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Take Action Immediately to Comply With CMS' Vaccine Mandate

The Centers for Medicare & Medicaid Services (CMS) recently issued an interim final rule (the "CMS Rule") which requires certain providers and suppliers participating in Medicare and Medicaid to ensure their eligible staff are fully vaccinated as a condition for continued participation in the federal benefits programs. The CMS Rule has caused quite a stir in the health care industry, as the vast majority of health care providers in the United States participate in the Medicare and Medicaid programs. According to the CMS Rule, facilities must make sure that all their eligible staff receive at least one dose of a COVID vaccine by December 6, 2021, and receive all shots necessary for full vaccination by January 4, 2022.

Given the short timeframe, providers and suppliers must take action quickly to comply with the rule or risk an array of serious consequences, including civil monetary penalties, denial of payment, and even termination from the Medicare and Medicaid programs. This article is intended to help you determine whether your facility is covered by the CMS Rule and understand the scope of eligible staff.

Covered Facilities

CMS establishes health and safety standards, known as the Conditions of Participation (CoPs) for 21 types of providers and suppliers, ranging from hospitals to hospices and rural health clinics to long-term care facilities. If a facility wants to participate in Medicare or Medicaid, it must abide by these CoPs. Although the vaccine mandate does not apply to all 21 types of facilities regulated under the CoPs, most of them are covered by this CMS Rule. Specifically, the vaccination requirements apply to the following providers and suppliers:

- 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), generally referred to as nursing homes
- 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)
- Home infusion therapy (HIT) suppliers
- Rural health clinics (RHCs) and federally qualified health centers (FQHCs)
- End-stage renal disease (ESRD) facilities

As specified by the CMS Rule, the following provider and supplier types are not covered by vaccination requirements:

- Religious nonmedical health care institutions (RNHCIs)
- Organ procurement organizations
- Portable x-ray suppliers
- Assisted living facilities
- Group homes
- Home and community-based services
- Physicians' offices

One key fact to remember when determining whether your facility is covered by the CMS Rule is that the vaccine mandate only applies to providers and suppliers regulated under the CMS CoPs. If your

facility is not subject to the CoPs, then you do not need to worry about the vaccination requirements under the CMS Rule.

Eligible Staff

Once it is determined that your facility is covered by the CMS vaccine mandate, the next task is to ascertain the scope of eligible staff so that you can determine who among your staff has to be vaccinated. The CMS Rule breaks down the staff of health care facilities into the following four categories:

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

Anyone who falls within the above four categories has to be vaccinated unless the individual is eligible for an exemption. Specifically, individuals who perform their duties at any site of care or who have the potential to have contact with anyone at the site of care, including staff or patients, must be fully vaccinated. Even those contracted staff (e.g., administrative staff, facility leadership, housekeeping and food services) who are present at the site of care less frequently than once per week have to be vaccinated.

Excluded from the scope of eligible staff are those who infrequently provide ad hoc non-healthcare services (such as annual elevator inspection), or services that are performed exclusively off-site, not at or adjacent to any site of patient care (such as accounting services). But facilities may choose to extend vaccination requirements to them if feasible.

Vaccine Exemption

In addition to grounds for exemption set forth in federal law, such as recognized medical conditions or religious beliefs, the CMS Rule also contains an exemption from the vaccination requirements for staff who work completely off-site. Regardless of the type of health care

facility in question, the exemption for remote staff always applies as long as the staff (i) provide medical (e.g., telehealth/telemedicine services) or support services exclusively outside of the facility setting and (ii) do not have any direct contact with patients and other staff of the facility.

To comply with the CMS vaccine mandate, your facility must have processes in place for vaccinating all eligible staff, providing exemptions and accommodations for those who are exempt, and tracking and documenting staff vaccination. If your entity would like to learn more about the CMS Rule or needs help with designing a vaccine policy, please reach out to the authors of this article. You can also visit our [Health Law Matters blog](#) for more insight into legal issues impacting the health care industry.

Read more of our analysis as it relates to COVID-19 and vaccine mandates.

- [Must State and Local Governments Follow OSHA's Vaccine and Testing Mandate?](#)
- [OSHA Releases COVID-19 Vaccination and Testing Emergency Temporary Standard](#)
- [Nursing Homes: Spread of COVID and Vaccine Mandates](#)
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- [EEOC COVID-19 Vaccine Mandate FAQ Updates Address Religious Objections](#)
- [Mandatory Vaccines Update: OSHA Sends Draft ETS to White House](#)
- [Thinking About Implementing a Mandatory COVID 19 Vaccine Policy? Here Is What to Consider](#)
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