

**THE IMMUNIZATION LAW AND POLICY PROGRAM  
DEPARTMENT OF HEALTH POLICY  
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THE GEORGE WASHINGTON UNIVERSITY**

# **STATE LAW & VACCINATION:**

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## **Requirements for Residents & Staff of Long-Term Care Facilities**

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This study examines state laws that address the provision of vaccinations recommended by the Advisory Committee on Immunization Practices (ACIP) to residents and/or staff of state-licensed long-term care facilities (LTCF).

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## **SUMMARY OF FINDINGS**

This study examines state laws governing how long-term care facilities (LTCFs) manage vaccinations for residents and/or staff as of Fall 2013. The laws were compared to the Medicare/Medicaid Conditions of Participation (COP) for LTCFs. The COP are rules LTCFs must follow in order to qualify for reimbursement from Medicaid and Medicare programs. The COP are: 1) assessing residents to determine their immunization status, 2) providing residents with education regarding vaccines, 3) implementing methods for residents to refuse vaccinations, 4) providing or obtaining vaccines for all eligible residents, 5) adhering to Advisory Committee on Immunization Practices (ACIP) recommendations, and 6) maintaining appropriate documentation of vaccination status of residents.

### **State Law and LTCF Vaccination Policy**

As of Fall 2013, 32 of 51 states, (the District of Columbia is counted as a state) have enacted laws addressing how LTCFs must manage vaccinations for residents and/or staff. Twenty-nine of the 32 laws apply to residents and 17 include staff. Three states (3/29) address only staff. Nineteen states (19/51) do not have laws addressing vaccination policy in LTCFs. **TABLE 3**

### **Assessment of Vaccination Status**

The COP require physicians to review the resident's total program of care and permit vaccinations after an assessment for contraindications. Twelve of 32 states address assessment of vaccination status for LTCF residents and/or staff. All 12 states address residents, while 7 states (7/12) include staff. **TABLE 3**

### **Vaccine-Related Education**

The COP acknowledge that residents have the right to be fully informed of their total health status and require LTCFs to inform each resident of available services at specified times.

Fourteen of 32 states require residents and/or staff to receive education related to recommended vaccinations, typically influenza and pneumococcal. Seven of these 14 states address both staff and residents and 3/14 states require LTCFs to provide education only to residents. Finally, 4/14 states have established policies related to education for staff only. **TABLE 3**

### **Exemption Policy**

The COP recognize that residents have the right to refuse treatment. Twenty-six of 32 states have incorporated at least one of 4 options residents and/or staff may assert when requesting a vaccination exemption: 1) general refusal, 2) personal belief, 3) religious belief, or 4) medical contraindication. Three states address only staff (3/26), eight only residents (8/26), and fifteen states refer to both staff and residents (15/26). Most states permit refusals based on

combinations of options. Medical contraindication is the most frequently allowed exemption (24/26) followed by a general refusal (20/26). **TABLE 3**

### **Vaccine Distribution**

The COP require LTCFs to “provide or obtain preventive and general medical care . . . that at a minimum include . . . (ii) Immunizations. All 32 states that address vaccination requirements in LTCFs, address how facilities will manage distribution of vaccines, adopting different terminology. Sixteen states (16/32) refer to both residents and staff, 13/32 states address residents only, and 3/32 states include provisions concerning staff only. **TABLE 3**

Twenty of 32 states have adopted the language used in the COP, or other terms that affirmatively require employers to ensure vaccine administration, including: 1) “provide”; 2) “provide or obtain”; 3) “arrange”; or 4) “administer”. **TABLE 6**

Fifteen of 32 states have adopted additional terms that do not clearly define a facility’s obligation and could be interpreted to permit an LTCF to avoid direct involvement in a vaccination program. These terms include: “make available,” “offer”.

Seven of 32 states have adopted other terms when outlining a facility’s obligations related to vaccine distribution to residents and/or staff. For example, an LTCF in Connecticut must “assure that each patient is “protected by adequate immunization”.

Three states authorize attending physicians to delegate vaccination services to qualified non-physician health practitioners. These states permit LTCFs to develop standing orders programs for the administration of influenza and pneumococcal polysaccharide vaccines.

### **Standard of Care**

The COP require facilities to use the recommendations of the Centers for Disease Control and Prevention’s (CDC) Advisory Committee on Immunization Practices or the Committee on Control of Infectious Diseases of the American Academy of Pediatrics as the guide when developing a vaccination program. Twenty-four of 32 states have incorporated the recommendations and 23/24 states apply to residents. Twelve states (12/24) include staff. **TABLE 3**

### **Documentation of Vaccination and Recordkeeping**

The COP require managing physicians to sign and date all vaccination orders with the exception of influenza and pneumococcal polysaccharide vaccines. Twenty-two of 32 states address how facility management must document or report information related to vaccinations for residents and/or staff. Twenty of the 22 states (20/22) address documentation of resident vaccinations (all except Colorado and Maine, which reference staff only). Sixteen states (16/22) include requirements for documentation of staff immunizations. **TABLE 3**

## **INTRODUCTION**

This study examines state laws that address how long-term care facilities (LTCFs) manage vaccination services for residents and/or employees. In 2011, there were over 1.4 million individuals residing in 15,674 Medicaid and/or Medicare certified nursing homes.<sup>1</sup> Residents of long-term care facilities require medical and non-medical care due to a chronic condition that limits their ability to successfully manage the activities of daily living (ADLs). Typical ADLs include dressing, bathing, and using the bathroom.<sup>2</sup>

Recommended vaccinations are an important component of the medical plans for residents of LTCFs who are at significantly increased risk for complications of influenza and pneumococcal disease. Health care personnel (HCP) are also at higher risk due to their work settings and may contract vaccine preventable diseases and transmit them to coworkers, residents and others in the wider community.<sup>3</sup>

## **LONG-TERM CARE FACILITIES AND VACCINE RECOMMENDATIONS**

The Healthy People 2020 annual influenza vaccination coverage goal is 90% for institutionalized adults, age 18 and over.<sup>4</sup> The Advisory Committee on Immunization Practices (ACIP) recommends influenza vaccination for all LTCF residents “[i]f possible . . . before influenza season.”<sup>5</sup> Other recommended vaccines include pneumococcal polysaccharide.<sup>6</sup> Finally, the Centers for Medicare and Medicaid Services (CMS) has required LTCFs to ensure that residents receive influenza and pneumococcal vaccinations since 2005.<sup>7</sup>

The CDC recommends “any facility or organization that provides direct patient care to formulate a comprehensive vaccination policy for all HCP”.<sup>8</sup> Routinely recommended vaccines for employees of LTCFs include hepatitis B, seasonal influenza, measles, mumps, rubella, pertussis, and varicella vaccines.<sup>9</sup>

## **DEFINING LONG-TERM CARE FACILITIES**

Long-term care facilities that wish to receive Medicaid and/or Medicare certification must comply with federal requirements. Federal law defines skilled nursing facilities (SNF) and nursing facilities (NF) as:

[A]n institution (or a distinct part of an institution) which – (1) is primarily engaged in providing to residents - (A) skilled nursing care and related services for residents who require medical or nursing care, or (B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons, and is not primarily for the care and treatment of mental diseases . . . .<sup>10</sup>

The term excludes institutions that have a primary purpose of furnishing health or rehabilitative services to persons with mental retardation or related conditions.

