Memorandum

Subject: **Vaccine Mandate Summary**

Date: November 5, 2021

Dear Association Executives - We have received several questions around the recent vaccine mandates released by the Biden Administration this week. We hope this summary, along with the summaries from our federal consultant group help answer some of your questions.

On November 4, the **Centers for Medicare and Medicaid Services (CMS)**issued an interim final rule with comment (IFC), entitled “**Medicare and Medicaid Programs: Omnibus COVID-19 Health Care Staff Vaccination”** ([rule](https://r20.rs6.net/tn.jsp?f=001ZRVyQ3YcDNLdSP-1oEp04zgI1WEJ3dXdRc3EAVQb2yrGefHKI52R-CdB33R9gBarHHidNq88127wNhuTUZpEO68tBiDOLU7CXf9zN5W1H_eMA22GH_9zW1ddJW-qb9lL6Lg5dS2ysowe_kSW4uMZEk_c2LBn20xoQShdyrRE7eb2O0xniEdfXXOA4pMoIkPh&c=zD9LzJ1_CvW0O82MUdC17fFvnmThwYBeMab019kQihkVc24ugvTnLg==&ch=iNI9GozcmpnF4V5iyABRRSm9jWXn3k3jF_m5rEy5DCkW_QV9pf31uw==); [press release;](https://r20.rs6.net/tn.jsp?f=001ZRVyQ3YcDNLdSP-1oEp04zgI1WEJ3dXdRc3EAVQb2yrGefHKI52R-IBNSWyfVsz3yWgfhQv33xtVbEZ4UIhF-icm-V45enO7WHJMG2JDaxQXYk2BwlX1wT9fD0V2pwIMMuZDxeydfNbes-eo4NZ-nd1T5vhY2EGX1WytROCsk9mWqerLuiQkpyAl38A4cILFy89jV4AWaBjZL1zlcOr25p-rGC5yKioG5bm0DkorKRHLACcu-BSAukFKQEFn23RixX4zlUheeVPnVCukh2GGds5UOucbEHfRW9NobrvMI_nT2I3229x5dA==&c=zD9LzJ1_CvW0O82MUdC17fFvnmThwYBeMab019kQihkVc24ugvTnLg==&ch=iNI9GozcmpnF4V5iyABRRSm9jWXn3k3jF_m5rEy5DCkW_QV9pf31uw==) [FAQ](https://r20.rs6.net/tn.jsp?f=001ZRVyQ3YcDNLdSP-1oEp04zgI1WEJ3dXdRc3EAVQb2yrGefHKI52R-IBNSWyfVsz3-5fUtA4ihbJGzrSwNRk9U9xtwCKG-IKKkyLgTkUsrsQliIHSqwuS-W6ON470fuuZWEUg66E9_oZqHL2lijdvDrppoGvAsPa5EJYC9KKY7XwLDy-myMVobQ0np4oryW00F3gC9BKmAP0SWZLA08D6h8KJ7DyNOSW2Ir8AXMJ35oo=&c=zD9LzJ1_CvW0O82MUdC17fFvnmThwYBeMab019kQihkVc24ugvTnLg==&ch=iNI9GozcmpnF4V5iyABRRSm9jWXn3k3jF_m5rEy5DCkW_QV9pf31uw==)).

The IFC stipulates that all staff members, including those who perform their duties outside of a formal clinical setting, of certain providers and suppliers participating in the Medicare and Medicaid programs must be fully vaccinated against COVID-19 unless exempt.

The definition of applicable facilities under the Medicare-certified providers and suppliers is listed under federal statute (for example the current Medicare definition of CMHCs (there are 129 Medicare-certified CMHCs throughout the country) which is Section 4162 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508, enacted November 5, 1990) (OBRA 1990), which added sections 1861(ff) and 1832(a)(2)(J) to the Act, includes CMHCs as entities that are authorized to provide partial hospitalization services under Part B of the Medicare program).

However, the definition of Medicaid-certified providers and suppliers will vary by state. We suggest you contact your state Medicaid agency to determine the list of the providers and suppliers that are subject to the IFC.

As noted in the summary below, the IFC does not allow for weekly testing in lieu of vaccination and maintains the employer’s right to require full vaccination of employees regardless of exemptions listed in the IFC. The final rule is expected to be published in *The Federal Register* on November 5, 2021, with an expected effective date of January 4, 2022. There is the opportunity to comment on the IFC. Comments must be received no later than 60 days after the publication of the IFC in *The Federal Register*.

