

Welcome to the

RHC Technical Assistance Webinar

This webinar is brought to you by the National Association of Rural Health Clinics and is supported by cooperative agreement UG6RH28684 from the Federal Office of Rural Health Policy, Health Resources and Services Administration (HRSA). It is intended to serve as a technical assistance resource based on the experience and expertise of independent consultants and guest speakers.

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CMS Vaccine Mandate Details

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Agenda

- CMS Interim Final Rule Details
- Vaccine Mandate Policy & Procedure (P&P)
- Legal Uncertainty



Healthcare Facilities Vaccine Mandate Timeline

- September 9th 2021 plans to mandate COVID-19 Vaccination in Long-Term Care Settings
- November 4th 2021
- December 6th 2021 shot, facilities are required to follow procedure
- January 4th 2022 – A

Litigation Update: On November 29, 2021, the United States District Court for the Eastern District of Missouri issued a preliminary injunction against the implementation and enforcement in ten states of Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination, 86 Fed. Reg. 61,555, 61,556 (Nov. 5, 2021). **On November 30, 2021, the United States District Court for the Western District of Louisiana issued a nationwide preliminary injunction against the implementation and enforcement of the same rule, with the exception of the ten states covered under the first preliminary injunction. CMS has appealed both of these decisions, and has filed motions for stays of these order. While CMS remains confident in its authority to protect the health and safety of patients in facilities funded by the Medicare and Medicaid programs, it has suspended activities related to the implementation and enforcement of this rule pending future developments in the litigation.** Please note that the comment period is separate from the litigation.

CMS Mandate vs. OSHA Mandate

- There is another separate federal COVID vaccine mandates that applies to employers with more than 100 employees.
- This other rule is being enforced through the Occupational Safety and Health Administration (OSHA) and is also being challenged in court.
- Systems with more than 100 employees should follow the legal developments of both rules.
- This presentation will be focused on the CMS rule.



Vaccine Policies and Procedures Must Apply to:

- “facility employees;
- licensed practitioners;
- students, trainees, and volunteers;
- and individuals who provide care, treatment, or other services for the facility and/or its patients, under contract or other arrangement.
- we believe it is necessary to require vaccination for all staff that interact with other staff, patients, residents, clients, or PACE program participants in any location, beyond those that physically enter facilities, clinics, homes, or other sites of care.”



- **“Individuals who provide services 100 percent remotely, such as fully remote telehealth or payroll services, are not subject to the vaccination requirements of this IFC.”**



Contracted Workers

- **“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.** 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. Again, we strongly encourage facilities, when the opportunity exists and resources allow, to facilitate the vaccination of all individuals who provide services infrequently and are not otherwise subject to the requirements of this IFC.”

Definition of “Fully Vaccinated”

- CMS defines fully vaccinated as “being 2 weeks or more since completion of a primary vaccination series.”
- However, “staff who have completed the primary series for the vaccine received by the Phase 2 implementation date (January 4th, 2022) are considered to have met these requirements, even if they have not yet completed the 14-day waiting period required for full vaccination.”
- **Booster shots, while encouraged, are not required for staff to be considered “fully vaccinated.”**

Medical Exemptions

- “Facilities have the flexibility to establish their own processes that permit staff to request a medical exemption from the COVID-19 vaccination requirements. Facilities must ensure that all documentation confirming **recognized clinical contraindications** to COVID-19 vaccinations for staff seeking a medical exemption are signed and dated by a licensed practitioner, who is not the individual requesting the exemption and is acting within their respective scope of practice based on applicable state and local laws. This documentation must contain 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. Additionally, a statement by the authenticating practitioner recommending that the staff member be exempted from the facility’s COVID-19 vaccination requirements is also expected.”
- <https://www.cdc.gov/vaccines/covid-19/clinical-considerations/covid-19-vaccines-us.html#Contraindications>

Religious Exemptions

- Q: What is the process for staff to seek a religious exemption?
- A: Facilities have the flexibility to establish their own processes that permit staff to request a religious exemption from the COVID-19 vaccination requirements. CMS requires facilities to ensure that requests for religious exemptions are documented and evaluated in accordance with applicable federal law and as a part of a facility's policies and procedures.



Religious Exemptions

- [Section L of EEOC!](#)
- Key Highlights:
 - “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.”



[Sample Religious Exemption Form](#)



Additional Precautions

- Q. How do accommodations work for staff members who are granted an exemption and are not vaccinated?
- A. The regulation requires that facilities develop a process for implementing *additional precautions* for any staff who are not vaccinated, in order to mitigate the transmission and spread of COVID-19.
- “Additional precautions” is not defined in the IFR.



Additional Precautions - *Examples*

- Permitting staff member to fully (100%) telework if feasible
- Undergo weekly and as otherwise necessary COVID-19 testing
- Utilize additional PPE
- Wear a N95 mask at all times
- Maintain adequate physical distancing, when appropriate, from other staff and patients
- Undergo daily temperature checks and leave facility if temperature is 100.4 degrees Fahrenheit or higher



New Conditions of Participation

- **§ 491.8 (d) Staffing and staff responsibilities.**
- **(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.

