

## FAQ for Staff Vaccination Mandate



### Resources

#### **Q1R: Where is the vaccine mandate document located?**

A: The Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination published on 11/5/21 can be found at:

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

#### **Q2R: Has CMS provided an FAQ?**

A: Yes, CMS has provided an FAQ on some of the basics of the mandate which can be found at:

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

#### **Q3R: Is there a resource in Ohio to check for vaccination status?**

A: Information on the Ohio Impact Statewide Immunization Information System (ImpactSIIS) Web application is located on the Ohio webpage at: <https://ohioimpactsiiis.org/siisprod/>

#### **Q4R: When exactly is the compliance date for Phase 1 and what is required to be completed?**

A: You must have your process or plan in place for vaccinating staff, providing exemptions and accommodations, and tracking and documenting staff vaccinations within 30-days (by December 6, 2021)

#### **Q5R: Is there a template and resources available to develop a policy?**

A: Yes, these resources can be found on the LeadingAge Ohio webpage at:

[https://www.leadingageohio.org/aws/LAO/pt/sd/news\\_article/405308/PARENT/layout\\_details/false](https://www.leadingageohio.org/aws/LAO/pt/sd/news_article/405308/PARENT/layout_details/false)

#### **Q6R: Where can I find data on the effectiveness of the vaccine? We have a staff member who is wanting information on how the vaccine is helping nursing homes.**

A: CDC provides data on studies on vaccine effectiveness in their Morbidity and Mortality Weekly Reports (MMWR) which can be found at

[https://www.cdc.gov/mmwr/covid19\\_vaccine\\_safety.html](https://www.cdc.gov/mmwr/covid19_vaccine_safety.html). This MMWR report highlights effectiveness for frontline healthcare workers.

[https://www.cdc.gov/mmwr/volumes/70/wr/mm7034e4.htm?s\\_cid=mm7034e4\\_w](https://www.cdc.gov/mmwr/volumes/70/wr/mm7034e4.htm?s_cid=mm7034e4_w). This report supports the vaccine effectiveness for residents in nursing homes

[https://www.cdc.gov/mmwr/volumes/70/wr/mm7034e3.htm?s\\_cid=mm7034e3\\_w](https://www.cdc.gov/mmwr/volumes/70/wr/mm7034e3.htm?s_cid=mm7034e3_w)

## FAQ for Staff Vaccination Mandate



### **Who is included in the mandate?**

#### **Q1M: Who does the mandate apply to?**

A: The requirements apply to facilities regulated under the Medicare Conditions of Participation (CoPs) or Requirements of Participation (RoPs). The Centers for Medicare & Medicaid Services (CMS) establishes health and safety standards, known as the Conditions of Participation, Conditions for Coverage, or Requirements for Participation for 21 types of providers and suppliers, ranging from hospitals to hospices and rural health clinics to long term care facilities (including skilled nursing facilities and nursing facilities, collectively known as nursing homes). The list of providers and suppliers is listed under Section I: Background on page 2 of the pdf <https://www.govinfo.gov/content/pkg/FR-2021-11-05/pdf/2021-23831.pdf>

#### **Q2M: Does the requirement also apply to adult day centers who take waiver/and DODD dollars?**

A: No, any provider not regulated under CMS' Conditions of Participation (CoPs) are not regulated under this mandate.

#### **Q3M: Does this apply to assisted living?**

A: No, this regulation and the requirements within only apply to providers and suppliers regulated under the CMS Conditions of Participation (CoPs).

#### **Q4M: Does it apply to assisted living with Medicaid waiver?**

A: No, assisted living even with Medicaid waiver still are not regulated by CMS under the Conditions of Participation.

#### **Q5M: Do assisted living employees that are in same building as SNF fall under this rule if they are only working in the assisted living but come in contact with SNF employees?**

A: Yes, CMS is requiring vaccination for all staff that interact with other staff, patients, residents, clients, or PACE program participants in any location, beyond those that physically enter facilities, clinics, homes, or other sites of care. Staff that have the potential to have contact with anyone at the site of care covered under this requirement, including staff or patients, must be fully vaccinated to reduce the risks of transmission of SARSCoV-2 and spread of COVID-19.

## FAQ for Staff Vaccination Mandate



**Q6M: Are contracted companies that provide services remotely included in this regulation since they are contracted by the provider regulated by this regulation?**

A: No, individuals who provide services 100 percent remotely, such as fully remote telehealth or payroll services, are not subject to the vaccination requirements of this IFC.

