

LEGAL UPDATE

Emergency Rule Requires COVID-19 Vaccination for Health Care Workers

On Nov. 4, 2021, the Centers for Medicare & Medicaid Services (CMS) issued an [emergency regulation](#) requiring COVID-19 vaccination of eligible staff at health care facilities that participate in the Medicare and Medicaid programs. CMS also issued a set of [FAQs](#) on the vaccination requirement. The emergency regulation is effective beginning Nov. 5, 2021.

A federal appeals court [issued a stay](#) on a [similar regulation](#) released by the Occupational Safety and Health Administration (OSHA). **However, the CMS regulation for health care workers is unaffected by the court ruling.**

COVID-19 Vaccination Requirement

These requirements apply to Medicare and Medicaid-certified provider and supplier types that are regulated under the Medicare health and safety standards, including hospitals, clinics and long-term care facilities. Facilities covered by this regulation must **establish a policy** ensuring 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 Dec. 6, 2021. All eligible staff must have received the necessary shots to be fully vaccinated—either two doses of Pfizer or Moderna or one dose of Johnson & Johnson—by Jan. 4, 2022.

The regulation provides for exemptions based on recognized medical conditions or religious beliefs. Facilities must develop a similar process or plan for permitting exemptions in alignment with federal law. **However, there is no weekly testing exception for unvaccinated workers.**

Comment Period

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

Important Dates

Nov. 5, 2021

Publication and effective date of rule requiring COVID-19 vaccines for health care workers.

Dec. 6, 2021

Deadline for health care facilities that participate in the Medicare and Medicaid programs to establish a policy requiring staff to be COVID-19 vaccinated.

Jan. 4, 2022

Deadline for eligible health care staff to be fully vaccinated against COVID-19.

Affected health care facilities must ensure that their staff is fully vaccinated against COVID-19 by Jan. 4, 2022.



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