



Centers for Medicare & Medicaid Services Issues Regulations Requiring COVID-19 Vaccinations for Health Care Workers

On November 5, 2021, the Centers for Medicare & Medicaid Services (CMS) published its [interim final rule](#) requiring health care workers in Medicare- or Medicaid-certified facilities to be fully vaccinated against COVID-19.

Under this rule, all staff working at a Medicare- or Medicaid-certified facility must be fully vaccinated no later than January 4, 2022. This requirement applies to all staff regardless of the staff member's clinical responsibility or patient contact, and includes those with maintenance, grounds keeping and administration responsibilities.

The vaccination requirement also extends to individuals who provide care, treatment or other services for a covered facility or its patients under contract or other arrangements. Covered facilities will need to ensure that third parties performing services on-site, such as maintenance and recordkeeping, comply with this rule's vaccination requirements.

Covered individuals who are granted exemptions from the COVID-19 vaccine under the Americans with Disabilities Act or Title VII of the Civil Rights Act are exempt from these vaccination requirements.

Many entities in the health care industry operate Medicare- or Medicaid-certified facilities. Thus, the rule covers a wide range of health care facilities, including, but not limited to, ambulatory surgery centers, hospices, hospitals, intermediate care facilities for individuals with intellectual disabilities, clinics, home health agencies and most skilled nursing facilities. However, the rule does not appear to apply to certain health care settings such as assisted living facilities that are not regulated by CMS or Medicare or Medicaid certified. However, such facilities may still be subject to the COVID-19 vaccination requirements of the new OSHA [Emergency Temporary Standards](#) (OSHA ETS) affecting employers with 100 or more employees.

The CMS interim final rule also requires that covered health care facilities establish a policy to fulfill the staff vaccination requirements over two phases. For Phase 1, covered individuals must have received, at a minimum, the first dose of a

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primary series or a single dose COVID-19 vaccine no later than December 5, 2021. For Phase 2, covered individuals must complete the primary vaccination series no later than January 4, 2022.

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CMS will enforce the interim final rule by working with state survey agencies. The state survey agencies will conduct on-site compliance reviews by assessing facilities for these requirements either during the standard recertification survey or on all complaint surveys. Penalties for failing to comply with this rule include civil monetary penalties, denial of payment and termination from the Medicare and Medicaid programs.

Given the short timeline for compliance, health care providers should determine if they are covered by the CMS interim final rule or the new OSHA ETS and begin to prepare policies and procedures as soon as possible.

If you have questions regarding whether your workplace is covered by the CMS interim final rule or the new OSHA ETS, or if you would like assistance developing and implementing policies and procedures that comply with the rules, contact [Shannon Toole](#), [Bob Lightfoot](#), [Tristan Dollinger](#) or your Reinhart attorney.

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