**CENTERS FOR MEDICARE AND MEDICAID SERVICES CONDITIONS OF PARTICIPATION**

CMS governs how LTCFs must operate and has developed a series of requirements referred to as Conditions of Participation (COP). All facility management must comply with these COP in order to receive payment for services provided to Medicare and Medicaid beneficiaries.<sup>11</sup> **TABLE 1**

<b>TABLE 1 – CMS CONDITIONS OF PARTICIPATION</b>	
<b>ELEMENT</b>	<b>CMS DEFINITION</b>
<b>Assessment</b>	(b) Physician visits. The physician must (1) Review the resident’s total program of care . . . and (3) Sign and date all orders with the exception of influenza and pneumococcal polysaccharide vaccines, which may be administered per physician-approved facility policy after an assessment for contraindications. . . <b>§ 483.40 (b) (1); (3)</b>
<b>Education</b>	(3) The resident has the right to be fully informed in language that he or she can understand of his or her total health status, including but not limited to, his or her medical condition . . . (6) The facility must inform each resident before, or at the time of admission, and periodically during the resident’s stay, of services available in the facility and of charges for those services. <b>§ 483.10 (b)(3); (6)</b>
<b>Exemption</b>	(4) The resident has the right to refuse treatment . . . <b>§483.10 (b)(4)</b>
<b>Vaccine Distribution</b>	(3) The facility must provide or obtain preventive and general medical care as well as annual physical examinations of each client that at a minimum include the following . . . (ii) Immunizations . . . <b>§ 483.460(a) (3)</b>
<b>ACIP Standard</b>	(3) The facility must provide or obtain . . . Immunizations, using as a guide the recommendations of the Public Health Service Advisory Committee on Immunization Practices or of the Committee on the Control of Infectious Diseases of the American Academy of Pediatrics . . . <b>§ 483.460(a)(3)(ii)</b>
<b>Records</b>	(b) Physician visits. The physician must . . .(3) sign and date all orders with the exception of influenza and pneumococcal polysaccharide vaccines, which may be administered per physician approved facility policy after an assessment for contraindications . . . <b>§ 483.40 (b)</b>
<b>SOURCE: GWU/SPHHS State Law and LTCF Vaccination of Residents/Staff 2013</b>	

## THE ROLE OF STATE LAW IN REGULATING VACCINATION IN LTCFS

All states have enacted laws governing how LTCFs must operate. As of the Fall 2013, 32 of 51 states (the District of Columbia is counted as a state) had laws controlling how LTCFs must manage vaccination of staff and/or residents. Twenty-nine of these 32 states apply to residents and 17/32 states include staff. Nineteen of 51 states did not have a relevant law.

**TABLE 2**

<b>TABLE 2 STATE LAW AND VACCINATIONS OF STAFF AND/OR RESIDENTS OF LTCFS</b>	
<b>Applies to Staff n = 17/32</b>	Alabama, Arkansas, Colorado, Florida, Kentucky, Maine, Maryland, New Hampshire, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah
<b>Applies to Residents n = 29/32</b>	Alabama, Arizona, Arkansas, California, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Virginia, Washington
<b>No Law n = 19/51</b>	Alaska, Delaware, District of Columbia, Hawai'i, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Mississippi, Missouri, Nevada, New Mexico, North Dakota, South Carolina, Vermont, West Virginia, Wisconsin, Wyoming
<b>SOURCE: GWU/SPHHS State Law and LTCF Vaccination of Residents/Staff 2013</b>	

### State Definitions of LTCFs

State laws explicitly cover more types of facilities than the federal statute, thereby providing protection for those residents and/or staff who are excluded by federal law (such as individuals with cognitive impairments). This report includes all facilities identified by state laws, including: assisted living facility, dementia care facility, home for the aged, home health agency, home health aide agency, home health care agency, homemaker, intermediate care facility for the mentally retarded (ICF/MR), licensed nursing facility, mental health facility, multi-level health care facility, nursing home, residential care facility, rest home, skilled nursing facility, specialty care assisted living facility, state-operated facility, and substance abuse treatment facility.

### Gaps Between Federal and State Law

State laws are the only option to ensure access to vaccinations for groups that are not included in the federal medical care guidelines created to protect Medicaid and Medicare beneficiaries. The excluded groups are: 1) all persons who reside in LTCFs dedicated to the care of the mentally disabled, 2) all persons who reside in non-Medicare-certified LTCFs, and 3) all employees who work in states that fail to maintain laws requiring vaccinations at the ACIP standard.

## **METHODS**

This study was conducted by comparing pertinent state laws to the Medicare/Medicaid COP for LTCFs. The study was completed in a 4-step process as follows:

A. The COP elements outlined below were the basis for the review instrument:

1. Whether facilities must assess new residents/staff vaccination status within a specified period of time after admission or employment.
2. Whether facilities must provide education to residents/staff regarding needed vaccines and their value.
3. Whether facilities must permit residents/staff to decline any vaccination.
4. Whether facilities must dispense all recommended vaccinations to residents/staff.
5. Whether facilities must vaccinate according to standards set by the ACIP.
6. Whether the facility must maintain vaccination records for residents/staff.

B. Using a legal electronic database, we identified the 32 state laws that address the provision of vaccinations to LTCF residents and/or staff. Search terms included “long term care facilities,” “nursing homes,” “vaccination,” “immunization,” and “long term care and immunization”.

C. The separate duties prescribed under the laws were identified and charted. Pertinent language is provided in Appendix 1.

D. The statutory duties were reviewed against the 6 elements adopted from the Medicare/Medicaid COP.

Table 3 shows how the laws address each element of the Conditions of Participation.

<b>TABLE 3 HOW STATES ADDRESS CONDITIONS OF PARTICIPATION FOR LTCFS</b>												
	ASSESS		EDUCATE		EXEMPTION		VACCINE DISTRIBUTION		ACIP STANDARD		RECORDS	
	<i>Staff</i>	<i>Res.</i>	<i>Staff</i>	<i>Res.</i>	<i>Staff</i>	<i>Res.</i>	<i>Staff</i>	<i>Res</i>	<i>Staff.</i>	<i>Res</i>	<i>Staff</i>	<i>Res.</i>
AL	•	•	•	•	•	•	•	•			•	•
AZ						•		•				•
AR					•	•	•	•		•	•	•
CA		•	•		•	•	•	•		•	•	•
CO					•		•		•		•	
CT						•		•		•		•
FL		•	•			•	•	•	•	•		•
GA						•		•				
IL		•	•		•	•	•	•		•	•	•
IN		•				•		•		•		
IA								•		•		•
KY	•	•	•	•	•	•	•	•	•	•	•	•
ME					•		•				•	
MD	•	•	•	•	•	•	•	•	•	•	•	•
MI				•				•		•		
MT								•		•		
NE								•		•		
NH		•			•	•	•	•	•	•		•
NJ						•		•		•		•
NY	•	•	•	•	•	•	•	•	•	•	•	•
NC	•	•	•	•	•	•	•	•			•	•
OH						•		•		•		
OK					•	•	•	•	•	•	•	•
OR					•		•					
PA			•	•	•	•	•	•	•	•	•	•
RI	•	•	•	•	•	•	•	•	•	•	•	•
SD								•				
TN			•		•	•	•	•	•	•	•	•
TX				•	•	•	•	•	•	•	•	•
UT	•	•			•	•	•	•	•	•	•	•
VA						•		•		•		
WA				•				•				
<b>Total = 32</b>	<b>7/32</b>	<b>12/32</b>	<b>11/32</b>	<b>10/32</b>	<b>18/32</b>	<b>23/32</b>	<b>19/32</b>	<b>29/32</b>	<b>12/32</b>	<b>23/32</b>	<b>16/32</b>	<b>20/32</b>
<b>SOURCE: GWU/SPHHS State Law and LTCF Vaccination of Residents/Staff 2013</b>												

## ASSESSMENT OF VACCINATION STATUS

Section 483.40 (b) (1) of the Conditions of Participation require physicians who serve residents to “(1) Review the resident’s total program of care . . . and (3) Sign and date all orders with the exception of influenza and pneumococcal polysaccharide vaccines, which may be administered per physician-approved facility policy after an assessment for contraindications.”

