Federal COVID-19 Vaccine Mandate for Health Care Employers

Information for PCAs & CHCs

Last updated Jan. 15, 2022

On Jan. 13, the US Supreme Court reinstated the CMS vaccine mandate on health care employers in ALL states except Texas. While technically the legal status of the CMS mandate could change again, that is very unlikely. On Jan. 14, CMS announced compliance deadlines for CHCs in the states where the CMS mandate was just reinstated -- see Tab One here.

Just announced: Webinar to review CMS vaccine mandate, including compliance, definitions, P&Ps, and enforcement:

- Tuesday Jan. 18 at 2:00 PM Eastern.
- Please register here.

Recent additions/ updates include:

- Chart showing date the CMS vaccine mandate went back in effect, by state
- Chart summarizing the new compliance deadlines -- or see Tab One here
- FAQs re: deadlines, measuring compliance, enforcement, etc. based on CMS guidance published 12/28/21.
    - Updates to the template P&Ps to reflect the new info from CMS. *(While none of the changes are major, they may be helpful. Therefore, CHCs who have already downloaded the template P&Ps should consider reviewing the new information, which is indicated with blue highlighting.)*

This toolkit is updated regularly as more information becomes available. The most recent version is always at shorturl.at/zJOX8.

Please contact Colleen Meiman at colleen@fachc.org or 301-906-5958 with questions, suggestions, etc.

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INTRODUCTION

On November 4, CMS published an Interim Final Rule with Comment Period (IFC) and set of FAQs establishing requirements for most healthcare providers to ensure that their "staff" are vaccinated against COVID-19. After multiple stops-and-starts due to actions in the Federal court system, as of January 13, 2022, the CMS vaccine mandate is in effect in all states, DC, and the territories. While technically this legal status could change again, it is very unlikely to do so. Therefore, **all CHCs are advised to proceed under the assumption that the CMS vaccine mandate will remain in effect permanently.**

This toolkit was **updated on January 15, 2022 to reflect the guidance that CMS has published regarding compliance deadlines, measures, and enforcement in all states except Texas.** This includes both general information and information that is specific to FQHCs and RHCs), as well as updates to the CMS FAQs.

As before, this toolkit includes:

- A summary of the requirements in the CMS vaccine mandate, and how they apply to CHCs.
- A set of FAQs specifically for CHCs.
- A template to assist CHCs in developing their Policies and Procedures to implement the IFC.
- The text of the new regulatory requirements on FQHCs (and RHCs), as established in the November 4 CMS IFC.
- Sample documents from a CHC that has already announced a vaccine requirement.

We welcome all suggestions for additional resources to add to this toolkit.

Date the CMS vaccine mandate went back in effect, by state

("Group One" & "Group Two" States)

"Group One" States: CMS vaccine mandate back in effect as of mid-December 2021		"Group Two" States: CMS vaccine mandate back in effect as of Jan. 13, 2022	
California	New Jersey	Alabama	Missouri
Colorado	New Mexico	Alaska	Montana
Connecticut	New York	Arizona	Nebraska
Delaware	North Carolina	Arkansas	New Hampshire
District of Columbia	Oregon	Georgia	North Dakota
Florida	Pennsylvania	Idaho	Ohio
Hawaii	Puerto Rico	Indiana	Oklahoma
Illinois	Rhode Island	Iowa	South Carolina
Maine	Tennessee	Kansas	South Dakota
Maryland	Territories	Kentucky	Utah
Massachusetts	Vermont	Louisiana	West Virginia
Michigan	Virginia	Mississippi	Wyoming
Minnesota	Washington		
Nevada	Wisconsin	STILL BLOCKED as of 1/14	Texas

Chart of Compliance Deadlines for CMS Vaccine Mandate - as of 1/15/22

This chart is also available at Tab One here.

Deadlines		Full compliance *(CHC must meet both criteria)*	Less-than-fully-compliant, but not subject to additional enforcement beyond an initial notice of non-compliance *(CHC must meet all 3 criteria)*	Out of compliance and subject to enforcement action
For Group One states*	For Group Two states*			
"Phase One"		P&Ps have been developed and implemented	P&Ps have been developed and implemented	CHC does not meet one or more of the three criteria under "Less than fully-compliant."
Between Dec. 28, 2021 and Jan. 27, 2022	Between Jan. 14 and Sun. Feb. 13, 2022	100% of staff have received **at least one dose** of vaccine or have **requested** an exemption or delay. *(Use % definition #1)*	At least 80% of staff have received **at least one dose** of vaccine or have **requested** an exemption or delay. *(Use % definition #1)* CHC has a plan for 100% of staff to have completed their vaccine series or have an approved exemption or delay within 60 days. *(Use % definition #2)*	
"Phase Two"		P&Ps have been developed and implemented	P&Ps have been developed and implemented	CHC does not meet one or more of the three criteria under "Less than fully-compliant."
Between Fri. Jan. 28 and Mon. Feb. 28, 2022	Between Mon. Feb. 14 and Tues. March 15	100% of staff have **completed their vaccine series** (2 doses for Pfizer & Moderna, 1 for J&J) or have been **approved** for an exemption or delay. *(Use % definition #2)*	At least 90% of staff have received **at least one dose** of vaccine or have **requested** an exemption or delay. (Use % definition #1) CHC has a plan for 100% of staff to have either **completed their vaccine series** or be **approved** for an exemption/delay within 30 days. *(Use % definition #2)*	
Full Enforcement		P&Ps have been developed and implemented	CHCs that are less-than-fully-compliant will no longer have an option to avoid additional enforcement action.	CHC does not meet one or more of the three both of the criteria under "Full Compliance."
From Tues. March 1 forward	From Wed. March 16 forward	100% of staff have completed their vaccine series or been approved for an exemption or delay. *(Use % definition #2)*		

**Group One States: CA, CO, CT, DE, DC, FL, HI, IL, ME, MD, MA, MI, MN, NV, NJ, NM, NY, NC, OR, PA, PR, RI, TN, VT, VA, WA, WI, other territories. (CMS mandate went back into effect in mid-December.)*

** Group 2 States: AL, AK, AZ, AR, GA, ID, IN, IA, KS, KY, LA, MS, MO, MT, NE, NH, ND, OH, OK, SC, SD, UT, WV, WY. (CMS mandate went back into effect on Jan. 13, 2022*

Summary of CMS Vaccine Mandate - *Updated 1/14/22*

Requirements and legal status:

- The details of the CMS COVID vaccine mandate are laid in n Interim Final Rule with Comment Period (IFC) and set of FAQs that CMS published on November 4, 2021.
- After multiple legal ups-and-downs, a US Supreme Court established on January 13, 2022 that the CMS vaccine mandate is in effect in all states except Texas, essentially in the form proposed by CMS.

Compliance deadlines and measures:

- The deadlines for CHCs to come into compliance with the CMS mandate are shown here. THe deadlines vary based on whether the CHC is located in a state where the CMS rule was reinstated by a lower court in mid-December 2021 (called "Group One states") or by the Supreme Court on January 12, 2022 (called "Group Two states.")
- There are three "phases" of compliance, with the definition of "fully compliant" becoming stricter with each phase. During the final, permanent phase ("Full Enforcement") compliance is defined as 100% of covered staff being either fully vaccinated or having an approved exemption or delay.
- During Phases One and Two (which each last 30 days), a CHC that is close to full compliance might receive a notice of non-compliance but not be subject to further enforcement action. As indicated on the chart, CMS has strict definitions of what it will consider to be close to full compliance.
- Once full enforcement is in place (starting day 61 – March 16 for Group Two states) there will no longer be an option for CHCs that are less than fully compliant to avoid some enforcement action.

Which providers are subject to the mandate?

- The CMS vaccine mandate IFC explicitly applies to FQHCs (aka CHCs) and RHCs.
- It does not apply to:
  - independent physicians offices or
  - providers that do not accept Medicare or Medicaid, such as many dentists.

Which of the CHC's "staff" are subject to the mandate.

- The IFC vaccine mandate does not apply to CHC employees or contractors who exclusively provide telehealth or other services from outside of any CHC sites and have no direct contact with patients or other staff.
- The IFC does apply to all staff, volunteers -- including Board members -- and trainees who set foot inside any CHC site.
- It also applies to many contractors and some other service providers who set foot in a CHC site. For more information, see the FAQs on Applicability - Individual and this flowchart.

Exemptions:

- CHCs are required to permit their staff to request exemptions for medical or religious

reasons; however, they are not required to automatically approve all requests.

- When determining whether to approve an exemption, CHCs should consider what accommodations would be needed to ensure that they are protecting the health of patients and other staff, and whether these accommodations would create an "undue hardship" on the CHC.
- For staff with approved exemptions, the CHC must implement additional precautions to minimize the risk of transmission of COVID.
- CHCs are well-advised to see legal counsel regarding specific exemption requests.

Policies and Procedures:

- The IFC requires CHCs to have a detailed set of P&Ps relating to the CMS vaccine mandate.
- Details of what must be addressed in the P&Ps are laid out in the new regulatory language for FQHCs (and RHCs.)
- A template for developing these P&Ps is included later in this toolkit..
- CHCs' Boards of Directors should approve the new P&Ps.

Duration: CMS does not intend to end these vaccine requirements when the COVID Public Health Emergency (PHE) ends.

Updated 1/15/22 **Enforcement:**

- Compliance with the IFC will be enforced through surveys conducted by Accrediting Organizations, and by State Survey Agencies in response to complaints.
  - *As of 1/13/22, we are hearing reports that suggest that CMS may be hiring outside groups to supplement State Survey Agencies in conducting "complaint surveys", but have not confirmed this.*
- CMS has repeatedly stated that their goal is to bring providers into compliance, not to penalize them.
- CHCs that are identified by CMS as out of compliance will likely be subject to a series of escalating penalties, which could ultimately (but not immediately) lead to a CHC not receiving reimbursement from Medicare or Medicaid, and then being terminated from the program.
- The only time that a CHC could be at risk of losing its Medicare reimbursement immediately would be if, after the March 2022 deadline, a surveyor concludes that:
  - At least 40% of its staff remain unvaccinated.

    OR
  - The CHC meets all three of the following:
    1. Does not have 100% of staff fully vaccinated or approved for exemptions or delays.
    2. Has noncompliant infection control practices, and
    3. Has not developed or implemented one of more required elements of its P&Ps
- CHCs that are terminated from Medicare and Medicaid are likely to lose their 330 grant, FTCA coverage, and 340B eligibility.

FAQs

Effective Dates and Deadlines (as of Jan. 15, 2022)

Updated 1/15/22: **What are the compliance deadlines for the CMS vaccine mandate?**
These deadlines are shown on the chart on the previous page*, and vary based on what state your site(s) are located in. In 25 states, DC, and the territories, the CMS vaccine mandate was reinstated by the courts in mid-December; for CHCs in these "Group One states", the key deadlines are Jan. 28 and March 1. For another 24 states, the CMS vaccine mandate was reinstated on January 13; for CHCs in these "Group Two" states, the key dates are February 14 and March 16.
**For a clearer version of the deadline chart, see Tab One of the CHC Resource Spreadsheet.*

Added 1/14/22: **What is the status of the CMS vaccine mandate in Texas?**
As of Jan. 14, the CMS mandate is still on hold in just one state: Texas. A judge in Texas issued a ruling on December 15 that put the CMS mandate on hold only in that state, and the Supreme Court's ruling on Jan. 13 did not address that ruling. It is expected that legal action will be taken soon to reinstate the CMS mandate in Texas, but there is no certain deadline for that to happen. (Thank you to the Texas PCA for this information.)

Added 1/15/22: **Except for those in Texas, are CHCs already expected to have achieved some level of compliance with the CMS vaccine mandate?**
Yes, except for Texas, all healthcare providers that are subject to the vaccine mandate are currently expected to be in compliance with the Phase One requirements at a minimum. CHCs are expected to be in compliance with the Phase Two requirements starting on Jan. 28 if they are in a Group One state, and February 14 if they are in a Group Two state.

Added 1/15/22: **Our CHC has sites in both a Group One and a Group Two state. Which set of deadlines apply to us?**
CMS considers each FQHC site to be a separate entity, so technically, each site should adhere to the deadlines that apply to the state in which it is located.

Potential for changes to CMS Mandate?

UPDATED 1/14/22: **Could the requirement to comply with the CMS mandate change again?**
Possibly, but not likely. Technically, the decisions that the U.S.Supreme Court's handed on Jan. 13, 2022 are only in effect temporarily, while the various lawsuits over the CMS and OSHA mandates continue to work their way through the appeal process. However, numerous legal experts who read the 1/13/22 rulings believe that the Supreme Court has made its opinion clear on the overall merits of the mandates, so future changes are unlikely. This AHA blog summarized the situation as follows:

> "Technically, all the court did today was decide whether the mandates will go into effect while the courts of appeals consider the challenges to them. But at this point, the writing is on the wall: The court has five votes to uphold a CMS vaccine mandate and six votes to vacate an economy-wide OSHA vaccine-or-test mandate. So while the cases return to the courts of appeals for further proceedings, it is very unlikely that the courts of appeals will reach a conclusion different than the Supreme Court's on the stay applications."

CMS guidance on compliance and enforcement

What guidance has CMS issued regarding compliance since the courts reinstated the CMS vaccine mandate?
On December 28, 2021, CMS issued guidance to State Survey Agencies detailing how they are to evaluate healthcare providers for compliance with the CMS vaccine mandate. This guidance consisted of a general memo as well as an attachment specific to FQHCs and RHCs. While these documents are not addressed directly to FQHCs, they detail how FQHCs' are expected to demonstrate compliance with the CMS vaccine mandate.

PCAs and CHCs in all states are strongly encouraged to read the FQHC attachment closely.

How do we calculate the percentages used to determine compliance for the various deadlines?
As indicated in the chart above, there are two different "percentage" definitions used to determine compliance with the deadlines established by CMS in the 12/28/21 guidance.

Both definitions use the same denominator (the universe of individuals under consideration): namely, all "staff" (including volunteers, contractors, students, etc.) who are subject to the CMS vaccine mandate. While this chart provides a detailed definition of these "staff", it generally includes all persons who work regularly at either clinical or administrative sites.

Percentage definition #1:

- **Numerator:** Those "staff" who fall into any of the following categories:
  - have received at least one vaccine dose;
  - have a pending request for an exemption or delay; or
  - have been approved for an exemption or delay.
- **Denominator:** All "staff" who are subject to the CMS vaccine mandate. See this chart for a detailed definition of these "staff".

Percentage definition #2:

- **Numerator:** Those "staff" who have either:
  - completed their initial vaccine series (i.e. two Pfizer or Moderna, or one J&J) OR

    - have an approved request for an exemption or delay. (In other words, staff with only one Pfizer or Moderna shot, or who have requested but not yet received an exemption/ delay, no longer count in the numerator.)
- **Denominator:** All "staff" who are subject to the CMS vaccine mandate. See this chart for a detailed definition of these "staff".

