

CMS Vaccination Guidance Compliance

Impact on Specific Licensees

On November 5, 2021, the Centers for Medicare and Medicaid Services (CMS) published a rule establishing requirements regarding COVID-19 vaccine immunization of staff among identified Medicare and Medicaid certified providers and suppliers as a condition for participating in the Medicare and Medicaid programs. Many types of providers and suppliers (to CMS facilities) were identified, including hospitals, nursing homes, and ambulatory surgical settings, among others. While legal proceedings delayed enforcement of the rule, on January 13, 2022, the U.S. Supreme Court determined that the CMS vaccination requirements could go into effect.

The vaccination requirement is not limited to employees of CMS facilities. The requirement also applies to those who “directly provide any care, treatment or other services for the facility and/or its patients, including 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.*” This may include individuals who provide services at CMS facilities, whether or not they are health care related. The rule permits infrequent non-health care services, such as a one-time plumbing repair or package delivery, without establishing vaccination status. Therefore, application of the rule requires consideration as to whether the service is for the benefit of the facility and/or its patients, and the location of and frequency at which the service is provided.

The CMS vaccination requirement potentially reaches a broad range of individuals, many as a result of unique arrangement specific circumstances and contractual agreements with a CMS facility. As a result, determination as to whether an individual licensee must be vaccinated to comply with the CMS rule must be made on a case-by-case basis by the CMS facility and service provider, taking into account the nature of the provider’s work as it relates to the facility.

Access to CMS Facilities by Authorities

It is the Department’s position that on-duty law enforcement and representatives of entities with a statutory authority to investigate crimes, such as Adult Protective Services (APS) and Child Welfare and Protection, should not be denied entry, or have their entry delayed, based on vaccination status. Unless the entities have entered into a specific contract that provides otherwise, these services are provided for the benefit of the State of Nebraska, and not an individual CMS facility and/or its patients.

Although the rule does not prohibit more extensive vaccination requirements, beyond what is outlined in the guidance, CMS facilities policies on vaccination should never impede a criminal investigation.

Access to CMS Facilities by State Surveyors and Trauma Program Reviewers

Nebraska State surveyors performing federal evaluations of facilities' compliance with CMS regulations will follow the vaccination requirements set forth by CMS. As noted in the Quality, Safety, and Oversight (QSO) [Memorandum](#) dated February 9, 2022, CMS facilities are not permitted to ask surveyors for proof of their vaccination status as a precondition for entry into the facility.

In addition to Nebraska State surveyors evaluating facilities' compliance with CMS regulations, there may be times when other DHHS employees need to be granted access to a CMS facility. This includes access to conduct inspections tied to participation in a State-supported activity, or to ensure compliance with State regulations. This includes reviews related to the Nebraska Statewide Trauma System. It is the Department's position that DHHS employees conducting these inspections are not subject to the CMS regulation as these services are provided for the benefit of the State of Nebraska, and not an individual CMS facility and/or its patients.