Twelve of 32 states address assessment of vaccination status for LTCF residents and/or staff:

- Alabama, California, Florida, Illinois, Indiana, Kentucky, Maryland, New Hampshire, New York, North Carolina, Rhode Island, and Utah

These 12 states all address residents, and 7 of the 12 states include staff:

- Alabama, Kentucky, Maryland, New York, North Carolina, Rhode Island, and Utah

### TABLE 3

The example from Alabama shows that the state has established a timeframe in which the influenza and pneumococcal vaccinations must occur. Employees are only required to accept the influenza vaccination. California has also incorporated a timeframe for the two vaccines but excludes staff. New Hampshire addresses assessment activities only for residents.

(d) A long term care facility shall document the annual immunization against influenza virus and the immunization against pneumococcal disease for each resident and the annual immunization against influenza virus for each employee, as provided in this section. Upon finding that a resident is lacking the immunizations as provided herein or that an employee has not been immunized against influenza virus, or if the long term care facility is unable to verify that the individual has received the required immunizations, the long term care facility shall provide or arrange for immunization.

(e) (1) The annual immunization and documentation program provided by this section for influenza shall be completed not later than November 30 of each year. (2) The annual immunization and documentation program provided by this section for pneumococcal disease shall be assessed within 5 days of admission and when indicated.

(f) For an individual who becomes a resident of or who is newly employed by the long term care facility after November 30, but before March 30 of the following year, the long term care facility shall determine the individual's status for the influenza virus required under this section, and if found to be deficient, the long term care facility shall provide the required immunizations. *Code of Ala. § 22-21-10. Flu and pneumonia vaccinations for long term care facility residents and employees*

\* \* \*

(a) A resident who receives services at a health care facility during the period of October 1 to April 1 shall have his or her status for influenza and pneumococcal immunization determined by his or her physician or facility medical director. . . . *Cal. Health & Safety Code § 120392.4. Determination of status for influenza or pneumococcal immunization; informed consent; residents lacking capacity; documentation*

\* \* \*

I . . . Prior to administration of the vaccination, diligence shall be exercised to determine whether the patient has already received the influenza vaccination for the year in question. . . . *N.H. Rev. Stat. § 151:9-b Immunizations by Hospitals, Residential Care Facilities, Adult Day Care Facilities, and Assisted Living Facilities*

\* \* \*

(d) For an individual who becomes a resident of or who is newly employed by the nursing home after November 30 but before March 30 of the following year, the nursing home shall determine the individual's status for the immunizations required under this section, and if found to be deficient, the nursing home shall provide the immunization. *N.C. Gen. Stat. § 131E-113. Immunizations of employees and residents*

## VACCINE-RELATED EDUCATION

Section 483.10 (b)(3); (6) of the Conditions of Participation acknowledge that “(3) The resident has the right to be fully informed in language that he or she can understand of his or her total health status, including but not limited to, his or her medical condition.” Further, “[t]he facility must inform each resident before, or at the time of admission, and periodically during the resident’s stay, of services available in the facility and of charges for those services”.

Fourteen of 32 states require residents and/or staff to receive education related to recommended vaccinations, typically influenza and pneumococcal: **TABLE 3**

- Alabama, California, Florida, Illinois, Kentucky, Maryland, Michigan, New York, North Carolina, Pennsylvania, Rhode Island, Tennessee, Texas, and Washington

Seven of the 14 states address both staff and residents:

- Alabama, Kentucky, Maryland, New York, North Carolina, Pennsylvania, and Rhode Island

Three of the 14 states require LTCFs to provide education only to residents:

- Michigan, Texas, and Washington

Four of the 14 states have established policies related to education for staff only:

- California, Florida, Illinois, and Tennessee

The provisions from California, Kentucky and Tennessee outline the content of an educational program. Kentucky requires both residents and staff to be informed about the risks of influenza and pneumococcal disease, the efficacy, side effects, and contraindications of the vaccines, and CDC recommendations. Illinois and Tennessee focus exclusively on staff, whose education must include information about the influenza vaccine, non-vaccine control measures, and the diagnosis, transmission, and potential impact of influenza.

Washington requires LTCFs and nursing homes to inform residents and their legal representatives about the benefits of receiving the influenza and pneumococcal vaccinations, both verbally and in writing. However, facilities that “rely exclusively” on “nonmedical religious healing methods,” are exempt from these rules.

Alabama, Connecticut, Pennsylvania and Rhode Island require Departments of Health and/or departments managing elderly affairs to provide educational materials to all facilities.

(1) Every long-term care facility shall require residents to be immunized against pneumococcal disease and influenza. Upon admission, the long-term care facility shall . . . (c) Counsel each resident on the risks of influenza and pneumococcal disease; the efficacy, side effects, and contraindications of these immunizations; and the recommendations of the Centers for Disease Control prior to administration of the vaccines. . . .

(3) Every long-term care facility shall require each employee to be immunized against pneumococcal and influenza virus. Upon employment, the long-term care facility shall: . . . (c) Counsel each employee on the risks of influenza and pneumococcal disease; the efficacy, side effects, and contraindications of these immunizations; and the recommendations of the Centers for Disease Control prior to administration of the vaccines; **Ky. Rev. Stat. § 209.552. Immunization against pneumococcal disease and influenza; documentation; immunization of employees**

\* \* \*

(3) Infection Control . . . (h) . . . (i) The facility shall have an annual influenza vaccination program which shall include at least: . . . 3. Education of all direct care personnel about the following: (i) Flu vaccination, (ii) Non-vaccine control measures, and (iii) The diagnosis, transmission, and potential impact of influenza; **Tenn. Comp. R. & Regs. R. 1200-08-06-06. Basic Services**

\* \* \*

(1) Long-term care facilities shall: . . . (b) Require that each resident, or the resident's legal representative, upon admission to the facility, be informed verbally and in writing of the benefits of receiving the influenza virus immunization and, if not previously immunized against pneumococcal disease, the benefits of the pneumococcal immunization.

(4) This section and rules adopted under this section shall not apply to nursing homes conducted for those who rely exclusively upon treatment by nonmedical religious healing methods, including prayer. **Rev. Code of Wash. § 74.42.285. Immunization - - Rules**

. . . (2) Upon admission, the nursing home shall inform residents or the resident's representative, verbally and in writing, of the benefits of receiving the influenza virus immunization and the pneumococcal disease immunization.

