

Welcome to the Planning for CMS' COVID-19 Vaccine Mandate Webinar

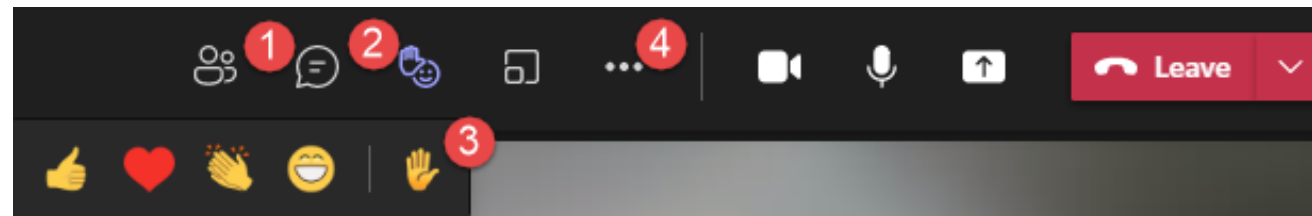
We will begin shortly.

The webinar will be recorded.

You can ask a question at any time during the presentation in the chat **1**.

Or, if you wish to be unmuted, please raise your hand **2** & **3** and a moderator will enable your microphone.

Additionally, under the menu **4** you can enable Live Captions and enable other Accessibility features.



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Planning for CMS' COVID-19 Vaccine Mandate



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CMS Vaccine Mandate – Is it Still in Place??

- Yes!
 - Supreme Court issued two separate rulings regarding vaccine mandates.
 - OSHA Mandate for Employers with more than 100 employees was overturned.
 - **CMS Mandate for Medicare/Medicaid Certified Facilities was upheld.**
 - So yes; healthcare providers do still have a vaccine mandate to comply with.



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CMS Vaccine Mandate – Who Does it Apply To?

- The staff vaccination requirement applies to the following Medicare and Medicaid-certified provider and supplier types:
 - Ambulatory Surgery Centers
 - Community Mental Health Centers
 - Comprehensive Outpatient Rehabilitation Facilities
 - End-Stage Renal Disease Facilities
 - Home Health Agencies
 - Home Infusion Therapy Suppliers
 - Hospices
 - Hospitals
 - Intermediate Care Facilities for Individuals with Intellectual Disabilities
 - Rehabilitation Agencies Psychiatric Residential Treatment Facilities (PRTFs)
 - Programs for All-Inclusive Care for the Elderly Organizations (PACE)
 - Rural Health Clinics/Medicare Federally Qualified Health Centers
 - Long Term Care facilities.



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CMS Vaccine Mandate – Who Does it Not Apply To?

- From a regulatory perspective, CMS is not authorized to implement a vaccine mandate on independent physician practices.
- ***Therefore, independent physicians/healthcare providers do not have to develop their own compliance protocol.***
- Any compliance for independent physicians/healthcare providers will result from their intersection with a CMS covered facility (i.e. being on staff at a hospital).



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CMS Vaccine Mandate – Who Does it Apply To?

- Which Staff are Covered under the Mandate?
 - This vaccination requirement applies to eligible staff working at almost all CMS-certified facilities that participate in the Medicare and Medicaid programs, ***regardless of clinical responsibility or patient contact.***
 - The requirement includes all current staff as well as any new staff who provide any care, treatment, or other services for the facility and/or its patients. This includes facility employees, licensed practitioners, students, trainees, and volunteers.
 - Additionally, this also includes individuals who provide care, treatment, or other services for the facility and/or its patients under contract or other arrangements. ***(i.e. Independent physicians covering call or rounding on patients)***



CMS Vaccine Mandate – Who Does it Apply To?

- Does this requirement apply to staff who work offsite?
 - Yes. These requirements are not limited to those staff who perform their duties solely within a formal clinical setting, as many health care staff routinely care for patients and clients outside of such facilities (e.g. home health, home infusion therapy, etc.).
 - ***To ensure maximum patient protection, all staff who interact with other staff, patients, residents, clients, or PACE program participants in any location beyond the formal clinical setting (such as homes, clinics, other sites of care, administrative offices, off-site meetings, etc.) must be vaccinated.***
- Does this requirement apply to full time teleworkers?
 - No. Individuals who provide services 100 percent remotely and who do not have any direct contact with patients and other staff, such as fully remote telehealth or billing.



