

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Interim Director of the District of Columbia Department of Health, pursuant to Section 1 of An Act To authorize the Commissioners of the District of Columbia to make regulations to prevent and control the spread of communicable and preventable diseases, approved August 11, 1939 (53 Stat. 1408; D.C. Official Code § 7-131)), Mayor's Order 98-141, dated August 20, 1998, Section 302(14) of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of the adoption, on an emergency basis, of the following amendments to Chapter 2 (Communicable and Reportable Diseases) of Subtitle B (Public Health and Medicine) of Title 22 (Health) of the District of Columbia Municipal Regulations (DCMR) and Chapter 40 (Health Occupations: General Rules) of Title 17 (Business, Occupations, and Professionals) of the DCMR.

The rulemaking modifies sections 230 (Mandatory COVID-19 Vaccination for Healthcare Workers) and 231 (Exemptions from Mandatory COVID-19 Vaccination for Healthcare Workers) of Chapter 2 (Communicable and Reportable Diseases) of Subtitle B (Public Health and Medicine) of Title 22 (Health) of the DCMR by including the Novavax COVID-19 vaccine among those vaccines that healthcare workers and other staff can receive to meet the imposed vaccination mandate, eliminates expired deadlines from prior rulemaking, and removes provisions that would subject individual licensees who are covered by the mandate to licensure denial or other disciplinary action for failure to comply with the mandate. Additionally, Chapter 40 (Health Occupations: General Rules) of Title 17 (Business, Occupations, and Professionals) of the DCMR will be modified by this rulemaking. Section 231 of Chapter 2 (Communicable and Reportable Diseases) of Subtitle B (Public Health and Medicine) of Title 22 (Health) of the DCMR is amended to allow healthcare facilities, rather than the Department of Health, to determine whether an exemption to the vaccine mandate should be granted to a requesting employee, contractor, volunteer, or privilege or credential holder of that healthcare facility.

The spread of COVID-19, caused by SARS-CoV-2, remains an imminent threat to the health, safety, and welfare of District residents, visitors, and persons providing healthcare in the District of Columbia. The spread of COVID-19 continues to impair the ability of the District's healthcare system to robustly respond to COVID-19 cases and all other healthcare needs. While the rates of infection and hospitalization for COVID-19 in the District of Columbia have stabilized, a revision and clarification of the processes and standards utilized by the Department of Health to continue mitigation of the spread of COVID-19 is necessary to ensure that healthcare facilities will continue to safely provide needed healthcare services through the use of screened and qualified staff. Accordingly, the Interim Director has determined it necessary for the immediate preservation of the health of District residents that these rules be adopted on an emergency basis.

This emergency rulemaking was adopted on November 8, 2022 and became effective immediately on that date. The emergency rulemaking will expire one hundred twenty (120) days from the date of adoption, on March 8, 2023, or upon publication of a final rulemaking in the *D.C. Register*, whichever occurs first.

The Interim Director also gives notice of her intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

Chapter 2, COMMUNICABLE AND REPORTABLE DISEASES, of Subtitle B, PUBLIC HEALTH AND MEDICINE, of Title 22 DCMR, HEALTH, is amended as follows:

Section 230, MANDATORY COVID-19 VACCINATION FOR HEALTHCARE WORKERS, is revised to read as follows:

230.1 Each of the persons described in § 230.2, unless granted an exemption under § 231 of this chapter, shall:

- (a) Receive the first and second dose of the Pfizer-BioNTech COVID-19 vaccine, or receive a second dose of a different COVID-19 vaccine listed in this subsection, within the time period established in the dosing schedule for the vaccine;
- (b) Receive the first dose and second dose of the Moderna COVID-19 vaccine, or a dose of a different COVID-19 vaccine listed in this subsection, within the time period established in the dosing schedule for the vaccine;
- (c) Receive one (1) dose of the Janssen COVID-19 vaccine; or
- (d) Receive the first and second dose of the Novavax COVID-19 vaccine or receive a second dose of a different COVID-19 vaccine listed in this subsection, within the time period established in the dosing schedule for the vaccine.