(3) Nursing homes who rely exclusively upon treatment by nonmedical religious healing methods, including prayer, are exempt from the above rules. **Wash. Admin. Code § 388-97-1340. Influenza and pneumococcal immunizations**

\* \* \*

(j) The State Board of Health shall make available to long term care facilities educational and informational materials pertaining to the vaccination program provided in this section. **Code of Ala. § 22-21-10. Flu and pneumonia vaccinations for long term care facility residents and employees**

\* \* \*

2. The commissioner is hereby directed to make available educational and informational materials to all long-term care facilities with respect to vaccination against influenza virus and pneumococcal disease. **Con. Laws of NY § 2196. Rules and regulations; report**

\* \* \*

(b) Educational materials.--The department, in conjunction with the Department of Aging, shall make available educational and informational materials to all facilities with respect to vaccination against influenza virus and pneumococcal disease. **35 Penn. Stat. § 632.7. Regulations**

\* \* \*

(b) Educational materials. The department, in conjunction with the Department of Elderly Affairs, shall make available educational and informational materials to all facilities with respect to vaccination against influenza virus and pneumococcal disease. **R.I. Gen. Laws § 23-17.19-7. Regulations**

## EXEMPTION POLICY

Section 483.10 (b)(4) of the Conditions of Participation incorporate the principle that residents have “the right to refuse treatment.” Residents and/or staff may be granted an exemption to vaccination based on 1) general refusal, 2) personal belief, 3) religious belief, or 4) medical contraindication. **TABLE 4**

Twenty-six of 32 states address the circumstances under which LTCF residents and/or staff may be excused from receiving a required vaccination: **TABLE 3**

- Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, and Virginia).

Six of 32 states do not address exemption policy (Iowa, Michigan, Montana, Nebraska, South Dakota, and Washington).

Colorado, Maine, and Oregon are the 3 states that address only staff. Fifteen of the 26 states address both residents and staff:

- Alabama, Arkansas, California, Illinois, Kentucky, Maryland, New Hampshire, New York, North Carolina, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, and Utah

Eight of the 26 states address only residents:

- Arizona, Connecticut, Florida, Georgia, Indiana, New Jersey, Ohio, and Virginia

### **Exemption Based on General Refusal TABLE 4**

Twenty states of the 26 that permit any type of exemption, will excuse residents and/or staff from a vaccination requirement when the individual refuses for any reason:

- Alabama, Arizona, California, Illinois, Indiana, Kentucky, Maine, Maryland, New Jersey, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, and Virginia

Eight of these 20 states permit a refusal after being fully informed of the health risks of not being immunized:

- Alabama, Illinois (for staff), Kentucky, Maryland, New York, North Carolina, Pennsylvania, and Rhode Island

Thirteen of the 20 states allow refusal without an educational requirement:

- Arizona, California, Illinois (for residents), Indiana, Maine, New Jersey, Ohio, Oklahoma, Oregon, Tennessee, Texas, Utah, and Virginia

#### **Exemption Based on Personal Belief TABLE 4**

Three states of the 26 that address exemption policy allow staff and/or residents to refuse any vaccine based on an individual's personal belief (California, Florida, and Maine). California and Florida address only residents, while Maine references only staff.

#### **Exemption Based on Religious Belief TABLE 4**

Fourteen of 26 states authorize staff and/or residents to refuse vaccinations based on religious beliefs. In Arkansas, an LTCF resident who requests exemption based on religion, must belong to a "recognized church or religious denomination" with "tenets and practices" that object to vaccinations. This policy may limit the use of religious exemptions in the state:

- Alabama, Arkansas, Connecticut, Florida, Illinois, Indiana, Kentucky, Maine, Maryland, New Hampshire, New York, North Carolina, Pennsylvania, and Rhode Island

Nine of the 14 states allowing religious exemptions, address both staff and residents (Alabama, Arkansas, Kentucky, Maryland, New Hampshire, New York, North Carolina, Pennsylvania, and Rhode Island). Illinois and Maine refer only to staff. In Connecticut, Florida, and Indiana, only residents may claim exemption to the vaccination policy due to religious beliefs.

#### **Exemption Based on Medical Contraindication TABLE 4**

Twenty four of 26 states permit exemption due to a medical contraindication, making it the most frequently allowed exemption:

- Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, and Virginia

Thirteen of the 24 states apply to staff and residents (Alabama, Arkansas, Illinois, Kentucky, Maryland, New Hampshire, New York, North Carolina, Oklahoma, Pennsylvania, Rhode Island, Texas, and Utah). Colorado and Maine apply only to staff. Nine states address only residents (California, Connecticut, Florida, Georgia, Indiana, Ohio, New Jersey, Tennessee, and Virginia).

Examples from Alabama, Arkansas, and Florida illustrate typical exemption policy:

(g) No individual, resident, or employee, shall be required to receive vaccine under this section if the vaccine is medically contraindicated, if the vaccine is against the individual's religious beliefs, or if the individual refuses the vaccine after being fully informed of the health risks of not being immunized. *Code of Ala. § 22-21-10. Flu and pneumonia vaccinations for long term care facility residents and employees*

\* \* \*

All residents of nursing home facilities and full-time and part-time employees of nursing home facilities shall be immunized according to this subchapter with the following exemptions: (1) No individual shall be required to receive either an influenza virus vaccine or a pneumococcal pneumonia vaccine if the vaccine is medically contraindicated as described in the product labeling approved by the Food and Drug Administration; and (2) The provisions of this subchapter shall not apply if the resident or legal guardian objects on the ground that the immunization conflicts with the religious tenets and practices of a recognized church or religious denomination of which the resident or guardian is an adherent or member. *Ark. Code § 20-10-1305. Exemptions*

\* \* \*

(1) Every licensed facility shall comply with all applicable standards and rules of the agency and shall . . . (s) . . . provide for immunizations against influenza viruses to all its consenting residents . . . subject to exemptions for medical contraindications and religious or personal beliefs. . . . *Fla. Stat. § 400.141. Administration and management of nursing home facilities*

Table 4 shows the four different approaches states use to permit residents/staff to refuse vaccinations.

**TABLE 4 HOW STATES ADDRESS EXEMPTION TO VACCINE REQUIREMENTS**

STATE	General Refusal		Personal Belief		Religion		Medical	
	Staff	Res.	Staff	Res.	Staff	Res.	Staff	Res.
AL	•	•			•	•	•	•
AZ		•						
AR					•	•	•	•
CA	•	•		•				•
CO							•	
CT						•		•
FL				•		•		•
GA								•
IL	•	•			•		•	•
IN		•				•		•
IA								
KY	•	•			•	•	•	•
ME	•		•		•		•	
MD	•	•			•	•	•	•
MI								
MT								
NE								
NH					•	•	•	•
NJ		•						•
NY	•	•			•	•	•	•
NC	•	•			•	•	•	•
OH		•						•
OK	•	•					•	•
OR	•							
PA	•	•			•	•	•	•
RI	•	•			•	•	•	•
SD								
TN	•	•						•
TX	•	•					•	•
UT	•	•					•	•
VA		•						•
WA								
<b>TOTAL = 32</b>	<b>15/32</b>	<b>18/32</b>	<b>1/32</b>	<b>2/32</b>	<b>11/32</b>	<b>12/32</b>	<b>15/32</b>	<b>22/32</b>

NOTES: Numbers will not add up to 32 due to overlap among categories

SOURCE: GWU/SPHHS State Law and LTCF Vaccination of Residents/Staff 2013

## VACCINE DISTRIBUTION

Section 483.460(a)(3) of the Conditions of Participation require facilities to “provide or obtain preventive and general medical care . . . that at a minimum include . . . (ii) Immunizations.” Additionally, under Section 483.40 (b) (3), physicians who serve residents must “(3) Sign and date all orders with the exception of influenza and pneumococcal polysaccharide vaccines, which may be administered per physician approved facility policy after an assessment for contraindications.