Besides the new deadlines and compliance measures, did CMS provide any other new guidance?
Yes. The FQHC attachment provides additional information on three other issues:

- Specific recommendations for the "additional precautions" that CHCs can take to mitigate the spread of COVID from staff who are less-than-fully vaccinated.
- Requirements around tracking each staff person's vaccination status.
- More information on what should be contained in a FQHC's "contingency plans."

This new information has been incorporated into the FAQs below, and also into the template P&Ps. The new information is noted as "Added/ Updated Jan. 5, 2022."

Enforcement

How will compliance with the CMS vaccine mandate be enforced for CHCs?
To a large degree, CHCs are on the "honor system" to comply with the mandate. Most healthcare providers who receive Medicare reimbursement are required to undergo regular "recertification" surveys, conducted by their state survey agency or an accrediting organization, during which they are assessed for compliance with all Medicare rules. However, FQHCs are not required by CMS to undergo regular surveys. Instead, every time a FQHCs enrolls a site in Medicare, it must sign and submit Exhibit 177, in which it attests that it will "remain in compliance with the all of the federally qualified health center requirements specified in 42 CFR Part 405 Subpart X, and Part 491." The COVID vaccine mandate rules are in Part 491.8. Therefore, FQHCs who fail to comply with the COVID vaccine mandate are in violation of their basic agreement with Medicare.

When might a CHC be reviewed by an external body to assess compliance with the CMS vaccine mandate?
At present, there are only three circumstances under which a CHC could be reviewed by an external body to assess compliance with the CMS vaccine mandate:

- CHCs who have received Ambulatory Health Care Accreditation will be assessed for compliance with the vaccine mandate during their next accreditation survey. These surveys generally occur once every 3 years.
- CHCs who have received PCMH recognition from NCQA ***might*** be required to report on compliance with the vaccine mandate as part of their annual PCMH reporting. However, this is not yet guaranteed, as NCQA is free to decide whether to address this topic in its annual reporting requirements.
- If a CHC patient or staff person files a complaint with CMS, and the complaint is deemed to "raise critical allegations of noncompliance", CMS can instruct a State Survey Agency to investigate the complaint. For more information, see page 15 here.

Note that CMS has explicitly instructed any survey agency that assesses a CHC for compliance with the vaccine mandate to "focus on the vaccination status and RHC/FQHC policies to address vaccination for staff that regularly work in the RHC/FQHC (e.g., weekly)."

Is CMS likely to show up at our CHC to assess compliance with the vaccine mandate?
No. CMS will only actively assess a CHC for compliance with the vaccine mandate if it receives a complaint that "raises critical allegations of noncompliance" at that specific CHC. In this event, CMS would instruct the State Survey Agency to conduct the assessment.

Will BPHC review for compliance with the CMS vaccine mandate during Operational Site Visits?
To date, BPHC has given no indication that it plans to assess compliance with the COVID vaccine mandate as part of CHCs' Operational Site Visits (OSVs.) While Chapter 5 of the BPHC Compliance Manual states under "Demonstrating Compliance" that vaccination status is one of the issues to be addressed under a CHC's privileging procedures, COVID-19 is not currently on the list of CDC-recommended vaccines for healthcare workers.

What level of noncompliance would put a CHC in imminent danger of no longer receiving Medicare or Medicaid reimbursement?
According to the FQHC attachment, a surveyor will conclude that a FQHC (or RHC) is in "Immediate Jeopardy" if:

- 40% or more of the CHC staff remain unvaccinated
  OR
- All three of the following situations are present:
  - The CHC did not meet the 100% staff vaccination rate standard;
  - The surveyors observe noncompliant infection control practices by staff, (e.g., staff failed to properly don PPE) and
  - One or more required components of the Policies and Procedures were not developed or implemented.

A healthcare provider who is found to be in "immediate jeopardy" can have their provider agreement with Medicare (and potentially Medicaid) terminated in as few as two calendar days. The provider agreement must be terminated within 23 days ***if the issues are not resolved***.

Applicability -- Types of healthcare employers

Is it certain that the vaccine mandate applies to FQHCs?
Yes, FQHCs (and RHCs) are explicitly listed in the CMS Interim Final Rule with Comment Period (IFC) as being subject to the vaccine mandate.

Does the vaccine mandate apply to Look-Alikes as well as grantees?
Yes. Technically, the definition of an FQHC includes both Section 330 grantees and Look-Alikes, so the IFC applies to both.

What types of healthcare employers are <u>not</u> subject to the vaccine mandate in the IFC?
Notably, the IFC -- and therefore the Federal vaccine mandate on health care employers -- does not apply to:

- providers who do not accept Medicare or Medicaid, such as many dental offices OR
- *independent* physicians' offices, regardless of whether they accept Medicare or Medicaid. (Note FAQ below about physicians' offices that are part of a hospital system.)

Why doesn't the vaccine mandate apply to independent physicians' offices?
CMS states in the IFC that it lacks the legal authority to extend the mandate to independent physicians' offices -- even if they accept Medicare or Medicaid reimbursement.

Does the vaccine mandate apply to physicians' offices that are owned by hospitals?
Yes, the Federal vaccine mandate does apply to staff working in physicians offices that are owned by hospitals. This is because these individuals are legally "employees" of the hospital "facility" (and the mandate applies to the hospital facility and its employees.)

Even in situations where these staff in these offices do not meet the legal definition of hospital employees, they should still be subject to the mandate, as they would qualify as "individuals who provide care, treatment or other services for the facility and/or its patients, under contract or other arrangement."

Can you summarize which outpatient providers are -- and are not -- subject to the Federal vaccine mandate?

Outpatient Provider Type		Subject to CMS Vaccine Mandate?	Notes
Dentist offices		NO	CMS lacks the authority to regulate these. Whether or not they get paid by Medicare or Medicaid is irrelevant.
Physicians' offices that:			
	Are owned by hospitals	YES	Staff in these offices are generally considered employees of the hospital, and so are subject to the mandate on the hospital. Even if they're not "employees", they would still qualify as "individuals who provide care, treatment or other services for the facility and/or its patients, under contract or other arrangement," and therefore would be subject to it.

	Are independent	NO	CMS lacks the authority to regulate these. Whether or not they get paid by Medicare or Medicaid is irrelevant. However, if they have over 100 staff, they will be subject to the OSHA vaccine mandate.
Rural Health Clinics (RHCs)		YES	
Community Mental Health Centers (CMHCs)		YES	
Public Health Depts that:			
	Are NOT FQHCs	Generally NO	Public health depts per-se are not subject to the mandate. However, if a public health dept also qualifies as a certain provider type under Medicare -- e.g., an FQHC, Community Mental Health Center --- it is subject to the mandate via that status.
	Are FQHCs (aka public entity FQHCs)	YES	They are subject to the mandate because they are FQHCs. They may be able to exclude some employees from the mandate, but those employees' jobs and physical location would need to be very separate from the FQHC work and patients.

Our CHC has over 100 staff, so we are subject to both the CMS IFR and the new OSHA ETS around vaccine requirements. When these two regulations differ (e.g., testing option), which one must we comply with?
If there is a difference in the requirements between the two Federal documents, your CHC must comply with the CMS IFC, which has stricter requirements. This is stated explicitly in the IFC and the CMS FAQs.

Are PCAs or HCCNs -- as employers -- subject to a Federal vaccine mandate?
Unless it has at least 100 employees, a PCA/ HCCN organization is not ***directly*** subject to a Federal vaccine mandate at this time. This is because:

- As they do not receive reimbursement from Medicare or Medicaid, the CMS mandate does not directly* apply to PCAs/HCCNs.
- While government contractors are subject to a mandate, PCAs and HCCNs are technically classified as cooperative agreement holders – rather than contractors – and so are not subject to that mandate.
- The OSHA vaccine mandate (published 11/4/21) only applies to employers with 100 or more employees.

**** However, some individual PCA/ HCCN staff will likely be subject to the Federal vaccine mandate as a result of the services they provide to CHCs.*** As discussed below, CHCs must

extend the vaccine requirements to individuals who provide them with certain types of "other services" and some PCA/ HCCN might fit under this category. See next question.

Could individual PCA staff members be subject to vaccine mandate through their work with individual CHCs?

Yes. As previously discussed, the CMS vaccine mandate does not apply directly to PCAs as organizations. However, ***some individual PCA staff members may be indirectly subject to the vaccine mandate via the work they do at CHC sites.*** Here is why:

- While PCAs generally do not have formal contracts with CHCs, their BPHC award requires them to work directly with CHCs; thus, CHCs' relationship with their PCA would likely qualify as an "other arrangement" which may be subject to the Federal vaccine mandate.
- CHCs must evaluate such "other arrangements" per the factors outlined in the IFC (and flowchart.)
- To the extent that PCA staff are physically present at CHC sites (either clinical or administrative), and therefore in proximity to patients and staff, those CHCs may determine that the Federal vaccine mandate applies to them.
- As with all individuals whom a CHC determines are subject to the IFC, PCA staff:
    - are exempt from the vaccine requirement if they work remotely (meaning off site from the CHC, not the PCA office) 100% of the time. So in practical terms, the IFC could only apply only to PCA staff who provide services on-site at a CHC(s).
    - must be offered the option to request a religious or medical exemption from the CHC. As the vaccine requirements would emanate from the CHCs (rather than the PCA itself), the PCA staff person would need to request and receive approval for an exemption from each CHC where they work.

Applicability -- Individual employees, contractors, etc.

The flowchart at the end of this section should assist CHCs in determining which individuals the Federal vaccine mandate applies to.

To which individuals associated with the CHC does the vaccine mandate apply?

In general, "any individual that performs their duties at any site of care, or has the potential to have contact with anyone at the site of care, including staff or patients, must be fully vaccinated to reduce the risks of transmission" of COVID. Thus, the vaccine mandate does not apply to individuals who exclusively provide telehealth or other services from outside of the CHC and have no direct contact with patients and other staff. However, it applies to all staff and many contractors who set foot inside any CHC site.

Here is information on whether the vaccine mandate applies to specific types of individuals.

	Does the IFC apply to:	Yes or No	Notes
STAFF	Staff who who work at <u>any</u> CHC site	Yes	The vaccine mandate applies regardless of whether the staff/ contractor has direct contact with patients.
	Administrative staff who work at a CHC site	Yes	CMS contends that these individuals will have contact with other staff who have direct contact with patients - even if they work only at an administrative-only site.
	Staff who work with patients predominantly in community settings	Yes	As these persons (e.g., Community Health Workers) have contact with patients and on-site CHC staff, they are subject to the vaccine rules.
	Staff (clinical or administrative) who work 100% remotely	NO	These persons are NOT subject to the vaccine mandate, as they have no risk of coming into contact either with patients or with other staff/ contractors who have contact with patients. However, if these persons are not vaccinated, they may NEVER set foot in a CHC site (either administrative or clinical).
CONTRACTORS	Contractors who work at a CHC site	Yes	This applies regardless of whether the contractor works at a clinical or administrative site.
	Contractors who work <u>exclusively</u> off-site	NO	To be exempt from the mandate, the contractor may not spend any time at a CHC site. This group may include clinician who provide services exclusively by telehealth
	Housekeeping workers	Most likely yes	Housekeeping workers are subject to the IFC, regardless of whether they are CHC staff or contractors. See question below about housekeeping staff who work after hours.
BOARD, VOLUNTEERS, TRAINEES	Volunteers	Yes	

	Board members	Yes	The IFC explicitly states that the vaccine requirements apply to "volunteer or other fiduciary board members."
	Students/ residents/ trainees/ interns	Yes	
"OTHER SERVICE" PROVIDERS	Individuals who provide "other services" for the CHC, beyond patient care "under contract or other arrangement"	Gray area	See Q&A below. The answer depends on the type and frequency of the service, where it is provided, whether the person/ firm is under contract or "other arrangement" with the CHC, etc.

The IFC applies to non-employees who provide the CHC with "other services... under contract or other arrangement". How broadly does this apply?

This is definitely a gray area, as CMS does not define either "other services" or "other arrangement". This is leading to lots of questions about whether the IFC applies to individuals like construction workers, pest control workers, and housekeeping staff who work after business hours.

While there are few "cut-and-dry" answers, the following questions may be helpful in determining whether the vaccine requirements apply to individuals providing "other services" to a CHC:

- Is the other service provided 100% off-site from any CHC site where either patients or staff would be?
    - If yes, then the vaccine requirements do <u>not</u> apply.
    - If no (the service is provided at least partly on-site), continue to the next question.
- Is the "other service" a health care service?
    - If yes, the vaccine requirements apply.
    - If no, continue to the next question.
- Is the individual (or their employer/ firm) providing the service "under contract or other arrangement" with the CHC? (Note that the IFC does <u>not</u> define "other arrangement".)
    - If yes, continue to the next question.
    - If no, the vaccine requirements likely do NOT apply. (Examples of this are an elevator inspector, and delivery persons who are not under contract with the CHC.)
- Is the "other service" provided on an infrequent, ad hoc basis, and require the person to enter the CHC site only "for specific limited purposes and for a limited amount of time."?

    - If yes, the vaccine requirements likely do not apply, but it is still advisable to review the next question.
    - If no, continue to the next question.
- Consider the following three factors with regard to the individual(s) in question:
    - frequency of presence
    - services provided
    - proximity to patients and staff.

  Based on an analysis of these factors, your CHC will need to make a decision about whether to extend the vaccine requirements to these individuals. The IFC provides the following guidance:

  > "For example, a plumber who makes an emergency repair in an empty restroom or service area and correctly wears a mask for the entirety of the visit may not be an appropriate candidate for mandatory vaccination. On the other hand, a crew working on a construction project whose members use shared facilities (restrooms, cafeteria, break rooms) during their breaks would be subject to these requirements due to the fact that they are using the same common areas used by staff, patients, and visitors."

Finally, the flowchart at the end of this section should assist CHCs in making these determinations.

Our housekeeping staff are contractors, and work entirely after business hours. Are they subject to the vaccine requirements?

While the IFC does not address this question directly, the vaccine mandate does appear to apply to housekeeping staff who work after hours (regardless of whether they are employees or contractors). In situations where the rule is unclear, CMS states that CHCs should analyze the individuals':

- proximity to patients and staff
- frequency of presence
- services provided

While after-hours workers are not near patients and staff in real-time, research shows that the COVID-19 virus can live on surfaces for up to two to three days. Thus, given the frequency with which housekeepers are in the same areas as patients and staff, their physical contact with surfaces in those areas, and the lifespan of the virus, it would appear that the vaccine mandate should extend to them.

Do the IFC vaccine requirements extend to plumbers, HVAC workers, pest control workers and others who come on-site at the CHC to provide non-health care services?

