



Guidance on CMS COVID-19 Vaccine Mandate – UPDATED January 26th, 2022

CMS Medicare and Medicaid COVID-19 Vaccination Mandate:

Effective 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. Following Supreme Court challenges, implementation of the rule in New York follows the guidance issued on December 28th, 2021, later affirmed on January 13th, 2022. Please find the guidance and revised implementation timeline at: <https://www.cms.gov/files/document/qso-22-07-all.pdf> (dated: December 28th, 2021)

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, based on the Hospital being certified by CMS, 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 per the revised guidance does require a **first dose to be administered by January 27th**, and **full vaccination by February 28th 2022**.

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.