

Date: February 7, 2022

From: Deputy Under Secretary for Health Performing the Delegable Duties of the Under Secretary for Health

Subj: Processing of Requests for Accommodation to the Requirements under Veterans Health Administration (VHA) Directive 1193.01 Coronavirus Disease 2019 (COVID-19) Vaccination Program for VHA Health Care Personnel (HCP) (VIEWS 6814505)

To: Assistant Under Secretaries for Health, Network Directors, and Other Key VHA Central Office Officials

1. On August 13, 2021, VHA Directive 1193 was published which established policy and guidance for mandatory COVID-19 vaccination for HCP in VHA. On November 19, 2021, VHA paused processing of COVID-19 related requests for accommodations (i.e., requests for exemption/exceptions to mandatory vaccination or requests related to masking, testing, etc.) to ensure that the process appropriately considered all employee rights under applicable Federal civil rights laws and aligned with our top priority: safe patient care. These concerns for safe patient care and the challenges of operating a health care administration with COVID-19 are discussed below. On January 27, 2022, VHA Directive 1193.01 was published that reinstates and updates VHA Directive 1193. On February 7, 2022, VHA will resume processing all VHA HCP employee accommodation requests related to the COVID-19 vaccination or safety protocol requirements pursuant to VHA Directive 1193.01. See *Attachment (Att.) 1*. This memorandum outlines general information on processing accommodation requests to the requirements under VHA Directive 1193.01.
2. The nature of COVID-19 illness and disease may continue to change with the emergence of new variants, such as Delta and Omicron, and [recent data from the Centers for Disease Control and Prevention \(CDC\)](#) on COVID-19 cases and hospitalizations demonstrate that vaccination remains the safest strategy to prevent emergence of novel variants, SARS-CoV-2 infections, and associated COVID-19-related disease complications. Rates of COVID-19 cases between October and December of 2021 among fully vaccinated persons were much lower than rates amongst unvaccinated persons due the same timeframe ([CDC Morbidity and Mortality Weekly Report](#)).
3. Infection rates in the time of the Omicron variant have been shown to be markedly lower after full vaccination, and even lower still after a booster dose, when compared to no vaccination. [Newly released data from the CDC](#) reveal that during both Delta and Omicron case growth, infection and hospitalization rates were highest among

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unvaccinated persons, still lower among those that were fully vaccinated, with lowest observed rates among those vaccinated with a booster.

4. The rise in community cases due to the Omicron variant has reflected a rise in infections transmitted within our medical centers. The number of healthcare-associated infections in VA is at its highest number since the beginning of the pandemic, both inside *and* outside of Community Living Centers (CLCs). While CLCs and other congregate healthcare settings have been disproportionately affected by outbreaks of SARS-CoV-2, a rise in healthcare-associated viral transmissions has been observed in non-CLC inpatient settings in VA medical centers.
5. **Process:** The COVID-19 reasonable accommodation process for requests based on disability, religion or pregnancy is described in VHA Directive 1193.01 and the attached or referenced guidance. Each employee request for accommodation will be individually considered as required by law and evaluated on [VA Form 10230a](#). See *Att. 2, Undue Hardship Review*. Requests may be approved unless doing so would create an undue hardship, such as creating a significant safety risk to patients and/or employees that cannot be mitigated. The evaluation process includes the following:
 - a. *Management Official/Supervisor:* To ensure consistency, the review of accommodation requests will be completed by Service Chiefs or equivalent. See *Att. 3, Authority to Decide COVID-19 Reasonable Accommodations Within VHA Pursuant to VHA Directive 1193.01*. First line supervisors will complete a draft VA Form 10230a; Service Chiefs will then consider that input, interact with employees as necessary, and then finalize VA Form 10230a prior to making determinations. Processing information can be found in the attached flow maps and trainings are being provided to leaders and supervisors. See *Att. 4, VHA Process Maps for Title VII: Religious or Pregnancy Accommodation and Medical Accommodation*. The initial training schedule is attached. See *Att.5, Training Schedule for VHA Leaders and Supervisors*.
 - b. *Evaluation of Requests:* Management Officials/Supervisors will make a good faith effort to provide reasonable accommodations, including considering potential alternatives to vaccination and/or the relevant safety protocol measures. In assessing whether there is an undue hardship, Management Officials/Supervisors will assess the employee's duties, the individual circumstances, and the impact granting the accommodation will have on patients, staff, and visitors and VHA's ability to fulfill its mission. Within a health care environment, there are positions in areas where vaccination is

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imperative to adequately mitigate the risk of SARS-CoV-2, especially to patients at higher risk of severe illness from COVID-19. This will be considered in the analysis for all accommodation requests. Service Chiefs or equivalents can seek guidance from Human Resources, the Local Reasonable Accommodation Coordinator, and the Office of General Counsel (OGC).

