

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The 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 *et seq.*) (2018 Repl.)), Mayor's Order 98-141, dated August 20, 1998, 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) (2016 Repl.)), 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).

The rulemaking modifies sections 230 and 231 of Chapter 2 (Communicable and Reportable Diseases) of Subtitle B (Public Health and Medicine) of Title 22 (Health) of the DCMR to require health care workers to be up to date on their COVID-19 vaccine, including boosters and annual vaccinations. The phrase "up to date" means a person has received all recommended COVID-19 vaccine doses, including any booster dose(s) and annual vaccine doses, when eligible for such doses, as set forth by the Centers for Disease Control and Prevention (CDC). Sections 230 and 231 were published in the *D.C. Register* at 68 DCR 013014 on December 10, 2021. Copies of the existing rules may be obtained between 9:00 AM and 5:00 PM, Monday through Friday, excluding holidays, by contacting Angli Black, Paralegal Specialist, at (202) 442-5977 or Angli.Black@dc.gov. The existing rules are also available online at <https://dcregs.dc.gov/Common/NoticeDetail.aspx?NoticeId=N116496>.

Emergency rulemaking action is necessary because the spread of a contagious disease such as COVID-19, caused by SARS-CoV-2, is an imminent threat to the health, safety, and welfare of District residents, visitors, and persons providing health care in the District of Columbia. Although existing Department of Health rules require that health professionals receive an initial course of vaccination against COVID-19, booster shots were not required until this emergency rulemaking was promulgated. Although COVID-19 vaccines remain effective in preventing severe disease, recent data suggest their effectiveness at preventing infection or severe illness wanes over time. The recent emergence of the Omicron variant further emphasizes the importance of vaccination, boosters, and prevention efforts needed to protect against COVID-19. Data from clinical trials showed that a booster shot increased the immune response in trial participants. With an increased immune response, people should have improved protection against getting infected with COVID-19. Clinical trials also showed that a booster shot helped prevent severe disease. Data available to the Department of Health indicates an alarming number of health professionals who are licensed, registered, or certified by the Department of Health, persons who are certified by the Department of Health to provide emergency medical services, and unlicensed personnel have not received a booster dose. Lack of up to date vaccination by these health care workers can easily lead to the spread of SARS-CoV-2 among vulnerable patients receiving

care from these health care workers and among the pool of health care workers. The vast majority of new infections of SARS-CoV-2 is among unvaccinated persons or vaccinated persons who have not received recommended booster doses. Too many health care workers, especially in long-term care settings, have not received their boosters. Health care workers who are not up to date with their COVID-19 vaccinations cannot be permitted to remain a major potential source of the spread of SARS-CoV-2. Moreover, it is vital for persons working in health care and ancillary fields to be up to date with their vaccinations against COVID-19 in order to protect themselves, so that the ability of the District's health care system to robustly respond not only to COVID-19 cases, but to all health care needs, is protected. Immediate action is required to protect District residents, visitors, and persons providing health care in the District of Columbia by preventing and controlling the spread of a contagious disease for which effective vaccines currently exist.

Therefore, it is necessary that health professionals who are licensed, registered, or certified by the Department of Health, persons who are certified by the Department of Health to provide emergency medical services, and unlicensed personnel receive vaccinations against COVID-19 and are up to date on vaccinations against COVID-19.

This emergency rulemaking was adopted on February 8, 2022 and became effective immediately on that date. The emergency rulemaking will expire one hundred twenty (120) days after the date of adoption, on June 7, 2022, or upon publication of a final rulemaking in the *D.C. Register*, whichever occurs first.

The Director also gives notice of the intent to take final rulemaking action to adopt these proposed rules as final 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 HEALTH CARE WORKERS, is amended as follows:

Subsection 230.1 is amended to read as follows:

- 230.1 (a) On or before September 30, 2021, each of the persons described in § 230.2, unless granted an exemption under § 231 of this chapter, shall:
- (1) Receive the first dose of the Pfizer-BioNTech COVID-19 vaccine, and receive the second dose of the Pfizer-BioNTech COVID-19 vaccine within the time period established in the dosing schedule for the vaccine; or

- (2) Receive the first dose of the Moderna COVID-19 vaccine, and receive the second dose of the Moderna COVID-19 vaccine within the time period established in the dosing schedule for the vaccine; or
 - (3) Receive one (1) dose of the Janssen COVID-19 vaccine.
- (b) On or before March 1, 2022, each of the persons described in § 230.2, unless granted an exemption under § 231 of this chapter, shall be up to date with their COVID-19 vaccine doses, and shall thereafter remain up to date with their COVID-19 vaccine doses.

Subsection 230.6 is amended to read as follows:

- 230.6 For initial applications submitted on or after September 30, 2021, the Department may deny an application for a license, certification, or registration listed in § 230.2 if the person:
- (a) Has not received a first dose of the Pfizer-BioNTech, Moderna, or Janssen COVID-19 vaccine, or other COVID-19 vaccine approved by the U.S. Food and Drug Administration (FDA) on a permanent or emergency use basis;
 - (b) Has not received the second dose of the Pfizer-BioNTech or Moderna COVID-19 vaccine, or other COVID-19 vaccine approved by the FDA on a permanent or emergency use basis within the time period established in the dosing schedule for the vaccine; or
 - (c) Is not up to date with all COVID-19 vaccine doses recommended by the Centers for Disease Control and Prevention (CDC) at the time of application, if the application is submitted on or after March 1, 2022.

A new subsection 230.9 is added to read as follows:

- 230.9 For purposes of this section, the phrase “up to date” means that a person has received all recommended COVID-19 vaccine doses, including any booster dose(s) or annual vaccines, when eligible, as set forth by the CDC.

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

Subsection 231.2 is amended to read as follows:

- 231.2 A person who is otherwise required to be vaccinated against COVID-19 pursuant to § 230 may be granted an exemption from the requirement if the

person files a request for an exemption with the Director in accordance with § 231.3, and is granted the request, based on the person's vaccination outside the United States with a COVID-19 vaccine approved by the World Health Organization (WHO), if:

- (a) The person is up to date by having received all recommended COVID-19 vaccine doses, including any booster dose(s) or annual vaccines, when eligible, as set forth by the WHO, and the person agrees to remain up to date by receiving all recommended COVID-19 vaccine doses on an ongoing basis; or
- (b) For an exemption request filed before March 1, 2022, the person agrees to become up to date by receiving all recommended COVID-19 vaccine doses, including any booster dose(s) or annual vaccines, when eligible, as set forth by the WHO by March 1, 2022, and the person agrees to remain up to date by receiving all recommended COVID-19 vaccine doses on an ongoing basis.

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.