**Q7M: We have a separate organization that has offices in our building. Do they need to also be vaccinated? They share common spaces, cafeteria, commons, halls etc. but are not in resident floors.**

A: We are asking ODH to weigh in on this question. Currently the IFC states that individuals that use shared facilities (restrooms, cafeteria, break rooms) during their breaks would be subject to these requirements due to the fact that they are using the same common areas used by staff, patients, and visitors.

**Q8M: We have a volunteer Board of Trustees that meets monthly with facility leadership staff offsite to perform governing body responsibilities. Do they meet the 'eligible staff' definition under the vaccine mandate? If the meetings are held offsite in a large enough space to social distance 6 ft or more, do Board volunteers meet the 'eligible staff' definition requiring vaccination?**

A: We are asking ODH to weigh in on this question. The IFC states 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.

**Q9M: Is a consulting group required to be vaccinated? After 12/5, if facility staff meet with groups of stakeholders that include volunteers serving on planning committees, do the volunteers meeting offsite meet the eligible staff definition requiring vaccination?**

A: We are asking ODH to weigh in on this question. The IFC states 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.

**Q10M: If someone comes to tour the facility are they required to be vaccinated?**

A: CMS did not include some categories of visitors who do not have a business relationship with the provider, such as family member visitors.

## FAQ for Staff Vaccination Mandate



**Q11M: What about corporate staff that from time to time either go the sites or come in contact with staff that come to corporate?**

A: Yes, the IFC states 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.

**Q12M: Are residents required to be vaccinated?**

A: No, they are not. The requirements of participation under § 483.80 (d)(3)(v) Infection control state that the resident (or resident representative) has the opportunity to accept or refuse a COVID-19 vaccine.

**Q13M: Do visitors need to be vaccinated? Are they allowed in the building?**

A: No, CMS is not requiring visitors be vaccinated. Visitors cannot be excluded from visiting based on vaccination status.

**Q14M: Are minors required to get a vaccination?**

A: If the minor is a staff member and eligible for the vaccine then they are mandated by this requirement.

**Q15M: Do surveyors need to be vaccinated?**

A: CMS states in the revised QSO-20-39-NH memo that State Survey agencies and CMS are ultimately responsible for ensuring surveyors are compliant with the applicable expectations. Therefore, LTC facilities are not permitted to restrict access to surveyors based on vaccination status, nor ask a surveyor for proof of his or her vaccination status as a condition of entry. If facilities have questions about the process a state is using to ensure surveyors can enter a facility safely, those questions should be addressed to the State Survey agency. Surveyors should not enter a facility if they have a positive viral test for COVID-19, signs or symptoms of COVID-19, or currently meet the criteria for quarantine. Surveyors should also adhere to the core principles of COVID-19 infection prevention and adhere to any COVID-19 infection prevention requirements set by federal and state agencies (including Executive Orders).

**Q16M: If you allow private caregivers on your campus to support care in IL and/or AL - would these persons also need to be vaccinated?**

A: No since assisted living and independent living facilities are not mandated by this IFC.

## FAQ for Staff Vaccination Mandate



**Q17M: Could you clarify if Volunteers will need to be vaccinated using the same timeline?**

A: Yes, they are regulated the same as staff under this mandate and must adhere to the same timeline.

**Q18M: Regarding Agency staff -- who hears the request for the exemption/accommodation - the Agency or the facility?**

A: We are asking ODH to weigh in on this question.

**Q19M: Should groups who come in over the holidays to provide entertainment be required to have vaccinations?**

A: We are asking ODH to weigh in on this question.

**Q20M: Would pharmacy and DME staff be included as contracted individuals?**

A: Facilities should consider frequency of presence, services provided, and proximity to patients and staff. The IFC states 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.

**Q21M: What about vendors, like food service vendors? Would they be included?**

A: Again, facilities should consider frequency of presence, services provided, and proximity to patients and staff. The IFC states 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-

**Q22M: Would ambulance companies whom we have contracts be included?**

A: We are asking ODH to weigh in on this question. Facilities should have a policy that addresses their protocol for 911 ambulance transports and those contracted non-emergent ambulance and transportation services.

**Q23M: If we have an agreement with an Agency, is the Agency required to ensure their staff member is vaccinated?**

A: We are asking ODH to weigh in on this question.

## FAQ for Staff Vaccination Mandate



**Q24M: If we have an emergency event -- e.g., fire, utility outage, HVAC failure -- are we allowed to have emergency responders and volunteers that are unvaccinated enter our facility to help with addressing the emergency?**

A: Yes, facilities should have a staffing contingency plan as part of their emergency preparedness plan. CMS notes in the IFC that contingency planning may extend beyond the specific requirements of this rule to address topics such as staffing agencies that can supply vaccinated staff if some of the facility's staff are unable to work. Contingency plans might also address special precautions to be taken when, for example, there is a regional or local emergency declaration, such as for a hurricane or flooding, which necessitates the temporary utilization of unvaccinated staff, in order to assure the safety of patients. For example, expedient evacuation of a flooding LTC facility may require assistance from local community members of unknown vaccination status. Facilities may already have contingency plans that meet the requirements of this IFC in their existing Emergency Preparedness policies and procedures.

