

CMS Healthcare Employer Vaccine Mandates as of 1/19/22

Healthcare employers: If you do not accept Medicare or Medicaid, you do NOT have a vaccine mandate, but you still have the general OSHA duty to keep employees safe.

Healthcare employers/ CMS: If you accept Medicare or Medicaid (CMS-covered facilities), you now have a **vaccine mandate**, plus PPE & recordkeeping requirements.

You must allow 2 exceptions by Federal law, 5 for Florida Law. If employees do not meet an exemption and choose to not get a COVID vaccine, they cannot work for you as you may lose your CMS status.

- On Jan 14th 2022, CMS issued **interpretative guidance** on its healthcare worker vaccine mandate following the Supreme Court's decision to allow the mandate to be enforced while some states challenge it in courts.
- Facilities in Florida are expected to abide by compliance deadlines set in a **Dec. 28, 2021, memorandum**.
- This document requires facilities to have their employees **fully vaccinated by Feb. 25.**
- See handout!

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
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Center for Clinical Standards and Quality/Quality, Safety & Oversight Group

Ref: QSO-22-07-ALL

DATE: December 28, 2021

TO: State Survey Agency Directors

FROM: Directors
Quality, Safety & Oversight Group (QSOG) and Survey & Operations
Group (SOG)

SUBJECT: Guidance for the Interim Final Rule - Medicare and Medicaid Programs; Omnibus
COVID-19 Health Care Staff Vaccination

Memorandum Summary

- CMS is committed to ensuring America's healthcare facilities respond effectively in an evidence-based way to the Coronavirus Disease 2019 (COVID-19) Public Health Emergency (PHE).
- On November 05, 2021, CMS published an interim final rule with comment period (IFC). This rule establishes requirements regarding COVID-19 vaccine immunization of staff among Medicare- and Medicaid-certified providers and suppliers.
- CMS is providing guidance and survey procedures for assessing and maintaining compliance with these regulatory requirements.
- The guidance in this memorandum does not apply to the following states at this time: Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, West Virginia and Wyoming.

Other CMS Healthcare Employer Requirements

- The **Respiratory Protection Standard** applies to personnel providing care to persons who are suspected or confirmed to have COVID-19 (i.e.: healthcare workers).
- Fact sheet here <https://www.osha.gov/sites/default/files/publications/OSHA4121.pdf>
- **Medical Benefits Removal** - OSHA is still requiring pay/ benefits to be paid by healthcare employers (10+). This means if a worker is exposed, you have to remove them, pay for their testing and pay them while they get tested & recover. See #73
<https://www.osha.gov/coronavirus/ets/faqs>
- Less than 10 employees? You still need to remove but you do not have to pay.
- You have to provide testing to healthcare workers at no cost to them.
- OSHA requires you to provide **Personal Protective Equipment** (PPE/ masks) to employees.

Other CMS Healthcare Employer Requirements

- **Recordkeeping for CMS healthcare employers**
- You have to do recordkeeping (log).
- Log at this link <https://www.osha.gov/sites/default/files/publications/OSHA4130.pdf>

General Safety Of Employees & Patients

- People with COVID-19 should isolate for 5 days and if they are asymptomatic or their symptoms are resolving (without fever for 24 hours), follow that by 5 days of wearing a mask when around others to minimize the risk of infecting people they encounter.
- <https://www.cdc.gov/media/releases/2021/s1227-isolation-quarantine-guidance.html>
- Notification Removal and Return to Work-Flow Charts*

Note that the chart has not been updated to reflect 5 days vs 10 days, so yes this is confusing)

- [For Employees](#)
- [For Employers](#)

Optional & Suggested Hazard Analysis, Safety Plan & Employee Training

- Continued adherence to the terms of the healthcare ETS is the simplest way for employers in healthcare settings to protect their employees' health and ensure compliance with their OSH Act obligations. (12/27 OSHA announcement)
- [COVID-19 Healthcare Worksite Checklist & Employee Job Hazard Analysis](#)
- [COVID-19 Plan Template](#)
- Employee Training Presentations
 - [Healthcare ETS](#)
 - [Mini Respiratory Protection Program](#)

Healthcare Employer Vaccine Mandates 1/19/22

- Florida employees have 5 exceptions to this vaccine mandate – links below for forms. Remember that you can *always* require employees to wear a mask with or without the vaccine or an exception. Check other state laws outside of FL.
- [Medical Exemption from COVID-19 Vaccination](#) – all states
- [Religious Exemption from COVID-19 Vaccination](#) – all states
- [Exemption from COVID-19 Vaccination Based on COVID-19 Immunity](#) - Florida
- [Exemption from COVID-19 Vaccination Based on Periodic Testing](#) - Florida
- [Exemption from COVID-19 Vaccination Based on Employer-Provided Personal Protective Equipment](#) - Florida

Other Vaccine Mandates

- **Large employers (over 100)** have NO Vaccine or Weekly Testing Mandate. You still have the general OSHA duty to keep employees safe. (Nothing for small employers at this time either.)
- **Federal employer** vaccination mandate remains active, however federal contractor mandate is not active - see below.
- **Federal Contractor - NOT active, nationwide injunction at this time** - but you still have the general OSHA duty to keep employees safe.
 - **Preliminary Injunction Granted Nationwide:** On Dec. 7, 2021, the United States District Court for the Southern District of Georgia (Augusta Division) granted the state's motion to issue a preliminary injunction to temporarily stop the federal government from enforcing the mandate nationwide. On Dec. 17, 2021, the United States Court of Appeals for the Eleventh Circuit denied the federal government's motion to stay the enforcement of the nationwide preliminary injunction. Therefore, the preliminary injunction remains in effect nationwide.
 - <https://law.georgia.gov/resources/vaccine-mandate-litigation>



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