


12 May 2022

Via Email: 

**Response to a request for official information**

Dear 

Thank you for your request for official information received 19 April 2022 by Nelson Marlborough Health (NMH)<sup>1</sup>, where you seek the following information:

- 1. Please provide me with the official policy of NMDHB with regard to the treatment of individuals who have opted not to be injected with Pfizer's mRNA substance, Comirnaty.***

**NMH Response:**

The attached **COVID-19 Ministry of Health Position statement on the assessment and treatment of unvaccinated individuals in healthcare settings** (8 February 2022) outlines assessment and treatment of unvaccinated patients in both Hospital and Community settings.

This response has been provided under the Official Information Act 1982. You have the right to seek an investigation by the Ombudsman of this decision. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or free phone 0800 802 602. If you have any questions about this decision please feel free to email our OIA Coordinator [OIArequest@nmdhb.govt.nz](mailto:OIArequest@nmdhb.govt.nz)

I trust this information meets your requirements. NMH, like other agencies across the state sector, supports the open disclosure of information to assist the public's understanding of how we are delivering publicly-funded healthcare. This includes the proactive publication of anonymised Official Information Act responses on our website from 10 working days after they have been released. If you feel that there are good reasons why your response should not be made publicly available, we will be happy to consider.

Yours sincerely



Lexie O'Shea  
**Chief Executive**

Encl: COVID-19 Ministry of Health *Position statement on the assessment and treatment of unvaccinated individuals in healthcare settings* (3 pages)

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<sup>1</sup> Nelson Marlborough District Health Board

## Ministry of Health position statement on the assessment and treatment of unvaccinated individuals in healthcare settings

8 February 2022

This statement has been updated to focus on the core issue of the assessment and treatment of unvaccinated patients in both community and secondary care settings.

The Ministry of Health position statement is in three parts:

- the purpose of the statement
- the principles of the statement
- summary and equity consideration

### Purpose

The purpose of this statement is to outline the Ministry of Health's position on the assessment and treatment of unvaccinated individuals in healthcare settings. In addition, this statement aims to address concerns raised by clinicians and providers regarding the assessment and treatment of unvaccinated patients.

Vaccination offers the best protection against COVID-19 both for individuals and for those they interact with, including health care workers and other patients, however some New Zealanders do not qualify for vaccination and some have chosen not to be vaccinated. It is important that there is a consistent and scientifically logical approach to the assessment and management of such individuals in a health care setting.

A range of guidance documents have been developed to minimise the risk of transmission of infection to the healthcare workforce.<sup>1</sup> The measures in these guidance documents have been largely effective. The rate of infection within health care settings has been very low, despite being one of the most at risk environments. These measures reduce the risks for both health care workers and patients. Additional risk due to worker specific vulnerability has also been addressed through Ministry of Health guidance documents. Employers have a health and safety duty to carry out a risk assessment with vulnerable workers and minimise any additional risk they face. Risk assessment must be carried out on a case-by-case basis rather than through the application of a blanket approach.

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<sup>1</sup> <https://www.health.govt.nz/our-work/diseases-and-conditions/COVID-19-novel-coronavirus/COVID-19-information-specific-audiences/COVID-19-personal-protective-equipment-central-supply/personal-protective-equipment-use-health-and-disability-care-settings>

## Principles of this statement

Health services need to provide services in accordance with the Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996 (the Code). Appropriate justification is needed if a health service is proposing to refuse access to services or to not comply with rights under the Code.

The onus is on the provider to make that justification. Justification should be made based on a risk assessment that considers both the provider and the patient, the other patients they see, the risk of attending premises where there are unvaccinated persons present, and the requirements outlined in the Code.

The Ministry is of the view that in most cases, with vaccinated staff and other precautions in place, that the risks are unlikely to be high enough to provide sufficient justification to not follow the Code. In other words, denying access to health care on the basis of vaccination status is unacceptable.

