



Practicing During the Covid-19 Pandemic: Washington Mandates

PACIFIC NORTHWEST NEUROPSYCHOLOGICAL
SOCIETY

CARIN MARNEY

LANE POWELL

Overview

- Washington vaccination mandate framework; rights and obligations
- Reasonable Accommodation
- Setting Parameters in Your Practice
- Frequently Asked Questions



Washington Proclamations 21-14 and 21-14.1



Issued August 9, 2021:

- Requires health care providers - including employees, contractors, and volunteers who work in health care setting - to be fully vaccinated by October 18, 2021
- Requires operators of health care setting to verify vaccination status of every employee, volunteer, contractor who
 - (1) works in the health care setting, regardless of whether they are licensed or providing health care services, and
 - (2) provides health care services for the health care setting operator.

Washington Proclamation 21-14.1 cont.

Who Must be Vaccinated?



- Who is a “health care provider”?
 - Individuals holding a license, certification, or registration with WA Dept of Health, who are actively practicing or providing services to people
 - All actively practicing health care providers are required to be vaccinated.
 - On-site workers in any health care setting, regardless of whether they are licensed or providing health care services (e.g. administrative support staff who work in a clinic or cleaning service workers)
 - A therapist is a health care provider.
 - Proclamation does NOT apply to health care providers who are not actively practicing or providing services.

What is a health care setting?



- For purposes of the proclamation, a health care setting is any public or private place that is primarily used for the delivery of in-person health care services to people, unless specifically exempted.
- Examples:
 - Hospitals
 - Outpatient facilities (dialysis centers, physician offices, private/group practice behavioral health settings including offices of psychiatrists, mental health counselors, and substance abuse professionals)
 - Long term care facilities
 - Inpatient rehab facilities
 - Inpatient behavioral health facilities
 - Mobile clinics (ambulance)
 - Dental facilities
 - Pharmacies, chiropractic, urgent care center, hospice, etc.

Who Must Be Vaccinated Under the Proclamation

- All employees
 - Regardless of licensed or not
- Any contractor
 - Regardless of type of work
 - Example – vendor, agency nurses
- Volunteers
 - Example – activities, entertainment
- Other health care providers
 - Example – home health coming into AL, hospice, physical therapy
- Telehealth: The Proclamation applies to licensed health care providers who only provide telehealth services.
 - Employees, contractors, volunteers of a health care setting operator who are not licensed, credentialed and don't provide health care services, can work remotely without being vaccinated. Example: billing, IT can work exclusively remotely w/o vaccination. If they sometimes enter the health care setting, they must be vaccinated.



Exemptions

- Exemptions provided only for disability related reason or sincerely held religious belief.
- If exemption is granted by the health care setting operator, then next step – can a reasonable accommodation be provided.
- A covered individual cannot opt out of the Proclamation unless a reasonable accommodation is provided.
 - Example: An individual who had Covid-19 and believes he or she has natural immunity, the Proclamation still applies and must be fully vaccinated.
 - If an individual does not qualify for a reasonable accommodation, testing is not an allowed alternative.



Reasonable Accommodation For Medical Reasons



- Must obtain documentation from an “appropriate health care provider or rehab professional authorized to practice in WA”
 - Stating the individual has a disability that necessitates and accommodation and the probable length of time the accommodation will be needed
 - The type of appropriate professional depends on the disability and type of functional limitation involved
 - Washington proclamation requires it
 - Recommend COVID-19 specific form
- Should rely on health care professional’s advice
 - Can seek clarification only
- Can require vaccine if:
 - There is a direct threat and no reasonable accommodation reduces that threat, or
 - The accommodation causes undue hardship to the employer (“an action requiring significant difficulty or expense”)
- Must go through the motions even if you know reasonable accommodations are not available – Interactive Process

Religious Accommodation



- If a request for sincerely held religious belief is made, must obtain written statement by the requester or documented by the operator, regarding the way requirements of the Proclamation conflict with the religious observance, practice, or belief of the individual.
 - Recommend Covid-19 form

Reasonable Accommodations

- For employees, contractors, volunteers with:
 - Disabilities
 - Pregnancy that prevent them from being vaccinated
 - Closely held religious beliefs, or who that prevent them from being vaccinated
- Must engage in the “interactive process”
- Washington proclamation requires supporting documentation
- Maintain confidentiality (vaccination status and reasonable accommodations provided)



Examples of Reasonable Accommodations

- More frequent COVID-19 testing
- Enhanced PPE
- Telework
- Reassignment to open position



Timing and New Hires

- As of October 18, 2021, health care operator cannot permit employee, contractor or volunteer to work without vaccination or approval of reasonable accommodation
- Unvaccinated New Hires
 - Delayed start date
 - Regardless, offers should be contingent upon obtaining full vaccination or obtaining exemption



Vaccination of Patients

Can Health Care Provider decline unvaccinated patients?

- Proclamation does not require operator of health care setting to verify vaccination status of visitor, patient or family member (unless that individual happens to be health care provider working for the operator.)
 - Health care setting operators can set their own vaccination policies for visitors and patients.
- AMA: In general, no, a physician should not refuse a patient simply because the individual is not vaccinated or declines to be vaccinated. The commitment to care for those who are sick or injured carries with it a duty to treat, including public health crisis when a physician may face greater than usual risks to their own safety, health or life.
- Patient's vaccination status, in and of itself, is not sufficient reason, ethically, to turn that individual away. A practice should assess relevant ethical considerations:



Vaccination of Patients



The obligation to treat a patient varies by the circumstances.