**Q25M: Can you speak to how organizations should handle hiring of new staff? Will staff have to be fully vaccinated upon hire? Will we be able to ask if they're vaccinated in the interview process? Does HIPAA apply to this?**

A: CMS notes that staff at all health care facilities included within the regulation must have received, at a minimum, the first dose of a two-dose COVID-19 vaccine or a one-dose COVID-19 vaccine by the regulatory deadline, or prior to providing any care, treatment, or other services for the facility and/or its patients. The facility must have a process for tracking and securely documenting the COVID-19 vaccination status of any staff. The HIPAA Privacy Rule does not prohibit any person (e.g., an individual or an entity such as a business), including HIPAA covered entities and business associates, from asking whether an individual (including interviewees) has received a particular vaccine, including COVID-19 vaccines. HHS provides additional guidance on the privacy rule at: <https://www.hhs.gov/hipaa/for-professionals/privacy/guidance/hipaa-covid-19-vaccination-workplace/index.html>

### **Exemptions**

**Q1E: Where can I find the CDC guidance on COVID-19 vaccination precautions and considerations?**

A: The CDC contraindications and precautions can be found at: <https://www.cdc.gov/vaccines/covid-19/clinical-considerations/covid-19-vaccines-us.html#Contraindications>

## FAQ for Staff Vaccination Mandate



**Q2E: For religious exemptions, if your company has a religious affiliation can your entire company be exempt due to the religious beliefs of the company?**

A: No, the religious exemption analysis is on an employee-by-employee basis, and not an organizational basis.

**Q3E: If a woman who is trying to get pregnant, is she covered in the medical necessity to delay category?**

A: The facility should develop its policy in collaboration with the facility's medical director. CDC states that COVID-19 vaccination is recommended for people who are pregnant, lactating, trying to get pregnant now, or who might become pregnant in the near future. Sample policies and federal contractor medical exemption forms can be utilized by facilities to establish their own policies and can be found on the LeadingAge Ohio webpage:

[https://www.leadingageohio.org/aws/LAO/pt/sd/news\\_article/405308/PARENT/layout\\_details/false](https://www.leadingageohio.org/aws/LAO/pt/sd/news_article/405308/PARENT/layout_details/false)

**Q4E: Do people who had COVID-19 within the last 90 days qualify for a temporary exemption?**

A: People with known current SARS-CoV-2 infection should defer vaccination at least until recovery from the acute illness (if symptoms were present) has been achieved and criteria to discontinue isolation have been met. Current evidence about the optimal timing between SARS-CoV-2 infection and vaccination is insufficient to inform guidance. CDC notes that COVID-19 vaccination is recommended for everyone aged 5 years and older, regardless of a history of symptomatic or asymptomatic SARS-CoV-2 infection; this includes people with prolonged post-COVID-19 symptoms and applies to primary series doses, additional primary doses, and booster doses. This guidance can be found under the COVID-19 vaccination and SARS-CoV-2 infection paragraph: <https://www.cdc.gov/vaccines/covid-19/clinical-considerations/covid-19-vaccines-us.html#CoV-19-vaccination>

**Q5E: Will there be a testing option for those not wanting to be vaccinated?**

A: No, there is not an opt-out option for individuals to be tested if they don't want to be vaccinated. For those that qualify for medical or religious exemptions, CMS does recommend testing as part of additional precautions, intended to mitigate the transmission and spread of COVID-19, for all staff who are not fully vaccinated for COVID-19.

## **Accommodations**

**Q1A: If the accommodation includes weekly testing, is it the employer's or the employee's responsibility pay for the testing?**

The CMS rule is silent on this question. Generally, employers are responsible for paying for the cost of reasonable accommodations under the ADA (disability) or Title VII (religion). However, the cost of providing the accommodation may be considered in determining whether the accommodation is, in fact, reasonable, or would pose an undue hardship. Because of the analysis of this question will be highly fact-specific, we encourage you to consult with legal counsel.

**Q2A: If someone is given an exemption then what can they do going forward? Can they give direct care still? Can they work in the SNF? Will there be a testing schedule for those employees?**

A: The provider must establish 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.

