken pox);
 5. Hepatitis B.;
 6. Influenza; and
 7. COVID-19.
- G. **Employee** means any person who performs any service for wages or other remuneration for a Designated Healthcare Facility, EMS Organization or Dental Health Practice. For purposes of this rule, independent contractors for any of the listed facilities in this definition are considered employees.
- H. **Emergency Medical Services (EMS) Organization** means an EMS ground ambulance service, non-transporting EMS service, air ambulance service, EMS training center, and/or emergency medical dispatch center, as defined in the Maine Emergency Services System Rules at 16-163 CMR Chapter 2.
- I. **Exemption** means a formal procedure to procure discharge from requirement to vaccinate.
- J. **Extreme Public Health Emergency** means a state of emergency declared by the Governor of the State of Maine pursuant to 22 MRS §802(2-A) and 37-B MRS §742 based upon an occurrence or imminent threat of widespread exposure to a highly infectious or toxic agent that poses an imminent threat of substantial harm to the population of the State.
- K. **Immunization** means a vaccine, antitoxin, or other substances used to increase an individual's immunity to disease.
- L. **Public Health Emergency** means a declaration by the Department, arising from an actual or threatened epidemic or public health threat for which the Department may adopt emergency rules for the protection of the public health, pursuant to 22 MRS § 802(2).
- M. **Public Health Official** means a local health officer, the Director of the Maine Center for Disease Control and Prevention (Maine CDC), or a designated employee or agent of the Maine Department of Health and Human Services (Department).
- N. **Public Health Threat** means a condition or behavior that can reasonably be expected to place others at significant risk of exposure to a toxic agent or environmental hazard or infection with a notifiable disease or condition, as defined in 22 MRS §801.

2. Immunizations Required

- A. Except as otherwise provided by law, each Designated Healthcare Facility in the State of Maine must require for all employees proof of immunization or documented immunity against:
1. Rubeola (measles);
 2. Mumps;
 3. Rubella (German measles);
 4. Varicella (chicken pox);
 5. Hepatitis B;
 6. Influenza; and
 7. COVID-19.
- B. Each EMS organization and Dental Health Practice must require for all employees a Certificate of Immunization against COVID-19.
- C. In accordance with 29 CFR §1910.1030(f)(1)(i) (effective July 6, 1992) of the Occupational Safety and Health Administration (OSHA) regulations, Designated Healthcare Facilities must make available the Hepatitis B vaccine to all healthcare workers with a risk of occupational exposure, provided at no cost to the employee and at a reasonable time and place.
- D. In the event of a Public Health Emergency or Extreme Public Health Emergency declared by the Governor, the Department may impose control measures, including, but not limited to, mass vaccinations and exclusions from the workplace, and may require immunization or documented immunity to protect public health and minimize the impact from the specific communicable disease.
- E. No Chief Administrative Officer may permit any employee to be in attendance at work without a certificate of immunization for each disease or other acceptable evidence of immunity to each disease (if applicable), or documentation of authorized exemption or declination in accordance with 22 MRS §802(4-B).

3. Exceptions and Declinations

An employee who does not provide proof of immunization or immunity for a vaccine required under this rule may be permitted to attend work if that employee is exempt in accordance with 22 MRS §802 (4-B). Documentation for an employee's immunization exemption must be maintained in the permanent health record for that employee for a minimum of six years after termination.

4. **Certification of Immunization and Proof of Immunity**

A. **Certificate of Immunization**

To demonstrate proper immunization against each disease, an employee must present the Designated Healthcare Facility, EMS Organization, or Dental Health Practice with a Certificate of Immunization from a physician, nurse or health official who has administered the immunization(s) to the employee. Physicians within their own practice may authorize their own employees to issue a certificate of immunization on behalf of the physician. The certificate must specify the immunization(s), and the date(s), including month and year, on which it was administered. Physicians, having reviewed official patient records created by another practitioner which indicate that a particular patient has received an immunization on a specified date, demonstrating at a minimum the month and year the immunization was given, may certify that the immunization was given. Adequately prepared secondary and/or collegiate school health records will also be considered acceptable for the purpose of meeting this requirement.

B. **Proof of Immunity**

To demonstrate that an employee is immune to any of the diseases, the employee must present the hospital/facility with laboratory evidence demonstrating immunity, or other acceptable evidence of immunity. (See Section 7-B Individual Health Records.)

5. **Immunization Dosage**

A. The following schedule contains the minimally required number of doses for the immunization(s) addressed under this rule:

1. **Rubeola (Measles):** Two doses of live measles vaccine given after the first birthday, with a minimum of four weeks separating the two doses.
2. **Mumps:** Two doses of live mumps vaccine given after the first birthday.
3. **Rubella (German Measles):** Two doses of live rubella vaccine given after the first birthday.
4. **Varicella (Chickenpox):** Two doses of live varicella vaccine given after the first birthday, with a minimum of four weeks separating the two doses.
5. **Hepatitis B:** Three doses of hepatitis B vaccine, the first two given one month apart and the third given five months after the second.
6. **Influenza:** Annual dose of inactivated influenza vaccine or live attenuated influenza vaccine.
7. **COVID-19:** The number of recommended doses shall be in accordance with the COVID-19 immunization manufacturer's Emergency Use Authorization or labelling. All employees of Designated Healthcare Facilities, EMS Organizations, and Dental Health Practices must have received their final dose by September 17, 2021.

