

NON-PROFIT HOUSING PROVIDER'S GUIDE TO COVID-19 VACCINATIONS - UPDATED COVID-19 GUIDANCE FOR HOUSING PROVIDERS

(current as of October 1, 2021)

Prepared by: De Jager Volkenant Barristers and Solicitors



Table of Contents

Introduction.....	2
General Overview.....	3
A Quick Reminder About Your Obligations.....	3
What Are Reasonable Precautions?	4
What About A COVID-19 Vaccination Policy for Staff and Volunteers?.....	4
Can Housing Providers Limit Access for Unvaccinated Residents?.....	5
Events.....	5
Common Areas.....	6
Best Practices for Housing Providers.....	6
Further Resources and Support.....	7

Introduction

Health regulations are shifting quickly and it's important your organization is prepared. As the COVID-19 pandemic enters its fourth wave while the immunization process continues throughout the province, many questions are being raised by employers and landlords around how to ensure the health and safety of staff, tenants, and visitors. In May 2021, BCNPHA and AHMA co-published the *Non-Profit Housing Provider's Guide to COVID-19 Vaccinations* to provide members with some guidance around critical issues such as office re-openings, protecting the health and safety of tenants, staff, and visitors, access to buildings and common areas, and events.

Mandatory COVID-19 vaccination and screening continues to be a popular (and contentious) topic of conversation. We are pleased to provide you with some updated information and answer some common questions that we have received since we published our COVID-19 Guide in May of 2021. (available here: <https://bcnpha.ca/wp-content/uploads/2021/04/BCNPHA-AHMA-COVID-19-Vaccine-Guide.pdf>)

Most of the foundational legal principles and practical guidance in the Guide are still applicable today. Unfortunately, the return to normal we had expressed hope for in the Guide by the Fall of 2021, did not happen. Instead, provincial and regional health authorities have issued new Public Health Orders, and these Orders must be carefully considered and strictly complied with if you are subject to them, including the requirement for “vaccine passports” in some circumstances.

This updated information is *not* intended for housing providers who operate long term care facilities or assisted living, as these facilities are subject to specific Public Health Orders and must strictly comply with those.

It is important to mention that if you operate a “long term care facility, private hospital, stand-alone extended care hospital, assisted living residence providing regular assistance with activities of daily living including eating, mobility, dressing, grooming, bathing or personal hygiene”, you will be required to comply with the Public Health Order dated September 27, 2021 “[COVID-19 Vaccination Status Information and Preventative Measures Order](#)”. Also, commentary in this update regarding the employment relationship is intended for the private employment context, rather than a unionized context.

Housing providers operating Long Term Care and Seniors' Assisted Living should also be familiar with the BC Centre for Disease Control Guidance for health care settings [list](#) which gives an excellent overview of requirements and best practices for social visitation.

Housing providers are encouraged to carefully and regularly monitor all applicable directives and mandates from government and health authorities, as these can be difficult to understand and can change on a daily basis. This [site](#) provides the latest Orders and Notices.

This updated guidance was prepared in consultation with our legal counsel, however, it does not constitute legal advice. We encourage housing providers with specific questions or concerns to contact us or legal counsel for an assessment of your specific situation in order to give you the best possible guidance and direction.

General Overview

Every housing provider should start by determining what is legally required of it based on the sector(s) and location(s) it is operating in, and the government and health and regulatory authorities it is subject to. Generally speaking, the starting point for most housing providers will be that requiring staff or volunteers to be vaccinated or requiring residents or visitors to show proof of vaccination (“vaccine passports”) are decisions that could carry a significant amount of risk and should be made very carefully.

In every case, every housing provider should:

1. encourage its staff, volunteers, residents (and visitors where appropriate) to receive the COVID-19 vaccine;
2. take all reasonable precautions to prevent COVID-19 transmission;
3. diligently comply with all COVID-19 government and health directives; and
4. consider implementing a COVID-19 vaccination policy in consultation with legal counsel.

A Quick Reminder About Your Obligations

As an employer, housing providers would be obligated to prevent COVID-19 transmission in the workplace based on:

- **Occupational health and safety (OHS) legislation**, which imposes a duty to:
 - take reasonable precautions for protecting the health and safety of workers in their workplace.
 - communicate any workplace hazards to its employees; and
 - train their employees on how to deal with workplace hazards.
- **Government requirements for reopening the workplace** during the COVID-19 pandemic. Failing to comply with these requirements can result in orders to shut down or suspend operations, or possible prosecution or litigation.