- c. *High Risk Positions*: VHA has determined that for the following specific positions, the standard accommodation of masking, maintaining physical distance, testing, and following other required safety protocols is either not possible or does not sufficiently mitigate the safety risk posed. The evidence upon which this determination is based must be reviewed when completing the VA Form 10230a and applied to the individual circumstances. These positions now include (as outlined on VA Form 10230a, Part A):
- i. Community Living Center staff
 - ii. Intensive Care Unit staff
 - iii. Spinal Cord Injury Departments staff
 - iv. Emergency Rooms staff
 - v. Chemotherapy unit staff (inpatient and outpatient)
 - vi. Dialysis staff (inpatient and outpatient)
 - vii. Staff who perform aerosol generating procedures
 - viii. Healthcare or laboratory personnel collecting or handling specimens from known or suspected COVID-19 patients (e.g., manipulating cultures from known or suspected COVID-19 patients)
 - ix. Staff with regular and recurring face to face contact with individuals coming from congregate settings and bedded residential settings (e.g. blind rehab, residential mental health, homeless shelters)
 - x. Acute inpatient medical/surgical unit staff
 - xi. Acute inpatient mental health staff
 - xii. Post-transplant unit staff (inpatient and outpatient)

This list has been updated and may continue to be updated as deemed necessary given developing science and changes to the pandemic environment. Service Chiefs or equivalent management officials must faithfully execute the analysis outlined on VA Form 10230a, Part A, for accommodations requested by employees in these positions. All recommended accommodation decisions, approvals and denials, made for these positions require OGC review.

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- d. *Other Positions*: Any accommodation request, including those made by employees who are not in a position on the high-risk list, can be denied if there is an undue hardship. The Service Chief or equivalent management officials will be guided in this process by the Local Reasonable Accommodation Coordinator, their servicing Human Resource, and OGC. Any recommendations for denials of an accommodation request must be submitted to OGC for review prior to a decision. Recommended approvals for staff that are not in the high-risk positions listed above do not need to be sent to OGC for review.
 - e. *Reassignments*: When it is determined that approving an accommodation in an employee's current position would be an undue hardship such that an employee cannot be accommodated in place, reassignments must be considered in accordance with [VA Notice 22-04, Processing Reassignments a Reasonable Accommodation Regarding the COVID-19 Vaccine Mandate](#) prior to a final denial. See *Att. 6*.
 - f. *Existing Requests*: All accommodation requests submitted by VHA HCP's prior to the publication of this memorandum remain valid and must be processed by the Service Chief or equivalent management officials. Any accommodations previously decided at the supervisor level will be reviewed by the Service Chief or equivalent management officials in accordance with the attached guidance, see *Att. 7 Guidance on Re-Reviewing Accommodations*. Please note that any accommodations granted may be modified or changed in the future if circumstances require it.
6. **Questions**: Additional resources may be found at the following [link](#). Frequently Asked Questions are attached, see *Att. 8*. Questions regarding this should be directed to your servicing human resource office or Workforce Management and Consulting at VHA106AWMCCOEERVHAVaccineEnforcementQuestions@va.gov.



Steven L. Lieberman, M.D.

Attachments:

Attachment 1-VHA Directive 1193.01

Attachment 2-10230a, *Undue Hardship Review*

Attachment 3- *Authority to Decide COVID-19 Reasonable Accommodations Within VHA Pursuant to VHA Directive 1193.01*

Attachment 4- VHA Process Maps for Title VII: Religious or Pregnancy Accommodation and Medical Accommodation
Attachment 5- Training Schedule for VHA Leaders and Supervisors
Attachment 6- VA Notice 22-04
Attachment 7- Guidance on re-reviewing accommodations
Attachment 8- Frequently Asked Questions