This is a "gray area", where each situation needs to be examined separately. The IFC is somewhat self-contradictory, in that:

- It requires CHCs to extend the vaccine requirements to individuals who provide "other services" (meaning not health care services) "under contract or other arrangement" with the CHC. While CMS does not define the term "other

arrangement", it could certainly be interpreted as broad enough to encompass things like contracts for pest control, HVAC maintenance, etc.

- At the same time, CMS explicitly states that CHCs are not required (but are permitted) to extend the mandate to persons who provide "other services" on an infrequent, ad hoc basis, and require the person to enter the CHC site "for specific limited purposes and for a limited amount of time." They give an example of the person doing the annual elevator inspection and delivery personnel as the types of individuals that CHCs can exempt from the mandate.

To help CHCs (and others) navigate these gray areas, the IFC states:

> "When determining whether to require COVID-19 vaccination of an individual who does not fall into the categories established by this IFC, facilities should ***consider frequency of presence, services provided, and proximity to patients and staff.***" (emphasis added)

Please see the previous question for the complete quote on this issue from the IFC.

Can our Board members be exempted from the vaccine requirements if our CHC conducts all our Board meetings remotely?

Per the IFC, Board members are subject to the same rules as employees, which means that they are subject to the vaccine requirements. However, this also means that:

- they can be exempted from the vaccine rules if they conduct all their "work" 100% remotely
- they may request exemptions for religious or medical reasons, and
- if their requests are approved, the CHC must "develop a process for implementing additional precautions" that "minimize(s) the risk of transmission of COVID-19 to at-risk individuals, in keeping with their obligation to protect the health and safety of patients."

Chapter 19 of the BPHC Compliance Manual states in footnote 3 that:

> "Where geography or other circumstances make monthly, in-person participation in board meetings burdensome, monthly meetings may be conducted by telephone or other means of electronic communication where all parties can both listen and speak to all other parties."

Thus, if a CHC concludes that holding all Board meetings in-person is "burdensome", BPHC permits the meetings to be held virtually. However, this arrangement still leaves the question of whether the COVID vaccination rules apply when a Board member is physically present at the CHC for reasons other than an official meeting. (While non-patient Board members might never need to set foot in the CHC, patient Board members would need to come to the CHC at times to receive care.) In the case of patient Board members, CHCs are advised to distinguish between when the person is physically at the CHC *in their capacity as a patient,* as opposed to *their capacity as a Board member:*

- Section 330 rules do not require individuals to be vaccinated to get care at a CHC, so the person cannot be required to be vaccinated to visit the CHC *in their capacity as a patient.*

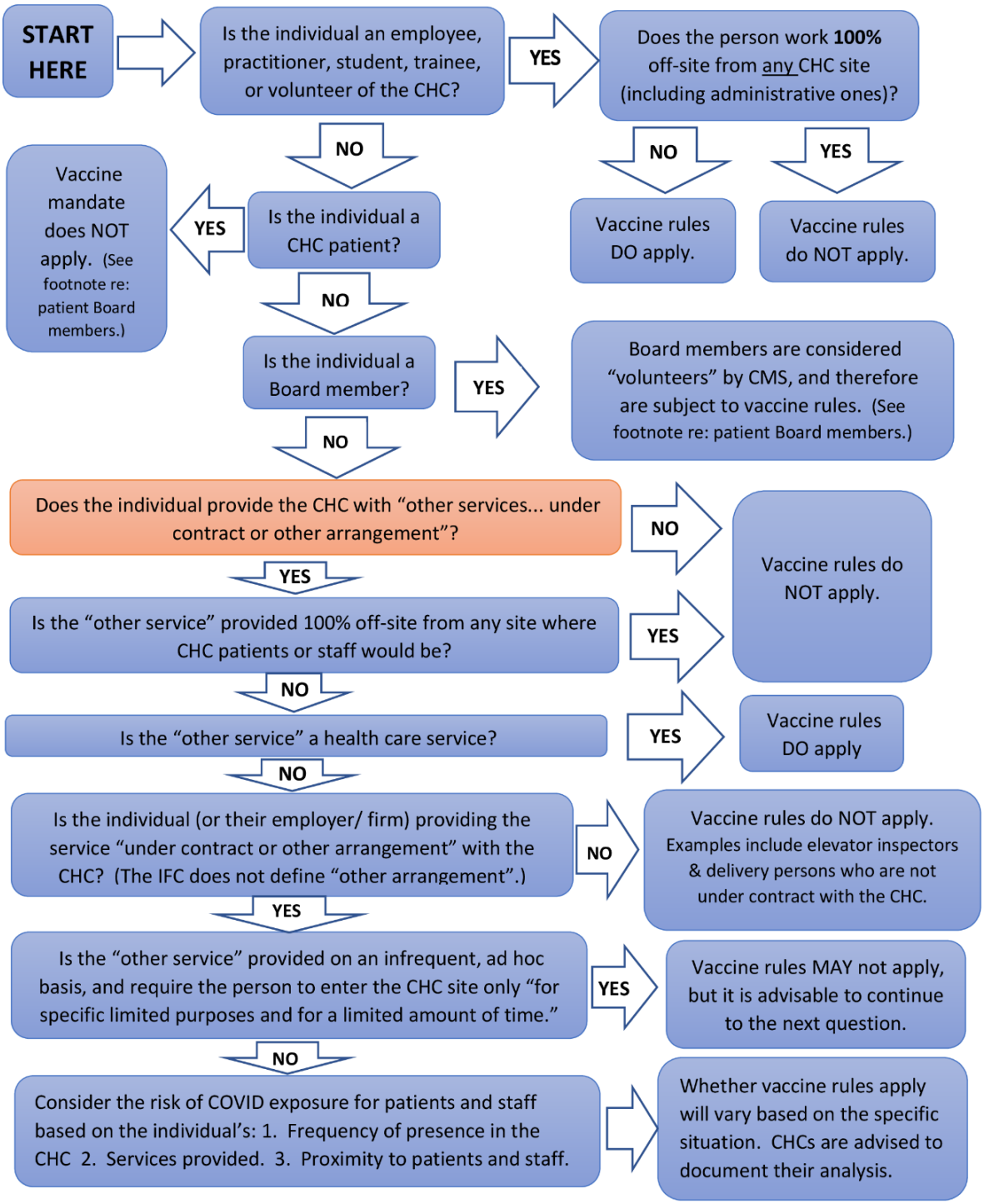
- However, CMS vaccine rules apply when the same person visits the CHC *in their capacity as a Board member*. Therefore, an unvaccinated person visiting the CHC *in their Board capacity* must be subject to the "additional precautions" described above.

Please note that this recommendation may change as more information becomes available from HHS; we will highlight any significant changes here.

When this toolkit references "staff" with regard to the vaccine mandate, to whom is it referring?

For simplicity, the remainder of this toolkit uses the term "staff" to refer to any individual associated with the CHC (e.g., employee, contractor, Board member, volunteer) who is subject to the vaccine mandate.

Flowchart: To Which Individuals Does the Federal Vaccine Mandate Apply?



*Patient Board members are a unique situation, as their patient status exempts them from the vaccine rules, while their Board member status make them subject to those rules. Pending any official guidance from HHS, CHCs should consider making these persons subject to the vaccine rules when they are acting *in their capacity as a Board member*, but not when acting *in their patient capacity*. See Q&A.

Clinical issues

On clinical issues, the IFC often refers to CDC guidance on COVID vaccination issues. What is a good summary of this CDC guidance?
In the IFC, CMS repeatedly refers to the CDC Summary Document for Interim Clinical Considerations for Use of COVID-19 Vaccines

Are staff who had COVID or test positive for antibodies still required to get vaccinated?
Yes.

Are staff who qualify for booster shots required to get them for their CHC to be in compliance?
No, the IFC requires that staff complete only the "primary vaccination series", which consists of the two-dose Pfizer or Moderna vaccines, or the one-shot J&J vaccine.

Are CHCs required to track which staff have received booster shots?
Yes. Even though eligible staff are not required to receive booster shots to comply with the IFC, CHCs are still required to track which staff receive them.

What are CDC-approved reasons for non-exempt staff members to delay getting a COVID vaccine past the effective date of the IFC?
These reasons include:

- having an acute illness secondary to COVID-19, and
- having recently received monoclonal antibodies or convalescent plasma for COVID-19 treatment within the last 90 days.

In the case of staff who qualify for a delay in vaccination:

- The CHC must document the reason for the temporary delay.
- The delay must be temporary, and the individual must be vaccinated as soon as clinically appropriate.

Exemptions - General

Can CHC staff request a medical or religious exemption from the vaccination requirement?
Yes. The IFC explicitly requires CHCs (and other providers) to establish and implement a process by which staff may request two types of exemptions from the COVID vaccination requirements:

- medical exemptions for certain disabilities (per the Americans with Disabilities Act)
- religious exemptions for "sincerely held religious beliefs, practices and observances" (per the Civil Rights Act.)

CHCs must have a process for collecting and evaluating such requests, including the tracking and secure documentation of:

- information provided by the staff,

- the CHC's decision on the request, and
- any accommodations that are provided

Our state or locality has a law that permits broader exemptions than are allowed under the IFC. Which set of rules should we follow?

CMS contends that CHCs should adhere to the exemption standards outlined in the IFC, stating that:

> "this IFC preempts the applicability of any State or local law providing for exemptions to the extent such law provides broader exemptions than provided for by Federal law and are inconsistent with this IFC."

As with other provisions in this IFC, there will certainly be numerous lawsuits filed on this issue.

Are CHCs required to automatically approve all employees' requests for medical or religious exemptions?

No. The IFC states:

> "Under Federal law…, workers who cannot be vaccinated or tested because of an ADA disability, medical condition, or sincerely held religious beliefs, practice, or observance ***may in some circumstances be granted an exemption*** from their employer. In granting such exemptions or accommodations, employers must ensure that they minimize the risk of transmission of COVID19 to at-risk individuals, in keeping with their obligation to protect the health and safety of patients." (*emphasis added.)*

Thus, CHCs are not automatically obligated to approve every exemption request they receive.

What factors should a CHC consider when determining whether to approve an exemption request?

CHCs are advised to seek legal advice in this area. However, here is some general information:

1. CMS requires that CHCs "develop a process for implementing additional precautions for any staff who are not vaccinated" and that this process "must ensure that they minimize the risk of transmission of COVID-19 to at-risk individuals, in keeping with their obligation to protect the health and safety of patients."

2. Employers are generally not required to grant accommodations to staff if doing so would create an "undue hardship" on the employer. In determining whether an accommodation for an exemption (religious or medical) would create "undue hardship", CHCs must consider:
   - Whether the accommodation will impose a direct threat to others, including both employees and patients;
   - The cost to the CHC of accommodating the request; and
   - Whether any alternatives are available (e.g., allowing the employee to work 100% from home.)

3. The Federal government recently provided this guidance to its agencies with regards to the vaccine exemptions:

   "Determining whether an exception is legally required will include consideration of factors such as the basis for the claim; the nature of the employee's job responsibilities; and the reasonably foreseeable effects on the agency's operations, including protecting other agency employees and the public from COVID-19. Because such assessments will be fact- and context-dependent, agencies are encouraged to consult their offices of general counsel with questions related to assessing and implementing any such requested accommodations."

Medical Exemptions

What are considered valid reasons for a medical exemption, per the IFC?
The IFC repeatedly states that medical exemptions may be granted for "***recognized*** clinical contraindications to COVID-19 vaccines." *(emphasis added.)* This language suggests (but does not explicitly state) that medical exemptions should only be approved when the staff person has one of the contraindications explicitly identified by the CDC. As discussed in the CDC Summary Document for Interim Clinical Considerations for Use of COVID-19 Vaccines, these are limited to:

- Severe allergic reaction (e.g., anaphylaxis) after a previous dose or to component of the COVID-19 vaccine
- Immediate (within 4 hours of exposure) allergic reaction of any severity to a previous dose or known (diagnosed) allergy to a component of the vaccine

Further CDC guidance indicates that two elements of the COVID vaccine that may have triggered a previous allergic reaction are:

- Polyethylene Glycol (PEG)
- Polysorbate.

What documentation is required for a staff person to request a medical exemption?
Staff members seeking a medical exemption must submit documentation to the CHC that:

- indicates which of the authorized COVID-19 vaccines are clinically contraindicated for him/her
- indicates the recognized clinical reasons for the contraindication;
- confirms/ documents his/her recognized clinical contraindication;
- a statement by the authenticating practitioner recommending that the staff member be exempted from the facility's COVID-19 vaccination requirements based on the recognized clinical contraindications.

This documentation must be signed and dated by a licensed practitioner, who is not the individual requesting the exemption, and who is acting within their respective scope of practice as defined by, and in accordance with, all applicable State and local laws.

Religious Exemptions

What guidance does the vaccine mandate IFC provide around religious exemptions?
The IFC contains very little information on this topic, other than providing a sample template for religious exemption requests. The IFC states:

> "We also direct providers and suppliers to the Equal Employment Opportunity Commission (EEOC) Compliance Manual on Religious Discrimination for information on evaluating and responding to such requests. While employers have the flexibility to establish their own processes and procedures, including forms, we point to The Safer Federal Workforce Task Force's "request for a religious exception to the COVID-19 vaccination requirement" template as an example. This template can be viewed here."

Does a CHC have to accept an employee's assertion of a religious objection to a COVID-19 vaccination at face value? Can it ask for additional information?
The EEOC addressed this question directly, as follows (see question L2 here):

> "Generally, under Title VII, an employer should assume that a request for religious accommodation is based on sincerely held religious beliefs. However, if an employer has an objective basis for questioning either the religious nature or the sincerity of a particular belief, the employer would be justified in making a limited factual inquiry and seeking additional supporting information. An employee who fails to cooperate with an employer's reasonable request for verification of the sincerity or religious nature of a professed belief risks losing any subsequent claim that the employer improperly denied an accommodation."

What guidance is available to assist CHCs in evaluating and responding to requests for religious exemptions?
Again, CHCs are well-advised to seek legal advice on this topic. However, general information on this topic is contained in a 10/14 *article* from the Society for Human Resource Management, which pasted in full later in this toolkit. In brief, CHCs must approve religious accommodation requests if both of the following conditions are met:

- The employee's religious belief is "sincerely held", *and*
- The CHC can accommodate the employee's request without "undue hardship."

Determining whether an employee's religious belief is "sincerely held" can be challenging (but not impossible -- see *article* for more information.) Because of these challenges, many employers simply focus on whether they can accommodate the request without "undue hardship." In determining whether an accommodation would create "undue hardship", CHCs must consider:

- Whether the accommodation will impose a direct threat to others, including both employees and patients;
- The cost to the CHC of accommodating the request; and
- Whether any alternatives are available (e.g., allowing the employee to work from home.)

Please see this *article* for more information.

