

# CMS Releases Interim Final Rule Requiring COVID-19 Vaccination for Employees and Suppliers

## Labor & Employment Law Update

By Suzannah Wilson Overholt on November 4, 2021



Today the Centers for Medicare & Medicaid Services (CMS) released its interim final rule requiring all employees and certain suppliers of most Medicare and Medicaid certified providers to be fully vaccinated against COVID-19 unless they receive an exemption due to a disability, medical condition or

sincerely held religious belief (the “Rule”) (the text of the regulations starts on page 171 of the CMS publication). The Rule is effective upon official publication, which is targeted as November 5.

### Covered Health Care Entities

The Rule applies to the following types of CMS regulated facilities:

- Ambulatory Surgical Centers (ASCs)
- Hospices
- Psychiatric residential treatment facilities (PRTFs)
- Programs of All-Inclusive Care for the Elderly (PACE)
- Hospitals (acute care hospitals, psychiatric hospitals, hospital swing beds, long term care hospitals, children’s hospitals, transplant centers, cancer hospitals, and rehabilitation hospitals/inpatient rehabilitation facilities)
- Long Term Care (LTC) Facilities, including Skilled Nursing Facilities (SNFs) and Nursing Facilities (NFs)
- Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs-IID)

- Home Health Agencies (HHAs)
- Comprehensive Outpatient Rehabilitation Facilities (CORFs)
- Critical Access Hospitals (CAHs)
- Clinics, rehabilitation agencies, and public health agencies as providers of outpatient physical therapy and speech-language pathology services
- Community Mental Health Centers (CMHCs) offering partial hospitalization services
- Home Infusion Therapy (HIT) suppliers
- Rural Health Clinics (RHCs)/Federally Qualified Health Centers (FQHCs)
- End-Stage Renal Disease (ESRD) Facilities

The Rule does *not* directly apply to other health care entities not regulated by CMS. Such entities may still be subject to other State or Federal COVID-19 vaccination requirements, such as those issued by OSHA for certain employers. Our discussion of the OSHA Rule may be found in our previous blog post.

#### Key Dates (assuming the Rule is published November 5)

- December 5, 2021 (30 days from publication): Staff must have received the first dose, or only dose as applicable, of a COVID-19 vaccine, or have requested or been granted an exemption to the vaccination requirement.
- January 4, 2022 (60 days from publication): The primary vaccination series must be completed and staff must be fully vaccinated, except for staff granted exemptions or those staff for whom vaccination must be temporarily delayed due to clinical precautions and considerations. Staff who have completed the primary series for the vaccine by this date are considered to have met these requirements, even if they have not yet completed the 14-day waiting period required for full vaccination.

#### Covered Employees Vendors

The vaccine requirement applies to the following, regardless of clinical responsibility or patient contact:

- Employees;
- Licensed practitioners;
- Students, trainees, and volunteers; and
- Individuals who provide care, treatment, or other services for the facility and/or its patients, under contract or other arrangement.

Individuals who provide services 100% remotely, e.g. fully remote telehealth or payroll services, are *not* subject to the vaccination requirement. Providers and suppliers are not required to ensure the vaccination of individuals who infrequently provide ad hoc non-health care services (e.g. annual elevator

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inspection), or services that are performed exclusively off-site, not at or adjacent to any site of patient care (e.g. accounting services).

### Definition of "Fully Vaccinated"

"Fully vaccinated" means two weeks or more has elapsed since completion of a primary vaccination series. "Completion of a primary vaccination series" means the administration of a single-dose vaccine, or the administration of all required doses of a multi-dose vaccine. COVID-19 vaccine doses from different manufacturers may be combined. Providers and suppliers must have a process for tracking and securely documenting the COVID-19 vaccination status of any staff who have obtained any booster doses as recommended by the CDC.

### Unvaccinated Staff

All applicable providers and suppliers must follow nationally recognized infection prevention and control guidelines to mitigate the transmission and spread of COVID-19 and implement *additional* precautions for all staff who are not fully vaccinated for COVID-19. The CDC infection control guidance can be found on the CDC website.

### Documentation Requirements

Providers and suppliers must track and securely document the vaccination status of each staff member. Vaccine exemption requests and outcomes must also be documented. All vaccine documentation must be kept confidential and stored separately from the personnel files. Examples of acceptable forms of proof of vaccination include:

- CDC COVID-19 vaccination record card (or photo of the card),
- Documentation of vaccination from a health care provider or electronic health record, or
- State immunization record.

### Exemptions

Providers and suppliers must establish and implement a process by which staff may request an exemption from COVID-19 vaccination requirements based on recognized medical conditions or religious beliefs. The Rule directs providers and suppliers to the CDC guidance regarding contraindications. Our previous discussion regarding medical and religious exemptions can be found in a previous blog post.

Now is the time for affected providers to implement vaccination and exemption policies. We will continue to provide updates on this important issue.

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