230.2 The following persons who have been hired by, employed by, contracted with, or granted privileges or credentials by facilities governed by § 11200 of Subtitle B (Public Health and Medicine) of Title 22 (Health) of the District of Columbia Municipal Regulations (“DCMR”), are subject to the requirements set forth in § 230.1:

- (a) Each person licensed pursuant to section 501(a)(1) of the District of Columbia Health Occupations Revisions Act of 1985 (“Health Occupations Act”), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1205.01(a)(1)), to practice acupuncture, advanced practice addiction counseling, assisted living administration, audiology, certified midwife, certified professional midwife, chiropractic, cytotechnology, dental hygiene, dentistry, dietetics, histotechnology, home health care administration, marriage and family therapy, massage therapy, medical laboratory technology, medicine, naturopathic medicine, nutrition, nursing home administration, occupational therapy, optometry, pharmaceutical detailing,

pharmacy, physical therapy, podiatry, practical nursing, professional counseling, psychology, registered nursing, respiratory care, social work, speech-language pathology, veterinary medicine, or to practice as an anesthesiologist assistant, athletic trainer, personal fitness trainer, pharmacy intern, physician assistant, physical therapy assistant, polysomnographic technologist, occupational therapy assistant, surgical assistant, professional art therapy, or as a trauma technologist, or to practice any other profession for which licensure is required by section 501(a)(1) of the Health Occupations Act (D.C. Official Code § 3-1205.01(a)(1));

- (b) Each person registered pursuant to section 501(a)(2) of the Health Occupations Act (D.C. Official Code § 3-1205.01(a)(2)) to practice as an audiology assistant, dental assistant, nursing assistive personnel (including certified nurse aide and certified home health aide), pharmacy technician, phlebotomist, psychology associate, polysomnographic technician or trainee, speech-language pathology assistant, or speech-language pathology clinical fellow, or to practice any other profession for which registration is required by § 501(a)(2) of the Health Occupations Act (D.C. Official Code § 3-1205.01(a)(2));
- (c) Each person certified pursuant to § 501(a)(3) of the Health Occupations Act (D.C. Official Code § 3-1205.01(a)(3)) to practice as an addiction counselor I, addiction counselor II, advanced practice registered nursing, veterinary technician, or a veterinary euthanasia technician, or to practice any other profession for which certification is required by § 501(a)(3) of the Health Occupations Act (D.C. Official Code § 3-1205.01(a)(3));
- (d) Each person certified pursuant to section 6 of the Emergency Medical Services Act of 2008 (“Emergency Medical Services Act”), effective March 25, 2009 (D.C. Law 17-357; D.C. Official Code § 7-2341.05), to perform the duties of emergency medical services personnel;
- (e) Each person certified pursuant to section 7 of the Emergency Medical Services Act (D.C. Official Code § 7-2341.06) to perform the duties of flight emergency medical services personnel;
- (f) Each person certified pursuant to section 9 of the Emergency Medical Services Act (D.C. Official Code § 7-2341.08) to perform the duties of an emergency medical services instructor; and
- (g) Each person who is an “unlicensed person” as that term is defined by section 2(7) of the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code § 44-551(7)), regardless of whether the person is an employee or contractor of a “facility,” as that term is defined by section by section 2(1C) of the Health-Care Facility Unlicensed Personnel Criminal Background

Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code § 44-551(1C)). The term “unlicensed person” includes, but is not limited to, unlicensed nurse aides, orderlies, assistant technicians, attendants, home health aides, personal care aides, medication aides, geriatric aides, medical assistants, health technicians, other health aides, housekeeping staff, maintenance staff and administrative staff.

- 230.3 An employer or contractor may impose COVID-19 vaccination requirements on its employees and contractors that are stricter than the requirements imposed by this section, such as by requiring its employees and contractors to obtain additional vaccinations against COVID-19 or requiring that unvaccinated employees or contractors be tested regularly for COVID-19.
- 230.4 An employer or contractor may impose COVID-19 vaccination requirements on its employees and contractors that are stricter than the requirements imposed by this section, such as by requiring its employees and contractors to be vaccinated against COVID-19 by a date earlier than required by this section, not providing an emergency use authorization exemption from the COVID-19 vaccination requirement, and requiring that unvaccinated employees or contractors be tested regularly for COVID-19.