Regarding the definition of "undue hardship", the EEOC has stated:

> "The Supreme Court has held that requiring an employer to bear more than a "de minimis," or a minimal, cost to accommodate an employee's religious belief is an undue hardship. Costs to be considered include not only direct monetary costs but also the burden on the conduct of the employer's business – including, in this instance, the risk of the spread of COVID-19 to other employees or to the public."

Also, the EEOC (which is responsible for enforcing the Civil RIghts Act, which provides the legal basis for religious exemptions) published updated guidance on evaluating requests for religious exemptions in late October. That guidance is included later in this toolkit.

Finally, in its November 11 webinar, Feldesman-Tucker staff offered the following recommendations to CHCs:

- To ensure consistency, have a small group that reviews and responds to all exemption requests your CHC receives.
- Use consistent wording on how you respond to all requests.

H.R. Issues

Can Federal grant funds be used to provide cash incentive payments to staff to get vaccinated?
No. Grant funds may not be used for this purpose. Per a BPHC FAQ here, grant funds cannot be used to provide anyone (staff or patients) cash incentive payments for getting vaccinated. H8F funds (aka American Rescue Plan funds) may be used "to offer certain incentive items" but may not be used for "cash gift cards, food", etc. To be on the safe side, CHCs should also avoid using program income for these incentives payments.

Are health care employers required to provide staff with paid time off to receive and recover from the COVID vaccines?
Yes. OSHA requires that all health care employers provide "reasonable time and paid leave (e.g., paid sick leave, administrative leave) to each employee for vaccination and any side effects experienced following vaccination."

Are CHCs required to keep information about employees' vaccination status confidential?
Yes. Under the American with Disabilities Act, employers must keep confidential all information about employees' medical status (even if the information is not related to a disability.) This includes not telling patients whether individual staff members have been vaccinated.

Will staff who leave the CHC because they chose not to get vaccinated be eligible for unemployment?
Per Forbes magazine, most states will not provide unemployment to persons who left their jobs due to an unwillingness to comply with vaccine requirements, as this is considered a failure to abide by the employer's rules and policies. However, unemployment eligibility rules vary from state to state, so *it is very important to check your state's rules*. As stated in

this article from the Society for Human Resource Management from the Society for Human Resource Management:

> "Some states may define 'cause' *[for denying benefits]* as any refusal to follow employer rules and policies, in which case a refusal to get vaccinated or to provide proof would likely be sufficient cause…. In a state with higher standards, such as gross misconduct, a refusal to comply with such a mandated safety rule may or may not rise to that level."

Policies and Procedures

What topics must be addressed in the P&P?

The new regulatory text impacting FQHCs and RHCs provides a detailed list of issues that must be addressed in the P&P. These include processes to:

- Ensure that all staff[1] (except those who have pending or approved requests for exemptions or delays) have received at least the J&J vaccine or the first dose of the Pfizer or Moderna vaccine before providing any care of other services for the CHC or its patients.
- Ensure that staff who receive the Pfizer or Moderna vaccine get both shots.
- Follow nationally recognized infection prevention and control guidelines intended to mitigate the transmission and spread of COVID-19, including extra precautions for staff who aren't vaccinated.
- Tracking which staff have received booster shots
- Allow staff to request medical and religious exemptions, and delays in getting vaccinated, consistent with the IFC requirements
- Track and document all exemption and delay requests, and the CHC's response
- Contingency plans for staff who are not fully vaccinated.

For the complete list and exact wording of the items that must be addressed in the P&P, please see section (d)(3) of the new regulatory text (included in this toolkit.)

Is the CHC's Board of Directors required to approve the new P&P?

The regulations governing the Community Health Center program state at 42 CFR § 51c.304(d)(3)(ii) that:

> "The governing board shall have specific responsibility for… (ii) Establishing personnel policies and procedures, including selection and dismissal procedures, salary and benefit scales, employee grievance procedures, and equal opportunity practices."

This language suggests that the CHC's Board must approve P&Ps related to the Federal vaccine mandate. Also, as indicated on page 7 of this memo prepared for NACHC by

[1] Throughout this Toolkit, general references to "staff" refer to any individual associated with the CHC (e.g., employee, contractor, Board member, volunteer) who is subject to the vaccine mandate. For information on which individuals are subject to the mandate, see the FAQ section "Applicability -- Individual employees, contractors, etc."

Feldesman Tucker, having the Board review and approve the vaccine mandate P&P is considered "good practice" and "makes sense."

Will a template P&P be available for CHCs to work from?
Yes. Colleen will coordinate with NACHC to ensure that a template P&P is available in time for CHCs to comply with the December 6 deadline.

CHCs are strongly encouraged to have their Board of Directors review and approve new policies related to vaccine mandates. For more information, see page 7 of this memo prepared for NACHC by Feldesman Tucker.

In addition, CHCs should have processes in place to handle exemption requests confidentially and quickly, and to document the review process and conclusions. Please see the final section of this toolkit for templates you can use for these exemption processes.

UPDATED 1/5/22 **The regulation states that each CHC's P&Ps must address "(ix) Contingency plans for staff who are not fully vaccinated for COVID-19." What factors must be addressed in this section of the P&Ps?**
Per the IFC, this section should address the following issues:

- "contingency plans in consideration of staff that are not fully vaccinated to ensure that they will soon be vaccinated and will not provide care, treatment, or other services for the provider or its patients until" they have received at least one vaccine shot.
- How CHC will "address the safe provision of services by individuals who have requested an exemption" and are waiting on a response, and those who have requested or received approval for a temporary delay.

Per the IFC, this section may (but is not required to)

- "address topics such as staffing agencies that can supply vaccinated staff if some of the facility's staff are unable to work."
- "address special precautions to be taken when, for example, there is a regional or local emergency declaration, such as for a hurricane or flooding, which necessitates the temporary utilization of unvaccinated staff, in order to assure the safety of patients."

The FQHC attachment published on 12/28/21 provides the following guidance around contingency plans for FQHCs and RHCs:

> "For staff that are not fully vaccinated, the RHC/FQHC must develop contingency plans for staff who have not completed the primary vaccination series for COVID-19.
>
> Contingency plans should include actions that the RHC/FQHC would take when staff have indicated that they will not get vaccinated and do not qualify for an exemption, but contingency plans should also address staff who are not fully vaccinated due to an exemption or temporary delay in vaccination, such as through the additional precautions. Facilities should prioritize contingency plans for those staff that have obtained no doses of any vaccine over staff that have received a single dose of a

multi-dose vaccine. For example, contingency plans could include a deadline for staff to have obtained their first dose of a multiple-dose vaccine. The plans should also indicate the actions the RHC/FQHC will take if the deadline is not met, such as actively seeking replacement staff through advertising or obtaining temporary vaccinated staff until permanent vaccinated replacements can be found."

Legal Issues

What authority allows the Federal government to impose vaccine requirements on health care providers, including FQHCs?

The IFC answers this question on both a general level and a specific level:

- General: Both the Medicare and Medicaid statutes contain several provisions that authorize HHS to impose requirements necessary "in the interest of the health and safety of beneficiaries."
- Specific: For each provider type that is subject to the IFC, CMS cites the exact statutory and regulatory text that requires them to comply with Medicare and Medicaid program requirements. For FQHCs and RHCs, this language is found in 42 CFR 491.2, which defines a FQHC as an entity defined in § 405.2401. In turn, § 405.2401 requires FQHCs to enter into an agreement with CMS to meet Medicare Program requirements.

Our state and/or locality has enacted laws that are inconsistent with the rules in this IFC. How do we balance those laws with the requirements of this IFC?

CMS contends that, under the Supremacy Clause of the U.S. Constitution, this IFC "preempts inconsistent State and local laws as applied to Medicare- and Medicaid-certified providers and suppliers."

There will certainly be multiple lawsuits addressing the issue of whether Federal rules (i.e., the CMS IFC and the new OSHA ETS on employers with over 100 staff) preempt state and local laws. Private employers will also be challenging Federal, state and local laws.

Have the courts approved vaccine requirements in the past?

Yes. The US Supreme Court has twice upheld the right of states to impose vaccine requirements on the general public. In 1905, the court allowed states to require that individuals be vaccinated against smallpox or face a fine. In 1922, it ruled that states could require a smallpox vaccination as a condition of attending school.

More recently, on October 29, 2021, the Supreme Court refused to block Maine's requirement that healthcare workers be vaccinated against COVID notwithstanding their religious objections.

Is there a precedent for using Medicare reimbursement as a tool to address broader social challenges?

Yes. In 1966, the newly-established Medicare program announced that hospitals must be fully desegregated to receive Medicare reimbursement. At the same time, teams of volunteers visited hospitals across the country to verify compliance with the requirement. “Within a few months'' over 95% of US hospitals were desegregated.

Record-Keeping/ Tracking Staff Vaccination Status

ADDED 1/5/22: **What guidance has CMS provided regarding CHC tracking of staff vaccination status?**

In the FQHC attachment provided to survey agencies on 12/28/21, CMS stated that:

> “The RHC/FQHC must track and securely document:
>
> - Each staff member’s vaccination status (this should include the specific vaccine received, and the dates of each dose received, or the date of the next scheduled dose for a multidose vaccine);
> - Any staff member who has obtained any booster doses (this should include the specific vaccine booster received and the date of the administration of the booster);
> - Staff who have been granted an exemption from vaccination (this should include the type of exemption and supporting documentation); requirements by the RHC/FQHC; and
> - Staff for whom COVID-19 vaccination must be temporarily delayed and should track when the identified staff can safely resume their vaccination.”
> - Which staff telework full-time and therefore are exempt from the CMS mandate.

CMS also states that FQHCs/ RHCs:

> “have the flexibility to use the tracking tools of their choice; however, they must provide evidence of this tracking for surveyor review. Additionally, facilities’ tracking mechanism should ***clearly identify each staff’s role, assigned work area, and how they interact with patients.*** This includes staff who are contracted, volunteers, or students.” ***Emphasis added.***

Are CHCs required to report data to CMS or other agencies re: compliance with the IFC?

No. While CHCs are required to keep records on compliance, they are not required to proactively report this data to CMS or other government agencies.

Can we permit staff to attest that they have been vaccinated?

No. CMS does not consider an individual’s attestation to be sufficient proof of vaccination.

OSHA Rules

Updated 1/14/22: **What is the status of the OSHA standards around COVID?**

It is important to note that OSHA has issued two distinct Emergency Temporary Standards (ETS) related to COVID-19, and that the future status of each ETS differs:

ETS Name	Date Issued	Contents	Status as of 1/14/22	ETS Number
COVID-19 **Healthcare** ETS	June 2021	Requirements around PPE, physical barriers & distancing, removing infected employees, etc.	Largely withdrawn, but **OSHA plans to issue a permanent standard soon that will be largely similar to the ETS.**	29 CFR 1910.50**2**
COVID-19 **Vaccination & Testing** ETS	November 2021	All employers with 100+ staff must ensure staff are vaccinated or tested weekly.	Blocked nationally as of 1/13/22, and **not expected to ever be reinstated.**	29 CFR 1910.50**1**

In short:

- The ETS with requirements around PPE, removing infected employees, etc., is largely no longer in effect -- but will soon be reinstated. (Some record-keeping requirements remain in effect during this interim period.)
- The ETS requiring employers with 100+ staff to ensure staff are vaccinated or tested weekly (i.e., the OSHA vaccine mandate) was blocked nationally by the US Supreme Court on Jan. 13, 2022. It is not expected to be reinstated.

Miscellaneous

Do CHC staff have the option of doing weekly COVID testing instead of getting the vaccine?
No. The IFC explicitly states that a testing option is not available for staff of health care providers.

Note that the OSHA ETS for employers with over 100 staff does allow a testing alternative for persons who do not want to get vaccinated. However, as discussed below, health care providers with over 100 staff persons must comply with the tighter standards in the CMS IFC.

Where are the specific new requirements that are being placed on FQHCs?
CMS is adding a new section to the regulations at 42 CFR § 491.8. These regulations establish the terms that an organization must agree to in order to be recognized by Medicare and Medicaid as a FQHC.

Will the vaccine mandate rules be rescinded when the COVID Public Health Emergency ends?

Probably not. CMS has stated that it intends for the IFC to remain in effect after the COVID PHE ends.

NEW REGULATORY TEXT re: COVID VACCINATION

As published by CMS in Nov. 5, 2021 Interim Final Rule with Comment Period (IFC)
*Note that this text is **specific to FQHCs and RHCs**, and is part of the Conditions of Coverage for FQHCs (and Conditions of Certification for RHCs.)*

§ 491.8 Staffing and staff responsibilities. - *Adding new section (d) below:*

(d) *COVID-19 vaccination of staff*. The RHC/FQHC must develop and implement policies and procedures to ensure that all staff are fully vaccinated for COVID-19. For purposes of this section, staff are considered fully vaccinated if it has been 2 weeks or more since they completed a primary vaccination series for COVID-19. The completion of a primary vaccination series for COVID-19 is defined here as the administration of a single-dose vaccine, or the administration of all required doses of a multi-dose vaccine.

(1) Regardless of clinical responsibility or patient contact, the policies and procedures must apply to the following clinic or center staff, who provide any care, treatment, or other services for the clinic or center and/or its patients:
  (i) RHC/FQHC employees;
  (ii) Licensed practitioners;
  (iii) Students, trainees, and volunteers; and
  (iv) Individuals who provide care, treatment, or other services for the clinic or center and/or its patients, under contract or by other arrangement.

(2) The policies and procedures of this section do not apply to the following clinic or center staff:
  (i) Staff who exclusively provide telehealth or telemedicine services outside of the clinic or center setting and who do not have any direct contact with patients and other staff specified in paragraph (d)(1) of this section; and
  (ii) Staff who provide support services for the clinic or center that are performed exclusively outside of the clinic or center setting and who do not have any direct contact with patients and other staff specified in paragraph (d)(1) of this section.

