



## Navigating the CMS Rule Addressing COVID-19 Vaccination Requirements for Healthcare Workers

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## Presenters



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# Key Takeaways

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  - Eligibility & Coverage
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  - Requirements, Timing, & Interaction with Other Federal Regulations
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  - Medical and Religious Exemptions
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  - Enforcement & Next Steps

# Eligibility and Coverage



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## What Entities are Covered?

### Residential Congregate Care Facilities

- Long Term Care Facilities (Skilled Nursing and Nursing Facilities)
- ICFs-IID
- PRTFs

### Acute Care Settings

- Hospitals
- CAHs
- ASCs

### Outpatient Clinical Care Services

- ESRDs
- CMHCs
- CORFs
- RHCs & FQHCs
- Clinics, Rehabilitation Agencies, and Public Health Agencies as Providers of Outpatient Physical Therapy and Speech-Language Pathology Services

### Home-Based Care

- HHAs
- Hospice
- HIT Suppliers
- PACE Organizations

# What Entities Are Excluded?

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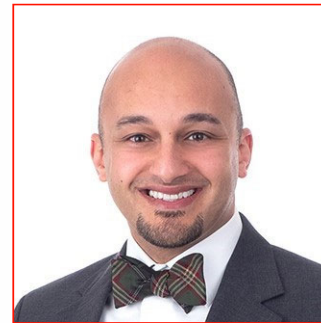
- Entities NOT INCLUDED in the CMS Rule:
  - Religious Nonmedical health Care Institutions
  - Organ Procurement Organizations
  - Portable x-ray suppliers
- CMS Rule does NOT APPLY to:
  - Assisted living facilities
  - Group homes
  - Home and community-based services
  - **Physician offices**

# Which Personnel Must Be Vaccinated?

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- **Thorny issue → Integrated health care systems (i.e., an organization that has both covered and not covered entities)**
- **Rule of Thumb:** If the individual interacts with patients (directly or indirectly) of the hospital or another Medicare certified entity covered by the CMS, those individual providers will be subject to the vaccination mandate, including non-clinical (i.e., housekeeping, food service, patient transport staff, etc.)
- **Common examples**
  - Telework
  - Separate corporate office or shared services
  - Physicians employed by a physician office with hospital privileges

## Requirements, Timing, and Interaction with Other Federal Regulations



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# Requirements

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- Develop Policies and Procedures Regarding Mandatory Vaccination
  - ❑ Require staff to have first dose (or a single-dose) prior to providing any care, treatment or services
  - ❑ Ensure all staff are fully vaccinated by the deadlines;
  - ❑ Vaccination status tracking



# Requirements

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- Develop Policies and Procedures Regarding Mandatory Vaccination
  - ❑ Handling, documenting, and tracking religious/medical exemptions
  - ❑ Tracking and documenting temporary vaccine delays
  - ❑ Additional precautions for staff who are not fully vaccinated
  - ❑ Contingency plans for staff who are not fully vaccinated



# Requirements

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- Policies and Procedures Must Apply To:
  - All facility employees
  - Students
  - Trainees
  - Volunteers
  - Contractors



# Deadlines

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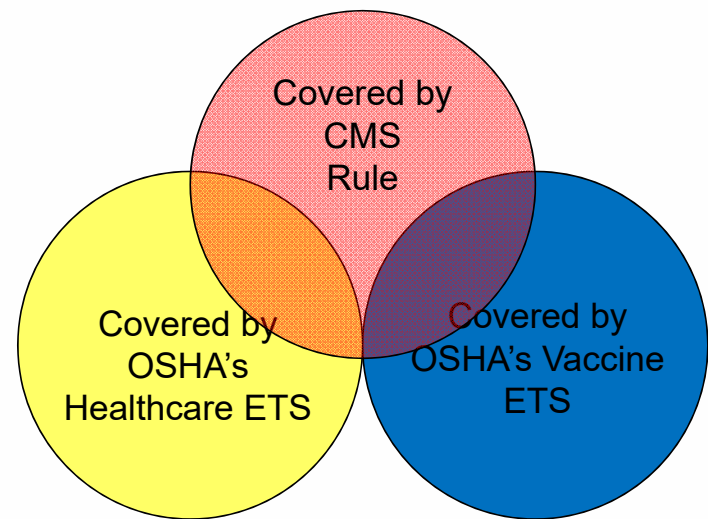
- Implement policies and procedures – “Immediately”
  - “[W]e understand that instantaneous compliance, or compliance within days, with these regulations is not possible. ... The policies and procedures required by the [Rule] will also take time for facilities to develop.”
- First dose (or single dose) - December 6, 2021
- Second dose (if applicable) - January 4, 2022



# Interaction with OSHA Emergency Standards

- The OSHA Emergency Temporary Standards
  - The Healthcare ETS
    - Applies to “healthcare” companies
    - **no mandate (but several other requirements)**
  - The Vaccine ETS
    - Companies with 100+ employees
    - Companies **NOT** covered by Healthcare ETS
    - Mandatory vaccination

Blocked by Federal Judge on Nov. 6, 2021



## Medical & Religious Exemptions



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# Exemptions to the Rule

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- The CMS Rule requires covered entities to allow exemptions as accommodations for:
  - Workers with recognized medical conditions for which COVID-19 vaccines are contraindicated; or
  - Workers with sincerely held religious beliefs in conflict with vaccination.
- Covered entities must establish processes by which employees may request a medical or religious exemption.

# Medical Exemption

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- Covered entities must obtain documentation:
  - Signed and dated by a licensed practitioner;
  - That specifies the worker's recognized medical condition;
  - That specifies why each of the authorized COVID-19 vaccinations are clinically contraindicated for the worker; and
  - That contains a statement from the practitioner recommending exemption for the worker.



# Religious Exemption

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- Covered entities must document and evaluate requests in conformity with applicable federal law and guidance from the EEOC.
- In the absence of objective evidence to the contrary, ***generally assume*** that requests for religious accommodation are based on ***sincerely held religious beliefs***.
- A sincerely held religious belief does not need to follow the tenets of a particular religion.

# Religious Exemptions

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- However, you may make reasonable requests for verification of the sincerity or religious nature of a belief, including seeking supporting information.
- A worker who fails to cooperate with a reasonable request for verification risks losing any subsequent claim that the employer improperly denied an accommodation.
- Accommodation is available **only** if based on religious beliefs, not social, political, or economic views, or personal preferences.

# Exemptions to the Rule

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- Potential accommodations for workers entitled to an exemption could include:
  - Robust Testing
  - Source Control
  - Physical Distancing
- Covered entities ***must take additional precautions*** to minimize the risk of transmission of COVID-19 by exempt workers.

# Enforcement and Next Steps



## Key Takeaway Regarding Enforcement

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- CMS will enforce this rule through surveys, statements of deficiencies, and potential penalties.
- During the CMS led stakeholder calls on November 4, 2021 and November 10, 2021, which is recorded and available online, the agency emphasized the need to have a compliant written policy and procedure that can be reviewed by state surveyors.

## Next Steps

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- There is a lawsuit!
- Medicare-certified entities should implement and distribute their vaccine mandate policies ASAP, including a procedure for handling exemption requests.
- Other steps to consider
  - Be prepared to address decreases in labor.
  - Be prepared to address employee morale and public relations issues

## Questions?



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