

The Biden Administration's COVID-19 Vaccine Mandate: Frequently Asked Questions for the HCH Community

November 8, 2021

On November 4, the Biden Administration issued two rules to provide further guidance on the COVID-19 vaccine mandate [announced](#) in early September. One [rule](#) outlines the requirements for health care facilities, while the [second rule](#) outlines those for private employers with 100+ employees. The National HCH Council has previously [endorsed organizations that issued vaccine mandates](#), and we are grateful to see these new guidelines announced because they will increase the number of people getting vaccinated. To help with initial planning, below are answers to frequently asked questions for how the new rules will impact the Health Care for the Homeless community.

FAQs for Health Care Facilities

➤ **What are the important dates for meeting this requirement?**

- **December 6, 2021:** All health care facility employees must have received at least 1 dose of a COVID-19 vaccine (Pfizer, Moderna, or Johnson & Johnson) or submit a request for a medical or religious exemption.
- **January 4, 2022:** All health care facility employees who received the Moderna or Pfizer vaccine must have received the 2nd dose (or have an approved exemption).

➤ **What is the main take-away from these new rules?**

All Medicare and Medicaid-certified [facilities](#), **to include federally qualified health centers (FQHCs)**, are required to vaccinate all staff and most contractors. No testing alternative is allowed. These are minimum standards, and health care facilities continue to have the option to impose additional requirements (in accordance with federal law).

➤ **Which staff are included in this vaccine mandate?**

All staff (and contractors) of a health care facility are included in this mandate, to include both clinical and non-clinical staff. Students, volunteers, Board members, trainees/interns, housekeeping staff, and food services staff are also included in these requirements.

Broadly, the rule applies to anyone with direct contact with patients/clients or staff, or is physically onsite at a health care facility, or offsite at service locations such as client homes, clinics, administrative offices, outreach and/or street medicine sites. The mandate also applies to individuals who provide care, treatment, or other services for the facility and/or its patients/clients under contract or other arrangements.

Those who are 100% telework, have no contact with any staff or patients/clients, and who never enter the facility are not included in this mandate. However, if such staff are unvaccinated, they cannot have any interaction with any staff member or patients/clients or enter any facility site.

➤ **Does this rule apply to medical respite care programs and/or homeless services providers?**

Although most medical respite care programs are not Medicare or Medicaid-certified facilities, they are almost certainly included in this rule. If they are contracting with an eligible [facility](#) (such as an FQHC or hospital), or staff from these programs enter an FQHC or hospital (or other covered facility), this rule applies.

Homeless services providers are likely not included in this set of rules because they are not regulated health care settings and generally do not contract with them. However, for those providers working for an organization with 100+ employees, please see the FAQ below.

➤ **What if my state has different policies or laws on vaccinations and testing?**

This federal rule preempts state laws and is therefore in effect in every state and every jurisdiction. However, because these rules set a minimum standard, state laws that set a higher standard (e.g., more restrictions on religious exemptions, or vaccine mandates without an option for testing, etc.)

➤ **What do health care employers need to know/do?**

- Develop a plan for vaccinating all eligible staff.
- Develop a plan for storing documentation of vaccination status.
- Establish a process for employees to request a medical or religious exemption. Certain allergies, [recognized medical conditions](#), or deeply held religious beliefs, observances, or practices may be grounds for an exemption.
- Facilities with employees with approved exemptions must take steps to minimize the risk of COVID-19 transmission with reasonable accommodations, such as wearing additional PPE, changing job duties to avoid contact with others, etc.
- Only a primary series of a vaccination is required to be in compliance with the mandate. Third doses (or “booster shots”) are not included in this mandate.
- Failure to comply with these rules as an employer will result in a series of escalating penalties that could result in losing Medicare and Medicaid reimbursements and being terminated from the program.
- While employers have the option to terminate employees for non-compliance, the rule is silent on mandating such action.

➤ **What do health care employees need to know/do?**

- Provide your employer documentation of a single dose of COVID-19 vaccination by December 6, 2021 and proof of complete primary series by January 4, 2022.
- Previous COVID-19 infection does not exempt you from the vaccine mandate.
- These rules set a minimum standard. Employers may implement additional requirements in accordance with federal law (e.g., higher threshold for exemptions, vaccine mandates without an option for testing, etc.).
- There is no testing alternative. Vaccines (or an approved exemption) are required.