(3) The policies and procedures must include, at a minimum, the following components:
  (i) A process for ensuring all staff specified in paragraph (d)(1) of this section (except for those staff who have pending requests for, or who have been granted, exemptions to the vaccination requirements of this section, or those staff for whom COVID-19 vaccination must be temporarily delayed, as recommended by the CDC, due to clinical precautions and considerations) 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 prior to staff providing any care, treatment, or other services for the clinic or center and/or its patients;

(ii) A process for ensuring that all staff specified in paragraph (d)(1) of this section are fully vaccinated for COVID-19, except for those staff who have been granted exemptions to the vaccination requirements of this section, or those staff for whom COVID-19 vaccination must be temporarily delayed, as recommended by the CDC, due to clinical precautions and considerations;

(iii) A process for ensuring that the clinic or center follows nationally recognized infection prevention and control guidelines intended to mitigate the transmission and spread of COVID-19, and which must include the implementation of additional precautions for all staff who are not fully vaccinated for COVID-19;

(iv) A process for tracking and securely documenting the COVID-19 vaccination status for all staff specified in paragraph (d)(1) of this section;

(v) A process for tracking and securely documenting the COVID-19 vaccination status of any staff who have obtained any booster doses as recommended by the CDC;

(vi) A process by which staff may request an exemption from the staff COVID-19 vaccination requirements based on an applicable Federal law;

(vii) A process for tracking and securely documenting information provided by those staff who have requested, and for whom the facility has granted, an exemption from the staff COVID-19 vaccination requirements;

(viii) A process for ensuring that all documentation, which confirms recognized clinical contraindications to COVID-19 vaccines and which supports staff requests for medical exemptions from vaccination, has been signed and dated by a licensed practitioner, who is not the individual requesting the exemption, and who is acting within their respective scope of practice as defined by, and in accordance with, all applicable State and local laws, and for further ensuring that such documentation contains:

(A) All information specifying which of the authorized COVID-19 vaccines are clinically contraindicated for the staff member to receive and the recognized clinical reasons for the contraindications; and

(B) A statement by the authenticating practitioner recommending that the staff member be exempted from the clinic's or center's COVID-19 vaccination requirements for staff based on the recognized clinical contraindications;

(ix) A process for ensuring the tracking and secure documentation of the vaccination status of staff for whom COVID-19 vaccination must be

temporarily delayed, as recommended by the CDC, due to clinical precautions and considerations, including, but not limited to, individuals with acute illness secondary to COVID-19, and individuals who received monoclonal antibodies or convalescent plasma for COVID-19 treatment; and

(x) Contingency plans for staff who are not fully vaccinated for COVID-19.

TEMPLATE P&P - Updated 1/5/22

The following is a template Policy and Procedures (P&P) regarding the Federal COVID-19 vaccine mandate, to assist CHCs in developing their own P&Ps. CHCs who use this template should note:

- Per the CMS Interim Final Rule with Comment (IFC), CHCs need to have P&Ps in effect on December 6, 2021.

- It is highly recommended that CHCs have their Board members review and approve these P&Ps.

- Yellow highlighting indicates places where a CHC should add specific information on its processes. Gray highlighting is suggested (but not mandatory) language. Green indicates places where the CHC should insert its name.

- Please pay close attention to the footnotes. They explain why certain language is necessary, what assumptions are being made, where to find additional information, etc.

- The template incorporates all elements that the IFC indicates must be included in CHCs' P&Ps.

- The template proposes a framework for addressing two common questions:

    - Which non-employees the vaccine rules apply to: The IFC contains very broad language about which non-employees the mandate applies to. ("Individuals who provide care, treatment, or other services for the CHC and/or its patients, under contract or by other arrangement.") Since this is such an open-ended standard, this P&P instead:
        - states that the mandate applies to "Contractors who regularly provide services at any active CHC site, whether administrative or clinical." and
        - includes a section on "Other individuals who provide short-term, non-health care services at CHC sites." This section indicates that the CHC will decide whether the mandate applies to these individuals on a case-by-case basis, based on an analysis of the services they provide, their proximity to patients and other staff, the frequency with which they are at the CHC, etc.

      As with all sections, CHCs should adjust this template language to fit their situation, and seek legal counsel as appropriate.

- Patient Board Members: The template indicates that these individuals are subject to the vaccine mandate when acting *in their capacity as a Board member*, but not when *acting in their capacity as a patient.*

- The template indicates that the CHC will follow CDC recommendations when evaluating requests for medical delays and exemptions, and will follow EEOC guidance when evaluating requests for religious exemptions.

- This template does not account for State-specific regulations. CHCs whose states have specific regulations should incorporate them as appropriate.

- Finally, I am not a lawyer, and this template does not constitute legal advice. While this template is hopefully a helpful starting place, CHCs should consult qualified legal counsel about the details of their specific situation.

Template Policy and Procedure:
Federal COVID-19 Vaccine Mandate

I. Purpose of Policy and Procedure

CHC is committed to high standards and compliance with all applicable laws and regulations.

The purpose of this Policy and Procedure (P&P) is to establish how CHC will comply with the Federal COVID-19 Vaccine Mandate, as established in the CMS Interim Final Rule with Comment Period entitled "Medicare and Medicaid Program; Omnibus COVID-19 Health Care Staff Vaccination," published on November 5, 2021 (hereafter referred to as the "IFC".)

II. Policy

A. Applicability to individuals.

1. General.

   These Policies and Procedures (P&Ps) apply to the following individuals, regardless of clinical responsibility or patient contact:

   a. CHCs employees
   b. Licensed practitioners
   c. Students, residents, trainees, researchers, and volunteers. This includes members of CHC's Board of Directors, subject to the provision below regarding patient Board members.
   d. Contractors who regularly provide services at any active CHC site, whether administrative or clinical.[2]

2. Exception for individuals who work 100% remotely.

   These P&Ps do not apply to individuals who:

[2] Section (d)(1) of the new regulatory requirements on FQHCs, as established in the IFC, state that the vaccine mandate also applies to "Individuals who provide care, treatment, or other services for the clinic or center and/or its patients, under contract or by other arrangement." Since this is such an open-ended standard, this P&P proposes instead stating that the mandate applies to "Contractors who regularly provide services at any active CHC site, whether administrative or clinical." and then including a separate section on "Other individuals who provide short-term, non-health care services at CHC sites." As with all sections of this template, CHCs should adjust this proposed language to fit their situation.

a. provide services to CHC's patients or to the organization exclusively from locations that are separate from any CHC site, whether administrative or clinical, and
b. have no direct contact with CHC patients or staff.

3. Other individuals who provide short-term, non-health care services at CHC sites.
   a. Individuals who provide short-term ad-hoc services at CHC sites outside of a formal written contract (ex. delivery drivers, EMT, repair services, etc.) are not subject to this P&P. However, when possible, they are subject to the additional precautions listed later in this P&P.
   b. In situations where it is not immediately clear if this P&P applies, CHC will evaluate the risk of COVID-19 exposure that the individual(s)' presence creates for patients and staff, taking into account the individual(s)':
      1. Frequency of presence at one or more of CHC's sites
      2. Services provided.
      3. Proximity to patients and staff.

      Based on this evaluation, CHC will decide if this P&P applies to the individual(s), and will document the rationale for this decision as appropriate.

4. Patient Board Members.
   Patient Board members are in a unique situation, as the IFC vaccine requirements explicitly apply to Board members, while Section 330 rules simultaneously prohibit CHC from requiring patients to be vaccinated in order to receive care. Therefore, this P&P applies to patient Board member when they are acting *in their capacity as a Board member*, but not when they are acting *in their capacity as a patient*.

For purposes of this P&P, the term "staff" refers to any individuals to whom the Federal COVID-19 vaccine mandate applies, as determined under this section.

B. General Requirements and Exceptions

The following requirements apply to all individuals who are subject to this P&P per the section "Applicability to Individuals" (hereafter referred to as "staff"):

1. General vaccination requirements: Subject to the exemptions and delays discussed below:
   a. All staff must have received, at a minimum, the first dose of a two-dose COVID-19 vaccine or a one-dose COVID-19 vaccine by:
      i. December 6, 2021, if they are on staff with CHC prior to that date, or

ii. prior to providing any care, treatment, or other services for CHC and/or its patients if they join CHC staff after December 6, 2021.

b. All staff who received the first dose of a two-dose COVID-19 vaccine must receive the second dose of that vaccine by:
   i. January 4, 2022, if they are on staff with CHC prior to December 6, 2021, or
   ii. Thirty days after receiving the first dose, if they join CHC staff after December 6, 2021.

c. Staff are not currently required to receive booster shots, but are required to inform CHC if they do, following established protocols for documenting such medical information to CHC, per Section III Procedures, below.

2. Exemptions and delays – General information:

a. Under Federal law, all staff may request:
   i. A temporary delay of the vaccine requirements for medical reasons.
   ii. An exemption from the vaccine requirements for medical reasons.
   iii. An exemption from the vaccine requirements for religious reasons, per the Civil Rights Act.

b. As outlined in the Procedures section, CHC has processes by which:
   i. Staff may request delays and exemptions from the Federal vaccine mandate based on applicable Federal law.
   ii. CHC will evaluate and respond to requests for delays and exemptions.
   iii. CHC will track and securely document requests for delays and exemptions, and its responses.

c. To be approved for a delay or exemption, staff must meet the criteria established below, and CHC must determine that it can accommodate the staff person's request without undue hardship.

d. Staff who receive an exemption from, or delay in, meeting the COVID-19 vaccination requirements will be subject to additional precautions to mitigate the transmission and spread of COVID-19. These precautions are outlined in the Procedures section.

III. Procedures

CHC uses the following procedures to implement the policies established above:

A. Tracking and documenting staff vaccination status.

Insert information on how your CHC will track and securely document the COVID-19 vaccination status of all eligible staff[3]. The IFC provides the following guidance:

- *"Examples of appropriate places for vaccine documentation include a facilities 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, pursuant to ADA and the Rehabilitation Act."*
- *"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, or*
  - *State immunization information system record.*
- *CDC provides a staff vaccination tracking tool at https://www.cdc.gov/nhsn/hps/weekly-covid-vac/index.html*

Also, note that you are required to track:

- *if/when staff receive booster shots[4] – even though the IFC does not require boosters*
- *the vaccination status of staff who have been approved for a temporary delay in getting vaccinated for medical reasons.*

UPDATE Jan. 5, 2022: *In the FQHC attachment published on 12/29/21, CMS provides additional information about tracking staff vaccination status. The following proposed language (in gray) reflects this new information:*

CHC will track and securely document:

- Each staff person's role, assigned work area, and how they interact with patients.
- Each staff member's vaccination status, including
  - the specific vaccine received,
  - the dates of each dose received, or the date of the next scheduled dose for a multi- dose vaccine;
  - any booster doses received, including the specific vaccine booster and the date received.
- Staff who have been granted an exemption from vaccination, along with the type of exemption and supporting documentation.
- Staff for whom COVID-19 vaccination must be temporarily delayed, including the date when they safely resume their vaccination.

[3] This information is required under section (d)(3)(iv) of the new regulatory requirements on FQHCs.

[4] This information is required under section (d)(3)(v) of the new regulatory requirements on FQHCs.

- Staff who telework 100% of their time and therefore are not subject to the vaccine requirements.

B. Exemptions and delays: General procedures[5]

1. Staff seeking a medical or religious exemption from, or a temporary delay in, meeting the vaccination requirements (henceforth, "exemption or delay"), must submit a written request to *insert title/ position, e.g., their immediate supervisor, the HR Director* by:
    a. December 6, 2021, if they are on staff with CHC prior to that date, or
    b. Prior to providing any care, treatment, or other services for CHC and/or its patients if they join CHC staff after December 6, 2021.

2. CHC will not begin reviewing a request until all required documentation has been submitted.

3. When evaluating requests, CHC will consider:
    a. The standards established for the specific request type, as discussed in the P&P section addressing the request type.
    b. Whether the request can be accommodated without creating an "undue hardship" for CHC.[6]

4. CHC will provide a response to a request for an exemption or delay in writing by:
    a. January 4, 2022, for completed requests submitted not later than December 6, 2021
    b. Within *indicate number of* calendar[7] days for completed requests submitted after December 6, 2021.

5. All CHC staff who have requested an exemption or delay and are awaiting a decision from CHC, and staff who have received approval for an exemption or decision, will consistently adhere to the additional precautions established below for staff who are less-than-fully-vaccinated.

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[5] Section (d)(3)(vi) of the new regulatory requirements on FQHCs require the P&P to describe the process for staff to request an exemption.

[6] When evaluating whether an accommodation would create an "undue hardship", factors that the CHC may consider include, but are not limited to:

- Whether the accommodation will impose a direct threat to others, including both staff and patients;
- The direct and indirect cost to your CHC of accommodating the request, including impacts on operations; and
- Whether any alternatives are feasible (e.g., allowing the employee to work from home.)

See *this article* for more information. CHCs may want to seek legal advice to determine whether it is advisable to include this level of detail in their P&P.

[7] CHCs may insert a number of their choice. Note that for the initial implementation of the Federal vaccine mandate, CMS provided health care providers 30 calendar days to respond to requests.

5. CHC will track all requests for exemptions and delays, and will securely store all documentation related to those requests and CHC's response. This information will be kept confidential, and all medical records[8] will be stored separately from an employee's personnel file.[9]

6. CHC has the right to discontinue a previously-granted accommodation if providing it subsequently poses an undue hardship on CHC's operations due to changed circumstances.[10]

C. Requests for temporary medical delays.

1. CHC staff may request a temporary medical delay in meeting the IFC's COVID-19 vaccination requirements due to recognized clinical precautions and considerations, as recommended by the CDC, including but not limited to:
   a. acute illness secondary to COVID-19, and
   b. having recently received monoclonal antibodies or convalescent plasma for COVID-19 treatment.[11]

2. A request for a temporary medical delay must include:
   a. *The CHC form for requesting a temporary medical delay*[12]
   b. A letter that[13]:
      i. Is signed and dated by a licensed practitioner, who meets the following requirements:
         a) The licensed practitioner cannot be the individual requesting the exemption.
         b) The practitioner must be operating within their scope and practice as defined by local and state laws.
      ii. Indicates a medical reason for the delay that is consistent with CDC recommendations.

3. To confirm that a delay in COVID-19 vaccination is consistent with CDC recommendations, CHC will refer to CDC's Summary Document for Interim Clinical Considerations for Use of COVID-19 Vaccines Currently Authorized in the United States.

4. CHC will not approve a request for a temporary medical delay if above requirements are not met.

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[8] It is unclear if requests for religious exemptions must be kept separate from an employee's personnel file.

[9] This information is required under section (d)(3)(vii) of the new regulatory requirements on FQHCs.

[10] This language is copied from Question L.6. in the EEOC guidance available EEOC guidance.

[11] This language is based on (and largely copied from) the new regulatory requirements at (d)(3)(ix).

[12] This template assumes the CHC creates a standardized request form for each type of request.

[13] This language is based on (and largely copied from) the new regulatory requirements at (d)(3)(viii).

5. Staff who receive approval for a temporary medical delay are required to come into compliance with the COVID-19 vaccination requirements as soon as is clinically appropriate.

6. CHC will track the vaccination status of individuals who have been approved for temporary medical delays, including when they come into compliance with the vaccination requirements.

D. Requests for medical exemptions.

1. Per the Americans with Disabilities Act, CHC staff persons may request an exemption from the COVID-19 vaccination requirements for medical reasons.

2. A written request for a medical exemption must include:
    a. *The CHC form for requesting a medical exemption*
    b. *A* letter that[14]:
        i. is signed and dated by a licensed practitioner, who meets the following requirements:
            a) The licensed practitioner cannot be the individual requesting the exemption.
            b) The practitioner must be operating within their scope and practice as defined by, and in accordance with, all applicable State and local laws
        ii. includes the following components:
            a) All information specifying which of the authorized COVID-19 vaccines are clinically contraindicated for the staff member to receive;
            b) The recognized clinical reasons for the contraindications; and
            c) A statement by the authenticating practitioner recommending that the staff member be exempted from CHC's COVID-19 vaccination requirements for staff based on the recognized clinical contraindications.