All 32 states that address vaccination requirements for residents and/or staff indicate how facilities may manage vaccine distribution. **TABLE 5**

States have adopted different terminology to describe how facilities must fulfill the COP. The terms include: “provide,” “obtain,” “make available,” “arrange,” “offer,” or “encourage and promote”. **TABLE 6**

Sixteen of 32 states address vaccine distribution to residents and staff: **TABLE 3**

- Alabama, Arkansas, California, Florida, Illinois, Kentucky, Maryland, New Hampshire, New York, North Carolina, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, and Utah

Thirteen of 32 states address vaccine distribution to residents only:

- Arizona, Connecticut, Georgia, Indiana, Iowa, Michigan, Montana, Nebraska, New Jersey, Ohio, South Dakota, Virginia, and Washington

Colorado, Maine, and Oregon are the 3 states that confine any discussion related to vaccine distribution to staff.

### **Facilities Required to Provide, Provide or Obtain, Arrange, or Administer Vaccinations**

Twenty of 32 states require LTCFs to “provide” or “provide or obtain” or “arrange” or “administer,” or “immunize” residents and/or staff. These states have adopted the language used to describe the requirement in the COP, or other terms that affirmatively require employers to ensure vaccine administration: **TABLE 6**

- Alabama, Arkansas, Colorado, Florida, Illinois, Indiana, Iowa, Kentucky, Maryland, Montana, New Hampshire, New Jersey, New York, North Carolina, Oregon, South Dakota, Tennessee, Utah, Virginia, and Washington

The excerpts below demonstrate how facilities manage vaccination:

. . . (d) (1) The Department of Health shall provide vaccines, supplies, and staff necessary for the immunizations of nursing home residents and employees. . . . *Ark. Code § 20-10-1304.*  
**Implementation**

\* \* \*

(1) Every licensed facility shall comply with all applicable standards and rules of the agency and shall . . . (s) Before November 30 of each year, subject to the availability of an adequate supply of the necessary vaccine, provide for immunizations against influenza viruses to all its consenting residents . . . ***Fla. Stat. § 400.141. Administration and management of nursing home facilities***

\* \* \*

82.2(6) *Health care services. a. Physician services.* . . . (3) The facility shall provide or obtain preventive . . . care . . . that at a minimum include the following . . . 2. Immunizations. . . . ***Iowa Admin. Code 441-82.2(249A). Licensing and certification***

\* \* \*

(1) . . . Upon admission, the long-term care facility shall. . . (d) Provide or arrange for immunizations against pneumococcal and influenza. . . .

(3) Every long-term care facility shall require each employee to be immunized against pneumococcal and influenza virus. Upon employment, the long-term care facility shall. . . (d) Provide or arrange for immunizations against pneumococcal and influenza. . . Upon finding that an employee lacks either of these immunizations, the facility shall provide or arrange for immunization. . . . ***Ky. Rev. Stat. § 209.552. Immunization against pneumococcal disease and influenza; documentation; immunization of employees***

\* \* \*

(1) An employer of a health care worker at risk of contracting an infectious disease in the course of employment shall provide the worker preventive immunization for infectious disease if such preventive immunization is available and is medically appropriate.

(2) Such preventive immunization shall be provided by the employer at no cost to the worker. ***Oreg. Rev. Stat. § 433.416. Preventive immunization; provision by employer***

\* \* \*

(1) Long-term care facilities shall: (a) Provide access on-site or make available elsewhere for all residents to obtain the influenza virus immunization on an annual basis . . . ***Rev. Code of Wash. § 74.42.285. Immunization - - Rules***

(1) The nursing home shall provide residents access on-site or make available elsewhere, the ability to obtain the influenza virus immunization on an annual basis. ***Wash. Admin. Code § 388-97-1340. Influenza and pneumococcal immunizations***

\* \* \*

(a) A facility shall annually administer or arrange for administration of a vaccination against influenza to each resident. . . . (b) A facility shall administer or arrange for administration of a pneumococcal vaccination to each resident . . . who has not received this immunization prior to or upon admission to the facility. . . . ***§ 210 Ill. Comp. Stat. 45/2-213, amended by IL LEGIS 98-271. Vaccinations***

(b) An assisted living establishment or shared housing establishment that provides medication administration as an optional service shall annually administer or arrange for administration of a vaccination against influenza to each resident. . . . An assisted living establishment or shared housing establishment that provides medication administration as an optional service shall administer or arrange for administration of a pneumococcal vaccination to each resident who is age 65 or over. . . . ***§ 210 Ill. Comp. Stat. 9/76. Vaccinations***

\* \* \*

(b)(1) Subject to subsection (e) of this section, each related institution in the state shall immunize residents against the influenza virus and pneumococcal disease. . . . (2) [and] shall immunize

employees against the influenza virus. . . . [and] (2) If necessary, provide or arrange for an immunization as required under subsection (b) of this section. *Md. Code, Health-General § 18-404. Immunization against influenza virus and pneumococcal disease*

### **Facilities Required to Make Available or Offer Vaccinations**

Fifteen of 32 states permit LTCFs to “make available” or “offer,” recommended vaccinations to staff and/or residents. These terms could be interpreted differently, and may mitigate a facility’s obligation to provide vaccines in these states:

- Arizona, California, Colorado, Georgia, Illinois, Maine, Nebraska, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Washington

### **Facilities Required to Offer Vaccinations**

Nine of 32 states require LTCFs to “offer” vaccinations to residents and/or staff:

#### **TABLE 6**

- California, Georgia, Illinois, Maine, Nebraska, Ohio, Oklahoma, Tennessee, and Texas

The excerpts below from California, Illinois, and Nebraska show how facilities offer vaccination services. California requires nursing facilities to offer hepatitis B vaccines to new residents who are determined to be susceptible to the virus. In Nebraska, while facilities must offer influenza and pneumococcal vaccinations to all residents, no facility is required to cover the cost associated with the service.

(a) Each year, commencing October 1 to the following April 1, inclusive, every health care facility . . . shall offer . . . immunizations for influenza and pneumococcal disease to residents, aged 65 years or older, receiving services at the facility. . . . for the prevention, detection, and control of influenza outbreaks in California long-term care facilities.

