



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

The Director

Wednesday, September 26, 2012

MEMORANDUM FOR: Heads Of Executive Departments And Agencies

FROM: John Berry, Director
Kathleen Sebelius U.S. Department of Health and Human Services,
Secretary

Subject: Immunization of Federal Workers with Seasonal Influenza Vaccine

Keeping the federal workforce healthy is a top priority for the President. Flu season is here and we know flu can be very serious; even healthy people can get and spread this infection. There are many actions each of us can take to reduce the spread of flu viruses. The most important of these is getting an annual flu vaccine. We know that getting vaccinated is the best way to protect against influenza and its complications. In addition, there are everyday preventive actions including washing our hands and staying home if we are sick that can reduce the spread of germs.

As the agencies responsible for federal workforce polices and for protecting the health of all Americans, the U.S. Office of Personnel Management and the U.S. Department of Health and Human Services (HHS) are again coordinating an effort to reduce the spread of flu viruses in our workplaces and communities.

Influenza vaccine is free to federal employees in federal health clinics across the country. To further protect our entire workforce, we are asking federal departments and agencies to consider providing flu vaccine to their contractors who work in close proximity to federal staff. Many of you already do this. HHS's policy for purchasing vaccine for contractors is attached. For further information, please contact the HHS Office of the General Counsel at (202) 690-7741.

As we enter the 2012-2013 flu season, the Centers for Disease Control and Prevention recommends that all persons 6 months of age and older, with some exceptions, get their seasonal flu vaccine as soon as possible. It is no longer necessary to determine if someone is in a high-risk group for flu to receive the flu vaccine, because virtually everyone can benefit.

In addition to helping get our employees vaccinated, we also want to help spread the word to the general public that getting vaccinated against the flu is easy to do.

The Department's consumer flu website – www.flu.gov – features great flu prevention tips, public service announcements, posters, and information syndicated from various HHS websites. We also re-launched the flu vaccine finder tool on flu.gov for members of the public to find locations that offer flu vaccination in their communities. We encourage you to visit flu.gov for

tools, ideas, and resources your employees and their families can use. This site is constantly updated throughout the flu season.

Thank you for your attention to this important matter. Working together, we can help ensure a healthy federal workforce this flu season.

Attachment - Vaccination of Government Contractors by Federal Occupational Health Units

HHS has made broad efforts in recent years to increase vaccine coverage against influenza within HHS components. FOH has administered seasonal influenza vaccines to HHS employees for many years. As discussed in greater detail below, my Office has advised that HHS agencies have the legal authority to offer influenza vaccines to HHS agency contractors if certain policy conclusions are reached by the agencies. Specifically, we advised that HHS agencies could offer influenza vaccines to agency contractors (in addition to agency employees) if the agencies determine that it is a "necessary expense" to purchase influenza vaccines for both agency employees and contractors. It is a well-settled rule of statutory construction that where an appropriation is made for a particular object, by implication it confers authority to incur expenses which are necessary or proper or incident to the proper execution of the object, unless there is another appropriation which makes more specific provision for such expenditures, or unless they are prohibited by law, or unless it is manifestly evident from various precedent appropriation acts that Congress has specifically legislated for certain expenses of the government creating the implication that such expenditures should not be incurred except by its express authority. 6 Comp. Gen. 619, 621 (1927).

Given the infectious nature of the influenza virus and the negative workforce and other consequences associated with contracting the virus, agencies within HHS have concluded that providing influenza vaccines to contractors is justified under the necessary expense doctrine if the contractors are co-located with or have substantial physical proximity to agency employees. This conclusion is supported by a policy position that such vaccination is justified in order to maintain the health of agency employees and to maximize the productivity of agency operations.

Trivalent seasonal influenza vaccines are covered under the National Vaccine Injury Compensation Program (VICP). See <http://www.hrsa.gov/vaccinecompensation/>. The VICP is a no-fault alternative to the traditional tort system for resolving vaccine injury claims that provides compensation to eligible people found to be injured by covered vaccines. Because seasonal influenza vaccines are covered under the VICP, persons with vaccine injury claims must first exhaust their remedies within the VICP before pursuing civil actions against vaccine administrators or manufacturers. In the event that federal personnel (e.g., nurses employed by the FOH) were sued for alleged negligence in relation to vaccine injury, such employees would be immune from suit in an individual capacity under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-2680.