Housing providers should understand their obligations to each employee before making any decisions, which will largely depend on the written contract (or lack thereof) between the housing provider and the individual employee.

As a landlord, housing providers are obligated to ensure premises are reasonably safe and complies with safety and housing standards, failing which the housing provider could be liable.

Failure to take reasonable precautions may lead to intervention and prosecution by public health authorities, or to litigation resulting in court or tribunal orders resulting in liability or requiring the housing provider to take specified measures.

Housing providers should also be mindful of the balancing exercise required between maintaining a safe and healthy facility and the privacy and human rights of individuals (the most typical grounds being religious grounds or physical or mental disability).

What Are Reasonable Precautions?

The Public Health Order dated September 28, 2021 "[Face Coverings \(COVID-19\)](#)" imposes a mandatory masking requirement for indoor public spaces (subject to exemptions). Indoor public spaces include a building or structure provided for the common use of all occupants and invitees of the building or structure, including lobbies, hallways, public bathrooms and elevators, used as a place in which a non-profit organization provides good or services to the public. There may also be region-specific restrictions that housing providers must comply with.

In addition to complying with and enforcing these requirements, housing providers should also:

1. Require staff, volunteers, visitors, and other constituents to maintain proper physical distancing and to stay away if unwell;
2. Consider installing physical barriers and utilizing PPE;
3. Ensure that visible signage is posted on and around your premises regarding the above; and
4. Generally ensure a clean and sanitized environment.

What About A COVID-19 Vaccination Policy for Staff and Volunteers?

If public health or government authorities *require* vaccinations, proof of vaccinations, and/or a vaccination policy for staff and volunteers, housing providers should discuss this with legal counsel and should consider drafting and implementing such a policy only after careful consideration and consultation. Housing providers would be expected to take a balancing approach to the issue of vaccinations in the workplace (i.e. balancing its obligation as employer to maintain a safe workplace with the individual privacy and human rights of its staff and volunteers).

Housing providers should not make any changes to the terms and conditions of an employment relationship (e.g. imposing a new policy) before fully understanding their obligations to each of their affected employees, specifically regarding their ability to: modify terms and conditions of employment; impose discipline; or terminate the employment relationship. These obligations will be specific to each employee and again, dependent on what the written contract between the housing provider and the employee says (or does not say) about these issues.

For clarity, the Public Health Order dated September 10, 2021 "[Gatherings and Events](#)" *does not* establish a general right for a housing provider to require proof of vaccination for its staff or volunteers.

Whether you should implement a mandatory vaccination policy will depend on a public health or government authority requiring such a policy, or else on your operational requirements and the potential for COVID-19 exposures. If employees do not attend a physical workplace for example, such a policy is unlikely to be reasonable. It may also be challenging to justify a policy where historically other prevention measures have proven to be completely effective (i.e. there have been no outbreaks in the workplace).

Conversely, if workers are in close contact with other persons (especially immune-compromised persons) for long periods of time and physical distancing or other methods of prevention are difficult, or there has been COVID-19 transmission, such a policy is more likely to be reasonable.

In any case, housing providers should ensure other infection control measures remain in place. Vaccination should be an additional measure to other reasonable precautions taken, not a replacement measure.

Even where a housing provider is not required by public health or government to require its staff or volunteers to be vaccinated or screen for vaccinated individuals a vaccination policy can still be useful and help clarify what is expected of individuals (e.g. employers could ask employees to provide information about their vaccination status, rather than mandating vaccinations). Any such policy should, among other things, clearly and carefully address privacy as well as possible accommodations.

In summary, housing providers should consider the following when considering a vaccination policy:

- 1. Orders and guidance from public health authorities.** Policies following such orders and guidance are more likely to withstand scrutiny.
- 2. The risk level of the workplace.** It is more reasonable to have a vaccination policy and a mandatory requirement where there are regular high-risk contacts (especially with vulnerable persons).
- 3. Alternative measures.** Policies may be difficult to justify where alternative measures such as testing, PPE, physical distancing, modified duties, or remote work are viable.
- 4. Non-employee standards.** If unvaccinated persons (e.g. visitors) can access the workplace, it may be unreasonable to require vaccinations.
- 5. Existing obligations to employees.** Housing providers should be aware of their existing obligations to employees and be careful about imposing any new terms or conditions or requirements, and act in good faith with all of their employees.

