

Publications

CMS Issues COVID-19 Vaccine Mandate for Health Care Staff

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CLIENT ALERT | 11.5.2021

On November 4, 2021, the Centers for Medicare & Medicaid Services (CMS) issued the highly anticipated Informal Rule with Comment Period (IFC)[i] requiring employees of Medicare and Medicaid-participating health care facilities to be vaccinated for COVID-19. The CMS press release regarding this mandate can be found [here](#). This emergency regulation covers more than 17 million workers at approximately 76,000 healthcare facilities around the country.

The staff vaccination requirements apply only to Medicare and Medicaid-certified provider and supplier types that have Conditions or Requirements of Participation.

Specifically, CMS noted that the regulation applies to the following Medicare and Medicaid-certified provider and supplier types: Ambulatory Surgical Centers; Hospices; Programs of All-Inclusive Care for the Elderly; Hospitals; Long Term Care facilities; Psychiatric Residential Treatment Facilities; Intermediate Care Facilities for Individuals with Intellectual Disabilities; Home Health Agencies; Comprehensive Outpatient Rehabilitation Facilities; Critical Access Hospitals; Clinics (rehabilitation agencies and public health agencies as providers of outpatient physical therapy and speech-language pathology services); Community Mental Health Centers; Home Infusion Therapy suppliers; Rural Health Clinics/Federally Qualified Health Centers; and End-Stage Renal Disease Facilities.

The requirements do not directly apply to other health care entities, such as physician offices, assisted living providers, group homes, and providers of Home and Community Based-Services (HCBS) that are not regulated by CMS.

There will be two implementation phases for this IFC. Phase 1 requires that providers covered by this regulation establish a policy to ensure that all eligible staff have received the first dose of a two-dose COVID-19 vaccine or a one-dose COVID-19 vaccine prior to providing any care, treatment, or other services by **December 5, 2021**. For Phase 2, all eligible staff must have received the necessary shots to be fully vaccinated – which is defined as either two doses of Pfizer or Moderna

or one dose of Johnson & Johnson – by **January 4, 2022**. The regulation also provides for exemptions based on recognized medical conditions or religious beliefs, observances, or practices. Providers must develop a similar process or plan for permitting exemptions in alignment with federal law.

The vaccination requirement applies to eligible staff working at these provider types that participate in the Medicare and Medicaid programs, regardless of clinical responsibility or patient contact. The requirement includes all current staff, as well as any new staff, who provide any care, treatment, or other services for the provider and/or its patients. This includes provider employees, licensed practitioners, students, trainees, and volunteers. Additionally, it includes individuals who provide care, treatment, or other services for the provider under contract or other arrangements. Individuals who provide services that do not have any direct contact with patients and other staff, such as fully remote telehealth or payroll services, are not subject to the vaccination requirements.

CMS will ensure compliance with these requirements through established survey and enforcement processes, and the typical remedies for deficiencies will apply. CMS will be issuing interpretive guidelines following the publication of this IFC, which will include survey procedures.

Providers that are not subject to this CMS mandate may be subject to the Occupational Safety and Health Administration (OSHA) rules for facilities with greater than 100 employees, issued on the same date. CMS and OSHA collaborated to make sure both rules are complimentary. The OSHA requirements do not apply to providers that are covered under the CMS rule. For more information about the OSHA requirements, please see this *Client Alert*.

The CMS regulations can be found here. A list of frequently asked questions can be found here.

Vorys attorneys will be providing a free webinar regarding the OSHA and CMS requirements on November 8, 2021 at 12pm (ET). To learn more or to register for this webinar, [click here](#).

Please contact your regular Vorys attorney if you have any questions or concerns about these new requirements. We will continue to analyze the requirements and monitor for additional information.

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VORYS COVID-19 TASK FORCE

We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at vorys.com/coronavirus.

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[i] Stakeholders will have 60 days to submit formal comment on the emergency regulation. It is important to note that since this is an emergency regulation, the requirements go into effect immediately and before any additional response is provided on the comments by CMS. The comment period officially closes on January 4, 2022. At that point, CMS will consider and respond to comments as a part of potential future rulemaking, if needed.