Policy: Complying with CMS Omnibus COVID-19 Health Care Staff Vaccine Interim Final Rule

Facility: [FACILITY]

Effective Date: November 5, 2021

Approved by:

It is the goal and expectation that [FACILITY] will be in full compliance with all Centers for Medicare and Medicaid Services (CMS) applicable rules and regulations. On November 5, 2021, CMS released the CMS Omnibus COVID-19 Health Care Staff Vaccine Interim Final Rule, which applies to all skilled nursing facilities and nursing facilities effective November 5, 2021. The interim rule is a condition of participation for [FACILITY] to participate in Medicare and/or Medicaid programs. The CMS Interim Final Rule is intended to provide additional safety protections for the residents at [FACILITY].

This COVID-19 vaccination requirement applies to all staff who work at [FACILITY], regardless of clinical responsibility or resident contact. In addition to [FACILITY] employees, the vaccination requirement also applies to licensed practitioners, students, trainees, and volunteers affiliated with [FACILITY].

Additionally, the vaccination requirements apply to individuals who provide care, treatment, or other services for [FACILITY] and/or its residents under contract or other arrangements. This vaccination policy does not apply to [FACILITY] employees who 100% telework.

Documentation of all employee vaccinations and vaccination exemption requests will be retained in the employee medical files.

**Employees hired prior to December 5, 2021**

**Vaccination Requirement**

1. All applicable [FACILITY] employees (see expanded list of covered individuals above) must have proof of the first dose of a primary 2-dose series or a single dose COVID-19 vaccine no later than December 5, 2021.
2. All [FACILITY] employees (see expanded list of covered individuals above) must have completed their COVID-19 vaccination(s) by January 4, 2022.
3. Only Pfizer-BioNTech COVID-19 Vaccine (interchangeable with the licensed Comirnaty vaccine), Moderna COVID-19 Vaccine, and the Janssen (Johnson & Johnson) COVID-19 Vaccine will count towards vaccination status.
4. Employees who have previously had COVID-19 are not exempt from these vaccination requirements. Available evidence indicates that COVID-19 vaccines offer better protection than natural immunity alone and that vaccines, even after prior infection, help prevent reinfections.
5. Any covered employees or other required individuals who cannot show proof of first dose vaccination by December 5, 2021, ***shall have the option to*: [NOTE—Facility must decide which options will be made available and if the employee makes the choice or the facility makes the choice]**
	1. Resign from employment. **[INSERT facility specific resignation terms here (accrued PTO balance, etc. per your polices)]**.
	2. Be placed on an involuntary, unpaid leave of absence for 30 days. COBRA charges for any insurance coverage will be charged to the employee while on the leave of absence. **[INSERT other facility specific leave of absence terms here (accrued PTO balance, etc. per your policies)]**. [FACILITY] will not hold the position, shift, or hours for an employee on an involuntary leave of absence. Leaves of absences may be extended by 30-day increments at the discretion of [FACILITY]. Employees on a leave of absence shall be considered for reemployment once proof of vaccination is provided.
	3. Be terminated from employment due to violation of company policy and Federal regulation. **[INSERT facility specific termination terms here (accrued PTO balance, etc. per your polices)]**.
	4. Request a vaccination exemption (see exemptions section below)

**Exemptions**

1. [FACILITY] will accept vaccination exemptions from staff with recognized medical conditions for which vaccines are contraindicated (as a reasonable accommodation under the Americans with Disabilities Act (ADA)) or sincerely held religious beliefs, observances, or practices (established under Title VII of the Civil Rights Act of 1964). No other reasons for exemptions will be considered.
2. Exemptions will be reviewed by **[NAME (Administrator, HR, a team, legal?)]** to determine if they are compliant with the regulation and will or will not be accepted.
3. ***OPTIONAL-*** Employee’s *may appeal a rejected exemption determination by contacting [NAME].*
4. To request an exemption to the CMS vaccination requirement, the employee must provide the [FACILITY] Administrator the following:
	1. The exemption request must be in writing.
	2. For medical exemptions, the written request must confirm a recognized clinical contraindication to COVID-19 vaccination and must be signed and dated by a licensed or certified Minnesota practitioner who is not related to the employee…physician, physician assistant - certified, or advance practice registered nurse. The contact information and license or certification number of the practitioner shall be included with the exemption request.
	3. For sincerely held religious beliefs, practices, or observations exemptions, the written request must identify the religious affiliation and the rationale why the religious belief does not permit COVID-19 vaccination. The request must be signed and dated by the employee.
5. Exemption requests must be received no later than December 4, 2021.
6. Exempt, non-vaccinated employees will continue to be tested for COVID-19 consistent with current CMS requirements. ***OPTIONAL—****consider instituting a testing schedule that is more frequent than the one based on positivity rates, for example, weekly or twice per week regardless of county positivity rates.*

**Employees hired on December 5, 2021, or later**

No employee (see expanded list of covered individuals above) will be hired by [FACILITY] unless:

1. The prospective employee provides [FACILITY] proof of the first dose of a primary 2-dose series or a single dose COVID-19 vaccine prior to hire or prior to providing any care, treatment, or services to residents of [FACILITY]. Only Pfizer-BioNTech COVID-19 Vaccine (interchangeable with the licensed Comirnaty vaccine), Moderna COVID-19 Vaccine, and the Janssen (Johnson & Johnson) COVID-19 Vaccine will count towards vaccination status. The employee must agree to provide subsequent proof of the second dose of a two-dose vaccine on the date consistent with CDC recommendations for the vaccine***. (NOTE—could just require to be fully vaccinated for consideration)***

-or-

1. The prospective employee provides [FACILITY] a written exemption request based on recognized medical conditions for which vaccines are contraindicated (as a reasonable accommodation under the Americans with Disabilities Act (ADA)) or sincerely held religious beliefs, observances, or practices (established under Title VII of the Civil Rights Act of 1964). No other exemptions will be accepted. See above for exemption documentation requirements.

Exempt, non-vaccinated employees will continue to be tested for COVID-19 consistent with current CMS requirements. ***OPTIONAL—****consider instituting a testing schedule that is more frequent than the one based on positivity rates, for example, weekly or twice per week regardless of county positivity rates.*

**General**

[FACILITY] reserves the right to make employment decisions based on qualifications and capacity to perform the job, but such employment decisions will not be based on race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local commission, familial status, disability, sexual orientation, or age.

**Disclaimer**

The information provided on this sample policy does not, and is not intended to, constitute legal advice; instead, all information, content, and materials available on this sample policy are for general informational purposes only. Please check with your legal counsel to obtain advice with respect to any particular legal matter.