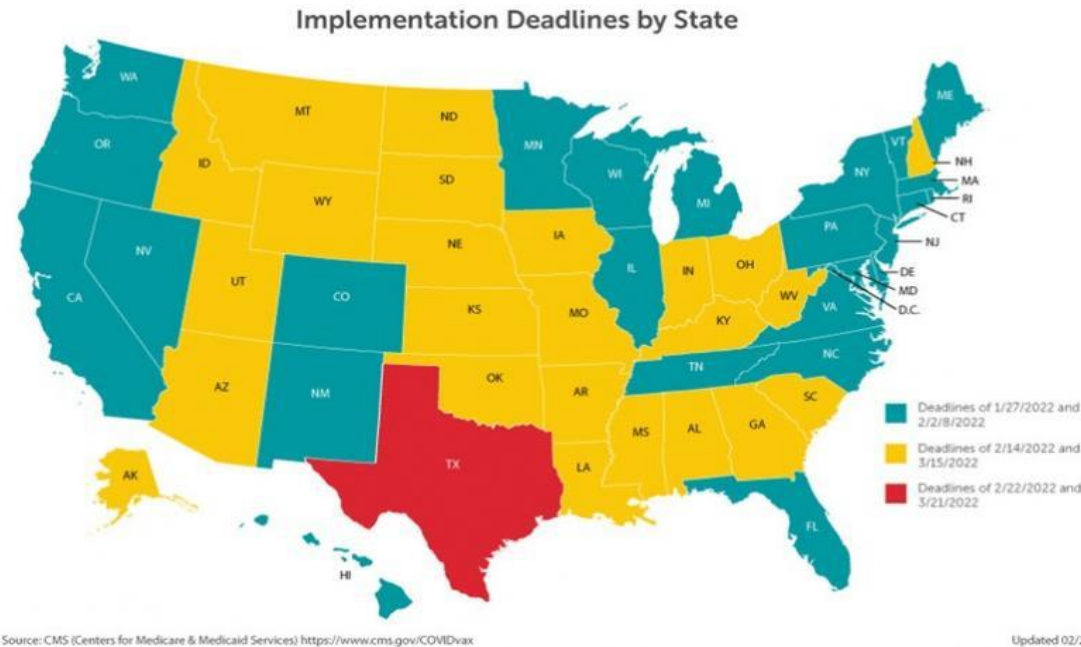
CMS Vaccine Mandate – Are Exemptions Available?

- **Yes!**
 - CMS requires facilities to allow for religious and medical exemptions to staff:
 - Reasonable accommodation for a disability.
 - Sincerely held religious belief, observance, or practice and for medical reasons.
 - Providers and suppliers should establish exceptions as a part of its policies and procedures and in alignment with Federal law. CMS believes that exemptions could be appropriate in certain limited circumstances, but no exemption should be provided to any staff for whom it is not legally required or who requests an exemption solely to evade vaccination.
 - *A temporary exemption will exist for a covered individual who has recently received a positive COVID-19 diagnosis.*
 - *CMS directs facilities to develop a process for evaluating such exemption requests. While not setting the parameters themselves; CMS encourages facilities to reference current EEOC guidance when developing such exemption protocols.*
 - *Finally, CMS notes that the rule will require that facilities who have approved religious/medical exemptions to implement additional patient health safeguards. This will most likely involve routine testing for COVID-19 infections.*



CMS Vaccine Mandate – Timelines for Georgia

- Initial Dose: February 14
- Second Dose: March 15
- Booster doses are not necessary to demonstrate compliance.