The following contains further helpful guidance directly from the human rights and privacy commissions:

- The British Columbia Human Rights Commission's [A human rights approach to proof of vaccination during the COVID-19 pandemic](#).
- The Joint Statement by Federal, Provincial and Territorial Privacy Commissioners on [Privacy and COVID-19 Vaccine Passports](#).

Can Housing Providers Limit Access for Unvaccinated Residents?

Events

The Public Health Order dated September 10, 2021 "[Gatherings and Events](#)" requires an organizer to obtain proof from "participants" of COVID-19 vaccination (one dose of the COVID-19 vaccine by September 13, 2021 and full vaccination by October 24, 2021), in order for the participant to access to prescribed "events".

Indoor group activities at a housing provider may fit into the categories described in the Order and therefore the housing provider must require proof of vaccination in order for a participant to participate

in that event, in reliance on the Public Health Order. This participant could be a resident of the housing provider or a visitor.

Some specific health authorities have additional restrictions in place made by the region's Medical Health Officer, including the regions of [Fraser East Health](#), [Interior Health](#), and [Northern Health](#).

Housing providers should carefully determine the specific activity and circumstances in question (including their location of operation) and are encouraged to seek specific legal advice about whether proof of vaccination would be required. In any case, housing providers should always try to deal fairly, consistently, and in good faith with any persons attempting to participate in an activity, including their residents.

Housing providers should also be familiar with the other requirements under the [Order](#) for indoor and outdoor events (e.g. limits on capacity, access requirements) and strictly comply with these.

Common Areas

With respect to access to common areas, it is unlikely that housing providers could require residents to provide proof of vaccination in order to access common areas generally. Housing providers should always be careful not to unreasonably refuse a resident access to common areas. That said, the recent Public Health Order dated September 28, 2021 "[Face Coverings \(COVID-19\)](#)" would apply to common areas and housing providers should enforce this requirement with all persons in common areas (subject to exemptions as provided in the Order). Housing providers should also continue all other prudent methods of prevention, including increased cleaning and appropriate signage to encourage distancing.

Best Practices for Housing Providers

The following would be some best practices for housing providers:

1. Be aware of and diligently follow all applicable public health and government directives and requirements. If public health or government authorities require vaccinations, proof of vaccinations, and/or a vaccination policy for your organization, you must comply with this.
2. Encourage vaccinations and educate staff and volunteers on the purpose, effectiveness, and risks of vaccines. (See for example: [NACI's Immunization and vaccine awareness materials](#)).
3. Respect the privacy of individuals. Limit the collection of any staff or volunteer medical information to their immunity or vaccination status, and any information that may be required during any accommodation process.
4. Ensure staff charged with the responsibility of monitoring and enforcing any requirements and dealing with problems related to these are well suited to this task.
5. Do everything possible to minimize confrontational situations with staff, volunteers, residents, or visitors. Try to de-escalate any conflict and communicate in a calm and respectful manner.
6. Maintain other COVID-19 prevention measures and precautions short of vaccination, such as physical distancing, masking, physical barriers, PPE, screening, maintaining a clean and sanitized environment, and posting appropriate signage.

7. Carefully consider and understand the implications of any decisions you make.
8. Consult with legal counsel prior to making any immediate decisions or communication, especially concerning COVID-19 vaccine requirements and in drafting and implementing a COVID-19 vaccination policy.
9. Be reasonable and fair in your decisions and communicate well with your staff, volunteers, and residents.
10. Act in good faith and have compassion for others. Understand the difficulties and stress that the COVID-19 pandemic has caused for everyone.

Further Resources and Support

If you are seeking further resources and supports on COVID-19, please look at the BCNPHA and AHMA COVID-19 resource pages, which include a return to work planning guide, a communicable disease planning guide and template, as well as links to important health information:

<https://bcnpha.ca/resources/covid-19-coronavirus/>

<http://www.ahma-bc.org/covid19updates>

BCNPHA and AHMA are committed to supporting our members and the Community Housing Sector as we navigate the unknown waters of the COVID-19 pandemic. If you have any questions, or require further information please contact BCNPHA and AHMA staff.

This updated COVID-19 guidance information is provided for general information purposes only and does not constitute legal or other professional advice or an opinion of any kind. Readers are encouraged to seek specific legal advice.