

TO: PCAs

FROM: Colleen Meiman
National Policy Advisor

DATE: November 16, 2021

RE: **Template Policy and Procedure for CHCs on Federal COVID-19 Vaccine Mandate**

I am attaching template Policy and Procedures (P&P) regarding the Federal COVID-19 vaccine mandate, to assist CHCs in developing their own P&Ps. CHCs who use this template should note:

- Per the [CMS Interim Final Rule with Comment \(IFC\)](#), CHCs need to have P&Ps in effect on December 6, 2021.
- It is highly recommended that CHCs have their Board members review and approve these P&Ps.
- **Yellow highlighting** indicates places where a CHC should add specific information on its processes. **Gray highlighting** is suggested (but not mandatory) language. **Green** indicates places where the CHC should insert its name.
- Please pay attention to the footnotes. They explain why certain language is necessary, what assumptions are being made, where to find additional information, etc.
- The template incorporates all elements the IFC requires be included in CHCs' P&Ps.
- The template proposes a framework for addressing two common questions:
 - Which non-employees the vaccine rules apply to: The IFC contains very broad language about which non-employees the mandate applies to. ("Individuals who provide care, treatment, or other services for the CHC and/or its patients, under contract or by other arrangement.") Since this is such an open-ended standard, this P&P instead:
 - states that the mandate applies to "Contractors who regularly provide services at any active CHC site, whether administrative or clinical." and
 - includes a section on "Other individuals who provide short-term, non-health care services at CHC sites." This section indicates that the CHC will decide whether the mandate applies to these individuals on a case-by-case basis, based on an analysis of the services they provide, their proximity to patients and other staff, the frequency with which they are at the CHC, etc.

As with all sections, CHCs should adjust this template language to fit their situation, and seek legal counsel as appropriate.

- Patient Board Members: The template indicates that these individuals are subject to the vaccine mandate when acting *in their capacity as a Board member*, but not when *acting in their capacity as a patient*.
- The template indicates that that the CHC will follow [CDC recommendations](#) when evaluating requests for medical delays and exemptions, and will follow [EEOC guidance](#) when evaluating requests for religious exemptions.
- This template does not account for State-specific regulations. CHCs whose stats have specific regulations should incorporate them as appropriate.
- For more information on all the issues addressed in this P&P (except State-specific rules), see the [Toolkit on Federal Vaccine Mandate](#), which is updated regularly as new information is received.
- This template will be incorporated into the on-line [Toolkit on Federal Vaccine Mandate](#).
- Finally, I am not a lawyer, and this template does not constitute legal advice. While this template is hopefully a helpful starting place, CHCs should consult qualified legal counsel about the details of their specific situation.

As always, [please let me know](#) if you have any questions or suggestions.

Sample Policy and Procedure: Federal COVID-19 Vaccine Mandate

I. Purpose of Policy and Procedure

CHC is committed to high standards and compliance with all applicable laws and regulations.

The purpose of this Policy and Procedure (P&P) is to establish how CHC will comply with the Federal COVID-19 Vaccine Mandate, as established in the [CMS Interim Final Rule with Comment Period](#) entitled “Medicare and Medicaid Program; Omnibus COVID-19 Health Care Staff Vaccination,” published on November 5, 2021 (hereafter referred to as the “IFC”).

II. Policy

A. *Applicability to individuals.*

1. General.

These Policies and Procedures (P&Ps) apply to the following individuals, regardless of clinical responsibility or patient contact:

- a. CHCs employees
- b. Licensed practitioners
- c. Students, residents, trainees, researchers, and volunteers. This includes members of CHC's Board of Directors, subject to the provision below regarding patient Board members.
- d. Contractors who regularly provide services at any active CHC site, whether administrative or clinical.¹

2. Exception for individuals who work 100% remotely.

These P&Ps do not apply to individuals who:

¹ Section (d)(1) of the new regulatory requirements on FQHCs, as established in the IFC, state that the vaccine mandate also applies to “Individuals who provide care, treatment, or other services for the clinic or center and/or its patients, under contract or by other arrangement.” Since this is such an open-ended standard, this P&P proposes instead stating that the mandate applies to “Contractors who regularly provide services at any active CHC site, whether administrative or clinical.” and then including a separate section on “Other individuals who provide short-term, non-health care services at CHC sites.” As with all sections of this template, CHCs should adjust this proposed language to fit their situation.