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CMS Vaccine Mandate – Documentation

- Regulated facilities included within this requirement must have a process or plan in place for documenting and tracking staff vaccinations.
- All COVID-19 vaccinations must be appropriately documented by the facility, which could be in a facility's immunization record, health information files, or other relevant documents.
- All medical records, including vaccine documentation, must be kept confidential and stored separately from an employer's personnel files. Acceptable forms of proof of vaccinations include:
 - CDC COVID-19 vaccination record card (or legible photo of the card),
 - Documentation of vaccination from a health care provider or electronic health record, or
 - State immunization information system record. Ultimately, it is up to the facility to ensure that it has a process or plan in place for capturing COVID-19 vaccination status for all staff, including individuals who provide services under contract or other arrangements.



CMS Vaccine Mandate – Documentation

- ***Of note, facilities are not required to ensure vaccination of vendors, volunteers, or professionals who infrequently provide ad hoc, non-health care services (e.g. annual elevator inspection) or services that are performed exclusively offsite and not at or adjacent to any site of patient care (such as accounting services).***



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CMS Vaccine Mandate – Enforcement

- CMS works directly with the state survey agencies to regularly review compliance with Medicare/Medicaid regulations across multiple health care settings; therefore, **CMS expects state survey agencies to conduct onsite compliance reviews of these requirements in two ways:**
 - State survey agencies would assess all facilities for these requirements during the standard recertification survey.
 - State survey agencies would assess vaccination status of staff on all complaint surveys. While onsite, surveyors will review the facility's COVID-19 vaccination policies and procedures, the number of resident and staff COVID-19 cases over the last 4 weeks, and a list of all staff and their vaccination status.
- Additionally, Accrediting Organizations will be required to update their survey processes to assess facilities they accredit for compliance with vaccination regulations.



CMS Vaccine Mandate – Enforcement

- What opportunities are available to return to compliance for hospitals and other acute and continuing care providers?
 - CMS surveyors cite hospitals and other facilities based on the severity of deficiency, classified among three levels, from most to least severe: “**Immediate Jeopardy**”, “**Condition**”, and “**Standard**.” In all cases, health care facilities have an opportunity to return to compliance before termination.
 - “**Immediate Jeopardy**” citations indicate a serious scope of non-compliance, failure of the provider to address deficiencies, and close interaction with patients of unvaccinated staff. Termination of the provider type will occur within 23-days following the citation if not immediately addressed.
 - “**Condition**” level citations indicate substantial non-compliance that needs to be addressed to avoid termination.
 - “**Standard**” level citations indicate minor non-compliance where (with respect to this rule) almost all staff are vaccinated, the provider has a reasonable policy in place to educate staff on the vaccinations, and the provider has procedures for tracking and monitoring vaccination rates.



CMS Vaccine Mandate – Enforcement Metrics

- Facilities with less than 100% staff vaccination compliance rates may be cited, but will be exempted from CMS enforcement actions (for example, civil monetary penalties or “CMPs”) if they meet the following criteria:
 - If by the applicable Phase 1 deadline, the facility has more than 80% staff vaccination compliance rate (i.e. at least first dose) and a plan to achieve a 100% staff vaccination compliance rate within 60 days; and
 - If by the applicable Phase 2 deadline, the facility has more than 90% staff vaccination compliance rate and a plan to achieve a 100% of staff fully vaccinated within 30 days.



CMS Vaccine Mandate – Penalties

- Medicare and Medicaid-certified facilities are expected to comply with all regulatory requirements, and CMS has a variety of established enforcement remedies.
 - For nursing homes, home health agencies, and hospice (beginning in 2022), this includes civil monetary penalties, denial of payment, and even termination from the Medicare and Medicaid program as a final measure.
 - The remedy for non-compliance among hospitals and certain other acute and continuing care providers is termination; however, CMS's goal is to bring health care facilities into compliance.
 - Termination would generally occur only after providing a facility with an opportunity to make corrections and come into compliance.



Latest News

- Late yesterday, the Governors of Virginia and West Virginia requested relief from compliance with the CMS Vaccine Mandate based on staffing shortage concerns.
 - Potential to set pathway towards other States requesting similar relief.



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Wrap Up & Questions

Ask in the chat or use the “raise hand” feature to be unmuted.
The recording & slides will be posted to our website shortly:

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