(b) Each health care facility . . . shall offer . . . pneumococcal vaccine to all new admittees to the health care facility. . . . *Cal. Health & Safety Code § 120392.2. Health care facilities; immunization for influenza and pneumococcal disease; reimbursement*

\* \* \*

(c) All persons seeking admission to a nursing facility shall be verbally screened for risk factors associated with hepatitis B, hepatitis C . . . . Persons who are identified as being at high risk for hepatitis B, hepatitis C . . . . All persons determined to be susceptible to the hepatitis B virus shall be offered immunization within 10 days of admission to any nursing facility. . . . *§ 210 Ill. Comp. Stat. 45/2-213, amended by IL LEGIS 98-271. Vaccinations*

\* \* \*

In order to prevent, detect, and control pneumonia and influenza outbreaks in Nebraska, each general acute hospital, intermediate care facility, nursing facility, and skilled nursing facility shall annually, beginning no later than October 1 and ending on the following April 1 when no national vaccine shortage exists, offer onsite vaccinations for influenza and pneumococcal disease to all residents and to all inpatients prior to discharge . . . . Nothing in this section shall be construed to require any facility listed in this section to cover the cost of a vaccination provided pursuant to this section. *Neb.Rev.St. § 71-468. Onsite vaccinations for influenza and pneumococcal disease*

## Facilities Required to Make Vaccinations Available

Eight of 32 states require facilities to “make available” vaccinations to residents and/or staff. Under these laws, facilities may avoid direct involvement in a vaccination program:

- Arizona, California, Colorado, Maine, Pennsylvania, Rhode Island, Utah, and Washington **TABLE 6**

The excerpts below from Arizona, Pennsylvania, and Utah demonstrate how facilities make vaccinations available. Note that in Utah, facilities are considered to have made the influenza vaccination available when an employee’s health insurance plan covers an influenza vaccination, or when the employee receives the vaccination at the same or lower fee than charged by the local health department.

In addition to its other powers and duties . . . [t]he department shall . . . (d) Require as a condition of licensure that nursing care institutions and assisted living facilities make vaccinations for influenza and pneumonia available to residents on site on a yearly basis. *Ariz. Rev. Stat. § 36-406. Powers and duties of the department*

\* \* \*

(b) Records and immunizations. . . Upon finding that a resident is lacking such immunization or the facility or individual is unable to provide documentation that the individual has received the appropriate immunization, the facility shall make available the immunization. . . . *35 Penn. Stat. § 632.4. Resident immunization*

(b) Records and immunizations. . . Upon finding that an employee is lacking such immunization or the facility or individual is unable to provide documentation that the individual has received the appropriate immunization, the facility shall make available the immunization. . . . (c) Immunization authorized. - - Nothing in this section shall prohibit the immunization against pneumococcal disease to employees. *35 Penn. Stat. § 632.5. Employee immunization*

\* \* \*

(1) Each long-term health care facility shall make available to all employees an influenza immunization during the recommended vaccine season. The facility shall be deemed to have made influenza immunization available if the facility documents that each employee on staff had the opportunity to receive an influenza immunization under their existing health plan coverage. If the employee does not have health plan coverage for influenza immunization, then the facility shall be deemed to have made influenza immunization available if the facility documents that each employee on staff had the opportunity to receive an influenza immunization at a cost to the employee that is at or below that charged by their local health department. *R432-40-5. Immunization Offer and Exemptions; Utah Admin. Code R432-40. Long-Term Care Facility Immunizations*

## Other Approaches to Vaccine Distribution

Seven of 32 states have adopted other terms when outlining a facility's obligations related to vaccine distribution to residents and/or staff: **TABLE 6**

- Connecticut, Florida, Indiana, Maryland, Michigan, New Hampshire, and New Jersey

The excerpts below from Connecticut, Florida, and Michigan show the different approaches to delivering vaccines. Connecticut requires nursing homes to assure that each patient is protected by adequate immunization. Nursing homes in Florida must encourage and promote influenza vaccination among facility staff. Michigan's home for the aged and nursing homes assist residents to obtain influenza vaccinations. Consenting patients in New Hampshire shall be immunized against influenza and pneumococcal disease.

(a) . . . The regulations shall: (1) Assure that each patient admitted to a nursing home facility is protected by adequate immunization against influenza and pneumococcal disease. . . . *Conn. Gen. Stat. § 19a-522. Regulations concerning nursing home facilities' health, safety and welfare. Regulations concerning immunization against influenza and pneumococcal disease. Reimbursement procedures*

\* \* \*

(u) Annually encourage and promote to its employees the benefits associated with immunizations against influenza viruses . . . . *Fla. Stat. § 400.141. Administration and management of nursing home facilities*

\* \* \*

Sec. 21332. A home for the aged shall offer each resident, or shall provide each resident with information and assistance in obtaining, an annual vaccination against influenza. . . . *Mich. Comp. Laws § 333.21332. Annual vaccinations against influenza; home for the aged, offer of information and assistance*

Sec. 21716. A nursing home shall offer each resident, or shall provide each resident with information and assistance in obtaining, an annual vaccination against influenza. . . . *Mich. Comp. Laws § 333.21716. Annual vaccinations against influenza; nursing homes, offer of information and assistance*

## Facilities that May Permit Vaccinations under Delegated Authority

Oklahoma, South Dakota, and Utah are the 3 states that explicitly permit attending physicians to delegate vaccination services to qualified non-physician health practitioners. The relevant excerpts are below.

(d) Attending physicians may establish standing orders for the administration of influenza and pneumococcal immunizations . . . . *OKLA. ADMIN. CODE § 310:675-9-31; Influenza and pneumococcal vaccinations*

\* \* \*

The ICF/MR shall ensure the availability of physician services 24 hours a day. The ICF/MR shall provide or obtain preventive . . . medical care . . . of each person supported that, at a minimum, include the following: . . . (2) Immunizations; . . .

The ICF/MR may utilize physician assistants and certified nurse practitioners to provide physician services. The physician, physician's assistant, or certified nurse practitioner must participate in the establishment of each newly-admitted person's ISP. A physician must participate as part of the interdisciplinary team process, either in person or through a written report to the interdisciplinary team. The physician, physician's assistant, or certified nurse practitioner must develop a medical care plan of treatment if the person requires 24-hour licensed nursing care. *S.D. Admin. R. 46:17:05:02. Physician services*

\* \* \*

Each long-term health care facility shall implement written policies and procedures that include . . . (3) standing orders from a qualified health care practitioner to ensure residents obtain influenza and pneumococcal immunizations; and (4) collection and recording of resident-specific immunization history information for each resident admitted to the facility; *R432-40-4. Policy and Procedures; Utah Admin. Code R432-40. Long-Term Care Facility Immunizations*

Table 5 shows the vaccines LTCFs are required to distribute to staff and/or residents.