Section 231, EXEMPTIONS FROM MANDATORY COVID-19 VACCINATION FOR HEALTHCARE WORKERS, is amended to read as follows:

231 EXEMPTIONS FROM MANDATORY COVID-19 VACCINATION FOR HEALTHCARE WORKERS

- 231.1 A person who is otherwise required to be vaccinated against COVID-19 pursuant to § 230 shall be exempt from the COVID-19 vaccination requirement if the person is granted an exemption from a healthcare facility governed by § 11200 of Subtitle B (Public Health and Medicine) of Title 22 (Health) of the District of Columbia Municipal Regulations (“DCMR”) that has hired, employed, contracted with, or granted privileges or credentials to the individual, for one of the following reasons:
 - (a) The person objects in good faith and in writing that the person’s vaccination against COVID-19 would violate a sincerely held religious belief and the vaccination would in fact violate a sincerely held religious belief of the person;
 - (b) The person has obtained and submitted written certification from a physician, or other licensed health professional who may order an immunization, that being vaccinated against COVID-19 is medically inadvisable due to the person’s medical condition and it is in fact medically inadvisable for the person to receive a COVID-19 vaccine due to the person’s medical condition. If the condition making the vaccine medically inadvisable is temporary, the physician or other licensed health professional

should specify in the certification the date on which, or the change in condition upon which, taking the vaccine would no longer be medically inadvisable; or

- (c) The person has submitted documentation showing that the person has received a COVID-19 vaccine approved by the World Health Organization.

231.2 A person requesting an exemption pursuant to § 231.1 must submit documentation to the healthcare facility governed by § 11200 of Subtitle B (Public Health and Medicine) of Title 22 (Health) of the DCMR that has hired, employed, contracted with, or granted privileges or credentials to the individual, that satisfactorily demonstrates that the exemption is warranted.

231.3 An exemption requested pursuant to § 231.1 shall be effective upon a written document issued by a healthcare facility governed by § 11200 of Subtitle B (Public Health and Medicine) of Title 22 (Health) of the DCMR that has hired, employed, contracted with, or granted privileges or credentials to the individual, granting the exemption.

231.4 An exemption for the COVID-19 vaccination previously granted by the Director of the District of Columbia Department of Health, or his or her designee, prior to the effective date of this rulemaking, shall remain effective for two (2) years after it is granted. Thereafter, a person who is otherwise required to be vaccinated against COVID-19 pursuant to § 230 shall be exempt from the COVID-19 vaccination requirement if the person is granted an exemption from a healthcare facility governed by § 11200 of Subtitle B (Public Health and Medicine) of Title 22 (Health) of the DCMR that has hired, employed, contracted with, or granted privileges or credentials to the individual.

Chapter 40, HEALTH OCCUPATIONS: GENERAL RULES, of Title 17, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, of the District of Columbia Municipal Regulations is amended as follows:

Section 4019, SARS-CoV-2/COVID-19 OBLIGATIONS OF HEALTH PROFESSIONALS, is amended to read as follows:

4019 SARS-CoV-2/COVID-19-RELATED OBLIGATIONS OF HEALTH PROFESSIONALS

4019.1 Each person required to be licensed pursuant to section 501(a)(1) of the District of Columbia Health Occupations Revisions Act of 1985 (“Health Occupations Act”), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1205.01(a)(1)), each person required to be registered pursuant to section 501(a)(2) of the Health Occupations Act (D.C. Official Code § 3-1205.01(a)(2)), and each person required to be certified pursuant to section 501(a)(3) of the Health Occupations Act (D.C. Official Code § 3-1205.01(a)(3)), shall:

- (a) Comply with each Mayor's Order related to a public emergency, or a public health emergency declared in response to the impacts of COVID-19;
- (b) Comply with each administrative order and each guidance issued by the Department of Health related to SARS-CoV-2 or COVID-19; and
- (c) Not employ or contract with any person after October 1, 2021, who is required to be vaccinated against COVID-19 pursuant to § 230 of Subtitle B (Public Health and Medicine) of Title 22 (Health) of the District of Columbia Municipal Regulations and who is not so vaccinated, unless the person has been granted an exemption from the vaccination requirement pursuant to § 231 of Subtitle B (Public Health and Medicine) of Title 22 (Health) of the District of Columbia Municipal Regulations.

All persons desiring to comment on the subject of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of the publication of this notice in the *D.C. Register*. Comments should be sent to Phillip Husband, Department of Health, Office of the General Counsel, 899 North Capitol Street, N.E., 6th Floor, Washington, D.C. 20002, or by email to Angli.Black@dc.gov. Copies of the proposed rules may be obtained during the hours of 9:00 AM to 5:00 PM, Monday through Friday, excluding holidays, by contacting Angli Black, Paralegal Specialist, at (202) 442-5977 or Angli.Black@dc.gov.