

Wisconsin Department of Health Services Answers Questions About the CMS Vaccination Mandate

On November 23, 2021, the Wisconsin Department of Health Services (DHS) conducted a live webinar to answer questions surrounding the Centers for Medicare & Medicaid Services (CMS) COVID-19 Vaccine Mandate scheduled to take effect December 6, 2021.

The most frequently asked question among providers was, "Does the vaccine mandate apply to our facility?" The response by DHS was consistent that if your facility or provider type bills Medicare via a CMS Certification Number, the CMS vaccination mandate applies to you. The provider types specifically exempted from the mandate include, standalone personal care agencies, assisted living facilities, physician offices, outpatient mental and behavioral health clinics and non-certified home and community-based service providers.

As of December 5, 2021, covered providers should have the following three items documented:

1. A process or plan to vaccinate staff with the first dose administered on or before December 6, 2021, and the second dose, other than the one-dose Johnson & Johnson vaccine, administered no later than January 4, 2022;
2. A plan for medical or religious exemptions and accommodations for those granted such an exemption; and
3. A plan for tracking and documenting staff vaccinations.

Although no official guidance from CMS has been received thus far by DHS related to enforcement of the vaccine mandate, DHS did say that enforcement of the above three requirements will commence January 5, 2022, via recertification and complaint surveys. Interpretive guidelines on enforcement will be issued by CMS and providers found out of compliance can expect a citation of varying scope and severity (based on the degree of noncompliance) and possibly Civil Monetary Penalties, Denial of Payment for New Admissions, and possibly termination from the Medicaid or Medicaid programs.

Another popular question asked was to which staff the vaccine mandate will apply. DHS responded "all eligible staff," meaning all staff that provide care,

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treatment and services to include students, trainees, volunteers and contracted staff. All offsite staff are included with the exception of full-time teleworkers. While DHS stated that contracted employees such as plumbers would be included, a recently updated [CMS Vaccination Mandate FAQ document](#) states that vendors, volunteers or professionals providing infrequent or ad hoc non-health care services onsite or exclusively offsite would not require vaccinations.

Exemptions from the mandate and accommodations for the unvaccinated were also discussed. It will be up to the provider to ensure it has documentation of a granted exemption whether from its own employees or those from an outside agency, such as a staffing agency. DHS believes that CMS will not require the state surveyors to evaluate the granted exemptions, just verify that staff is either vaccinated or has a documented exemption. Providers were directed to consult the federal Equal Employment Opportunity Commission website for more information on granting exemptions.

Finally, there were questions about new hires after December 6, 2021. DHS responded that for new hires after December 6, 2021, they need to be vaccinated and have their first dose prior to providing resident/patient care.

If you have additional questions about the CMS vaccine mandate, please reach out to [Robert Lightfoot](#) or your Reinhart attorney.

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