3. To confirm that a COVID-19 vaccination is medically contradicted, CHC will refer to CDC's Summary Document for Interim Clinical Considerations for Use of COVID-19 Vaccines Currently Authorized in the United States.

4. CHC will not approve a request for a medical exemption if the requirements above are not met.

E. Requests for religious exemptions.

[14] This language is based on (and largely copied from) the new regulatory requirements at (d)(3)(viii).

1. Per the Civil Rights Act, CHC staff persons may seek an exemption from the COVID-19 vaccination requirements for religious reasons.

2. A written request for a religious exemption must include:
   a. *The CHC form for requesting a religious exemption*
   b. an explanation of how being vaccinated for COVID-19 would substantially burden the staff person's religious exercise or conflict with their sincerely held religious beliefs, practices, or observances.[15]

3. In reviewing requests for religious exemptions, CHC will adhere to the guidelines established by the EEOC in Section L of at *https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#L*[16]

4. Per the U.S. Equal Employment Opportunity Commission (EEOC), "objections to the vaccine that are based on social, political or personal preferences or on nonreligious concerns about the possible effects of the vaccine" do not qualify for this exemption.[17]

E. Additional Precautions for Staff Who Are Not Fully Vaccinated for COVID-19

1. Staff who are less-than-fully-vaccinated against COVID-19 will be subject to additional precautions to mitigate the transmission and spread of COVID-19. These staff include individuals who:
   a. have requested an exemption or delay from the vaccination requirements and are awaiting a decision from CHC.
   b. have been approved for an exemption or delay from the vaccination requirements
   c. have received only one shot of a two-shot vaccine regimen (e.g., Pfizer, Moderna)

2. These additional precautions include *Insert the additional precautions you will take to reduce the risk of staff who remain less-than-fully-vaccinated (due to exemptions or delays) spreading COVID-19 to patients or other staff.* ***UPDATED Jan. 5. 2022,*** *to reflect language suggested by CMS in the FQHC*

[15] CHCs should consider creating a standard form for staff to address these issues. CMS references this religious exemption form in the IFR as an example.

[16] Key points in this EEOC guidance include: 1. Employee requests for religious exemptions are generally assumed to be based on sincerely held religious beliefs. 2. If there is objective basis for questioning the religious nature or the sincerity, the CHC may request additional factual supporting information. 3. Employee religious beliefs are accepted regardless of whether they are traditional or familiar.

[17] This statement is based on question L2 from the EEOC guidance.

Attachment (in gray below). Note that this language is suggested, and not required.

- *Reassigning staff who have not completed their primary vaccination series to non- patient care areas, to duties that can be performed remotely (i.e., telework), or to duties which limit exposure to those most at risk (e.g., assign to patients who are not immunocompromised, unvaccinated);*
- *Requiring staff who have not completed their primary vaccination series to follow additional, CDC-recommended precautions, such as adhering to universal source control and physical distancing measures in areas that are restricted from patient access (e.g., staff meeting rooms, kitchen), even if the facility or service site is located in a county with low to moderate community transmission.*
- *Requiring at least weekly testing for exempted staff, and staff who have not completed their primary vaccination series, until the regulatory requirement is met, regardless of whether the facility or service site is located in a county with low to moderate community transmission, in addition to following CDC recommendations for testing unvaccinated in facilities located in counties with substantial to high community transmission.*
- *Requiring staff who have not completed their primary vaccination series to use a NIOSH- approved N95 or equivalent or higher-level respirator for source control, regardless of whether they are providing direct care to or otherwise interacting with patients.*

F. Contingency Plans for Staff Who Are Not Fully Vaccinated for COVID-19[18]

Per the IFC, this section should address the following issues:

- *"contingency plans in consideration of staff that are not fully vaccinated to ensure that they will soon be vaccinated and will not provide care, treatment, or other services for the provider or its patients until" they have received at least one vaccine shot.*
- *How CHC will "address the safe provision of services by individuals who have requested an exemption" and are waiting on a response, and those who have requested or received* approval for a temporary delay.

Per the IFC, this section may (but is not required to)

- *"address topics such as staffing agencies that can supply vaccinated staff if some of the facility's staff are unable to work."*
- *"address special precautions to be taken when, for example, there is a regional or local emergency declaration, such as for a hurricane or flooding, which necessitates the temporary utilization of unvaccinated staff, in order to assure the safety of patients."*

[18] The new regulatory language explicitly requires FQHCs' P&Ps to address "Contingency plans for staff who are not fully vaccinated for COVID-19." (See (d)(3)(x).) However, the regulation provides no suggestions for what the contingency plans should be.

UPDATED Jan. 5, 2022: *The FQHC attachment published by CMS on 12/29/21 provides the following additional information about contingency plans for FQHCs and RHCs (quoted directly below):*

> *"For staff that are not fully vaccinated, the RHC/FQHC must develop contingency plans for staff who have not completed the primary vaccination series for COVID-19.*
>
> *"Contingency plans should include actions that the RHC/FQHC would take when staff have indicated that they will not get vaccinated and do not qualify for an exemption, but contingency plans should also address staff who are not fully vaccinated due to an exemption or temporary delay in vaccination, such as through the additional precautions. Facilities should prioritize contingency plans for those staff that have obtained no doses of any vaccine over staff that have received a single dose of a multi-dose vaccine. For example, contingency plans could include a deadline for staff to have obtained their first dose of a multiple-dose vaccine. The plans should also indicate the actions the RHC/FQHC will take if the deadline is not met, such as actively seeking replacement staff through advertising or obtaining temporary vaccinated staff until permanent vaccinated replacements can be found."*

IV. Review and Updates of this Policy and Procedure

This Federal COVID-19 Vaccine Mandate Policy and Procedure shall be reviewed periodically [19] and updated consistent with requirements established by the Board of Directors, CHC's senior management, federal and state law and regulations, and applicable accrediting and review organizations.

Responsible Parties:

Signature _____ Date _____
CEO

Signature _____ Date _____
Board Chairperson

[19] Some CHCs may want to be more specific about how often this P&P will be reviewed.

RESOURCES TO ADDRESS VACCINE HESITANCY AMONG HEALTH CARE STAFF

Here are some articles on strategies to address vaccine hesitancy among their health care workers, authored by:

- A group of Black doctors
- Another pair of black doctors
- The American Medical Association
- Beckers' Hospital Review
- The Home Care industry
- Lowell CHC in Massachusetts

RELIGIOUS EXEMPTIONS - General Information

EEOC Guidance on Responding to Requests for Religious Exemptions

The Equal Opportunity Employment Commission (EEOC) is responsible for enforcing the Civil Rights Act, which provides the legal basis for religious exemptions. On October 25, the EEOC published updated guidance on evaluating requests for religious exemptions. This guidance is pasted below:

"The EEOC enforces Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits employment discrimination based on religion. This includes a right for job applicants and employees to request an exception, called a religious or reasonable accommodation, from an employer requirement that conflicts with their sincerely held religious beliefs, practices, or observances. If an employer shows that it cannot reasonably accommodate an employee's religious beliefs, practices, or observances without undue hardship on its operations, the employer is not required to grant the accommodation. See generally Section 12: Religious Discrimination; EEOC Guidelines on Discrimination Because of Religion; EEOC Guidelines on Discrimination Because of Religion. Although other laws, such as the Religious Freedom Restoration Act (RFRA), may also protect religious freedom in some circumstances, this technical assistance only describes employment rights and obligations under Title VII.

L.1. Do employees who have a religious objection to receiving a COVID-19 vaccination need to tell their employer? If so, is there specific language that must be used under Title VII? (10/28/21)

Employees must tell their employer if they are requesting an exception to a COVID-19 vaccination requirement because of a conflict between that requirement and their sincerely held religious beliefs, practices, or observances (hereafter called "religious beliefs"). Under Title VII, this is called a request for a "religious accommodation" or a "reasonable accommodation."

When making the request, employees do not need to use any "magic words," such as "religious accommodation" or "Title VII." However, they need to notify the employer that there is a conflict between their sincerely held religious beliefs and the employer's COVID-19 vaccination requirement.

The same principles apply if employees have a religious conflict with getting a particular vaccine and wish to wait until an alternative version or specific brand of COVID-19 vaccine is available.

As a best practice, an employer should provide employees and applicants with information about whom to contact, and the procedures (if any) to use, to request a religious accommodation.

As an example, here is how *EEOC designed its own form for its own workplace*.

L.2. Does an employer have to accept an employee's assertion of a religious objection to a COVID-19 vaccination at face value? May the employer ask for additional information? (10/25/21)

Generally, under Title VII, an employer should assume that a request for religious accommodation is based on sincerely held religious beliefs. However, if an employer has an objective basis for questioning either the religious nature or the sincerity of a particular belief, the employer would be justified in making a limited factual inquiry and seeking additional supporting information. An employee who fails to cooperate with an employer's reasonable request for verification of the sincerity or religious nature of a professed belief risks losing any subsequent claim that the employer improperly denied an accommodation. See generally Section 12-IV.A.2: Religious Discrimination.

The definition of "religion" under Title VII protects nontraditional religious beliefs that may be unfamiliar to employers. While the employer should not assume that a request is invalid simply because it is based on unfamiliar religious beliefs, employees may be asked to explain the religious nature of their belief and should not assume that the employer already knows or understands it. By contrast, Title VII does not protect social, political, or economic views, or personal preferences. Section 12-I.A.1: Religious Discrimination (definition of religion). Thus, objections to COVID-19 vaccination that are based on social, political, or personal preferences, or on nonreligious concerns about the possible effects of the vaccine, do not qualify as "religious beliefs" under Title VII.

The sincerity of an employee's stated religious beliefs also is not usually in dispute. The employee's sincerity in holding a religious belief is "largely a matter of individual credibility." Section 12-I.A.2: Religious Discrimination (credibility and sincerity). Factors that – either alone or in combination – might undermine an employee's credibility include: whether the employee has acted in a manner inconsistent with the professed belief (although employees need not be scrupulous in their observance); whether the accommodation sought is a particularly desirable benefit that is likely to be sought for nonreligious reasons; whether the timing of the request renders it suspect (e.g., it follows an earlier request by the employee for the same benefit for secular reasons); and whether the employer otherwise has reason to believe the accommodation is not sought for religious reasons.

The employer may ask for an explanation of how the employee's religious belief conflicts with the employer's COVID-19 vaccination requirement. Although prior inconsistent conduct is relevant to the question of sincerity, an individual's beliefs – or degree of adherence – may change over time and, therefore, an employee's newly adopted or inconsistently observed practices may nevertheless be sincerely held. An employer should not assume that an employee is insincere simply because some of the employee's practices deviate from the commonly followed tenets of the employee's religion, or because the employee adheres to some common practices but not others. No one factor or consideration is determinative, and employers should evaluate religious objections on an individual basis.

When an employee's objection to a COVID-19 vaccination requirement is not religious in nature, or is not sincerely held, Title VII does not require the employer to provide an exception to the vaccination requirement as a religious accommodation.

L.3. How does an employer show that it would be an "undue hardship" to accommodate an employee's request for religious accommodation? (10/25/21)

Under Title VII, an employer should thoroughly consider all possible reasonable accommodations, including telework and reassignment. For suggestions about types of reasonable accommodations for unvaccinated employees, see K.6, above. In many circumstances, it may be possible to accommodate those seeking reasonable accommodations for their religious beliefs, practices, or observances without imposing an undue hardship.

If an employer demonstrates that it is unable to reasonably accommodate an employee's religious belief without an "undue hardship" on its operations, then Title VII does not require the employer to provide the accommodation. 42 U.S.C. § 2000e(j). The Supreme Court has held that requiring an employer to bear more than a "de minimis," or a minimal, cost to accommodate an employee's religious belief is an undue hardship. Costs to be considered include not only direct monetary costs but also the burden on the conduct of the employer's business – including, in this instance, the risk of the spread of COVID-19 to other employees or to the public.

Courts have found Title VII undue hardship where, for example, the religious accommodation would impair workplace safety, diminish efficiency in other jobs, or cause coworkers to carry the accommodated employee's share of potentially hazardous or burdensome work. For a more detailed discussion, see Section 12-IV.B: Religious Discrimination (discussing undue hardship).

An employer will need to assess undue hardship by considering the particular facts of each situation and will need to demonstrate how much cost or disruption the employee's proposed accommodation would involve. An employer cannot rely on speculative hardships when faced with an employee's religious objection but, rather, should rely on objective information. Certain common and relevant considerations during the COVID-19 pandemic include, for example, whether the employee requesting a religious accommodation to a COVID-19 vaccination requirement works outdoors or indoors, works in a solitary or group work setting, or has close contact with other employees or members of the public (especially medically vulnerable individuals). Another relevant consideration is the number of employees who are seeking a similar accommodation (i.e., the cumulative cost or burden on the employer).

L.4. If an employer grants some employees a religious accommodation from a COVID-19 vaccination requirement because of sincerely held religious beliefs, does it have to grant the requests of all employees who seek an accommodation because of sincerely held religious beliefs? *(10/25/21)*

No. The determination of whether a particular proposed accommodation imposes an undue hardship on the conduct of the employer's business depends on its specific factual context. When an employer is assessing whether exempting an employee from getting a vaccination would impair workplace safety, it may consider, for example, the type of workplace, the nature of the employee's duties, the number of employees who are fully vaccinated, how many employees and nonemployees physically enter the workplace, and the number of employees who will in fact need a particular accommodation. A mere assumption that many more employees might seek a religious accommodation to the vaccination requirement in the future is not evidence of undue hardship, but the employer may take into account the cumulative cost or burden of granting accommodations to other employees.

L.5. Must an employer provide the religious accommodation preferred by an employee if there are other possible accommodations that also are effective in eliminating the religious conflict and do not cause an undue hardship under Title VII? *(10/25/21)*

No. If there is more than one reasonable accommodation that would resolve the conflict between the vaccination requirement and the sincerely held religious belief without causing an undue hardship under Title VII, the employer may choose which accommodation to offer. If more than one accommodation would be effective in eliminating the religious conflict, the employer should consider the employee's preference but is not obligated to provide the reasonable accommodation preferred by the employee. If the employer denies the employee's proposed accommodation, the employer should explain to the employee why the preferred accommodation is not being granted.

An employer should consider all possible alternatives to determine whether exempting an employee from a vaccination requirement would impose an undue hardship. *See, e.g.*, K.2. Employers may rely on CDC recommendations when deciding whether an effective accommodation is available that would not pose an undue hardship.

