

The logo features the text 'AFSCME' in large, bold, white letters on a blue background. Below it, 'Health & Safety Fact Sheet' is written in a smaller, white, sans-serif font. To the right, there is a stylized graphic of a star with several curved lines radiating from it, set against a blue background with a green horizontal bar at the bottom.

AFSCME

Health & Safety Fact Sheet

New CMS COVID-19 Vaccination Requirements For Health Care Facility Staff Updated January 20, 2022

The Centers for Medicare & Medicaid Services (CMS) issued an emergency regulation that requires certain health care facilities that participate in Medicare or state Medicaid programs to implement COVID-19 vaccination requirements for their staff. This fact sheet describes key parts of this new rule and explains where you can get more information.

When does this rule go into effect?

The emergency regulation went into effect on Nov. 5, 2021. Under the rule, covered health care facilities were required to adopt plans and processes to implement the rule's requirements no later than Dec. 5, 2021, and meet certain vaccination deadlines. *Subsequent lawsuits, however, have led to delays in the rule's implementation and enforcement.*

- ***For covered facilities in all locations other than in the 25 states listed below, CMS has issued guidance that delays the compliance dates to the following:***
 - By Jan. 27, 2022, covered facilities in these states and territories generally are required to have developed and implemented policies and procedures for ensuring all facility staff are vaccinated for COVID-19. Further, facilities are required to show by that date that 100% of staff have received at least one dose of COVID-19 vaccine or have a pending request for, or have been granted a qualifying exemption (i.e., a medical/disability or religious exemption), or identified as having a temporary delay as recommended by the Centers for Disease Control and Prevention (CDC). Temporary delays in vaccination are recommended by the CDC for certain medical reasons. For example, an individual who has received monoclonal antibodies or convalescent plasma for COVID-19 treatment should wait 90 days before receiving a vaccine.
 - By Feb. 26, 2022, facilities are generally required to show that 100% of staff have received the necessary doses to complete the COVID-19 vaccine series (i.e., two doses of either the Pfizer-BioNTech or Moderna vaccines or one dose of the Johnson & Johnson vaccine) or have been granted a qualifying exemption or identified as having a temporary delay.
- ***For covered facilities in 24 states*** (Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Utah, West Virginia and Wyoming), ***CMS has issued guidance that delays the applicable compliance dates to Feb. 13, 2022, (instead of Jan. 27) and March 15, 2022 (instead of Feb. 26).***

- ***For covered facilities in Texas, CMS has not yet issued compliance dates.*** A federal court had stayed implementation indefinitely there but issued a judgement dismissing the case on Jan. 19, 2022. CMS is expected to issue additional guidance establishing compliance dates for Texas facilities.

Enforcement deadlines are discussed separately below under the heading, “*How will this requirement be enforced?*”

Which kinds of health care facilities are covered under this requirement?

This requirement applies only to providers that are certified to participate in Medicare or Medicaid *and* are regulated under certain health and safety standards. For purposes of this rule, they are referred to as health care facilities.

The requirement specifically applies to the following providers and suppliers:

- Ambulatory surgical centers.
- Outpatient physical therapy and speech-language pathology providers, including clinics, rehabilitation agencies and public health agencies.
- Community mental health centers.
- Comprehensive outpatient rehabilitation facilities.
- Critical access hospitals.
- End-stage renal disease facilities (i.e., dialysis centers).
- Home health agencies.
- Home infusion therapy suppliers.
- Hospices.
- Hospitals.
- Intermediate care facilities for individuals with intellectual disabilities.
- Nursing homes.
- Program of All-Inclusive Care for the Elderly (PACE)
- Psychiatric residential treatment facilities.
- Rural health clinics and federally qualified health centers.

This rule does not apply to health care providers that are not regulated by CMS. For example, if a nursing home does not participate in either Medicare or Medicaid, this rule does not apply to it. Further, Medicare- and Medicaid-participating providers not covered by CMS health and safety standards, like doctors’ offices, group homes and independent providers of home care services, are not covered by this new rule.

Which staff are covered by this requirement?

This vaccination requirement applies to staff, both current and new, working at a facility that participates in Medicare or Medicaid, regardless of clinical responsibility or patient contact. This includes facility employees, licensed practitioners, students, trainees, volunteers and contractors.

These requirements are not limited to staff who perform duties within a formal clinical setting. All staff who interact with other staff, patients, residents and clients in any location beyond the formal clinical setting must be vaccinated.

Staff who provide services 100% remotely and do not have any direct contact with patients and other staff, are not subject to the vaccination requirement in this regulation.

When must staff be vaccinated?

Staff at covered health care facilities in most states, the District of Columbia and all territories, at a minimum, must have received the first dose of a primary series or single dose COVID-19 vaccine by Jan. 27, 2022. Staff at covered health facilities must complete the primary vaccination series by Feb. 26, 2022. Staff at covered facilities in the 24 states listed under the first question above must have received the first dose of a primary series or single dose COVID-19 vaccine by Feb. 13, 2022, and must complete the primary vaccination series by March 15, 2022. Exceptions apply to those who have been granted exemptions from the COVID-19 vaccine or for whom COVID-19 vaccination must be temporarily delayed, as explained in more detail below.

What is “fully vaccinated” under this requirement? Are booster shots required?

CMS currently considers staff fully vaccinated if it has been two weeks or more since they completed a primary vaccination series for COVID-19. Staff who have completed the primary series for the vaccine are considered to have met these requirements even if they have not yet completed the 14-day waiting period required for full vaccination. Booster shots are not required under this rule.

