



**Centers for Medicare and Medicaid (CMS)
Interim Final Rule on Healthcare Staff COVID-19 Vaccination
AFT Summary - 11/9/21**

Requires most healthcare facilities receiving Medicare and Medicaid reimbursement to implement policies and procedures to:

- Vaccinate all eligible staff (employees, contracted workers, students, volunteers). Previously infected workers must also be fully vaccinated.
- Evaluate and grant medical and religious exemptions.
- Record and document current and future vaccinations and boosters. Employers must also track medical exemptions, temporary delays in vaccination for medical reasons, and religious exemptions.

Weekly testing as an alternative to full vaccination is not permitted under the CMS rule.

What facilities are covered as a condition of participation in Medicare and Medicaid:

- Hospitals and critical access hospitals
- Psychiatric residential treatment facilities and community mental health centers
- Ambulatory surgical centers
- Long term care facilities/skilled nursing homes and programs of all-inclusive care of the elderly
- Intermediate care facilities for individuals with intellectual disabilities
- Comprehensive outpatient rehabilitation facilities
- Home healthcare agencies
- Hospices
- Rehabilitation centers
- Home infusion therapy suppliers
- Rural health clinics/federally qualified health centers
- End stage renal disease facilities

Effective dates:

By December 5, 2021

- All eligible staff must have received the first dose of Pfizer or Moderna or the single dose of Johnson & Johnson.
- Employers must have all policies and procedures in place.

By January 4, 2022

- All eligible staff must have received the second dose of Pfizer or Moderna.¹ Booster shots are not required under the CMS rule.²

Exemptions:

Employers must develop policies and procedures for staff to request a medical or religious exemption in accordance with the federal laws.³ Employers must keep records on exemptions and accommodations offered.

- **Medical exemptions** must be for recognized clinical contraindications consistent with CDC guidance. The written request must be signed and dated by a state-licensed practitioner acting within their scope of practice.
- **Temporarily delayed vaccination** may be permitted for staff if consistent with CDC guidance (for example, if the healthcare worker had been treated with convalescent plasma). A deadline or process for determining when the worker must be vaccinated is not provided.
- **Religious exemptions** may be granted for sincerely held religious beliefs, practice, or observance. Employers may use the Equal Employment Opportunity Commission guidance to evaluate requests for religious exemptions.

The rule stipulates unvaccinated workers should be offered accommodations that eliminate them from patient care duties. Employers must develop contingency plans for staffing problems that may arise, including use of vaccinated agency staff to replace unvaccinated staff if necessary.

Personnel who are not covered:

- Staff who provide telehealth services or telework 100 percent of the time.
- Physicians' offices, religious non-medical, organ procurement organizations, portable x-ray suppliers, assisted living facilities, group homes. These employers may be covered under the Occupational Safety and Health Administration's emergency temporary standard on vaccinations for workplaces outside of healthcare.⁴
- Staff who work in a facility where no patient care is performed and where they do not come in contact with anyone who interacts with patients, such as staff in off-site hospital finance offices.
- Non-healthcare personnel who enter a covered facility very occasionally, such as a plumber conducting one-time repairs, are not covered. Other non-healthcare workers assigned to work onsite regularly, are covered.

How does the CMS rule interact with OSHA standards and state and local laws?

¹ Although CMS uses the Centers for Disease Control and Prevention's definition of "fully vaccinated," (two weeks after receipt of the second injection), staff are in compliance once they have received the second Pfizer or Moderna vaccine or the first Johnson and Johnson vaccine to be in compliance.

² For people who are immunocompromised, the CDC recommends a third shot as part of the primary vaccine series. These third doses are not considered boosters. These individuals may also receive a booster shot, a fourth dose.

³ Americans with Disabilities Act and Title VII of the Civil Rights Act, the Pregnancy Discrimination Act, the Genetic Information Nondiscrimination Act.

⁴ Physicians with hospital privileges must be vaccinated.

- The CMS rule supersedes local and state laws and regulations on vaccines consistent with the Supremacy Clause of the United States Constitution.
- The new OSHA rule requiring vaccination or weekly testing does not apply to healthcare facilities covered by the CMS rule.
- The CMS rule does not supersede the OSHA COVID-19 Emergency Temporary Standard for Healthcare. That rule remains in effect until December 21, 2021 and may be extended. The two rules are complimentary for healthcare. The CMS rule does not require employers to provide paid time off for vaccine administration and recovery. The OSHA ETS does require this.

Duration and enforcement of the CMS rule

The CMS rule is an interim final rule, which means it will end in three years unless finalized. It is not tied to ongoing declaration of the Public Health Emergency and is expected to be continued after the conclusion of the Public Health Emergency.

CMS does not enforce the rule directly but provides guidance to state licensing agencies and accrediting bodies. Facilities found to be out of compliance will be offered assistance, but could ultimately face civil fines or have their participation in Medicare or Medicaid reimbursement revoked.