Given highly transmissible disease that poses significant risk of illness for which a safe, effective vaccine is available, decision to accept or decline an unvaccinated patient must balance:

- The urgency of the patient's need
- Risk the patient may pose to other patients in your practice
- The need for the physician or staff to be available to provide care in the future
- Would treating this patient "seriously compromise" the physician's ability to provide care to other patients
- Can an accommodation be made to minimize risk an unvaccinated patient presents to other patients
- Can unvaccinated patient be seen in a dedicated exam room? Or at dedicated times only?
- Can patient test negative as condition to receiving care?
- Can care reasonably be provided by telemedicine?
- Can adequate PPE be used to minimize risk of exposure?
- Can patient be persuaded to accept vaccination?

Vaccination of Patients

- Vaccination verification requirements will be coming in the next few weeks
- If require vaccination of patients – be consistent in application of vaccine requirement
 - Will you require flu shot? MMR? Tdap?
 - Have a policy that you can refer to and uniformly apply?
 - Is Telemedicine appropriate? Can telemedicine be used to effectively treat a patient?



Messaging your Compliance and Policy



- Communicate your policy and process to employees, contractors, volunteers, and other health care providers
- Communicate your policy and process to patients or third parties you work with

Verification Practices



- Establish a practice for viewing verification documents and maintaining records
 - Who will verify vaccination
 - Confidential storage of all records
 - Log to easily keep track of those that have provided proof
- Notify employees, contractors, volunteers, and other health care providers:
 - The requirement to be vaccinated
 - How they must provide proof of vaccination (prior to visit or at start of visit)
- Establish check-in processes at all health care setting entrances
 - Confirm all entering are either a visitor or have provided proof of vaccination
 - Process for handling those that are not visitors and have not provided proof of vaccination

Judicial Responses to Anti-Mandate lawsuits?

So far, courts have generally dismissed lawsuits, reasoning:

- Requiring COVID-19 vaccination as condition of employment was NOT “illegal” and does not require employees to commit and “illegal” act
- COVID-19 vaccination requirement is consistent with at-will employment
- Employees can exercise their “personal liberty” to seek employment elsewhere



COVID FAQs and Case Studies

Frequently Asked Questions: Covid Mandates and New Hires

- If a new hire is not vaccinated, but agrees to be vaccinated by the applicable state or federal deadline, can we hire them while they are in the process of getting both shots?
- When posting positions, can we include vaccination requirements?



Frequently Asked Question: Medical Exemption Doctor's Letters

- Is a doctor's note saying the employee should be exempt from the Covid-19 mandate, without more, sufficient?



Frequently Asked Question: Leaves of Absence

- Is putting someone on leave essentially not providing reasonable accommodation?



What happens if I don't follow the Proclamation requirements?

- Willful violation of the Proclamation is a gross misdemeanor.
- The Dept of Health, boards and commissions that regulate health care providers, will follow their normal complaint and investigation process regarding legal requirements for credential holders. This could include action against a facility's license or provider's credential if they are in violation.



Case Study No. 1: Employee refuses vaccination

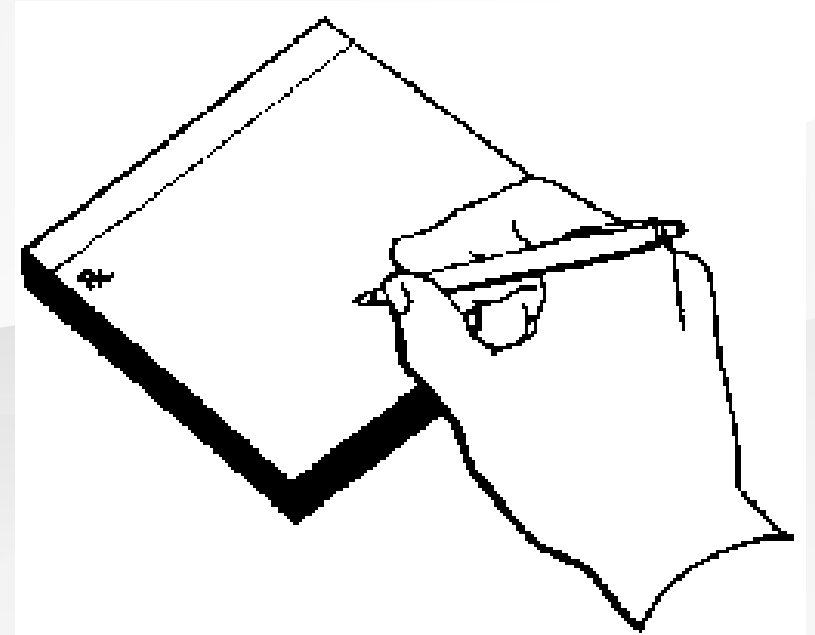
- Employee of hospital refuses to be vaccinated. Employee has ADHD. He refuses to apply for medical exemption due to disability (ADHD). His entire family is vaccinated, including his twin brother. What should hospital do under current state mandate?

Case Study No. 3: Third party refusal

- You have been retained as an expert to conduct an IME. The individual you are examining is not your patient. You have communicated to counsel your policy that all individuals you examine must be vaccinated against Covid-19. This individual is not vaccinated and refuses. What are you ethically obligated to do?

Best Practice: What should you do?

- Stay the course, and stay compliant – implement policies consistently
- Stay vigilant to changes in laws and guidance
- Listen to your employees' concerns – and be proactive
- If in doubt, check with your counsel
- Document your compliance





QUESTIONS?



Carin A. Marney

SHAREHOLDER | ATTORNEY

206.223.7273
marneyc@lanepowell.com