<b>TABLE 5 – LTCF FACILITY VACCINATION OF STAFF/RESIDENTS</b>						
<b>STATE</b>	<b>INFLUENZA</b>		<b>PNEUMOCOCCAL</b>		<b>HEPATITIS B</b>	
	<i>Staff</i>	<i>Res.</i>	<i>Staff</i>	<i>Res.</i>	<i>Staff</i>	<i>Res.</i>
AL	•	•		•		
AZ		•		•		
AR	•	•		•		
CA		•		•		
CO	•					
CT		•		•		
FL	•	•		•		
GA		•		•		
IL		•		•		•
IN		•		•		
IA		See note 4		See note 4		See note 4
KY	•	•	•	•		
ME <sup>1</sup>	•				•	
MD	•	•		•		
MI		•				
MT		See note 4		See note 4		See note 4
NE		•		•		
NH	•	•		•		
NJ		•		•		
NY	•	•	•	•		
NC	•	•		•		
OH		•		•		
OK	•	•		•		
OR	See note 2		See note 2		See note 2	
PA	•	•	See note 5	•		
RI	•	•		•	See note 3	
SD		See note 4		See note 4		See note 4
TN	•	•		•		
TX	•	•		•	•	
UT	•	•		•		See note 4
VA		•		•		
WA		•				
<b>Total = 32</b>	<b>17/32</b>	<b>29/32</b>	<b>4/32</b>	<b>27/32</b>	<b>3/32</b>	<b>5/32</b>
1. Maine employees must also demonstrate immunity against: “(1) Rubeola (measles); (2) Mumps; (3) Rubella (German measles); (4) Varicella (chicken pox)”						
2. “[Facilities] shall provide the worker preventive immunization for infectious disease if such preventive immunization is available and is medically appropriate.”						
3. In addition to vaccines outline above, “evidence of immunity is required for all health care workers . . . against: Measles, mumps and rubella, varicella, Tetanus, Diphtheria and Pertussis.”						
4. The facility shall provide or obtain preventive care for each resident that includes all recommended immunizations.						
5. “Nothing in this section shall prohibit the immunization against pneumococcal disease to employees.”						
<b>SOURCE: GWU/SPHHS State Law and LTCF Vaccination of Residents/Staff 2013</b>						

Table 6 summarizes the methods LTCFs employ to manage vaccination for residents and staff.

TABLE 6 – VACCINE DISTRIBUTION												
STATE	MAKE AVAILABLE		PROVIDE		ARRANGE		OFFER		ADMINISTER		OTHER	
	Staff	Res.	Staff	Res.	Staff	Res.	Staff	Res.	Staff	Res.	Staff	Res.
AL			•	•	•	•						
AZ		•										
AR			•	•								
CA		•						•				
CO	•		•									
CT												•1
FL				•							•5	
GA								•				
IL						•		•		•		
IN										•		•2
IA				•3								
KY			•	•	•	•						
ME	•							•				
MD			•	•	•	•					•2	•2
MI												•4
MT				•3								
NE								•				
NH			•									•2
NJ				•6								•6
NY			•	•	•	•						
NC			•	•	•	•						
OH								•				
OK								•	•			
OR			•									
PA	•	•										
RI	•	•										
SD				•3								
TN				•		•	•					
TX								•	•			
UT	•			•3								
VA				•		•						
WA		•		•								
<b>Total = 32</b>	<b>5/32</b>	<b>5/32</b>	<b>9/32</b>	<b>15/32</b>	<b>5/32</b>	<b>8/32</b>	<b>4/32</b>	<b>7/32</b>	<b>0/32</b>	<b>2/32</b>	<b>2/32</b>	<b>7/32</b>
1. “Assure each patient is protected”												
2. “Shall be immunized” or “shall immunize”												
3. “Provide or obtain”												
4. “[Facility] shall offer each resident, or shall provide each resident with assistance in obtaining an annual influenza vaccination.”												
5. “Annually encourage and promote to employees the benefits associated with influenza immunizations”												
6. . N. Jersey: INFLUENZA: Facilities “shall document evidence of annual vaccination”. PNEUMOCOCCAL: Facilities “shall provide”.												
<b>SOURCE: GWU/SPHHS State Law and LTCF Vaccination of Residents/Staff 2013</b>												

## STANDARD OF CARE

Section 483.460(a)(3)(ii) of the Conditions of Participation require facilities to “provide or obtain . . . Immunizations, using as a guideline the recommendations of the Public Health Service Advisory Committee on Immunization Practices or of the Committee on Control of Infectious Diseases of the American Academy of Pediatrics”.

Twenty-four of 32 states have incorporated the standard for LTCF residents and/or staff:

- Arkansas, California, Colorado, Connecticut, Florida, Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Montana, Nebraska, New Hampshire, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, and Virginia

All these 24 states, with the exception of Colorado, address residents. Twelve states (12/24) include staff:

- Colorado, Florida, Kentucky, Maryland, New Hampshire, New York, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, and Utah **TABLE 3**

Provisions from California, Connecticut, Indiana, and Oklahoma are provided below:

(a) Each year, commencing October 1 to the following April 1, inclusive, every health care facility . . . shall offer . . . immunizations for influenza and pneumococcal disease to residents, aged 65 years or older, receiving services at the facility, based upon the latest recommendations of the Advisory Committee on Immunization Practices (ACIP) of the Centers for Disease Control and Prevention, and the latest recommendations of appropriate entities for the prevention, detection, and control of influenza outbreaks in California long-term care facilities.

(b) Each health care facility, as defined in subdivision (a) of Section 120392, shall offer, pursuant to Section 120392.4, pneumococcal vaccine to all new admittees to the health care facility, based on the latest recommendations of the ACIP. *Cal. Health & Safety Code § 120392.2. Health care facilities; immunization for influenza and pneumococcal disease; reimbursement*

\* \* \*

(a) . . . The regulations shall: (1) Assure that each patient admitted to a nursing home facility is protected by adequate immunization against influenza and pneumococcal disease in accordance with the recommendations of the National Advisory Committee on Immunization Practices, established by the Secretary of Health and Human Services; *Conn. Gen. Stat. § 19a-522. Regulations concerning nursing home facilities' health, safety and welfare. Regulations concerning immunization against influenza and pneumococcal disease. Reimbursement procedures*

\* \* \*

(b) A health facility shall conduct the immunizations required under subsection (a) in accordance with the recommendations established by the Advisory Committee on Immunization Practice of the United States Centers for Disease Control and Prevention that are in effect at the time the health facility conducts the immunizations. *Ind. Code § 16-28-14-3. Required immunizations; methods*

\* \* \*

(d) Attending physicians may establish standing orders for the administration of influenza and pneumococcal immunizations in accordance with the Recommendations of the Advisory Committee on Immunization Practices for the Centers for Disease Control and Prevention most recent to the time of vaccination. ***OKLA. ADMIN. CODE § 310:675-9-31; Influenza and pneumococcal vaccinations***

## DOCUMENTATION AND RECORDKEEPING REQUIREMENTS

Section 483.40 of the Conditions of Participation require physicians who manage residents' medical care to "(3) sign and date all orders with the exception of influenza and pneumococcal polysaccharide vaccines, which may be administered per physician approved facility policy after an assessment for contraindications."

Twenty-two of 32 states address how facility management must document or report information related to vaccinations for residents and/or staff: **TABLE 3**

- Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Illinois, Iowa, Kentucky, Maine, Maryland, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, and Utah

Twenty of the 22 states address documentation of resident vaccinations (all except Colorado and Maine, which reference staff only). Sixteen states (16/22) include requirements for documentation of staff immunizations:

- Alabama, Arkansas, California, Colorado, Illinois, Kentucky, Maine, Maryland, New York, North Carolina, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, and Utah

Examples from Connecticut, Iowa, Kentucky, Maine, Maryland, New Hampshire, and Oklahoma are below. Maine requires facility management to maintain a list of all employees who remain unvaccinated or cannot prove immunity to identified vaccine-preventable diseases. The list must incorporate the employee's name, exemption, and the reasons why the individual is not immune.