➤ **Do health care facilities with 100+ employees also have to adhere to the second rule for private employers?**

No. The health facility rule takes priority over the private employer rule.

➤ **Where can I get more information?**

- [Biden- Harris Administration Issues Emergency Regulation Requiring COVID-19 Vaccination for Health Care Workers \(CMS\)](#)
- [FAQ on CMS Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule](#)
- [White House Fact Sheet: Biden Administration Announces Details of Two Major Vaccination Policies](#)

FAQs for Private Employers with 100+ Employees (non-health care)

➤ **What are the important dates for meeting this requirement?**

- **December 6, 2021:** All requirements (including exemption policies, paid leave for vaccination, and masking policies) must be implemented, with the exception of testing for employees who are not fully vaccinated.
- **January 4, 2022:** Deadline for employers to comply with the testing requirements for employees who are not fully vaccinated.

➤ **What is the main take-away from these new rules for larger employers?**

Employers have the option to mandate vaccines; however, those that do not must require non-vaccinated employees to submit to weekly testing at their own time and expense, as well as wear a face covering at work. These are minimum standards, and employers continue to have the option to impose additional requirements (in accordance with federal law).

➤ **What workplaces are included in this vaccine mandate?**

Private employers with 100 or more employees total (not per site or service location). Part-time employees are included in this count.

➤ **What if my state has different policies or laws on vaccinations and testing?**

This federal rule preempts state laws and is therefore in effect in every state and every jurisdiction. However, because these rules set a minimum standard, state laws that set a higher standard (e.g., more restrictions on religious exemptions, or vaccine mandates without an option for testing, etc.)

➤ **What does "fully vaccinated" mean?**

"Fully vaccinated" means a person's status two weeks after completing primary vaccination with a COVID-19 vaccine with at least the minimum recommended interval between doses (if applicable). This means 1 dose of Johnson & Johnson, or the 2-dose series of either Moderna or Pfizer. This rule does not address a third dose (or "booster shots").

➤ **What do employers need to do?**

- If employers choose not to implement a vaccine mandate, they must require non-vaccinated employees to submit to weekly testing (every 7 days) at their own time and expense, as well as wear a face covering at work. Employees who are fully vaccinated are not required to submit to weekly testing or wear a mask.
- Establish a written vaccination policy available to all employees that includes information on any vaccine or testing requirements, the process for requesting exemptions, paid leave for vaccination and side-effects, any disciplinary actions for noncompliance.
- Establish a process for employees to request a medical or religious exemption.
- Maintain a roster of every employee's vaccination status and a copy of every COVID-19 test result, which must remain confidential.
- Upon request, make available the total number of employees and the number of employees who are fully vaccinated.
- Provide up to 4 hours of paid leave for each primary vaccination dose, and "reasonable time and paid sick leave" to recover from any side effects.
- Remove from the workplace any employee who tests positive for COVID-19 (regardless of vaccination status), or who does not produce a timely negative test result each week.
- Ensure employees returning to work after isolation for a COVID-19 infection have met [CDC criteria](#) for ending isolation.
- Avoid prohibiting or discouraging vaccinations and/or face coverings worn by customers or employees, or discriminating or retaliating against employees over the provisions of this rule.
- Provide all required information in a language and at a literacy level each employee understands.
- While employers have the option to terminate employees for non-compliance, the rule is silent on mandating such action.

➤ **What do employees need to do?**

- Provide documentation of their vaccination (written self-attestation is allowed). Employees who do not provide documentation will be considered unvaccinated.
- For unvaccinated employees, obtain a weekly COVID-19 test at their own time and expense, and wear a face covering at work. Failure to submit test results on time will result in removal from the workplace. Prior COVID-19 infection and/or an exemption does not exempt an employee from testing or face covering requirements.
- Promptly notify the employer if diagnosed with COVID-19 or receive a positive test result, regardless of vaccination status.

➤ **Where can I get more information?**

- [Landing page for the Department of Labor/Occupational Safety and Health Administration \(OSHA\) COVID-19 Vaccination and Testing Emergency Temporary Standard](#)
- [FAQ from the Department of Labor/Occupational Safety and Health Administration \(OSHA\)](#)
- [3-page summary on OSHA Vaccination and Testing rules](#)
- [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#)
- [White House Fact Sheet: Biden Administration Announces Details of Two Major Vaccination Policies](#)