

All Member Call Agenda November 9, 2021

- Welcome
- Reminders
- Federal Updates
- Vaccine Mandate
- Exemptions & Accommodations
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Email questions to COVID19@leadingageohio.org

Vaccine Mandate & What the Future Holds



Upcoming Education

11/10 STAT: Unnecessary Medications

11/11 Activity Professionals Call

11/15 - Isolation, Trauma and Exhaustion; Recovery for Caregivers and Those We Serve

12/1 Current Financial Trends Facing the Skilled Nursing Facility

12/1 HospiLearn – Hospice Survey: What to Expect

12/9 Virtual Philanthropy Gathering: -Planned Giving - It's Easier than You Think

1/10 – 1/27 - Core of Knowledge

<https://leadingageohio.org/aws/LAO/pt/sp/education>

Vaccine Mandate

CMS has posted the presentation slides and a recording of the stakeholder call held on 11/4/21.

To view the slides, visit: <https://www.cms.gov/files/document/covid-19-health-care-staff-vaccination-ifc-6-national-stakeholder-call-slides.pdf>

To view the video, visit: <https://www.youtube.com/watch?v=xHA0zY1aC-Y>

In addition to the resources above, CMS has prepared a frequently asked questions document, available here:

<https://www.cms.gov/files/document/cms-omnibus-staff-vax-requirements-2021.pdf>

Next stakeholder call will be held on: Wednesday, November 10 from 3:30 – 4:30 PM EST.

To register in advance, visit:

https://cms.zoomgov.com/webinar/register/WN_bCsmBuXfTnOCK0owoQVHvg

When

Interim Final Rule with Comments

<https://www.federalregister.gov/documents/2021/11/05/2021-23831/medicare-and-medicaid-programs-omnibus-covid-19-health-care-staff-vaccination>

- Phase 1 – within 30 days 1st dose or requested exemption.
- Phase 2 – within 60 days complete primary vaccination series (dose by the 60 days, not 14 days post shot)
- Fully vaccinated defined: 14 days after single dose vaccine, 2nd dose of two dose vaccine, WHO EUA vaccine, US clinical trial vaccine. (Additional and booster dose not required)

Medicare & Medicaid Providers Included in the Mandate:

Ambulatory Surgical Centers (ASCs) (§ 416.51)

Hospices (§ 418.60)

Psychiatric residential treatment facilities (PRTFs) (§ 441.151)

Programs of All-Inclusive Care for the Elderly (PACE) (§ 460.74)

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) (§ 482.42)

Long Term Care (LTC) Facilities, including Skilled Nursing Facilities (SNFs) and Nursing Facilities (NFs), generally referred to as nursing homes (§ 483.80)

Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs-IID) (§ 483.430)

Home Health Agencies (HHAs) (§ 484.70)

Comprehensive Outpatient Rehabilitation Facilities (CORFs) (§§ 485.58 and 485.70)

Critical Access Hospitals (CAHs) (§ 485.640)

Clinics, rehabilitation agencies, and public health agencies as providers of outpatient physical therapy and speech-language pathology services (§ 485.725)

Community Mental Health Centers (CMHCs) (§ 485.904)

Home Infusion Therapy (HIT) suppliers (§ 486.525)

Rural Health Clinics (RHCs)/Federally Qualified Health Centers (FQHCs) (§ 491.8)

End-Stage Renal Disease (ESRD) Facilities (§ 494.30)





- All staff that interact with other staff, patients, residents, clients, or PACE program participants in any location, beyond those that physically enter facilities or other sites of patient care.
- Facility employees; licensed practitioners; students, trainees, and volunteers; and individuals who provide care, treatment, or other services for the facility and/or its patients, under contract or other arrangement, staff in administrative offices or at an off-site staff meeting



- Facility-employed staff, many facilities have services provided directly, on a regular basis, by individuals under contract or arrangement, including hospice and dialysis staff, physical therapists, occupational therapists, mental health professionals, social workers, and portable x-ray suppliers.
- Any individual that performs their duties at any site of care, or has the potential to have contact with anyone at the site of care, including staff or patients, must be fully vaccinated to reduce the risks of transmission of SARSCoV-2 and spread of COVID-19.



- Who isn't?
 - Physician offices, portable x-ray suppliers, assisted living, group homes, Medicaid only HCBS
 - Individuals who provide services 100 percent remotely, such as fully remote telehealth or payroll services
 - Ad hoc non-health care services (elevator inspection)
 - Facilities should consider frequency of presence, services provided, and proximity to patients and staff.
- However,....
 - The OSHA COVID-19 Employer Emergency Temporary Standard (for facilities with greater than 100 employees) applies to employers that are not subject to the IFC.
 - Staff of these entities are indirectly included in the vaccination requirements through their service arrangements

Accommodations

- Employers following CDC guidelines and the new requirements in this IFC may also be required to provide appropriate accommodations, to the extent required by Federal law, for employees who request and receive exemption from vaccination because of a disability, medical condition, or sincerely held religious belief, practice, or observance.
- For individual staff members that have legally permitted justifications for exemption, the providers and suppliers covered by this IFC can address those individually.
- Facilities have the flexibility to establish their own processes that permit staff to request a religious and medical exemption.