In New Hampshire, facilities must collect aggregated data showing resident influenza and pneumococcal vaccination and report annually to the Department of Health and Human Services. Maryland requires facilities to document staff refusal or medical contraindication in the employee's personnel record, while Oklahoma requires documentation of a resident's refusal or medical contraindication.

Individuals' records shall be started at the time of admission and remain current and shall include as appropriate: (a) reports of . . . immunizations . . . *Regs., Conn. State Agencies § 17a-227-16. Individual records*

\* \* \*

In order to participate in the program, a facility shall be licensed as a hospital, nursing facility, or an intermediate care facility for the mentally retarded . . . shall meet the following conditions of participation.

82.2(1) *Governing body and management. . . c. Client records.* (1) The facility shall develop and maintain a record-keeping system that includes a separate record for each client and that documents the clients' health care, active treatment, social information, and protection of the client's rights . . . (4) Any individual who makes an entry in a client's record shall make it legibly, date it, and sign it. (5) The facility shall provide a legend to explain any symbol or abbreviation used in a client's record . . . *Iowa Admin. Code 441-82.2(249A). Licensing and certification*

\* \* \*

. . . . (2) Every long-term care facility shall document the annual immunization against influenza virus and pneumococcal immunization for each resident. . . . (4) Every long-term care facility shall document the annual immunization against influenza virus and pneumococcal immunization for each employee. *Ky. Rev. Stat. § 209.552. Immunization against pneumococcal disease and influenza; documentation; immunization of employees*

\* \* \*

C. List of Non-Immunized Employees. The chief administrative officer or his/her designee in each designated healthcare facility shall 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. The list shall include the names of all employees with authorized exemptions from immunization as well as any who are otherwise not known to be immune and shall 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 . . . *Code Me. R. 10-144 Ch. 264, § 7. Records and Record Keeping*

\* \* \*

Documentation in medical records (f)(1) (i) Each related institution shall document the annual immunization against influenza virus and immunization against pneumococcal disease received by each resident in the resident's medical record.(ii) Each related institution shall document the annual immunization against influenza virus received by each employee in the employee's personnel file. (2) If a resident or employee refused to be immunized as required under subsection (b) of this section, the related institution shall document the refusal and the reason for the refusal. *Md. Code, Health-General § 18-404. Immunization against influenza virus and pneumococcal disease*

\* \* \*

III. Each hospital, residential care facility, adult day care facility, and assisted living facility licensed under this chapter shall collect aggregate data regarding patient influenza and pneumococcal immunization and shall report that data to the department of health and human services on an annual basis, beginning July 1, 2005, for calendar year 2004 data. The data shall be limited to the number of patients within the age guidelines in the current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention receiving either or both the influenza vaccine and the pneumococcal vaccine. *N.H. Rev. Stat. § 151:9-b Immunizations by Hospitals, Residential Care Facilities, Adult Day Care Facilities, and Assisted Living Facilities*

\* \* \*

(a) Each facility shall document evidence of the offering of annual vaccination against influenza for each resident and for each employee, in accordance with the Recommendations of the Advisory Committee on Immunization Practices for the Centers for Disease Control and Prevention most recent to the time of vaccination.

(b) Each facility shall document evidence of the offering of vaccination against pneumococcal disease for each resident, in accordance with the Recommendations of the Advisory Committee on Immunization Practices for the Centers for Disease Control and Prevention most recent to the time of vaccination.

(c) . . . Documentation of the vaccination, medical contraindication or refusal shall be recorded in the resident's medical or care record. If the resident is not vaccinated, the documentation in the resident record shall include a statement signed by the resident, the resident's representative, or the resident's physician as appropriate. *OKLA. ADMIN. CODE § 310:675-9-31; Influenza and pneumococcal vaccinations*

## **CONCLUSION**

Our findings show that more than half of the states (32/51) have adopted legal or regulatory policy to control vaccine preventable disease in LTCFs. Kentucky, Michigan, New York, and Rhode Island are the states (4/32) that address all 6 COP for both staff and residents. The remaining states (28/32) do not address all 6 COP for both staff and residents.

Vaccine distribution is most commonly addressed, followed by exemption policy, the standard of care, and documentation of vaccination status. Less than half of the 32 states address assessments and education.

## **NEXT STEPS**

The results of our research provide information to support state policymakers as they review existing laws and update or enact new laws that fully comply with the COP. Policy changes could facilitate increased uptake of recommended vaccines for both residents and staff of LTCFs.

Emphasis could be placed on: 1) updating laws to include additional provisions for staff, 2) clarification of provisions related to assessments for residents and staff, and 3) ensuring that newly recommended vaccines are automatically included in all requirements. The findings also illustrate a need to clarify the language related to the obligations of facilities to distribute vaccines.

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<sup>1</sup> Centers for Medicare and Medicaid Services (CMS) Nursing Home Data Compendium 2012 Edition. Available at: [http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/downloads/nursinghomedatacompendium\\_508.pdf](http://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/CertificationandCompliance/downloads/nursinghomedatacompendium_508.pdf).

<sup>2</sup> Long Term Care.gov. Available at: <http://longtermcare.gov/the-basics/glossary/>.

<sup>3</sup> Centers for Disease Control and Prevention. Immunization of Health-Care Personnel, Recommendations of the Advisory Committee on Immunization Practices (ACIP). MMWR 2011; 60 (No. RR07). p 8. Available at: <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr6007a1.htm>

<sup>4</sup> Healthy People 2020. “Immunization and Infectious Diseases. Available at: <http://www.healthypeople.gov/2020/topicsobjectives2020/objectiveslist.aspx?topicId=23#578824>.

<sup>5</sup> Centers for Disease Control and Prevention. Prevention and Control of Influenza with Vaccines, Recommendations of the Advisory Committee on Immunization Practices (ACIP). MMWR 2010; 59 (No. RR08). p. 42. Available at: <http://www.cdc.gov/mmwr/pdf/rr/rr5908.pdf>

<sup>6</sup> Recommended Adult Immunization Schedule – United States – 2013. Available at: <http://www.cdc.gov/vaccines/schedules/downloads/adult/adult-schedule.pdf>.

<sup>7</sup> Centers for Medicare and Medicaid Services. “Provider Resources: Adult Immunization Resources for Providers.” Available at: <http://www.cms.gov/Medicare/Prevention/Immunizations/Providerresources.html>.

<sup>8</sup> Centers for Disease Control and Prevention. Immunization of Health-Care Personnel, Recommendations of the Advisory Committee on Immunization Practices (ACIP). MMWR 2011; 60 (No. RR07). p 1-45. Available at: <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr6007a1.htm>

<sup>9</sup> Centers for Disease Control and Prevention. Prevention and Control of Influenza with Vaccines, Recommendations of the Advisory Committee on Immunization Practices (ACIP). MMWR 2010; 59 (No. RR08). p. 1-62. Available at: <http://www.cdc.gov/mmwr/pdf/rr/rr5908.pdf>

<sup>10</sup> Title 42 Code of Federal Regulations, Section 483.5.

<sup>11</sup> Centers for Medicare and Medicaid Services. “Conditions for Coverage (CfCs) & Conditions of Participations (CoPs).” Available at: <http://www.cms.gov/Regulations-and-Guidance/Legislation/CfCsAndCoPs/index.html?redirect=/cfcsandcops/>.