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**CURRENT REGULATIONS REGARDING STAFF VACCINATION**

November 23, 2021

*Angie McLain-Johnson, MA, CHC, RHIA, Pafford Medical Services, and Past President, OKAMA*

**Omnibus COVID-19 Health Care Staff Vaccination Regulation**

On November 5th, CMS announced the Omnibus COVID-19 Health Care Staff Vaccination Regulation, which applies to Medicare and Medicaid facilities, including hospitals, home health agencies and ambulatory surgery centers, which are regulated by the Medicare conditions of participation (CoPs).

Currently, Ambulance Services, not associated with a facility are considered an Ambulance Supplier and do not directly fall under this regulation.

* As of December 6th, providers are required to have a plan for vaccinating staff, except for individuals that meet an exception or accommodation. The plan must include tracking and documentation of staff vaccinations.
* Every employee “who provides care, treatment or other services at the facility” must have one vaccine dose administered, or the first of two dose shots by December 6th.
* These individuals must be fully vaccinated by Jan 4th unless they have an exemption.
* Exceptions are allowed for medical and religious exemptions. To meet the exemption, there must be:
* If medical, the reason the vaccines are clinically contraindicated should be documented, with a statement from an authenticating practitioner recommending that the staff member be exempted.
* If for religious reasons, it must be documented by the facility and evaluated in accordance with applicable federal law and as outlined by the facilities policies and procedures.

*Currently, this regulation preempts State and Local laws and States Executive Orders*

However, although an Ambulance Supplier does not directly fall under this regulation. **It does apply to individuals who provide care, treatment or other services for a facility and its patients under contract or other arrangements**. If an Ambulance Supplier is in a direct contracted relationship with a facility and providing services on behalf of the facility (i.e., contracted interfacility transports), the facility may request from the Ambulance Supplier to provide proof to the facility regarding compliance.

**Occupational Safety and Health Administration (OSHA)**

**COVID-19 Vaccination and Testing; Emergency Temporary Standard, 86 Fed. Reg. 61,402 (Vaccination and Testing ETS)**

This regulation requires employers with one hundred or more employees to implement a policy requiring them to get vaccinated by Jan. 4 or be tested weekly and wear a mask. If you are covered by CMS, you are not covered by OSHA, it is one or the other. **The OSHA requirement is temporarily on hold**.

At least thirty-four lawsuits were filed nationwide seeking to permanently stay or rule unconstitutional the Emergency Temporary Standard (ETS) announced by the U.S. Occupational Safety and Health Administration (OSHA). OSHA announced November 18, 2021, that it would stay enforcement of the ETS pending court review. The Sixth Circuit Court of Appeals was drawn in a lottery to hear and resolve all matters related to these now-consolidated challenges to the ETS (National Law Review, 2021).

**HEALTHCARE ETS, 29 CFR 1910.502**

* Applies to settings where employee provides healthcare or healthcare support services.
* Fully vaccinated workers are exempt from masking, distancing, and barrier requirements in well-defined areas where no reasonable expectation that any person with suspected or confirmed Covid-19 will be present.
* Does not require mandatory vaccination.
* Healthcare support services, of the Healthcare ETS, that are not subject to the Healthcare ETS because these employees are segregated in non-healthcare settings (stand-alone administrative facilities), those employees will be subject to the requirements Vaccination and Testing ETS (which is currently on hold).

**Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors**

* Effective Jan. 18, 2022, **only employees working directly on or in connection with a federal contract**, including employees working from home/remotely, are required to be vaccinated against COVID-19 unless they qualify for an exemption. For medical exemption it must meet the contraindications as defined by the CDC.
* A federal contractor is one where there is an agreement between two or more parties creating an obligation as recognized by law, for one party to furnish services and another party to be paid for services. This regulation is not in relations to providing services to a Medicare Beneficiary and being paid by Medicare.
* Individuals must receive the last dose of their primary vaccine by Jan. 18, 2022.
* New employees who cannot meet these deadlines will need to be fully vaccinated prior to their start date.
* People are considered fully vaccinated for COVID-19 two weeks after they have received the second dose in a two-dose series, or two weeks after they have received a single-dose vaccine.
* For more information refer to the Safer Federal Workforce Task Force COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors Updated November 10, 2021. https://www.saferfederalworkforce.gov/downloads/Guidance%20for%20Federal%20Contractors\_Safer%20Federal%20Workforce%20Task%20Force\_20211110.pdf

Based on what we understand of the above,

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| **AS OF 11/25/2021** |  |  |
|  |  |  |
| **IS MY EMS REQUIRED TO COMPLY?** | **YES** | **NO** |
|  |  |  |
| A Hospital-Based EMS | **X** |  |
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| An EMS with a Federal Contract for Services-Only Employees working on the Federal Contract or in Conjunction with the Contract | **X** |  |
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| An EMS with a Contract to Provide Service to a Hospital or other Provider (Home Health, Hospice) that is Required to Comply | **X** |  |
|  |  |  |
| **NONE** of the Above |  | **X** |

**Resources**

*Interim clinical considerations for use of covid-19 vaccines*. Centers for Disease Control and Prevention. https://www.cdc.gov/vaccines/covid-19/clinical-considerations/covid-19-vaccines-us.html?CDC\_AA\_refVal=https%3A%2F%2Fwww.cdc.gov%2Fvaccines%2Fcovid-19%2Finfo-by-product%2Fclinical-considerations.html.

*CMS Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule Basics Q:* https://www.cms.gov/files/document/cms-omnibus-covid-19-health-care-staff-vaccination-requirements-2021.pdf.

*Is Your Workplace Covered by the COVID-19 Healthcare ETS*. COVID-19 Healthcare ETS from <https://www.osha.gov/coronavirus/ets>.

Lester, K., & Moore, S. (2021, November 5). Federal Government Releases Covid-19 Vaccination Requirements Rules. *AAA Member Advisory*.

*New covid-19 testing and reporting requirements - CMS*. https://www.cms.gov/files/document/covid-ppt-nh-all-call.pdf

*OSHA suspends implementation and enforcement of COVID-19 vaccine and testing mandate* from https://www.natlawreview.com/article/osha-suspends-implementation-and-enforcement-covid-19-vaccine-and-testing-mandate.

*Safer Federal Workforce Task Force COVID-19 Workplace Safety: Guidance for Federal Contractors and Subcontractors*. Safer Federal Workforce from https://www.saferfederalworkforce.gov/overview/.

*Summary of COVID-19 Healthcare ETS*. COVID-19 Healthcare ETS, from <https://www.osha.gov/coronavirus/ets>.