L.6. If an employer grants a religious accommodation to an employee, can the employer later reconsider it? *(10/25/21)*

The obligation to provide religious accommodations absent undue hardship is a continuing obligation that takes into account changing circumstances. Employees' religious beliefs and practices may evolve or change over time and may result in requests for additional or different religious accommodations. Similarly, an employer has the right to discontinue a previously granted accommodation if it is no longer utilized for religious purposes, or if a provided accommodation subsequently poses an undue hardship on the employer's operations due to changed circumstances. As a best practice, an employer should discuss

with the employee any concerns it has about continuing a religious accommodation before revoking it and consider whether there are alternative accommodations that would not impose an undue hardship.

When May an Employer Reject a Religious Accommodation Request?

This article was published on October 14, 2021 by the Society for Human Resource Management, and is available here

An employer that requires vaccinations against COVID-19 must grant sincere religious accommodation requests, so long as they don't cause an undue hardship on the company. How can a business tell whether an objection to vaccination is based on a genuinely held religious belief and accommodate without creating an undue hardship?

"Because it is so hard to effectively challenge whether a particular belief is genuinely held, most employers will probably choose to skip the first step and go straight to the accommodation question," said Anthony George, an attorney with Bryan Cave Leighton Paisner in Denver.

Sincerely Held Religious Belief

The Equal Employment Opportunity Commission's (EEOC's) guidance on COVID-19 and EEO laws states that employers "should ordinarily assume that an employee's request for religious accommodation is based on a sincerely held religious belief, practice or observance."

"Under this guidance, employers should request additional information only in the rare cases when the employer has an objective basis to question whether the employee is sincere or to question whether the employee's belief is actually religious in nature," said Erika Todd, an attorney with Sullivan & Worcester in Boston.

"What is considered a religious belief under Title VII [of the Civil Rights Act of 1964] is very broad and difficult for employers to challenge," said Jill Cohen, an attorney with Eckert Seamans in Lawrenceville, N.J.

The EEOC has said in its compliance manual on religious discrimination that the definition of "religion" extends to traditional religions as well as religious beliefs that are "new, uncommon, not part of a formal church or sect, only subscribed to by a small number of people, or that seem illogical or unreasonable to others."

"Beliefs pertaining only to economic, social, personal preferences, or political ideals typically are not considered religious for purposes of Title VII," Cohen said.

"If the objection refers to vague constitutional rights or political views or natural law, then the employer may reasonably conclude that the objection is not based in religion and may be overruled," George said.

"Concerns about vaccine safety, toxicity, efficacy, the trustworthiness of the media, government or the pharmaceutical industry are not religious beliefs," said Richard Reice, an attorney with Kauff McGuire & Margolis in New York City.

That said, an employee with a disability may need to be excused from a vaccine mandate.

"Employers [that] develop an objective basis for questioning either the religious nature or the sincerity of a particular belief are permitted to seek additional supporting information, as necessary, to make a reasonable business decision," said Joseph Vaughan, an attorney with Vaughan Baio & Partners in Philadelphia.

Employers should consider four factors established by the EEOC in its questions and answers on religious discrimination in the workplace. These factors might undermine an employee's assertion that he or she sincerely holds the religious belief at issue and include whether:

- The employee has behaved in a manner markedly inconsistent with the professed belief.
- The accommodation sought is a particularly desirable benefit that is likely to be sought for secular reasons.
- The timing of the request renders it suspect—for example, it follows an earlier request by the employee for the same benefit for secular reasons.
- The employer otherwise has reason to believe the accommodation is not sought for religious reasons.

Employers sometimes question the sincerity of a religious belief by probing into whether the employee has acted contrary to the belief in the past, Cohen noted.

For example, some employees have requested accommodations to vaccinations based on the alleged use of fetal cell lines in the initial testing of the drug, she said. In response, some employers are asking these employees to certify that they similarly do not take other common medicines that use fetal cell lines in testing, such as Tylenol, Motrin and other common drugs, Cohen stated.

Bona fide doubt that a religious belief is genuinely held might also exist if an employee who gets a flu shot every year now asserts that his or her religion prohibits piercing the skin, George said.

Nonetheless, Cohen said, if acting contrary to the religious belief is explainable, the inconsistency may not be enough to conclude that the religious belief is insincere.

Undue Hardship

Employers must try to reasonably accommodate workers with sincere religious beliefs if the employees ask for an accommodation, but they don't have to provide accommodations that would result in an undue hardship.

The standard for undue hardship is lower under Title VII—which prohibits religious discrimination—than under the Americans with Disabilities Act. Under Title VII, undue hardship has been defined as more than a minimal burden, said Tracey Diamond, an attorney with Troutman Pepper in Princeton, N.J., and Philadelphia.

Because COVID-19 has killed more than 700,000 people in the U.S. "and unvaccinated workers are more likely to get COVID-19 and transmit COVID-19 to others, employers will have a compelling argument that allowing unvaccinated workers into the workplace would be an undue hardship," George said.

In making an undue hardship determination, "employers will want to consider the cost to the company and whether the accommodation will impose a direct threat to others," Diamond said

Even if unvaccinated entry into the workplace would be an undue hardship, that doesn't end the inquiry, George said. "The employer must still consider whether some alternative is possible."

Alternatives could include routine COVID-19 testing, mask wearing, social distancing and working remotely, noted Abby Warren, an attorney with Robinson & Cole in Hartford, Conn.

"Some employees may be entitled to a religious exemption to the vaccine mandate but still find themselves out of a job when the employer is unable to accommodate that exemption without it causing an undue hardship," said Helene Hechtkopf, an attorney with Hoguet Newman Regal & Kenney in New York City.

“Termination could be legally permissible, but there is a risk that dissatisfied former employees will pursue litigation," cautioned Erika Todd, an attorney with Sullivan & Worcester in Boston.

MEDICAL EXEMPTIONS

Writing medical exemptions for patients

Some CHCs are reporting that patients (and staff) are asking their providers to write them medical exemptions for reasons that are not consistent with CDC guidelines (e.g., anxiety.) While there are no hard-&-fast rules that explicitly prevent providers from writing medical exemptions for reasons other than the three contraindications listed by CDC, there are several reasons to think that writing such exemptions – particularly if a provider/ CHC writes a lot of them – could put both the provider's medical license and the CHC's 330 grant at risk. Here's why:

BOTTOM LINE:

- There are no hard-&-fast rules that explicitly prevent a provider from writing a medical exemption for a COVID vaccine for reasons other than the three contraindications listed by CDC.
- However, there are several reasons to think that writing exemptions for reasons not approved by the CDC – particularly if a provider/ CHC writes a lot of them – would put both the provider's medical license and the CHC's 330 grant at risk.
- Therefore, a CHC cannot state that Federal/ state rules explicitly prohibit them from writing non-CDC-approved exemptions. However, a CHC can reasonably say that writing such exemptions puts their providers' licensee and their Federal funding at risk.
- There is suggested language below that CHCs can post if their providers are getting pressured to write medical exemptions for reasons not approved by the CDC.

BACKGROUND:

The CDC has identified three conditions that merit a medical exemption from receiving a COVID-19 vaccine.

- Severe immediate allergic reaction to a previous dose of the COVID-19 vaccine
- Previous allergic reaction to Polyethylene Glycol (PEG)
- Previous allergic reaction to Polysorbate

BPHC rules – specifically Chapter 5 of the Compliance Manual – require that all employees, individual contractors, and volunteers who provide health care services on behalf of the CHC be granted privileges by the CHC. (See *Demonstrating Compliance, section d.)* Privileging procedures require verifying the clinical staff person's "current clinical competence." It is

reasonable to assume that not following CDC guidelines on vaccine exemptions would raise issues around a provider's "current clinical competence" - which in turn could place their 330 funding/status at risk.

Licensing rules: While there are no cut-&-dry prohibitions, there are many reasons to expect that providers who write medical exemptions for COVID vaccines for reasons not approved by the CDC place their licenses at risk – particularly if they write a lot of them. For example:

- There are examples of doctors losing their license due to writing medical exemptions for non-COVID vaccines that were not consistent with medical guidelines.

- The California Medical Board has stated that "a physician who grants a mask or other exemption without… finding of a legitimate medical reason supporting such an exemption within the standard of care may be subjecting their license to disciplinary action"

- The Federation of State Medicaid Boards has stated that physicians and other healthcare professionals could risk losing their medical licenses if they spread COVID-19 vaccine misinformation on social media, online and in the media. While posting misinformation publicly isn't quite the same as writing a medical exemption, it is certainly similar.

RECOMMENDATION: CHCs whose providers are getting pressured to write medical exemptions for non-CDC-approved reasons can consider posting the following in their clinical rooms, etc.:

> "To protect our Federal funding and our doctors' medical licenses, *this CHC's* providers are permitted to write medical exemptions for the COVID-19 vaccine only to patients with a documented history of one of the three contra-indications approved by the Centers for Disease Control and Prevention:
>
> - Severe immediate allergic reaction to a previous dose of the COVID-19 vaccine
> - Previous allergic reaction to Polyethylene Glycol (PEG)
> - Previous allergic reaction to Polysorbate.
>
> "Patients who are seeking medical exemptions from receiving a COVID-19 vaccine for any other reason will not be able to receive an exemption from *this CHC*."

CHCs might also create a standard Medical Exemption form that lists the three CDC-approved contraindications (listed above) and instructs the provider to check off which one applies and provide history info, such as:

CONTRA-INDICATION	CHECK IF APPLICABLE	HISTORY/ DATE
Severe immediate allergic reaction to a previous dose of the COVID-19 vaccine		
Previous allergic reaction to Polyethylene Glycol (PEG)		
Previous allergic reaction to Polysorbate		

SAMPLE DOCUMENTS FROM A CHC THAT HAS ALREADY ANNOUNCED A VACCINE REQUIREMENT

The following documents were shared by a CHC which announced in late July that it would make being vaccinated (or having an approved exemption) a condition of employment effective October 31. They include emails to staff, forms for requesting exemptions, FAQs for staff, etc. As of September 21, this CHC is steadily increasing the percentage of its staff who are vaccinated. CHCs are welcome to adapt these emails and forms for their own use.

Initial Announcement of Vaccine Requirement

Name of CHC has a duty to provide and maintain a workplace that is free of known hazards and to safeguard the health of our employees, their families, and the patients and communities we serve. We know that the risk of transmission, infection, and death from the COVID-19 virus is significantly reduced through vaccination. We also know that increasing the number of people vaccinated will decrease the potential for future and potentially more concerning variants of the virus to emerge. Therefore, in support of our commitment to employee health and wellness, and the health of the community, we will be phasing in the following standards related to vaccination against COVID-19:

PHASE ONE:

Effective August 9, 2021: New employees must have initiated the vaccination process prior to their start date or initiate vaccination upon onboarding. Vaccination must be completed 45 days following their start date in order to continue their employment with *CHC.*

Effective August 16, 2021: Vaccination against COVID-19 will become an Employee Health Standard at *CHC*.

- We encourage all unvaccinated employees to initiate vaccination against COVID-19 on or before this date.
- Employees may reach out to Employee Health Coordinator *(give name)* to assist in scheduling their vaccination.
- Notice of vaccination (initiation and completion) must be provided to Employee Health Coordinator *(give name)* who will be responsible for validating the completion of the vaccination process.
- *CHC* will allow for medical and religious exemptions from the COVID-19 vaccine requirement, in accordance with all applicable laws and regulations.
    - A medical exemption may be requested through *(give name)*, Chief Medical Officer, and a Medical Review Committee has been established to evaluate those requests.

- Requests for religious exemptions may be submitted through *(give name)* and will require membership in an established religion that has publicly announced prohibition against their members receiving the COVID-19 vaccine.

- Any employee that received a medical or religious exemption will be subject to weekly COVID-19 PCR testing.

- Any employee that has not received a medical or religious exemption and is unwilling to comply with the COVID-19 vaccine requirement will be subject to weekly COVID-19 PCR testing. Weekly testing of unvaccinated employees will be the standard at any time local infection rates are elevated.

PHASE TWO:

October 31, 2021: As of this date vaccination against COVID-19 will become a Condition of Employment for all *CHC* employees excluding those with an approved medical or religious exemption. Weekly testing of exempt employees will be the standard at any time local infection rates are elevated.

In closing, we value all our employees and certainly hope that nobody will choose to leave due to this Employee Health Standard. We are hoping that providing this schedule for phasing in the COVID-19 vaccination as a condition of employment allows everyone time to address any questions and concerns that have thus far prevented you from becoming vaccinated. Please reach out to *CMO* or any member of the leadership team and we will be happy to provide you with resource material or put you in touch with other medical professionals who may help you in making this important decision.

FAQs for staff on COVID-19 Vaccination as a Condition of Employment

Does *CHC* plan to continue paying the $300 Employee Wellness Incentive to employees who complete the vaccination process?

As previously announced, up until October 31, 2021 any employee who provides documentation verifying that they are fully vaccinated will receive a $300 Employee Wellness Incentive. Evidence of being fully vaccinated should be submitted to Employee Health Coordinator, *give name*. This Wellness Incentive will expire on October 31, 2021 when vaccination against COVID-19 becomes a condition of employment.

If an individual isn't vaccinated by October 31st and is not exempt, does that mean they can no longer be employed with CHC?

Yes. Once COVID-19 vaccination becomes a condition of employment (October 31st), an employee who chooses not to be vaccinated against COVID-19 and has no medical or religious exemption would not be meeting that condition of employment and therefore would not be eligible for continued employment with *CHC*. We hope no one makes that choice, which is why we are allowing over 60-days for people to make their decision about vaccination.

Is there something I can sign stating that I didn't want the vaccine and only got vaccinated to stay employed?

We are not forcing anyone to get vaccinated against their will. In good conscience as a health care organization, we are implementing a policy where vaccination is a condition of employment. If an employee is not willing to become vaccinated and does not consent to that vaccination of their own free will, that is their choice. However, the consequence of that choice is that they are no longer eligible to remain employed. Given that, we would not allow an employee to sign a statement indicating that they were vaccinated against their will.

If an employee is terminated for not being vaccinated, do they qualify for unemployment?

It is important to clarify that an employee who chooses not to be vaccinated and does not qualify for a medical or religious exemption is choosing not to fulfill a condition of employment. Therefore, the employee is not being terminated; rather, the employee is choosing not to fulfill the requirements for employment and are voluntarily relinquishing their ability to remain employed at CHC. An employee may file for unemployment anytime they separate from an employer. Determination of eligibility will be made by the South Carolina Department of Employment and Workforce.

If an employee resigns because they are not willing to get vaccinated, can they ever be rehired?

Like any employee in good standing who voluntarily separates from *CHC* and works a two-week notice, you would be eligible for rehire; however, eligibility for rehire does not guarantee reemployment or priority consideration in the hiring process. If rehired, like all new employees, vaccination against COVID-19 would be a condition of employment.

If a staff member chooses to give notice, will they receive a payout of their annual leave if they complete that notice?

