



Q&A Follow Up from 10.13.21 Chapter Meeting

Q. We have been having the issue where Guardian notes no fingerprints received and we have the livescan and a form from DOJ [Department of Justice] that they were received. How is that handled and what should we do? What needs to be downloaded?

CDSS, Care Provider Management Bureau

A: It takes up to 14 days for fingerprint information to populate in Guardian. If it has been longer than 14 days, please contact Guardian@dss.ca.gov or call the 1-888-422-5669 for assistance and we can check the actual case.

Q. I have seen that when caregivers are renewing, they are being asked for fingerprints again. Do you have an idea why is that happening? I have called Guardian and they have no idea as it shows that the person has fingerprints on file on your data base.

CDSS, Care Provider Management Bureau

A. This is a system flaw in Guardian that CPMB does have on the priority list to rectify. In this instance it will require agencies to contact us so we can manually get this application going. We would ask that they start the application and then call CPMB at 1-888-422-5669 for further assistance.

Q. Will FDA [US Food and Drug Administration] authorized self-antigen tests qualify as testing for the weekly testing for those who have an exemption?

CDSS, Home Care Services Bureau

A. As stated in the [State Public Health Officer Order](#), dated September 28, 2021, and Provider Information Notice (PIN) [21-07-HCS](#), dated September 28, 2021, tests for COVID-19 (either PCR or antigen tests) that have Emergency Use Authorization by the US Food and Drug Administration are acceptable for weekly testing.

Elizabeth Murphy, Attorney at Law, Jackson Lewis

The FDA has published a very thorough article discussing in detail which tests have EUA. You can read it here: <https://www.fda.gov/medical->



**devices/coronavirus-disease-2019-covid-19-emergency-use-
authorizations-medical-devices/in-vitro-diagnostics-euas-molecular-
diagnostic-tests-sars-cov-2**

Q. Is PCR [polymerase chain reaction] COVID testing the only test allowed to comply with PIN-21-07-HCS or is antigen testing allowed?

CDSS, Home Care Services Bureau

A. As stated in the State Public Health Officer Order, dated September 28, 2021, and PIN 21-07-HCS, tests for COVID-19 (either PCR or antigen tests) that have Emergency Use Authorization by the US Food and Drug Administration or be operating per the Laboratory Developed Test requirements by the US Centers for Medicare and Medicaid Services are acceptable for weekly testing.

Q. For HCOs [Home Care Organizations] that have Learning Management Systems (LMS), do we still have to use HCS 500 if the LMS report has all the information that is required on the HCS 500?

CDSS, Home Care Services Bureau

A. The HCS 500 (Registered Home Care Aide Training Log) is not a required form. Home Care Organizations have flexibility to document training requirements that best fit their business need, but a training verification log is required for each affiliated Home Care Aide. The training verification logs may be requested at any time and will be reviewed during inspections.

Q. Are we as an employer responsible to provide/pay for the weekly testing to our exempt employees?

CDSS, Home Care Services Bureau

A. Please consult your Human Resources or Employment attorney. However, there are many free testing locations throughout California. Registered Home Care Aides may use the California Department of Public Health's COVID-19 Testing Locations or contact their Local Health Department to find a local testing center.



Elizabeth Murphy, Attorney at Law, Jackson Lewis

The California Labor Commissioner, who is charged with making determinations about California wage and hour requirements has stated its FAQ, that if an employer requires an employee to be tested or vaccinated, then the employer must pay for the time it takes to be tested, including travel time. Since the time is deemed hours worked, an employer cannot require the employee to use sick time for this time. And though not specified in the FAQ, if the time is deemed hours worked, the drive time would be deemed a business expense and would need to be reimbursed.

Here is a link to the FAQ for your reference:

<https://www.dir.ca.gov/dlse/COVID19resources/FAQs-Testing-Vaccine.html>

There is an argument that since the mandate was issued by the state versus a voluntary mandate issued by the employer it is not hours worked, however, we assess substantial risk in not compensating for the vaccination/testing time as the mandate focuses on the requirements for facilities and employers versus individuals.

As to the second time, statewide paid sick leave would cover an employee who could not come to work due to symptoms from the COVID-19 vaccine. As stated above, there would be a risk in requiring an employee to use paid sick leave to get the vaccination if it is mandated.

Q. Is there a form for tracking weekly tests or is a spreadsheet recommended?

CDSS, Home Care Services Bureau

A. There is no formal tracking sheet for weekly testing. Home Care Organizations have the flexibility to use a system that best fits their business needs.

Q. We are hoping to get "family" defined. There is a lot of precedent in CA for family extending to people considered family who are not legal relatives by blood or marriage. We serve many programs where this is relevant. My contact is April@24hrcares.com if this needs a follow-up or if you want to see the precedent I am referring to.



CDSS, Home Care Services Bureau

A. The California Department of Public Health anticipates releasing additional information on the definition of “family”. The Home Care Services Consumer Protection Act defines “family member [as] any spouse, by marriage or otherwise, domestic partner, child or stepchild, by natural birth or by adoption, parent, brother, sister, half-brother, half-sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or any person denoted by the prefix “grand” or “great,” or the spouse of any of these persons, even if the marriage has been terminated by death or dissolution.” (Health and Safety Code § 1796.12 (f).)