- a. provide services to CHC's patients or to the organization exclusively from locations that are separate from any CHC site, whether administrative or clinical, and
- b. have no direct contact with CHC patients or staff.

3. Other individuals who provide short-term, non-health care services at CHC sites.

- a. Individuals who provide short-term ad-hoc services at CHC sites outside of a formal written contract (ex. delivery drivers, EMT, repair services, etc.) are not subject to this P&P. However, when possible, they are subject to the additional precautions listed later in this P&P.
- b. In situations where it is not immediately clear if this P&P applies, CHC will evaluate the risk of COVID-19 exposure that the individual(s)' presence creates for patients and staff, taking into account the individual(s):
 1. Frequency of presence at one or more of CHC's sites
 2. Services provided.
 3. Proximity to patients and staff.

Based on this evaluation, CHC will decide if this P&P applies to the individual(s), and will document the rationale for this decision as appropriate.

4. Patient Board Members.

Patient Board members are in a unique situation, as the IFC vaccine requirements explicitly apply to Board members, while Section 330 rules simultaneously prohibit CHC from requiring patients to be vaccinated in order to receive care. Therefore, this P&P applies to patient Board member when they are acting *in their capacity as a Board member*, but not when they are acting *in their capacity as a patient*.

For purposes of this P&P, the term "staff" refers to any individuals to whom the Federal COVID-19 vaccine mandate applies, as determined under this section.

B. General Requirements and Exceptions

The following requirements apply to all individuals who are subject to this P&P per the section "Applicability to Individuals" (hereafter referred to as "staff"):

1. General vaccination requirements: Subject to the exemptions and delays discussed below:
 - a. All staff must have received, at a minimum, the first dose of a two-dose COVID-19 vaccine or a one-dose COVID-19 vaccine by:
 - i. December 6, 2021, if they are on staff with CHC prior to that date, or
 - ii. prior to providing any care, treatment, or other services for CHC and/or its patients if they join CHC staff after December 6, 2021.

- b. All staff who received the first dose of a two-dose COVID-19 vaccine must receive the second dose of that vaccine by:
 - i. January 4, 2022, if they are on staff with CHC prior to December 6, 2021, or
 - ii. Thirty days after receiving the first dose, if they join CHC staff after December 6, 2021.
 - c. Staff are not currently required to receive booster shots, but are required to inform CHC if they do, following established protocols for documenting such medical information to CHC, per Section III Procedures, below.
2. Exemptions and delays – General information:
- a. Under Federal law, all staff may request:
 - i. A temporary delay of the vaccine requirements for medical reasons.
 - ii. An exemption from the vaccine requirements for medical reasons.
 - iii. An exemption from the vaccine requirements for religious reasons, per the [Civil Rights Act](#).
 - b. As outlined in the Procedures section, CHC has processes by which:
 - i. Staff may request delays and exemptions from the Federal vaccine mandate based on applicable Federal law.
 - ii. CHC will evaluate and respond to requests for delays and exemptions.
 - iii. CHC will track and securely document requests for delays and exemptions, and its responses.
 - c. To be approved for a delay or exemption, staff must meet the criteria established below, and CHC must determine that it can accommodate the staff person's request without undue hardship.
 - d. Staff who receive an exemption from, or delay in, meeting the COVID-19 vaccination requirements will be subject to additional precautions to mitigate the transmission and spread of COVID-19. These precautions are outlined in the Procedures section.

III. Procedures

CHC uses the following procedures to implement the policies established above:

A. Tracking and documenting staff vaccination status.

Insert information on how your CHC will track and securely document the COVID-19 vaccination status of all eligible staff². The IFC provides the following guidance:

² This information is required under section (d)(3)(iv) of the new regulatory requirements on FQHCs.