Consistent with *CHC*'s employment policies, an employee who voluntarily terminates their employment and works the required notice will be eligible for a pay out of accrued annual leave up to the maximum hours allowable.

If a staff member has "natural immunity" as defined by the CDC is that acceptable in place of the vaccine until they are no longer naturally creating antibodies?

No. Studies have shown that those who had COVID early on are at higher risk of hospitalization and death. Vaccination is still recommended. The more recently you acquired COVID-19 infection, the less chance of hospitalization or death, but the best overall protection is previous infection with COVID **plus** the COVID vaccine.

Will students and others who do rotations in our practices be required to be vaccinated against COVID-19?

It is our expectation that individuals coming into any of our locations for educational experience would be vaccinated against COVID-19. This will be a consideration when applications are submitted to Human Resources.

Can you clarify the weekly testing requirement for those who choose not to become vaccinated or who receive medical or religious exemptions?

First, we would like to clarify that the weekly testing requirement would be a PCR test, not an antigen test. Beginning August 16th and up until the time when being fully vaccinated against COVID-19 becomes a condition of employment (October 31st) the weekly testing requirement applies to all unvaccinated individuals including those who have requested or received medical or religious exemption. Beginning November 1st, when vaccination is a condition of employment, the weekly PCR testing will be required for those who are unvaccinated due to a medical or religious exemption only when local infection rates are elevated.

Who can I hold responsible if I have side effects from the vaccine that require medical treatment?

All vaccines, prescription medication, OTC medicines, dietary supplements, and even some foods may result in unexpected side effects; however, through informed consent and personal choice, absent any negligence on the part of another party, an individual assumes that risk. There is no one that will be held responsible if you have an unexpected side effect.

If a reaction to the vaccine required medical treatment, that cost could be processed through your insurance like any other qualifying medical expenses.

If a staff member is fully vaccinated and later develops COVID, will they qualify for FFCRA leave or will they have to use their sick time? Or can they take it without pay?

A vaccinated person who becomes infected with COVID-19 would be eligible to apply for emergency medical leave under the FFCRA. However, the FFCRA is scheduled to expire on September 31, 2021, after which employees may use any accrued paid time off – sick, annual, or floating holidays. If the employee has no remaining paid leave available, they may request leave without pay through their supervisor.

As staff are getting vaccinated if they experience side effects like fever and flu-like symptoms will they receive FFCRA paid leave?

Side effects from receiving the COVID-19 vaccination would be a qualifying event for emergency medical leave under the FFRCA. However, the FFCRA is scheduled to expire on September 31, 2021, after which employees may use any accrued paid time off – sick, annual, or floating holidays. If the employee has no remaining paid leave available, they may request leave without pay through their supervisor.

MRNA has been around for 30 years? Why has it never been used in a vaccine before?

mRNA was first investigated as a possible alternative to conventional vaccines in a paper published in 1990. At that time, it wasn't considered very feasible for a vaccine due to problems with the mRNA breaking down and an inefficient delivery system. It took modern technological developments to make the mRNA stick around long enough in the body for it be usable as a vaccine. Oncology was the first area to start testing mRNA vaccines (vaccines against cancer) back in 2009. 33 clinical studies using mRNA vaccines for oncology have been initiated since 2009. These studies continue but in 2019 most efforts turned towards using the technology for COVID vaccines. Phase I and phase 2 human trials on CMV and flu mRNA vaccines have been going on and/or completed since around 2015. COVID vaccines are the first mRNA vaccines to be produced and tested in large-scale phase III studies.

Where can *CHC* staff get vaccinated? Will there be a day set up for staff? Will they need to clock out?

CHC wants to make vaccination as convenient as possible for our employees. Efforts are underway to make sure all three vaccines are available so that an employee may receive the vaccine of their choice. If you choose to be vaccinated on a day you are scheduled to work, you may do so on work time, or "on the clock." Finally, there is no cost to the employee for being vaccinated. For assistance in scheduling your vaccination, please contact Employee Health Coordinator *give name*.

Process for Seeking a Medical Exemption

Requirements and Instructions: Effective October 31, 2021, vaccination against COVID-19 is a condition of employment with [HEALTH CENTER NAME]. A medical exemption may be granted upon receipt of a completed form (below) and supporting documentation when requested.

- Requests for a medical exemption will be reviewed by and adjudicated by an independent review committee comprised of multidisciplinary [HEALTH CENTER NAME/ACRONYM] providers.

- Priority will be given to the advisory opinions of established and credible medical professional organizations including but not limited to the American Academy of Pediatrics, American Academy of Family Physicians, American College of Obstetrics and Gynecology, Society for Fetal and Maternal Health, and the Centers for Disease Control.

- In those cases where a medical exemption is not consistent with the advisory opinion of an established and credible medical professional organization, the request must be supported by an attestation of need signed and certified by a licensed health care provider, not related to the submitter, and whose specialty is appropriate to the associated condition.

- Documentation related to the medical condition for which any exemption is requested may not be more than 3 months old.

- Medical exemptions expire when the medical condition(s) contraindicating COVID-19 vaccination changes in a manner which permits vaccination. The assigned expiration is at the sole determination of [HEALTH CENTER NAME/ACRONYM].

- While [HEALTH CENTER NAME/ACRONYM] will carefully review all requests for medical exemptions, approval is not guaranteed.

[HEALTH CENTER NAME/ACRONYM] will carefully review each request and determine if the request should be granted. After your request has been reviewed and processed, you will be notified by email if an exemption has been granted or denied. If the approved exemption contains an expiration, you will be expected to complete the requirement at that time. Should the condition continue, or a new vaccination contraindication occur, a new request with updated documentation is required. Decisions are final and not subject to appeal. Individuals whose requests have been denied are permitted to reapply if new documentation and information should become available.

Individuals with an approved exemption may be required to comply with COVID-19 testing and other preventive requirements as specified by [HEALTH CENTER NAME/ACRONYM].

Steps to request a medical exemption:

- Read the CDC COVID-19 Vaccine Information;
- Complete and sign the following page of this form;
- Have your Licensed Health Care Provider complete the provider section of this form if you feel it will be required;
- Submit the completed documents.

Form for Requesting a Medical Exemption

Insert CHC's name/ logo

To request an exemption from receiving the COVID-19 vaccination for medical reasons, please complete this form and return to the Chief Medical Officer at [EMAIL]

Employee Name: _____ Email: _____

Phone Number_____ Department/Location: _____

Incomplete submissions will not be reviewed. Be sure all forms and documentation are submitted at one time.

I am requesting an exemption from receiving the COVID 19 vaccine due to the following medical condition:

_____

Please initial next to each of the statements below:

- ___ I request exemption from the COVID-19 vaccination requirements due to my current medical condition described above. I understand and assume the risks of non-vaccination.
- ___ I understand that as I am not vaccinated, to protect my own health, the health of my coworkers and of our patients, I will comply with assigned COVID-19 testing requirements and other preventive guidance.
- ___ I acknowledge that I have read the CDC COVID-19 Vaccine Information.
- ___ I understand that this exemption will expire when the medical condition(s) contraindicating vaccination changes in a manner which permits vaccination, as determined by [HEALTH CENTER NAME/ACRONYM] in reviewing the request.
- ___ If required, I authorize my licensed health care provider to provide [HEALTH CENTER NAME/ACRONYM] with medical information about my medical exemption for the COVID-19 vaccination.
- ___ I certify that the information I have provided in connection with this request is accurate and complete as of the date of this submission. I understand this exemption may be revoked and I may be subject to termination if any of the information I provided in support of this exemption is false.

Signature: _____Date:

_____

Health Care Provider Attestation for Medical Exemption

Attention Health Care Provider: A condition of employment with [HEALTH CENTER NAME/ACRONYM] is COVID-19 vaccination. _____ (insert patient's name) is requesting a medical exemption from COVID-19 vaccination. A medical exemption may be allowed for certain recognized contraindications. Please certify below the medical reason that your patient should not be vaccinated for COVID-19 by completing this form and attaching available supporting documentation. Information provided on this form will be reviewed in consideration of the exemption request.

By signing and providing further information below, you are attesting that the physical condition of this patient or medical circumstances relating to the individual are such that vaccination is not considered safe. Please state, with sufficient detail for independent medical review, the specific nature and probable duration of the medical condition or circumstances that contraindicate vaccination with the COVID-19 vaccine.

Medical condition or circumstances:

_____

_____

Duration of the medical condition or circumstance and reason why vaccine is contraindicated:

_____

_____

_____

_____

_____

_____

Certification

I certify that _____ (patient name) has the above contraindication and support the request for a medical exemption from COVID-19 vaccination at [HEALTH CENTER NAME/ACRONYM].

Provider Information

Medical Provider
Name:_____

Medical Provider Specialty:
_____

Signature: _____ Date:
_____

Provider License Number: _____

Practice Name:
_____

Address:
_____

Phone number: _____

Process for Requesting a Religious Exemption

Requirements and Instructions: Effective October 31, 2021, vaccination against COVID-19 is a condition of employment with [HEALTH CENTER NAME AND ACRONYM]. A religious exemption may be granted if the employee (1) holds sincere religious beliefs which are contrary to the practice of vaccination, (2) completes this form, and (3) provides the required documentation to support the exemption request.

[HEALTH CENTER NAME/ACRONYM] is committed to providing equal employment opportunities without regard to any protected status and a work environment that is free of unlawful harassment, discrimination, and retaliation. As such, [HEALTH CENTER NAME/ACRONYM] is committed to complying with all laws protecting employees' religious beliefs and practices.

When requested, [HEALTH CENTER NAME/ACRONYM] may provide an exemption/reasonable accommodation for employees' religious beliefs and practices which prohibit the employee from receiving a COVID-19 vaccine, provided the requested accommodation is reasonable and does not create an undue hardship for [HEALTH CENTER NAME/ACRONYM] or pose a direct threat to the health and/or safety of others in the workplace and/or to the requesting employee.

To request an exemption related to [HEALTH CENTER NAME/ACRONYM]'s COVID-19 vaccination requirements, please complete this form, and return it to Human Resources. This information will be used by Human Resources to engage in an interactive process to determine eligibility for and to identify possible accommodations. If an employee refuses to provide such information, the employee's refusal may impact [HEALTH CENTER NAME/ACRONYM]'s ability to adequately understand the employee's request or effectively engage in the interactive process to identify possible accommodations.

While [HEALTH CENTER NAME/ACRONYM] will carefully review all requests for religious exemptions, approval is not guaranteed. [HEALTH CENTER NAME/ACRONYM] will carefully review each request and determine if the request should be granted. After the request has been reviewed and processed, the employee will be notified, in writing, if an exemption has been granted or denied. The decision is final and not subject to appeal. Employees are permitted to reapply if new documentation and information should become available.

Individuals with an approved exemption may be required to comply with COVID-19 testing and other preventive requirements as specified by [HEALTH CENTER NAME/ACRONYM].

Form for Requesting a Religious Exemption

Insert CHC name/ logo

To request an exemption from receiving the COVID-19 vaccination for religious beliefs and practices, please complete this form and return to HR at [INSERT NAME/EMAIL]

Employee Name: _____ Email: _____

Phone No: _____ Department/Location: _____

Please provide a statement explaining the religious beliefs or practices that necessitate this request for exemption. Please state why the COVID-19 vaccination requirement is contrary to your sincerely held religious beliefs or practices and provide examples of past adherence to these beliefs or practices:

If there is a religious leader or member willing to attest to the premise for this request for a religious exemption, please provide their contact information:

Name: _____ Telephone: _____

Email Address: _____

Please attach any written materials you may have that describe the religious beliefs or practices and their objections/prohibitions to the COVID-19 vaccine.

Verification and Accuracy: I have read and understand [HEALTH CENTER NAME/ACRONYM]'s Requirements and Instructions regarding religious exemption. My religious beliefs and practices which result in this request for a religious exemption are sincerely held. I verify that the information I am submitting in support of my request for an accommodation is complete and accurate to the best of my knowledge, and I understand that any intentional misrepresentation contained in this request may result in disciplinary action up to termination.

I also understand that my request for an accommodation may not be granted if it is not reasonable, if it poses a direct threat to the health and/or safety of others in the workplace and/or to me, or if it creates an undue hardship on [HEALTH CENTER NAME/ACRONYM].

Name (Print) _____

Signature _____ Date: ____/____/____

Email to Staff -- Six Weeks Prior to Effective Date

We are 44 days away from October 31, 2021, when our Employee Health Standard for vaccination against COVID-19 becomes a condition of employment.

Our policy states that effective October 31, 2021, vaccination is a requirement of employment for all CHC employees, which means that employees must be fully vaccinated by that date in order to meet all the requirements for continued employment. To fulfill that requirement, following are the dates by which vaccination should be initiated for each of the vaccines:

- **Moderna**: initiate on or before September 30 to comply with our policy.
- **Pfizer**: initiate on or before October 8 to comply with our policy.
- **Janssen** (J&J single shot vaccine): may be taken on or before October 31 to comply with our policy.

As I have stated in previous emails, CHC does not want to lose any of our valued employees; however, we must ensure adequate staffing to maintain access and fulfill our commitment to our patients and the communities served. Consequently, on Monday, September 20, 2021, we will begin the recruitment process to identify potential candidates to fill those positions in which the current employee remains unvaccinated, does not have an approved waiver or exemption, and does not initiate the vaccination process within the necessary timeframe outlined above. A list of the positions that will be posted beginning Monday is included at the conclusion of this email.

I'd like to address a couple other questions that have come up:

First, we have been asked if CHC will continue to provide a temporary waiver for those individuals with positive antibodies now that there is a federal mandate that prohibits testing as a substitute for vaccination. It is our plan to follow our existing policy unless or until we are advised or determine that it not fully compliant with the federal mandate.

Several people have made comments about the possibility of being "terminated" for not getting the COVID-19 vaccine. I want to be clear that employees whose employment ends as a result of not receiving the COVID-19 vaccine are not being terminated; they are voluntarily choosing not to fulfill a condition of employment and therefore, are not eligible for continued employment. This does not constitute a termination or "lay-off."

Finally, I have been asked if employees choosing not to fulfill this condition of employment will receive a pay-out for their accrued leave at the time of separation. I would direct anyone with that question to our personnel policies, or in the case of providers, your contract terms which remain in effect and should be mutually respected.

I hope this answers many of the lingering questions out there. Please don't hesitate to email me directly if you have more specific questions.

Positions that will be posted effective Monday 9/20/2021:

- 4 CMAs
- 2 CSRs
- 1 Custodial Technician
- 2 LPNs
- 2 NPs
- 1 PAT Parent Educator
- 4 Pharm Techs
- 1 Pharmacist
- 6 PSRs
- 2 RMAs
- 4 RNs

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[1] https://www.nashp.org/state-lawmakers-submit-bills-to-ban-employer-vaccine-mandates/