

Healthcare and Employment Alert



CMS Issues Emergency Regulation Requiring COVID-19 Vaccinations for Healthcare Workers: What We Now Know

By: Scott Kiplinger and Sam Clancy
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On November 4, 2021, the Centers for Medicare & Medicaid Services (CMS) issued an emergency regulation requiring COVID-19 vaccination of staff at Medicare- and Medicaid-certified healthcare facilities. Here are the key details:

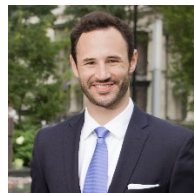
- **The regulation requires compliance by Medicare- and Medicaid-certified healthcare facilities**, including (without limitation) hospitals, clinics, long term care facilities, hospices, and home health agencies.
- **All staff—employees, contractors (direct and indirect), students, trainees, volunteers, etc.—working at a covered facility must be vaccinated against COVID 19**, regardless of clinical responsibility and patient contact; provided, however, workers who provide services entirely remotely (e.g., 100% remote telehealth or payroll services with no interaction with any patient or staff) need not be vaccinated under the CMS rule.
- **Covered facilities must establish a policy to timely fulfill staff-vaccination requirements.** Covered facilities must ensure all eligible staff have received their first vaccination by **December 5, 2021**. Workers who receive a two-shot vaccine, such as Pfizer and Moderna vaccines, must receive both doses by **January 4, 2022**. The regulations do not require workers to receive any “booster” shots; workers are considered “fully vaccinated” after receiving a second vaccine.
- **Exemptions will be considered and permitted on a case-by-case basis.** Covered facilities must allow exemptions to staff with recognized medical conditions that prevent them from receiving a vaccine. This includes workers who recently tested positive for COVID-19, as such a diagnosis temporarily delays their ability to get vaccinated. But a worker’s showing of a positive test for COVID-19 antibodies does not qualify as a medical exemption. Workers may also request an exemption for religious reasons. Request for permitted exemptions must be documented and evaluated while maintaining the (potentially) exempted worker’s privacy. You can access our prior client alert on religious accommodations [here](#).
- **Penalties for non-compliance** include monetary penalties and denial of CMS payments to covered facilities. Repeated or willful failures to comply could result in a covered facility’s termination from the Medicare and Medicaid program.
- **CMS has published FAQs** to provide clarifying guidance.

GableGotwals’ [Employment & Labor team](#) is available to help employers assess their current policies, procedures, and practices in light of these announcements. We will be monitoring for any action by on this issue, and any and all related litigation. Please contact any member of the team for further assistance.



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