In the event of a Public Health Emergency or Extreme Public Health Emergency declared by the Governor, the Maine CDC will specify the recommended dose for any vaccination imposed as a control measure to protect public health.

- B. Any such immunization must meet the standards for biological products which are approved by the United States Public Health Service.

6. Exclusions from the Workplace

A. Exclusion by order of Public Health Official

An employee not immunized or otherwise immune from a disease must 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 documented occurrence of a single case of rubeola (measles), mumps, rubella (German measles) or varicella (chickenpox) in a Designated Healthcare Facility or amongst its employees may be interpreted as a clear danger to the health of others.

The Chief Administrative Officer must 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. The following periods are defined as the "period of danger:"
 1. **Measles:** 15 days from the onset of symptoms from the last identified case;
 2. **Mumps:** 18 days from the onset of symptoms from the last identified case;
 3. **Rubella:** 23 days from the onset of symptoms from the last identified case;
 4. **Varicella:** 16 days from the onset of symptoms from the last identified case; and
 5. **COVID-19:** The duration of the Department's declared public health emergency, effective as of July 1, 2021.
- C. 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.
- D. 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 serologic evidence of immunity. Employees without serologic 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.

7. Records and Record Keeping

A. Designated Record Keeping

The Chief Administrative Officer in each Designated Healthcare Facility, EMS Organization, or Dental Health Practice must be responsible for the maintenance of

employee immunization records. The Chief Administrative Officer may designate a person to be responsible for record keeping.

B. Individual Health Records

Each Designated Healthcare Facility, EMS Organization, or Dental Health Practice must adopt a uniform, permanent health record for maintaining information regarding the health status of each employee. The immunization status of each employee with regard to each disease must be noted on the employee's health record. The health record of each employee must include, at a minimum, the month and year that each immunization was administered. Health records are to be retained a minimum of six years after the date the employee is no longer employed.

Where an exception has been granted for a reason authorized by law, the written request for exemption must be on file with the employee health record. Where laboratory or other acceptable evidence of immunity has been submitted, a copy of the documentation must also be on file.

C. List of Non-Immunized Employees

The Chief Administrative Officer or his/her designee in each Designated Healthcare Facility, EMS Organization, or Dental Health Practice, must keep a listing of the names of all employees within the facility who are not currently immunized or do not have documented serological immunity against each disease. This list must include the names of all employees with authorized exemptions from immunization as well as any who are otherwise not known to be immune and must state the reason that the employee is not immune. The purpose of the list is to provide an efficient means to rapidly contact non-immunized employees in the event of disease outbreaks and exclude them from the workplace as necessary.

D. Required Reports

1. Routine Reporting

The Chief Administrative Officer of each Designated Healthcare Facility, EMS Organization, or Dental Health Practice is responsible for submitting a summary report on the immunization status of all employees by December 15 of each calendar year, on a form prescribed by the Maine CDC. The summary report will include the following information at a minimum: specific contact information identifying the facility; the name of the Chief Administrative Officer; the total number of employees; the number of employees born on or after January 1, 1957; and the number of employees identified by vaccine type as either immunized, serological proof of immunity, exempt in accordance to law, having declined hepatitis B vaccine, or out of compliance. The summary report may be constructed so as to reflect meaningful data by groupings within the facility (*e.g.*, pediatric unit). Each report must be signed by the Chief Administrative Officer as a certification that the information is accurate.

2. Maine CDC Sample Survey

The Maine CDC will conduct periodic reviews by selecting a sample of employee health records for the purpose of comparing reported results against the criteria delineated in these rules. The results of this sample survey will be shared with the Chief Administrative Officer of the Designated Healthcare Facility, EMS Organization, or Dental Health Practice, for the purpose of identifying problem areas that may be occurring in the maintenance of their employee health records. Any published or unpublished reports of such sampling of employee health records must not identify individual employees and/or Designated Healthcare Facilities, EMS Organization, or Dental Health Practices directly or indirectly.

STATUTORY AUTHORITY:
22 MRS §§ 802(1), (3)

EFFECTIVE DATE:
April 16, 2002

NON-SUBSTANTIVE CORRECTIONS:
May 13, 2002 - corrected the spelling of DEPARTMENT in header, page 1
May 10, 2004 - spacing, capitalization and punctuation only

EFFECTIVE DATE:
October 6, 2009 to January 4, 2010: filing 2009-531 (EMERGENCY)
December 8, 2009 – filing 2009-644
April 14, 2021 – filing 2021-068 (ROUTINE TECHNICAL)
August 12, 2021 – filing 2021-166 (EMERGENCY ROUTINE TECHNICAL)