Accommodations

- Applicable laws include: (1) the Americans with Disabilities Act (ADA); (2) Section 504 of the Rehabilitation Act (RA); (3) Title VII of the Civil Rights Act of 1964; (4) the Pregnancy Discrimination Act; and (5) the Genetic Information Nondiscrimination Act.¹⁴⁹ In addition, other Federal laws may provide employees with additional protections

Accommodations

- Religious Exemption – Refer to Equal Employment Opportunity Commission’s Compliance Manual on Religious Discrimination for more information on religious exemptions.
 - The Safer Federal Workforce Task Force’s “request for a religious exception to the COVID-19 vaccination requirement” template as an example.
<https://www.saferfederalworkforce.gov/downloads/RELIGIOUS%20REQUEST%20FORM%20-%2020211004%20-%20MH508.pdf>.
- Clinical Exemption - Summary Document for Interim Clinical Considerations for Use of COVID-19 Vaccines Currently Authorized in the United States (i.e. severe allergic reaction).

Policy

The IFC provides regulatory language for each area.

Long Term Care Facilities Part 483:

The facility must develop and implement policies and procedures to ensure that all staff are fully vaccinated for COVID-19. Exemptions to staff with recognized medical conditions for which vaccines are contraindicated (as a reasonable accommodation under the Americans with Disabilities Act (ADA)) or religious beliefs, observances, or practices (established under Title VII of the Civil Rights Act of 1964).

- Facilities develop a process for implementing additional precautions for any staff who are not vaccinated, in order to mitigate the transmission and spread of COVID-19.
- Contingency plans

Policy

(1) Regardless of clinical responsibility or resident contact, the policies and procedures must apply to the following facility staff, who provide any care, treatment, or other services for the facility and/or its residents:

- (i) Facility employees;
- (ii) Licensed practitioners;
- (iii) Students, trainees, and volunteers; and
- (iv) Individuals who provide care, treatment, or other services for the facility and/or its residents, under contract or by other arrangement.

(2) The policies and procedures of this section do not apply to the following facility staff:

- (i) Staff who exclusively provide telehealth or telemedicine services outside of the facility setting and who do not have any direct contact with residents and other staff specified in paragraph (i)(1) of this section; and
- (ii) Staff who provide support services for the facility that are performed exclusively outside of the facility setting and who do not have any direct contact with residents and other staff specified in paragraph (i)(1) of this section.

Policy

(3) The policies and procedures must include, at a minimum, the following components:

- (i) A process for ensuring all staff specified in paragraph (i)(1) of this section (except for those staff who have pending requests for, or who have been granted, exemptions to the vaccination requirements of this section, or those staff for whom COVID-19 vaccination must be temporarily delayed, as recommended by the CDC, due to clinical precautions and considerations) have received, at a minimum, a single-dose COVID-19 vaccine, or the first dose of the primary vaccination series for a multi-dose COVID-19 vaccine prior to staff providing any care, treatment, or other services for the facility and/or its residents;
- (ii) A process for ensuring that all staff specified in paragraph (i)(1) of this section are fully vaccinated for COVID-19, except for those staff who have been granted exemptions to the vaccination requirements of this section, or those staff for whom COVID-19 vaccination must be temporarily delayed, as recommended by the CDC, due to clinical precautions and considerations;

Policy

(3) The policies and procedures must include, at a minimum, the following components (continued)

(iii) A process for ensuring the implementation of additional precautions, intended to mitigate the transmission and spread of COVID-19, for all staff who are not fully vaccinated for COVID-19;

(iv) A process for tracking and securely documenting the COVID-19 vaccination status of all staff specified in paragraph (i)(1) of this section;

(v) A process for tracking and securely documenting the COVID-19 vaccination status of any staff who have obtained any booster doses as recommended by the CDC;

(vi) A process by which staff may request an exemption from the staff COVID-19 vaccination requirements based on an applicable Federal law;

(vii) A process for tracking and securely documenting information provided by those staff who have requested, and for whom the facility has granted, an exemption from the staff COVID-19 vaccination requirements;

Policy

(3) The policies and procedures must include, at a minimum, the following components (continued)

(viii) A process for ensuring that all documentation, which confirms recognized clinical contraindications to COVID-19 vaccines and which supports staff requests for medical exemptions from vaccination, has been signed and dated by a licensed practitioner, who is not the individual requesting the exemption, and who is acting within their respective scope of practice as defined by, and in accordance with, all applicable State and local laws, and for further ensuring that such documentation contains:

(A) All information specifying which of the authorized COVID-19 vaccines are clinically contraindicated for the staff member to receive and the recognized clinical reasons for the contraindications; and

(B) A statement by the authenticating practitioner recommending that the staff member be exempted from the facility's COVID-19 vaccination requirements for staff based on the recognized clinical contraindications;

Policy

(3) The policies and procedures must include, at a minimum, the following components (continued)

(ix) A process for ensuring the tracking and secure documentation of the vaccination status of staff for whom COVID-19 vaccination must be temporarily delayed, as recommended by the CDC, due to clinical precautions and considerations, including, but not limited to, individuals with acute illness secondary to COVID-19, and individuals who received monoclonal antibodies or convalescent plasma for COVID-19 treatment; and

(x) Contingency plans for staff who are not fully vaccinated for COVID-19.

Enforcement

- CMS expects state survey agencies to conduct onsite compliance reviews of these requirements in two ways:
 - State survey agencies would assess all facilities for these requirements during the standard recertification survey.
 - State survey agencies would assess vaccination status of staff on all complaint surveys.
- While onsite, surveyors will review the facility's COVID-19 vaccination policies and procedures, the number of resident and staff COVID-19 cases over the last 4 weeks, and a list of all staff and their vaccination status. This information, in addition to interviews and observations, will be used to determine the compliance of the provider or supplier with these requirements.

Next Steps

- Submit comments and questions to COVID19@leadingageohio.org
- LeadingAge Ohio will have an FAQ
- LeadingAge Ohio is working with LeadingAge to provide tools for our members
- Updates will be provided in the newsletter