



CMS Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule

BACKGROUND:

CMS provided stakeholders with a 60-day comment period, but the regulation is effective immediately. The Occupational Safety and Health Administration (OSHA) also issued a vaccination mandate requiring employers with 100 or more employees to ensure each worker is fully vaccinated or tests negative for COVID at least once per week. However, the Biden Administration has made clear that, for Medicare- and Medicaid-certified providers, the CMS rule supersedes all others, including the new OSHA regulation. As such, hospitals are only expected to comply with the CMS rule.

There are two phases of compliance under the CMS Rule.

- In Phase 1, employers must implement a process for vaccinating staff, providing exemptions and accommodations, and tracking and documenting vaccinations, and staff must receive, at a minimum, the first dose of a primary series or a single dose COVID-19 vaccine, **by December 5, 2021**.
- In Phase 2, staff must complete the primary vaccination series **by January 4, 2022**.

CMS requires facilities to allow for exemptions for employees with recognized medical conditions for which vaccines are contraindicated (as a reasonable accommodation under the Americans with Disabilities Act (ADA) or for religious beliefs, observances, or practices (established under Title VII of the Civil Rights Act of 1964)). CMS states that no exemption should be provided to any staff for whom it is not legally required or who requests an exemption solely to evade vaccination. Employers must develop accommodations for exempted staff which could include testing, physical distancing and source control.

Requests for religious exemptions must be documented and evaluated as a part of a facility's policies and procedures, and facilities should reference the [Equal Employment Opportunity Commission's Compliance Manual on Religious Discrimination](#) for more information on religious exemptions. Regarding medical exemptions, a licensed practitioner acting within his/her scope of practice must sign and date all documentation confirming an employee's recognized clinical contraindication(s) to COVID-19 vaccinations and the practitioner's recommendation that the employee is exempted from the vaccination requirement.

CMS will utilize established survey and enforcement processes to monitor compliance. While onsite, surveyors will review the facility's COVID-19 vaccination policies and procedures, the number of resident and staff COVID-19 cases over the last four weeks, and a list of all staff and their vaccination status. CMS will use this information, in addition to interviews and observations, to determine the provider's compliance. Remedies for non-compliance may include civil monetary penalties, denial of payment, and termination; however, CMS states that it would first provide a facility with an opportunity to make corrections and come into compliance.

RESOURCES:

To view the CMS interim final rule, visit: <https://www.federalregister.gov/public-inspection/2021-23831/medicare-and-medicaid-programs-omnibus-covid-19-health-care-staff-vaccination>

To view a list of frequently asked questions, visit: www.cms.gov/files/document/cms-omnibus-staff-vax-requirements-2021.docx