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On November 4, 2021, the Centers for Medicare and Medicaid Services (CMS) issued an emergency regulation entitled “CMS Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule” (CMS rule) which requires certain employers who are certified under the Medicare and Medicaid programs to issue a policy requiring all employees to be vaccinated against COVID-19 within 60 days of the publication of the regulation in the Federal Register, which occurred on November 5, 2021. This document provides guidance on the applicability of the CMS rule to the OPWDD service system. It is not intended to supplant the CMS rule and providers should conduct their own review of the CMS rule.

<https://www.federalregister.gov/documents/2021/11/05/2021-23831/medicare-and-medicaid-programs-omnibus-covid-19-health-care-staff-vaccination>.

## 1. CMS Rule’s Applicability to Providers and Suppliers:

The CMS rule applies to covered staff at specific health care facilities that are certified Medicare and Medicaid providers. In the OPWDD service system this would include the following facilities:

- Intermediate Care Facilities, including OPWDD’s developmental centers;
- Specialty Hospitals; and
- Article 16 Clinics to the extent the facility is enrolled in Medicare under 42 CFR 485.725.

The CMS rule **does not apply** to the following facilities and services in the OPWDD service system:

- HCBS Facilities or services, such as Residential Habilitation, Family Care, Day Habilitation, Community Habilitation, Supported Employment, and other HCBS programs, unless the facility is co-located with either an Article 16 clinic or ICF and the two entities share communal space or employees;
- CCO/Health Homes;
- CSIDD;
- IPSIDD (unless location of service delivery is an Article 16 clinic subject to the rule);
- Programs that are 100% State-funded.

## 2. Applicability to Staff at Covered Facilities:

The CMS rule applies to staff at the covered facilities whether or not they work with individuals or the public. The rule includes employees, licensed practitioners, students, trainees and volunteers.

It applies to employees who routinely provide services for the facility under contract or other arrangements. The rule applies to employees who provide services off-site and to those who telecommute but who occasionally go into work. Any employee who performs duties at any site or who may come into contact with anyone at the facility must be fully vaccinated.

The CMS rule **does not apply** to the following staff:

- Staff who are full-time telecommuters and who do not come into contact with other employees or individuals receiving services, such as those providing full-time telehealth services or payroll services; and
- Infrequent service providers, such as those who provide “one-off” services.
- Those who have received a reasonable accommodation under applicable federal standards (e.g., ADA or Title VII).

### 3. Timing of Compliance:

All covered staff (except for those staff who have pending requests for, or who have been granted, exemptions to the vaccination requirements, or those staff for whom COVID-19 vaccination must be temporarily delayed, as recommended by the CDC, due to clinical precautions and considerations) must have received, at a minimum, a single dose COVID-19 vaccine, or the first dose of the primary vaccination series for a multi-dose COVID-19 vaccine by December 5, 2021, prior to staff providing any care, treatment, or other services for the facility and/or its residents or patients and the second dose of a multi-series COVID-19 vaccine by January 4, 2022. Providers should promptly inform their covered staff of the rule’s requirements in order to meet these deadlines. Boosters are not required by this rule.

### 4. Proof of Vaccination Status:

Providers and suppliers must track employee vaccination status and keep such records confidential. Examples of acceptable forms of proof of vaccination include:

- CDC COVID-19 vaccination record card (or a legible photo of the card).
- Documentation of vaccination from a health care provider or electronic health record.
- State immunization information system record.

### 5. No Testing Option:

There is no “test-out” option for covered employees under the CMS rule. Staff who have previously had COVID or who have COVID antibodies are not exempt from this rule.

### 6. Procedures:

By December 5, 2022, providers must develop procedures to allow employees to apply for a medical accommodation under the ADA or a religious accommodation under Title VII. Providers must also develop procedures to mitigate the transmission and spread of COVID for staff who are not fully vaccinated, including those who have received a reasonable accommodation or for whom vaccination must be temporarily delayed due to clinical precautions.

Providers must develop processes to ensure that all staff seeking a medical exemption provide documentation from a licensed practitioner who is not the individual requesting the exemption and is acting within their respective scope of practice based on applicable state and local laws. Such

documentation must contain all information specifying which COVID-19 vaccinations are clinically inadvisable and the recognized reason for such contraindication.

7. Enforcement:

CMS will enforce this rule through state surveyors who will review the providers records and may conduct interviews. Non-compliant providers will be given an opportunity to become compliant but may face civil monetary penalties, denial of new admissions to the program and termination from the Medicare and Medicaid programs if they continue to be out of compliance.

8. Reporting:

There are no new reporting requirements under this rule.

This guidance is based upon current information and is subject to change. CMS has also issued a set of Frequently Asked Questions (FAQs) accompanying the announcement of the Rule:  
<https://www.cms.gov/files/document/cms-omnibus-staff-vax-requirements-2021.pdf>.