Also released was the **Occupational Safety and Health Administration (OSHA)** **Emergency Temporary** **Standard** (ETS) for **COVID-19 vaccination and testing** ([rule](https://r20.rs6.net/tn.jsp?f=0018zlRSVwRip-W9du2qNb8t8DQigzqvyTcXC6M6kmKlZUHwwYLyFEnRR_9QVzzWbLsxGRG9NPn6OJkLqLXFrRDfmpHYsaTmhX9Rr-_6aGIW-r2b-_JsU-tXDtyj8EuMzXdt9E1KkwnNUeMgFIRox3BDITtnm9hz09vCS_13vBWGAYfgb1nCbl3MK_wbyRGdFtU&c=HZgC0bh8Jsovw8amMA2TFsB8Xa0tQXl9P7943FO6Vt_cJcox_MAZNw==&ch=g4wBWx70_CYIyFvgLCMOhM9dqk-vdwKGWPTbBFbfIaD2Ukl8ihb5zA==); [fact sheet;](https://r20.rs6.net/tn.jsp?f=0018zlRSVwRip-W9du2qNb8t8DQigzqvyTcXC6M6kmKlZUHwwYLyFEnRR_9QVzzWbLsFIUx8tDbRiZAYUdGLkoFEoBzpidtQ8fdDYUhWhmzBzAqX6SQTZD9PK1MlqYEL0N2f9vekKaO1KG69n5Zbe1W4Prj6XqAAQ88xFsKtfRvQUgEgC9EE0wezzckolTmIk0jogSUurlbciS2qtsKBQeA_g==&c=HZgC0bh8Jsovw8amMA2TFsB8Xa0tQXl9P7943FO6Vt_cJcox_MAZNw==&ch=g4wBWx70_CYIyFvgLCMOhM9dqk-vdwKGWPTbBFbfIaD2Ukl8ihb5zA==) [press release](https://r20.rs6.net/tn.jsp?f=0018zlRSVwRip-W9du2qNb8t8DQigzqvyTcXC6M6kmKlZUHwwYLyFEnRWU9efRAY7mDI_IzrgjZ4vpRE1GzPngKDDNNe8ou30ArvhJU7Xnr54lpp8d09sdupum_A8w9XbEoLg_woYdmZHbLQLtO5rNLdjhB8m4q4HUKeXpQ90aTCYRsuyk0L8Jw_643h6482f34&c=HZgC0bh8Jsovw8amMA2TFsB8Xa0tQXl9P7943FO6Vt_cJcox_MAZNw==&ch=g4wBWx70_CYIyFvgLCMOhM9dqk-vdwKGWPTbBFbfIaD2Ukl8ihb5zA==)) **in the workplace**. The ETS requires employees — who are employed by private-sector employers with 100 or more employees — to get vaccinated or test negative for the virus once per week and wear a mask indoors. It also requires employers to provide paid time off for employees to get vaccinated and recovery time from vaccination, and requires that the 28 states with OHSA approved state plans must also adhere to the ETS.

The ETS mandates that employers determine the vaccination status of each employee, obtain acceptable proof of vaccination status from vaccinated employees, and maintain records and a roster of each employee's vaccination status.

The testing requirement for unvaccinated workers is slated to begin on January 4, 2022 and employers must comply with all other requirements (i.e. providing paid time off for employees to get vaccinated and masking for unvaccinated workers) by December 5, 2021. Employees falling under the ETS rules will need to have their final vaccination dose by January 4, 2022.

OSHA has published a series of[**resources**](https://r20.rs6.net/tn.jsp?f=0018zlRSVwRip-W9du2qNb8t8DQigzqvyTcXC6M6kmKlZUHwwYLyFEnRR_9QVzzWbLsv6qIZvgnjzWQu8PixvbIbEHJEE8s755wGeV9kin8aXrWuJHiDnc_E-WU2kYKqEX-XkgJbSFb7RMbfTT-CnCU-9gNm7XrKFWS3RvFpN2rQq4=&c=HZgC0bh8Jsovw8amMA2TFsB8Xa0tQXl9P7943FO6Vt_cJcox_MAZNw==&ch=g4wBWx70_CYIyFvgLCMOhM9dqk-vdwKGWPTbBFbfIaD2Ukl8ihb5zA==) with respect to this ETS, including: [frequently asked questions](https://r20.rs6.net/tn.jsp?f=0018zlRSVwRip-W9du2qNb8t8DQigzqvyTcXC6M6kmKlZUHwwYLyFEnRR_9QVzzWbLsN7Yq3exK_YJpF0PVvS28SeLZJjOzYDzc0jjpAzWbarXC9JwlnoxotiG-P3tGvdMvcItAXojq_wuigeq3v70XHA3xdnYT0hAVur7ffg7mIQE=&c=HZgC0bh8Jsovw8amMA2TFsB8Xa0tQXl9P7943FO6Vt_cJcox_MAZNw==&ch=g4wBWx70_CYIyFvgLCMOhM9dqk-vdwKGWPTbBFbfIaD2Ukl8ihb5zA==); [guidance materials](https://r20.rs6.net/tn.jsp?f=0018zlRSVwRip-W9du2qNb8t8DQigzqvyTcXC6M6kmKlZUHwwYLyFEnRR_9QVzzWbLsg5ezzTUBqoODy6OzMvUJ3TywJ1T-KgYNG_HOirCtBxOycunLCriB-6VeC9Ld_fiCbQKLdTX9avAko9IU8f4qHbYDJFeWOcOeMWANzRA8GcE=&c=HZgC0bh8Jsovw8amMA2TFsB8Xa0tQXl9P7943FO6Vt_cJcox_MAZNw==&ch=g4wBWx70_CYIyFvgLCMOhM9dqk-vdwKGWPTbBFbfIaD2Ukl8ihb5zA==); and [reporting requirements](https://r20.rs6.net/tn.jsp?f=0018zlRSVwRip-W9du2qNb8t8DQigzqvyTcXC6M6kmKlZUHwwYLyFEnRR_9QVzzWbLsc7T_tiUamrlJFX3d-0dWA5Yz6lkjXBwJRSa_MoUJn9ODj-p190_wQHepYZUsRrmzGVJPCVxtAPWk7idD55Hy0UxrFtmAL_Ij-3pkNpN6KMTtBZVfvSwNqvX2j-RKoNC5fvGZTi-rzG9Hku8qIACF2w==&c=HZgC0bh8Jsovw8amMA2TFsB8Xa0tQXl9P7943FO6Vt_cJcox_MAZNw==&ch=g4wBWx70_CYIyFvgLCMOhM9dqk-vdwKGWPTbBFbfIaD2Ukl8ihb5zA==).

Please see the summaries below from our federal consultants that go into more details. Please feel free to share this with your members.

Best,

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