



November 4, 2021

**ILLINOIS HEALTH AND HOSPITAL ASSOCIATION
MEMORANDUM**

SUBJECT: CMS Issues Rule on Healthcare Worker Vaccination Requirements

The Centers for Medicare & Medicaid Services (CMS) today issued an [Interim Final Rule with Comment Period \(IFC\)](#) requiring COVID-19 vaccination of staff within all facilities regulated under Medicare Conditions of Participation, Conditions for Coverage, or Requirements for Participation, including hospitals. The rule is effective November 5, 2021 with two implementation phases detailed below. Comments on the rule must be submitted by January 4, 2022.

According to the Biden administration, as part of its [six-point COVID Action Plan](#), the vaccination requirement applies to more than 17 million clinical and nonclinical healthcare workers across the country, including employees, students, trainees, individuals providing services under arrangements, staff who are not involved in direct patient, resident or client care, and volunteers. Staff who provide services 100% remotely, such as fully remote telehealth or payroll services, are not subject to the vaccination requirements of this IFC.

This rule is a federal vaccine mandate for healthcare workers and does not allow a testing option for employees who choose not to be vaccinated as a method of compliance.

This IFC directly regulates the following providers and suppliers:

- Ambulatory Surgical Centers (ASCs)
- Clinics, rehabilitation agencies, and public health agencies as providers of outpatient physical therapy and speech-language pathology services
- Community Mental Health Centers (CMHCs)
- Comprehensive Outpatient Rehabilitation Facilities (CORFs)
- Critical Access Hospitals (CAHs)
- End-Stage Renal Disease (ESRD) Facilities
- Home Health Agencies (HHAs)
- Home Infusion Therapy (HIT) suppliers
- Hospices
- 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)
- Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs-IID)

- Long Term Care (LTC) facilities, including Skilled Nursing Facilities (SNFs) and Nursing Facilities (NFs), generally referred to as nursing homes
- Programs of All-Inclusive Care for the Elderly (PACE)
- Psychiatric residential treatment facilities (PRTFs)
- Rural Health Clinics (RHCs)/Federally Qualified Health Centers (FQHCs)

Key provisions of the rule include:

- **Phase 1**: By December 5, 2021, staff must receive the first dose, or only dose as applicable, of a COVID-19 vaccine, or have requested or been granted an exemption to the vaccination requirements of this IFC.
- **Phase 2**: By January 4, 2022, staff must complete the primary vaccination series – either two doses of Pfizer or Moderna, or one dose of Johnson & Johnson – unless a staff member has been granted an exemption or a delay. Staff who have completed the primary series for the vaccine received by January 4, 2022 are considered compliant even if they have not yet completed the 14-day waiting period required for full vaccination.
- Providers and suppliers must track and document the vaccination status of each staff member, including those for whom there is a temporary delay in vaccination. Examples of acceptable forms of proof of vaccination include: Centers for Disease Control and Prevention (CDC) COVID-19 vaccination record card (or an eligible photo of the card), documentation of vaccination from a healthcare provider or electronic health record, or state immunization information system record.
- Providers and suppliers must implement a process by which staff may request an exemption from COVID-19 vaccination requirements based on an applicable Federal law. Grounds for exemption may include certain allergies, recognized medical conditions, or religious beliefs, observances, or practices. A summary of clinical contraindications to receiving a COVID-19 vaccine is on the CDC [website](#). CMS refers providers and suppliers to the [Equal Employment Opportunity Commission \(EEOC\) Compliance Manual on Religious Discrimination](#) for evaluating and responding to exemption requests based on religious beliefs, observances or practices.
- Providers and suppliers must develop contingency plans for staff that are not fully vaccinated to ensure such staff will not provide care, treatment, or other services for the provider or its patients until they have either received the first dose or completed the primary vaccination series and are considered fully vaccinated. This plan should also address safe provision of services by individuals who request exemption from vaccination or whose vaccination must be temporarily delayed due to clinical precautions and considerations. Finally, providers and suppliers should consider situations where provision of services by unvaccinated staff is necessary, such as when there is a regional or local emergency declaration, if such contingency plans are not already in existing Emergency Preparedness policies and procedures.

- While facilities are not required to ensure vaccination of every individual who enters a facility, they may choose to extend COVID-19 vaccination requirements beyond those persons defined as staff in the IFC. CMS specifically encourages facilities to require COVID-19 vaccination for these individuals as reasonably feasible.
- The rule clarifies that if a facility is complying with one federal mandate then the facility does not need to simultaneously comply with other federal mandates. **Thus, hospitals complying with the CMS mandate will not need to also comply with the OSHA vaccine mandate rule.**
- CMS has made it clear that its new rules preempt any inconsistent state or local laws, including laws that ban or limit an employer's authority to require vaccination, masks, or testing.
- Providers and suppliers cited for noncompliance with this interim final rule may be subject to enforcement remedies including civil money penalties, denial of payment for new admissions, or termination of Medicare/Medicaid provider agreements.
- This rule is not tied to the public health emergency, and there is no sunset clause. CMS may retain these provisions as permanent in future rulemaking.

IHA's current interpretation of the interplay between the federal rule and the State of Illinois' existing [Executive Order 2021-22](#) is that the state's testing mandate for unvaccinated healthcare employees is still effective. IHA is evaluating this federal rule and will also be having further discussions with the Governor's Office to determine how it may impact the Governor's [Executive Order 2021-22](#) and the Illinois Department of Public Health's emergency rule [published in the [October 1 Illinois Register](#), pages 11907-11923] on COVID-19 vaccination and testing requirements for healthcare workers in Illinois. As soon as we have additional information, we will provide further updates to the membership.

Additional Resources

[Full copy of CMS Interim Final Rule with Comment](#)
[FAQs issued by CMS](#)

If you have questions or concerns, please [contact IHA](#).