



## Guidance on CMS COVID-19 Vaccine Mandate – Issued November 5, 2021

### CMS Medicare and Medicaid COVID-19 Vaccination Mandate:

On November 5, 2021, CMS promulgated final rules revising the requirements that Medicare and Medicaid certified providers must meet for participation in such programs. These new rules establish COVID-19 vaccination requirements for staff at covered facilities, and this document provides specific guidance on applicability to the OASAS system.

### The CMS Interim Final Rule:

The CMS COVID-19 vaccination mandate, available at: [CMS Final Rule: Vaccine Mandate](#), requires certain employers who are certified under the Medicare and Medicaid programs to issue a policy requiring all employees to be vaccinated against COVID-19 within 60 days of the publication of the regulation in the Federal Register, which occurred on November 5, 2021.

### Applicability in OASAS System:

The rule applies to **Medicaid and Medicare certified health care facilities**.

This rule **does apply** to OASAS certified, funded or otherwise authorized programs/facilities that are operated by Article 28 Hospitals, where the Hospital is certified by CMS (most Hospitals are CMS certified), including:

- 816 Withdrawal and Stabilization services
- 818 Substance Use Disorder Inpatient Rehabilitation Services
- 822 Outpatient Services including Outpatient, Outpatient Rehabilitation and Opioid Treatment Programs

In the OASAS system, this rule **does not apply** to community based:

- 816 Withdrawal and Stabilization services,
- 817 Residential Rehabilitation Services for Youth,
- 818 Substance Use Disorder Inpatient Rehabilitation Services
- 819 Chemical Dependence Residential Services
- 820 Residential Rehabilitation Services
- 822 Outpatient services including Outpatient, Outpatient Rehabilitation and Opioid Treatment Programs

The CMS mandate is not limited to individuals who perform direct care functions. Vaccination is required for “all staff that interact *with other staff*, patients, residents, clients... *in any location*, beyond those that physically enter facilities or other sites of patient care.” The mandate applies to students, trainees, volunteers, and housekeeping or food services staff. All administrative staff who work in applicable entities are also included due to their contact with facility staff.

Staff who provide services 100 percent remotely, such as fully remote telehealth or payroll services, are not subject to this mandate. Also, individuals who infrequently provide ad hoc non-health care services (for example annual elevator inspection, other delivery or repair services), or services that are performed exclusively off-site, not at or adjacent to any site of patient care (such as accounting services) do not have to be vaccinated.

### Vaccination:

Consistent with CDC guidance, CMS will consider staff “**fully vaccinated**” if it has been 2 or more weeks since they completed a primary vaccination series for COVID-19, defined as having received a single-dose vaccine or all doses of a multi-dose vaccine. Boosters are NOT required by the rule.

The CMS rule does require a **first dose to be administered by December 5<sup>th</sup>**, and **full vaccination by January 4<sup>th</sup> 2022**. However, the requirement for full vaccination will be delayed to allow staff who have received the second dose of a multi dose vaccine by 1/4/22 to continue to provide services without a 2 week waiting period. In addition, if an individual receives one dose by December 5, 2021, they can continue to provide services as well. Individuals who are not fully vaccinated by February 4, 2022 cannot provide services in any program subject to the rules.

Exemptions: The CMS rules does provide limited exemptions to vaccination requirements. Specifically, staff must be able to request an exemption from these requirements based upon an applicable law, such as the Americans with Disabilities Act or Title VII. This includes requests for **medical or religious** exemptions. Providers must have a process for collecting and evaluating such requests, including the tracking and secure documentation of information provided by those staff who have requested exemption, the facility’s decision to the request, and any accommodations that are provided.

With regard to recognized clinical contraindications to receiving a COVID-19 vaccine, facilities should refer to the CDC informational document, Summary Document for Interim Clinical Considerations for Use of COVID-19 Vaccines Currently Authorized in the United States, accessed at: [Clinical Considerations](#).

For religious exemptions, CMS points facilities to the Equal Employment Opportunity Commission (EEOC) Compliance Manual on Religious Discrimination for information on evaluating and responding to such requests. Employers have the flexibility to establish their own processes and procedures, including forms. An example of a template is The Safer Federal Workforce Task Force’s “request for a religious exception to the COVID-19 vaccination requirement”. This template can be viewed at: [Religious Exemption](#).

Preemption: Please note, this federal rule preempts inconsistent State and local laws as applied to Federally certified providers. This includes preemption of any State or local law providing for exemptions, **to the extent such law provides broader exemptions** than provided for by Federal law and are inconsistent with this rule.

Additional Federal Rules: The Occupational Safety and Health Administration (OSHA) issued an emergency temporary standard (ETS) to protect unvaccinated employees of large employers (100 or more employees) from the risk of COVID-19 infection by strongly encouraging vaccination—effective November 5, 2021 (“COVID-19 Vaccination and Testing ETS”). However, there have been numerous legal challenges to the Vaccination and testing ETS and a temporary stay issued by the 5<sup>th</sup> Circuit Court of Appeals. This guidance will be updated in accordance with the outcome any subsequent court decisions.