

# CMS Issues Interim Rule on Health Care Worker Vaccinations

On November 4, 2021, the Centers for Medicare and Medicaid Services (CMS) issued an [Interim Final Rule](#) (the CMS Rule) requiring employee vaccinations for certain Medicare- and Medicaid-certified health care providers. The CMS Rule is being issued in tandem with the [new Occupational Safety and Health Administration \(OSHA\) regulations](#) governing vaccination requirements for employers with 100 or more employees, and some health care employers may be subject to both sets of regulations. CMS has also issued [FAQs](#) covering specific aspects of the new interim rule.

Under the CMS Rule, workers in covered facilities must be fully vaccinated by January 4, 2022. For workers receiving vaccines requiring two doses (Moderna and Pfizer), they must have received the first dose of the vaccine by December 5, 2021. This timeline is consistent with the vaccination requirement under OSHA regulations, providing uniformity to the two sets of regulations intended to be complementary in their purpose and application.

## Who Is Covered?

The CMS Rule is primarily targeted at health care facilities, but the language likely extends beyond the facilities themselves as expanded upon below. On its face, the CMS Rule includes the following facilities:

- Hospitals;
- Ambulatory surgical centers;
- Hospices;
- Psychiatric residential treatment facilities;
- Programs of all-inclusive care for the elder population;
- Long-term care facilities, including skilled nursing facilities and nursing homes;
- Home health agencies;
- 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 vaccine requirement applies not only to the clinical employees of the covered facilities but also to the licensed practitioners, students, trainees, volunteers, and other individuals who provide care, treatment, or other services for the facilities and/or its patients under contract or by other arrangements.

While the CMS Rule does not directly cover physician-owned medical practices, physicians, and other individual providers, individual practitioners may fall under the vaccine requirement to the extent they are employed by or otherwise contract with a covered facility to provide services (e.g., a physician who has a professional service or medical director arrangement with a hospital would be subject to the vaccine requirement under such relationship).

Nor is the requirement limited to clinical employees — the Rule also applies to non-clinical employees of the covered facilities, except as otherwise noted below.

## Who Is Not Covered?

The vaccine requirement does not apply to those employees who (1) either solely provide services through telehealth or telemedicine or who provide support services outside of the covered facility setting (noting that, with respect to home health agencies and other organizations that provide care in the patients' homes, the facility setting is the patient home or residence) or (2) do not have contact with patients or staff otherwise covered by the vaccine requirement.

The CMS Rule also allows for vaccine exemptions for allergies, disabilities, medical conditions, or sincerely held religious beliefs. Any such exemptions will be considered in accordance with the Equal Employment Opportunity Commission (EEOC) guidelines, and in some instances, will require covered employers to provide appropriate accommodations if required by federal law. The CMS Rule also requires that covered facilities develop a contingency plan to ensure that staff will not provide care or services for the facility until they have received at least the first dose of a COVID-19 vaccine.

Covered facilities must develop processes for tracking which staff have received the vaccine and any boosters. They must also track those staff members who cannot get the vaccine because of an exemption or a contraindication, and they must implement safeguards to prevent the transmission of COVID-19 because of unvaccinated staff members.

On Friday, November 5, 2021, the Fifth Circuit of Appeals issued a temporary stay of the OSHA regulations, to which the Biden administration is currently in the process of appealing. While this temporary halt does not apply to the CMS Rule, it is certainly possible that similar legal challenges will be extended to cover the CMS Rule.

Given the significance of the new CMS Rule, related OSHA regulations, and the ongoing legal challenges to these government mandates, we anticipate that CMS and other governing agencies will continue to issue additional guidance.

*The Chambliss [Health Care](#) team will continue to monitor these developments. Please contact [Doug Griswold](#), [Mark Cunningham](#), or your relationship attorney if you have questions or need additional information.*

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