1. Access to health care is a fundamental right.
  - a. An individual seeking healthcare cannot be refused care because of their beliefs. In this case an individual who believes that a vaccine is harmful cannot be refused care for that belief.
  - b. A practitioner's personal beliefs should not influence that practitioner's duty of care for any individual. In this case a practitioner must not allow their opinion of an individual who refuses to be vaccinated to influence the care that they offer that individual.
  - c. The COVID-19 Public Health Response (Protection Framework) Order 2021 reinforces that a person cannot be denied access to health care services on vaccination grounds (sections 31 – 33)<sup>2</sup>.
2. Health care workers have a right to be safe in their workplace in accordance with the Health and Safety at Work Act 2015 (the Act).
  - a. All workers have a right to work within a safe environment. Healthcare settings are associated with some intrinsic risks, for example the risk of contracting an infectious disease from a member of the public seeking healthcare. Usually these risks are recognised, understood and a set of recommended actions are in place to reduce this risk to an acceptable level. This residual risk is not a zero risk.
  - b. The actions taken to mitigate any risks must be reasonable and proportionate to that risk.
  - c. Any actions taken to mitigate risk must be based, wherever possible on evidence.
3. Employers have a duty to ensure that their staff are able to work in a safe environment, in accordance with the Act. The employee also has a duty to inform the employer of any vulnerable status they might have. Where an employer has staff that are considered to be at risk of severe illness from COVID-19, they have a duty to carry out a risk assessment with those employees and reduce that risk where possible. Further information for people considered at higher risk of the effects of COVID-19 and their whanau can be found at [COVID-19: Higher Risk People](#).
4. Employees have a responsibility to follow reasonable guidelines set by their employers to ensure safety.

Individual patients have a responsibility to follow applicable health and safety guidelines and procedures when utilising a health service, such as the wearing of masks and observing distancing requirements where possible. If a patient refuses to do so and care can be safely be deferred, it may be reasonable to require a negative COVID-19 test prior to a subsequent consultation following a risk assessment as to whether it is required. However, vaccination of staff within a health care facility will also mitigate the risk and if it is known that the patient is unvaccinated, then steps can be taken to ensure that the risk to other patients in the facility are managed.

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<sup>2</sup> <https://www.legislation.govt.nz/regulation/public/2021/0386/latest/whole.html#LMS582363>

Advice on the Workplace infectious disease prevention<sup>3</sup> and guidance for workplaces that have a case of COVID-19<sup>4</sup> can be found on the Ministry website.

## Summary

- Individuals cannot be refused access to health care. The COVID-19 Public Health Response (Protection Framework) Order 2021 reinforces that a person cannot be denied access to health care services on vaccination grounds (sections 31 – 33).
- Restrictions to access to health care must be informed by a risk assessment, and the onus is upon the provider to justify that the risks are sufficiently high to support those restrictions.
- Total vaccination coverage and the prevalence of COVID-19 in the community are important factors in the efficacy of any mitigations aimed to prevent transmission.
- Other public health measures in place also contribute to reducing the risk.
- Vaccination status is one of many risk factors for infection and transmission. Unvaccinated patients who contract COVID-19 pose a high risk to themselves and to others.
- Individual patients have a responsibility to follow Health and Safety guidelines and procedures when utilizing a health service.
- Pathways exist for decreasing the risk of transmission from any asymptomatic individual. These pathways should be utilised effectively prior to the introduction of additional interventions such as pre-consultation testing.
- Young children form a large group of individuals who are unable to be vaccinated and as such are likely to form a majority of the group managed through an alternative pathway. Specific consideration must be given to how this would impact on children's clinical care.

## Equity

It is well understood that low vaccination rates are strongly linked with low socioeconomic status and poor health outcomes. Any approach that mandates a different approach to unvaccinated patients prior to planned care, risks worsening access to health care for those already suffering health inequities.

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<sup>3</sup> <https://www.health.govt.nz/your-health/healthy-living/environmental-health/infectious-disease-prevention-and-control/workplace-infectious-disease-prevention>

<sup>4</sup> <https://www.health.govt.nz/our-work/diseases-and-conditions/covid-19-novel-coronavirus/covid-19-health-advice-public/contact-tracing-covid-19/guidance-workplaces-have-case-covid-19>