

# MEMORANDUM

**Department of Aging and Disability Services (DADS)  
Regulatory Services Policy \* Survey and Certification Clarification (S&CC)**

**TO:** Regulatory Services  
Regional Directors and State Office Managers

**FROM:** Veronda L. Durden  
Assistant Commissioner  
Regulatory Services

**SUBJECT:** **S&CC 13-03** – Guidelines for Vaccine-Preventable Diseases Policy

**APPLIES TO:** Assisted Living Facilities (ALFs), Licensed Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICFs/IID) and Nursing Facilities (NFs)

**DATE:** **March 21, 2013**

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This memorandum provides guidance and answers to frequently asked questions about the development and implementation of a policy for vaccine-preventable diseases based on the Centers for Disease Control and Prevention (CDC) recommendations, as required in Texas Health and Safety Code (HSC) Chapter 224. Vaccine-preventable diseases are defined as those diseases included in the most current recommendations of the Advisory Committee on Immunization Practices (ACIP) of the CDC. The following link will direct you to the ACIP Comprehensive Recommendations page, which includes a tab for Health Care Personnel (HCP) recommendations:

<http://www.cdc.gov/vaccines/pubs/ACIP-list.htm>

HSC Chapter 224 and the Texas Department of Aging and Disability Services (DADS) rules for ALFs, NFs and ICFs/IID require each of these facilities to:

1. Determine risk factors based on the facility or region and the characteristics of the individuals residing in the facility and in the community.
2. Specify the vaccines that a covered employee or contractor must receive, based on the facility's determination and assessment of the risk the employee or contractor presents to residents and the community.
3. Ensure each covered employee or contractor has received the vaccines and maintain a record of compliance or exemption for that person.

According to DADS rules, the policy must:

- specify the required vaccines;
- include procedures for the facility to verify that an employee or contractor has received the required vaccines;
- include procedures for the facility to exempt an employee or contractor from the required vaccines for the medical conditions identified as contraindications or

- precautions by the CDC;
- include procedures the exempt employee or contractor must follow to protect residents from exposure to disease, such as the use of protective equipment, based on the level of risk the employee or contractor presents to the residents;
  - prohibit discrimination or retaliatory action against an employee or contractor who is exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the CDC. The required use of protective medical equipment (such as gloves and masks), reassignment to job duties that do not involve resident care, or other procedures to protect residents from exposure to disease may not be considered retaliatory action;
  - require the facility to maintain a written or electronic record of each employee's or contractor compliance with or exemptions from the policy; and
  - include disciplinary actions the facility may take against an employee or contractor who fails to comply with the policy.

The policy may:

- include procedures for an employee or contractor to be exempt from the required vaccines based on reasons of conscience, including religious beliefs; and
- prohibit an employee or contractor who is exempt from the required vaccines from having contact with residents during a public health disaster, as defined in HSC §81.003.

Surveyors will request and review the facility's policies and practices to ensure that all elements of the rules have been addressed by the facility. Citations will be based on a failure to have a policy or a failure to implement the policy and protect residents.

### Frequently Asked Questions

**1. Does this requirement apply to health care providers that contract with a resident to provide services?**

No. This requirement applies to employees of a facility and contractors of a facility who provide direct care to a resident. This requirement does not apply when a resident has an agreement with an outside resource, such as a home health agency, to perform additional services.

**2. Can a facility require outside resident-acquired resources, such as a home health or hospice agency's employees, to follow a vaccine-preventable disease policy?**

Yes. A facility may have a policy that requires an outside resource, who has made a written agreement or contract directly with a resident, to provide evidence that certain measures have been taken to protect the resident against vaccine-preventable diseases or other infections identified by the facility. The policy must be enforced evenly among all outside resident-acquired resources; the facility may not apply the policy to some entities and not others.

**3. Does this policy apply to a contractor who delivers services outside of the facility?**

Yes. If the contract is with the facility, the policy will apply to a contractor providing direct patient care.

**4. Who is required to receive vaccines for vaccine-preventable diseases?**

This may vary based on the facility's assessment and policy. But, at a minimum, the policy must apply to covered individuals as defined in the HSC Chapter 224.

HSC §224.002(b)(1) further states that “the policy must require covered individuals to receive vaccines *for the vaccine preventable diseases specified by the facility based on the level of risk the individual presents to patients* by the individual's routine and direct exposure to patients” (emphasis added).

**5. Are all CDC-recommended vaccines required to be included in the policy?**

No. Each facility must assess the level of risk covered individuals present to residents and develop a policy based on this assessment.

**6. Is a hospice employee who works in a NF, providing care under a contract with DADS or a resident, considered a “covered individual” and required to receive the vaccines specified in the NF’s vaccine-preventable disease policy?**

No. Hospice employees are subject to hospice laws and rules. Because the hospice laws and rules do not require a policy for vaccine-preventable diseases or define covered individuals, as noted in this question, hospice employees are not required to be vaccinated. However, an NF may develop and implement a policy requiring hospice employees to obtain certain vaccines.

The rules about a vaccine-preventable disease policy became effective June 1, 2012. However, facilities were not required to have a policy on vaccine preventable diseases in effect until September 1, 2012. The vaccine preventable disease policy rules for the referenced programs are located in the following sections:

- ALF: [Texas Administrative Code, Title 40, Part 1, Chapter 92, §92.41\(r\)](#) (relating to Vaccine Preventable Diseases)
- ICF/IID: [40 TAC §90.329](#) (relating to Vaccine Preventable Diseases)
- NF: [40 TAC §19.1601\(e\)](#) (relating to Vaccinations)

The following link is for HSC Chapter 224:

<http://www.statutes.legis.state.tx.us/Docs/HS/htm/HS.224.htm>.

If you have questions about this memorandum, please contact a policy specialist in the Policy, Rules and Curriculum Development unit at 512-438-3161.