**Q3A: Can accommodations include an increase to health insurance deductibles?**

No. Increasing health insurance deductibles is not an accommodation.

**Q4A: How would you accommodate an LPN in a SNF? They can't work remotely. Any thoughts on this?**

A: The facility is required to develop a policy for staff to receive the vaccine or apply for an exemption. Facilities are required to develop a policy on the accommodations that will then provided for staff meeting the exemption status. The facility must establish 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. Those accommodations might include weekly COVID testing, as an example, depending on the particular dynamics of the facility and the job responsibilities of the LPN.

## **Compliance**

**Q1C: If someone doesn't get any doses by 12/5 and does not have an exemption, are they eligible to work?**

A: If a staff member refuses to be vaccinated and does not meet the exemptions, then they would only be allowed to provide services to the facility through 100% remote work.



## FAQ for Staff Vaccination Mandate



**Q2C: Are we at risk for CMS reviewing the exemptions we've approved? What if they feel we were too strict or too lenient?**

A: We are asking ODH to weigh in on this question.

**Q3C: Does the facility need to validate if a vaccination card provided by an employee is authentic?**

A: The IFC does not speak to authenticity of cards. The requirement states that the provider must have a process for tracking and securely documenting the COVID-19 vaccination status of all staff.

**Q4C: Are providers responsible to ensure that employees can access the vaccination (i.e., like the early vaccinations clinics) or is the staff responsible to go out and get it on their own and then provide proof of vaccination?**

A: Requirements related to offering of the vaccine can be found in the [CMS QSO-21-19-NH](#) memo. The LTC facility must develop and implement policies and procedures to ensure staff are informed of when COVID-19 vaccine is available to the facility, each resident and staff member is offered the COVID-19 vaccine unless the immunization is medically contraindicated or the resident or staff member has already been immunized. The facility is required to ensure staff were offered the COVID-19 vaccine or information on obtaining COVID-19 vaccine.

Currently, the Conditions of Participation: "Health Care Services" at § 483.460(a)(4)(i) require that ICFs-IID offer clients and staff vaccination against COVID-19 when vaccine supplies are available.

The IFC does not speak to a requirement for hosting vaccination clinics but does speak to OSHA's June 21, 2021 ETS to protect health care and health care support service workers from occupational exposure to COVID-19.

**Q5C: Are we required to have evidence of vaccination or exemptions for contractors?**

A: The IFC states the facility must have 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

## FAQ for Staff Vaccination Mandate



(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.

### **Q6C: Are employees allowed to work after phase 1 if they have only received the first shot of a two-shot COVID-19 vaccine?**

A: Yes, individuals who have received the first of the two-dose series can work. In CMS' FAQ it states: The regulation requires health care providers to establish a process or policy to fulfill the staff vaccination requirements over two phases. For Phase 1, within 30 days after the regulation is published, staff at all health care facilities included within the regulation must have received, at a minimum, the first dose of a primary series or a single dose COVID-19 vaccine prior to staff providing any care, treatment, or other services for the facility and/or its patients. For Phase 2, within 60 days after the regulation is published, staff at all health care provider and supplier types included in the regulation must complete the primary vaccination series (except for those who have been granted exemptions from the COVID-19 vaccine or those staff for whom COVID-19 vaccination must be temporarily delayed, as recommended by CDC).

### **Other**

#### **Q1Q: 40% of my staff have indicated that they will be leaving healthcare as a result of this mandate. Since this is a federal mandate that will lead to mass unemployment in my rural area, will the government allow them to be eligible to collect unemployment?**

A: Employees are generally not eligible for unemployment when they voluntarily resign from their jobs. However, unemployment eligibility is ultimately an individualized determination made by state unemployment agencies, within the parameters of federal requirements.

#### **Q2Q: If staff have side effects from the vaccination, who pays for the medical care if needed, BWC? Would they get unemployment if needed?**

A: An employee could be eligible for workers' compensation benefits if their sickness or injury was work-related. Determining whether a sickness or injury is work-related is highly fact specific. In this circumstance, it would require a determination that the sickness/injury was directly caused by vaccination.

**FAQ for Staff Vaccination  
Mandate**



**Q30: Is there a best practice time frame that we should take eligible staff off work without pay to allow them time to comply with the mandate beyond the 12/5 and 1/4 deadlines?**

A: Providers must have a process or plan in place for vaccinating staff, providing exemptions and accommodations, and tracking and documenting staff vaccinations within 30-days (by December 6, 2021). Additionally, the process or plan for vaccinating staff must ensure that all eligible staff receive the 1st Dose or One-Dose Vaccine by December 6, 2021 and received all shots for full vaccination by January 4, 2022.