New Conditions of Participation

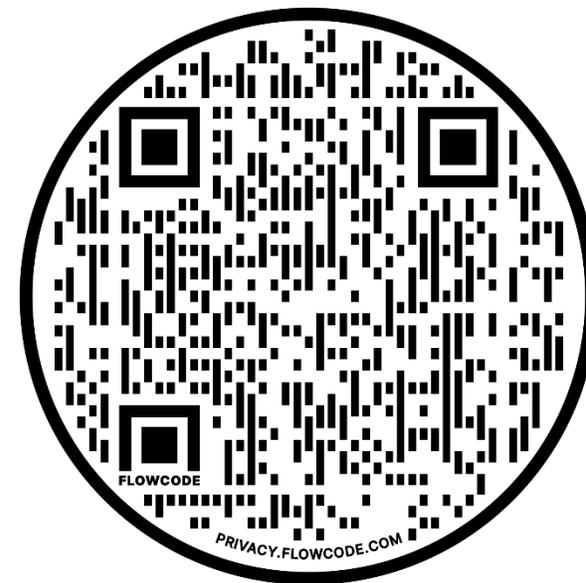


- [§ 491.8 \(d\)\(3\) Staffing and staff responsibilities.](#)
- **(3)** The policies and procedures must include, at a minimum, the following components:
 - **(iii)** A process for ensuring that the clinic or center follows nationally recognized infection prevention and control guidelines intended to 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;
 - <https://www.cdc.gov/infectioncontrol/basics/standard-precautions.html>

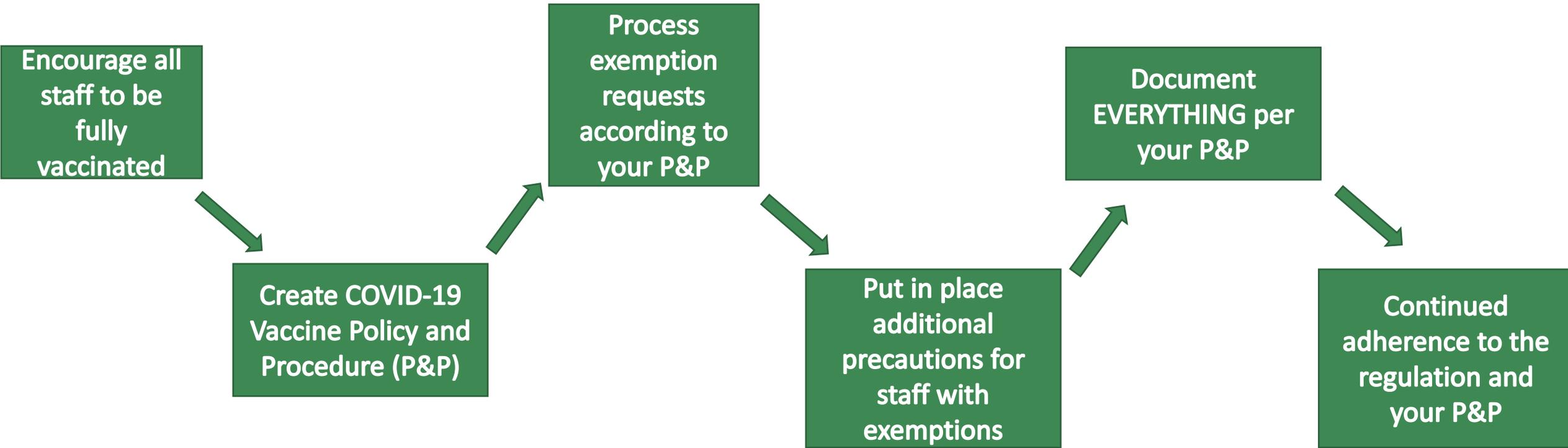


Sample Policies and Procedures

- Please see NARHC's sample P&P on the vaccine mandate [here](#).
- Your P&P must address the components of 491.8(d)(3).



Where do I start?



Enforcement

- Enforcement will be handled through surveys by state-surveyors or accreditors
- CMS expects state survey agencies to conduct onsite compliance reviews of these requirements in two ways:
 - State survey agencies would assess all facilities for these requirements during the standard recertification survey.
 - State survey agencies would assess vaccination status of staff on all complaint surveys.
- While onsite, surveyors will review the facility's COVID-19 vaccination policies and procedures, the number of resident and staff COVID-19 cases over the last 4 weeks, and a list of all staff and their vaccination status. This information, in addition to interviews and observations, will be used to determine the compliance of the provider or supplier with these requirements.

Legal Uncertainty

- NARHC will be sure to notify the RHC community whenever updates are warranted.
- Both rules could end up being appealed to the U.S. Supreme Court.
- It may be wise to have your P&P prepared and ready should the CMS mandate stand.



Questions?

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