Are there exemptions to this vaccination requirement?

Facilities are required to allow exemptions to staff with recognized medical conditions that indicate that a vaccine is not suitable for them, as required under the American with Disabilities Act (ADA), or whose sincerely held religious beliefs, observances or practices conflict with the vaccination requirement (as required under Title VII of the Civil Rights Act of 1964). Facilities are not allowed to grant exemptions beyond what is legally required for these two reasons.

Facilities must establish their own processes that permit staff to request religious or medical exemptions from the COVID-19 vaccination requirements. Facilities are required to ensure that requests for religious exemptions are documented and evaluated in accordance with applicable federal law. Facilities must ensure that all documentation confirming medical exemptions are signed and dated by a licensed practitioner.

How should facilities accommodate staff who meet the requirements for an exemption and are not vaccinated?

Facilities are required to develop a process for implementing additional precautions for any staff who are not vaccinated, in order to mitigate the spread of COVID-19. This may include steps such as reassignment of a worker or a requirement to use respirators or face coverings. While facilities may choose to implement testing requirements for staff who are unvaccinated under an approved religious or medical exemption, CMS has indicated that it does not consider testing to be an adequate alternative to vaccination for employees generally.

How will this requirement be enforced?

CMS is working with the state agencies responsible for determining whether health care facilities are complying with federal requirements (i.e., state survey agencies) to review compliance with these new requirements. On-site surveyors will review a facility's COVID-19 vaccination policies and procedures, the number of resident and staff COVID-19 cases over the prior four weeks, and a list of all staff and their vaccination status.

On Dec. 28, 2021, CMS issued guidance to state survey agencies for assessing facility compliance with this regulation in those places where its implementation has not been blocked by a court. This includes specific guidance for each of the 14 different facility types covered by the rule.

Under this new guidance, the state survey agencies are directed to begin surveying for compliance beginning Jan. 27, 2022, in most states, the District of Columbia and all territories and on Feb. 13, 2022, in the 24 states listed under the first question above, as part of the initial certification, standard recertification (or reaccreditation) and complaint surveys that they conduct of Medicare- and Medicaid-certified facilities.

- By Jan. 27, or Feb. 13 in the 24 states listed above, covered facilities are required to have developed and implemented policies and procedures for ensuring all facility staff are vaccinated for COVID-19. Further, facilities are required to show that 100% of staff have received at least one dose of COVID-19 vaccine or have a pending request for, or have been granted a qualifying exemption, or identified as a having a temporary delay as recommended by the Centers for Disease Control and Prevention (CDC) for medical reasons (such as having recently received monoclonal antibodies or convalescent plasma for COVID-19 treatment). Non-compliant facilities will receive a notice of non-compliance. A facility that is above 80% and has a plan to achieve a 100% vaccination rate within 60 days would not be subject to additional enforcement action.
- By Feb. 26, or March 15 in the 24 states listed above, facilities are required to show that 100% of staff have received the necessary doses to complete the COVID-19 vaccine series (i.e., two doses of either the Pfizer-BioNTech or Moderna vaccines or one dose of the Johnson & Johnson vaccine) or have been granted a qualifying exemption or identified as a having a temporary delay. Non-compliant facilities will receive a notice of non-compliance. A facility that is above 90% and has a plan to achieve a 100% vaccination rate within 30 days would not be subject to additional enforcement action.
- As of March 28, or April 14 in the 24 states listed above, non-compliant facilities may be subject to enforcement action.

More detailed information about compliance and enforcement for each facility type can be found in the guidance issued by CMS, which can be found [here](#) and [here](#).

What are the penalties for noncompliance?

For nursing homes, home health agencies and hospice, penalties include civil monetary penalties, denial of payment and termination from the Medicare and Medicaid program as a final measure. For hospitals and other acute and continuing care providers, the penalty is termination. Termination would occur only after providing a facility an opportunity to make the necessary corrections to come into compliance.

Which regulation is a given health care facility expected to follow if several vaccination rules may apply?

If a Medicare- or Medicaid-certified provider or supplier falls under the requirements of this CMS rule, it should look to these requirements first, which will take precedence over other federal rules. Further, CMS and other federal regulations generally supersede, or preempt, conflicting state or local laws. This includes state laws barring employers from requiring employees to vaccinate.

In a case in which the staff of a facility covered under the CMS rule are not subject to the rule's vaccination requirements (e.g., someone who teleworks full time), those staff may be subject to the requirements outlined in other federal rules. Implementation of federal vaccination requirements for federal contractors and the Occupational Health and Safety Administration (OSHA) COVID-19 emergency temporary standard for or employers with 100 or more employees, however, has been suspended, at least temporarily, by federal courts.

In a case in which a health care facility (and therefore its workers) is not covered under the CMS rule, that facility may be subject to the other federal vaccination and testing rules.

Do the CMS COVID-19 testing requirements for nursing home employees still apply?

Yes. In September 2020, CMS published emergency regulation that established new requirements for nursing homes to test facility residents and staff for COVID-19. This requirement still applies.

Where can I get more information about this CMS rule?

For general information about this new rule, CMS has provided a detailed set of [questions and answers](#). The latest enforcement guidance issued by CMS can be found [here](#) and [here](#). For answers to specific questions about this rule, contact Laurie Ann Atienza at latienza@afscme.org.