



Important Industry Update

New Covid Vaccine Regulations for Employees:

On the same day that our November newsletter was distributed, CMS and OSHA issued new regulations relative to Covid vaccination for employees. Given the importance of these regulations and the short implementation timelines we wanted to update our readers with essential information.

OSHA called their new rules an "Emergency Temporary Standard" and CMS titled theirs as an "Interim Final Rule" with comment period. The most significant difference between these new rules is that the OSHA rule which applies to employers outside of CMS regulated healthcare settings allows for employees to choose not to be vaccinated, instead mandating the individual wear a mask and undergo weekly Covid testing.

The employer is not responsible for the cost of the weekly testing under the OSHA emergency temporary standard. The CMS rule mandates that all healthcare workers obtain vaccination. While there is no personal choice or preference options for the healthcare worker to not be vaccinated, the CMS rule does allow exemptions for medically necessary healthcare contraindications and sincere religious beliefs.

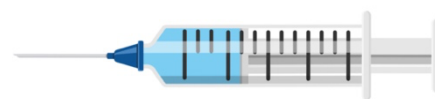
There are also no exemptions authorized for those who had and recovered from an active Covid infection. Given that our readers are all in regulated healthcare settings, we will focus our discussion on the CMS rules and timelines.

The CMS rule was officially published in the Federal Register on November 5th, 2021. It will

be added into the infection prevention COP for hospitals and the equivalent COP in non-hospital programs. You can find the new requirement and how to submit any comments using the following link:

<https://www.govinfo.gov/content/pkg/FR-2021-11-05/pdf/2021-23831.pdf>

At present there is no accompanying QSO memo with interpretive guidance, however CMS does indicate that this will be forthcoming. CMS does make it clear in their interim rule that their mandate for vaccination supersedes any conflicting state or local laws which might prohibit mandatory vaccination.



Key Dates:

The first important implementation deadline is 30 days from the posting date, which will be December 5th, 2021. By this date, healthcare workers in settings regulated by CMS must have had their first vaccination with a two-shot vaccine or their one-shot vaccination.

The second key date is January 4, 2022. By this date all the healthcare workers must have

received their second dose of a two-dose vaccine. Going forward CMS will expect the second dose followed by 14 days prior to provision of patient care services, but that aspect is waived to get the program started. The new regulations do not yet consider or require any booster doses at this time.



Applicability:**Mandated:**

- Staff and physicians that have patient contact and staff that have contact with other coworker staff
- Volunteers, board members, and contractors who perform services at the healthcare site
- Construction workers who will be onsite for multiple days, using public restrooms, the cafeteria or staff breakrooms

Exempt:

- Staff who work remotely from home 100% of the time
- "Ad hoc" contractors who come in to repair an elevator

**Vaccination Program Tracking:**

CMS does require healthcare organizations to document and track the vaccination status of their workers. In the posted regulations, they provided a link to a CDC developed tracking tool in Excel format that could be used for this purpose. The Excel tracking tool can be found using the following link: <https://www.cdc.gov/nhsn/hps/weekly-covid-vac/index.html#dtw>

Exemptions:

CMS identified that some staff may have a sincere religious belief or a medical contraindication to being vaccinated which may be protected by other Federal law or regulations and must be respected. In your tracking process you would want to document which staff have been authorized for such an exemption. They do mention that any clinical documentation should be confidential and maintained separately from the usual HR files.

As the proposed regulation is not crystal clear on how to accommodate such employees, we would anticipate that there will be many questions about how and which exemptions to approve, and how to reasonably accommodate such employees. CMS provided a link to a series of FAQs from the Equal Employment Opportunity Commission, (EEOC). <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>

Questions:

As you read the CMS proposed rule you likely will have additional questions. CMS provided yet another link to FAQs about the rule which may help. <https://www.cms.gov/files/document/cms-omnibus-staff-vax-requirements-2021.pdf>

CONSULTANT CORNER

Dear Readers,

Thank you for allowing us to send over another issue this month. Keeping you updated is important to us! We will see you in December!

Thank You,

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