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OMH Guidance Regarding Federal COVID-19 Vaccination Mandates

CMS Medicare and Medicaid COVID-19 Vaccination Mandate:

Effective November 5, 2021, CMS promulgated final rules revising the requirements that Medicare and Medicaid certified providers must meet for participation in such programs. These rules establish COVID-19 vaccination requirements for staff at covered facilities.

Applicability to OMH system:

The CMS COVID-19 vaccination mandate, available at <https://www.federalregister.gov/documents/2021/11/05/2021-23831/medicare-and-medicaid-programs-omnibus-covid-19-health-care-staff-vaccination>, applies to **Medicare certified health care facilities**. In the OMH system, this includes OMH-operated or -licensed hospitals and Comprehensive Psychiatric Emergency Programs (CPEPs), which should be in compliance with the CMS rule if they are in compliance with OMH's vaccine mandate at 14 NYCRR Part 557. The CMS rule is also applicable to OMH-licensed residential treatment facilities (RTFs) for youth, if those facilities are certified by Medicare. Such RTFs are not subject to Part 557 and will have to take steps to comply with the CMS rule. The CMS rule does not apply to OMH-licensed facilities that are not certified by CMS, such as freestanding clinics, rehab and residential programs that are not operated by a hospital, even though those facilities may still bill Medicare and Medicaid. CMS included "community mental health centers" in its rule, but we do not believe that this type of CMS-certified facility operates in New York State.

Applicability to Personnel:

The CMS COVID-19 vaccination mandate applies to all Medicare certified hospital and RTF staff, who provide inpatient or outpatient services to facility patients regardless of location, including treatment sites that may be off the hospital or facility's main campus. OMH operated hospitals provide both inpatient services, and a variety of OMH-licensed outpatient programs. All staff thereof are covered by the mandate.

Additionally, the mandate is not limited solely to individuals who perform direct care functions. Under the mandate, vaccination is required for "all staff who **interact with other staff**, patients, residents, clients... **in any location**, beyond those that physically enter facilities or other sites of patient care." Therefore, the mandate is applicable to any administrative staff, students, trainees, volunteers, housekeeping, and food services staff who either physically work in the facility, or in any other location where they physically interact with facility staff who interact with patients.

Not subject to the mandate are individuals who provide services 100 percent remotely, such as fully remote telehealth or payroll services, and individuals who infrequently provide ad hoc non-health care services (such as annual elevator inspection, delivery or repair services).

When determining whether to require COVID-19 vaccination of an individual, facilities should consider **frequency of presence within the covered facility, 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.

Compliance with Fully Vaccinated Status and Boosters:

Consistent with CDC guidance, CMS will consider staff “fully vaccinated” if it has been two or more weeks since they completed a primary vaccination series for COVID-19, defined as having received a single-dose vaccine or all doses of a multi-dose vaccine. Boosters are NOT required by the rule.

The rule requires a first dose of the COVID-19 vaccination administered by December 5, 2021, and a second dose (where applicable) by January 4, 2022. Individuals may continue to provide services if they have received their first dose by December 5, 2021, and their second dose of a two-dose vaccination series by January 4, 2022, even though they are not yet “fully vaccinated.”

Vaccine Exemptions:

Facility staff must be able to request an exemption from these requirements based upon an applicable law, such as the ADA or Title VII. This includes requests for medical or religious exemptions. Providers must have a process for collecting and evaluating such requests, including securing any documentation provided by staff requesting an exemption, the facility’s determination, and any accommodations provided.

Medical Exemptions:

With regard to recognized clinical contraindications to receiving a COVID-19 vaccine, facilities should refer to the CDC informational document, Summary Document for Interim Clinical Considerations for Use of COVID-19 Vaccines Currently Authorized in the United States, accessed <https://www.cdc.gov/vaccines/covid-19/clinical-considerations/covid-19-vaccines-us.html>.

Requests for medical exemptions must contain all documentation confirming recognized clinical contraindications to COVID-19 vaccines that support the staff member’s request and 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 pursuant to State and local laws. Such documentation must contain all information specifying which of the authorized COVID-19 vaccines are clinically contraindicated for the staff member to receive, the recognized clinical reasons for the contraindications, and a statement by the authenticating practitioner recommending that the staff member be exempted from the facility’s COVID-19 vaccination requirements based on such contraindication.

Religious Exemptions:

For religious exemptions, CMS points facilities to the Equal Employment Opportunity Commission (EEOC) Compliance Manual on Religious Discrimination for information on evaluating and responding to such requests. Additionally, the Safer Federal Workforce Task Force’s “request for a religious exception to the COVID-19 vaccination requirement” template is available at: <https://www.saferfederalworkforce.gov/downloads/RELIGIOUS%20REQUEST%20FORM%20-%2020211004%20-%20MH508.pdf>.

For additional information, see: <https://www.cms.gov/newsroom/press-releases/biden-harris-administration-issues-emergency-regulation-requiring-covid-19-vaccination-health-care>.