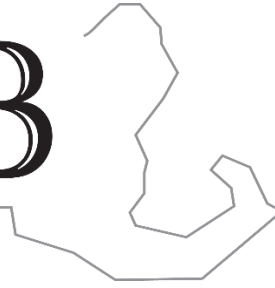


MAHIB

Assisting Massachusetts Boards of Health through training, technical assistance and legal education



MASSACHUSETTS ASSOCIATION OF HEALTH BOARDS Liability Protections for Vaccination Clinics

Question: Are healthcare workers, clinics and others who administer the COVID-19 vaccine liable for injury or death caused by a COVID-19 vaccination?

Answer: No. State and federal law, and a federal no-fault compensation program, provide immunity to healthcare workers, clinics, hospitals, and others in the event of injury or death from a COVID-19 Vaccine.

Massachusetts State Law

Ch. 64 of the Acts of 2020, entitled *An Act to Provide Liability Protections for Health Care Workers and Facilities During the Covid-19 Pandemic* was signed by the Governor on April 17, 2020, and is retroactive to March 10, 2020. This law provides liability protection for healthcare workers and facilities. It specifically includes the following:

- The **prescription, administration, delivery, distribution, or dispensing** of (COVID-19 Vaccine) by a health care professional¹ or health care facility² for the treatment, diagnosis, prevention, mitigation or as part of the Commonwealth's response to the COVID-19 outbreak.
- This protection extends to volunteer organizations³ that make their facilities available to support activities during the COVID-19 emergency.
- While the Massachusetts law does not specifically address liability protections for local public health workers, they are immune to the same extent as other vaccine providers and administrators under the Federal PREP Act, as discussed below.

¹ "Health Care Professional" includes all licensed, registered, or certified health care or emergency workers who are carrying out their duties within the scope of their licenses, registrations, or certifications.

² "Health care facility" includes hospitals, mental health facilities, skilled nursing facilities, assisted living residences, rest homes, community health centers, home health agencies, and sites designated by the Commissioner of Public Health to provide COVID-19 care services (field hospitals, for example).

³ "Volunteer organization" includes an organization, company or institution that makes its facility available to support the commonwealth's response and activities under the COVID-19 emergency.

- The care must be provided pursuant to a “COVID-19 emergency rule” and be impacted by treatment conditions resulting from the COVID-19 outbreak.

There are exceptions to this law. Liability protection is not provided for actions involving gross negligence, recklessness, or conduct with an intent to harm, or to discriminate on the basis of race, ethnicity, national origin, religion, disability, sexual orientation, or gender identity.

Massachusetts General Law Chapter 112, Section 12C protects physicians and nurses from administering immunizations under public health programs.

Federal Law

The Public Readiness and Emergency Preparedness Act (PREP Act) authorizes the Department of Health and Human Services (HHS) to issue a declaration that provides liability protection from “countermeasures” (e.g., vaccines, drugs, products) against diseases or other threats of public health emergencies. It applies to the development, manufacture, testing, **distribution, administration, and use of** vaccines.

It covers program planners, administrators and qualified persons who prescribe, administer, and/or dispense vaccines⁴. It is under this provision that workers on the level of local public health are given immunity from liability.⁵ It does not apply to willful misconduct.

The intent of the statute is not just to protect those caring for COVID-19 patients, but also to recognize the difficulty of providing care during the emergency conditions of a pandemic.

The Countermeasures Injury Compensation Program (CICP) is an emergency fund in the U.S. Treasury that provides compensations for injuries sustained by the administration or use of a countermeasure, like a vaccine. Claims are capped at \$50,000/year with a potential wrongful death benefit of \$370,376 should a person die as a result of a vaccine administration.

This information is provided for **educational purposes only** and it not to be construed as legal advice. For legal advice, please contact your city or town attorney.

Dated: 01.14.21

⁴ “Program Planner” includes, for example, state or local governments, persons employed by state and local governments, or any other person or entity who supervises or administers a program for the treatment, diagnosis, prevention, and mitigation of COVID-19. This would include a health director or agent of a board of health.

⁵ In general, the liability immunity applies to entities and individuals involved in the development, manufacture, testing, distribution, administration, and use of medical countermeasures described in a Declaration (of a pandemic state of emergency such as with COVID-19). <https://www.phe.gov/Preparedness/legal/prepact/Pages/prepqa.aspx>