Elizabeth Murphy, Attorney at Law, Jackson Lewis

The Orders themselves are unclear as to the definition of “family.” In addition to the above, we may consider the definition as recently broadened in the California Family Rights Act: biological or foster child, parent, grandparent, grandchild, sibling, spouse, domestic partner, or designated person who has a serious health condition.” (Government Code Section 12945.2(B)(5).)

Q. How about those who work just for a family member and no one else?

CDSS, Home Care Services Bureau

A. The Home Care Services Bureau understands this question to be asking whether mandatory vaccinations for the Registered Home Care Aides are required for home care aides working for only for a family member.

Mandatory vaccinations are not required for “those workers who only provide services to a recipient with whom they live or who are a family member of the recipient for whom they provide services”. “All workers who are eligible for the exception must only provide services to a single household. If the worker provides services across multiple households, then the exception does not apply [...].” (State Public Health Officer Order, dated September 28, 2021.)



Q. I have a caregiver who has a note from a doctor saying she can't get a vaccine or testing. I am not sure how to deal with that. Any recommendations would be helpful.

CDSS, Home Care Services Bureau

A. As stated in the State Public Health Officer Order, dated September 28, 2021, and PIN 21-07-HCS, a Registered Home Care Aide may be exempt from the vaccination requirement if they have a qualifying medical reason. The Registered Home Care Aide must provide a written statement signed by a physician, nurse practitioner, or other licensed medical professional practicing under the license of a physician, stating the individual qualifies for the exemption, and indicating the probable duration of the Registered Home Care Aides' inability to receive the vaccine (or if the duration is unknown or permanent, so indicate).

Per the California Department of Public Health, if the Registered Home Care Aide meets an exemption as described in the State Public Health Officer Order, but is unable to test for COVID-19, they must provide a written statement signed by a physician, nurse practitioner, or other licensed medical professional practicing under the license of a physician, stating the individual qualifies for the exemption (i.e. broken nose; tested positive within the last 90 days), and indicating the probable duration of the Registered Home Care Aides' inability to test for COVID-19.

Q. Are administrative employees that are not HCA's [Home Care Aides] exempt?

CDSS, Home Care Services Bureau

A. Administrative employees are a group that are listed under the State Public Health Officer Order, dated September 28, 2021, who may be subject to the vaccination mandate, but each administrative employee will need to be considered on a case-by-case basis. The State Public Health Officer Order, states any "worker" (as defined) in "direct care settings who [has] the potential for direct or indirect exposure to persons in care or SARS-CoV-2 airborne aerosols. [...] and persons not directly involved in providing care or services, but who could be exposed to infectious agents that can be transmitted in the care setting (e.g., clerical, clergy, dietary, environmental services, laundry, security, engineering, and facilities management, administrative, billing, cosmetology, personal training and volunteer personnel)" are subject to the vaccination mandate.



Q. Where can we find the source doc that was the proof of recovery in past 90 days as a way to meet compliance? And is that only for HCA or anyone mandated on state order?

CDSS, Home Care Services Bureau

A. If “proof of recovery in past 90 days” is a Qualified Medical Reason to be exempt from the mandate, the Home Care Aide’s physician, nurse practitioner, or other licensed medical professional practicing under the license of a physician, must provide a written statement stating the individual qualifies for the exemption, and indicating the probable duration of the Registered Home Care Aides’ inability to receive the vaccine (or if the duration is unknown or permanent, so indicate).

Elizabeth Murphy, Attorney at Law, Jackson Lewis

The CDC also said, as of October 25, 2021, that “People who have recovered from COVID-19 can continue to test positive for up to 3 months after their infection. CDC does not recommend retesting within 3 months after a person with COVID-19 first developed symptoms of COVID-19 (or the date their sample was taken for their first positive viral diagnostic test if their infection was asymptomatic).

If you have had a positive viral test on a sample taken during the past 90 days, and you have met the criteria to end isolation, you may travel instead with your positive viral test results and a signed letter from a licensed healthcare provider or a public health official that states you have been cleared for travel. The positive test result and letter together are referred to as “documentation of recovery.”

(<https://www.cdc.gov/coronavirus/2019-ncov/travelers/testing-international-air-travelers.html>)

Q. Also, did it get updated to required n95 for all exempted? I thought it was surgical mask or higher grade such as n95?

CDSS, Home Care Services Bureau

A. As stated in the State Public Health Officer Order, dated September 28, 2021, and PIN 21-07-HCS, those Registered Home Care Aides considered unvaccinated or incompletely vaccinated must, in addition to weekly testing, wear a surgical mask or higher-level respirator approved by the



National Institute of Occupational Safety and Health (NIOSH), such as an N95 filtering facepiece respirator, which must be worn at all times while in a facility or home. Nothing in this Order limits otherwise applicable requirements related to Personal Protective Equipment, personnel training, and infection control policies and practices

Q. If an HCA [Home Care Aide] provides care for a family member and only works in their home (may even be the same home they live in), and for HCA's that only will work in one home - did I read that right that they do not need to test weekly if they refuse vaccination?

CDSS, Home Care Services Bureau

A. As stated in the State Public Health Officer Order, dated September 28, 2021, the exception to the vaccination mandate are “those workers who only provide services to a recipient with whom they live or who are a family member of the recipient for whom they provide services”. Additionally, Registered Home Care Aides meeting this exception must only provide services to a single household – if they provide services across multiple households, then the exception does not apply and the Registered Home Care Aide must adhere to the provisions in the State Public Health Officer Order, including weekly testing if they meet one of the exemptions and are unvaccinated.