- “Examples of appropriate places for vaccine documentation include a facilities immunization record, health information files, or other relevant documents.”
- “All medical records, including vaccine documentation, must be kept confidential and stored separately from an employer’s personnel files, pursuant to ADA and the Rehabilitation Act.”
- “Examples of acceptable forms of proof of vaccination include:
 - CDC COVID-19 vaccination record card (or a legible photo of the card),
 - Documentation of vaccination from a health care provider or electronic health record, or
 - State immunization information system record.
- CDC provides a staff vaccination tracking tool at <https://www.cdc.gov/nhsn/hps/weekly-covid-vac/index.html>

Also, note that you are required to track:

- if/when staff receive booster shots³ – even though the IFC does not require boosters
- the vaccination status of staff who have been approved for a temporary delay in getting vaccinated for medical reasons.

B. Exemptions and delays: General procedures⁴

1. Staff seeking a medical or religious exemption from, or a temporary delay in, meeting the vaccination requirements (henceforth, “exemption or delay”), must submit a written request to *insert title/ position, e.g., their immediate supervisor, the HR Director* by:
 - a. December 6, 2021, if they are on staff with CHC prior to that date, or
 - b. Prior to providing any care, treatment, or other services for CHC and/or its patients if they join CHC staff after December 6, 2021.
2. CHC will not begin reviewing a request until all required documentation has been submitted.
3. When evaluating requests, CHC will consider:
 - a. The standards established for the specific request type, as discussed in the P&P section addressing the request type.
 - b. Whether the request can be accommodated without creating an “undue hardship” for CHC.⁵

³ This information is required under section (d)(3)(v) of the new regulatory requirements on FQHCs.

⁴ Section (d)(3)(vi) of the new regulatory requirements on FQHCs require the P&P to describe the process for staff to request an exemption.

⁵ When evaluating whether an accommodation would create an “undue hardship”, factors that the CHC may consider include, but are not limited to:

- Whether the accommodation will impose a direct threat to others, including both staff and patients;

4. CHC will provide a response to a request for an exemption or delay in writing by:
 - a. January 4, 2022, for completed requests submitted not later than December 6, 2021
 - b. Within *indicate number of* calendar⁶ days for completed requests submitted after December 6, 2021.
5. All CHC staff who have requested an exemption or delay and are awaiting a decision from CHC, and staff who have received approval for an exemption or decision, will consistently adhere to the additional precautions established below for staff who are less-than-fully-vaccinated.
5. CHC will track all requests for exemptions and delays, and will securely store all documentation related to those requests and CHC's response. This information will be kept confidential, and all medical records⁷ will be stored separately from an employee's personnel file.⁸
6. CHC has the right to discontinue a previously-granted accommodation if providing it subsequently poses an undue hardship on CHC's operations due to changed circumstances.⁹

C. Requests for temporary medical delays.

1. CHC staff may request a temporary medical delay in meeting the IFC's COVID-19 vaccination requirements due to recognized clinical precautions and considerations, as recommended by the CDC, including but not limited to:
 - a. acute illness secondary to COVID-19, and
 - b. having recently receiving monoclonal antibodies or convalescent plasma for COVID-19 treatment.¹⁰
2. A request for a temporary medical delay must include:

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- The direct and indirect cost to your CHC of accommodating the request, including impacts on operations; and
 - Whether any alternatives are feasible (e.g., allowing the employee to work from home.)

See [this article](#) for more information. CHCs may want to seek legal advice to determine whether it is advisable to include this level of detail in their P&P.

⁶ CHCs may insert a number of their choice. Note that for the initial implementation of the Federal vaccine mandate, CMS provided health care providers 30 calendar days to respond to requests.

⁷ It is unclear if requests for religious exemptions must be kept separate from an employee's personnel file.

⁸ This information is required under section (d)(3)(vii) of the new regulatory requirements on FQHCs.

⁹ This language is copied from Question L.6. in the EEOC guidance available [EEOC guidance](#).

¹⁰ This language based on (and largely copied from) the new regulatory requirements at (d)(3)(ix).

- a. *The CHC form for requesting a temporary medical delay*¹¹
- b. A letter that¹²:
 - i. Is signed and dated by a licensed practitioner, who meets the following requirements:
 - a) The licensed practitioner cannot be the individual requesting the exemption.
 - b) The practitioner must be operating within their scope and practice as defined by local and state laws.
 - ii. Indicates a medical reason for the delay that is consistent with CDC recommendations.
3. To confirm that a delay in COVID-19 vaccination is consistent with CDC recommendations, CHC will refer to [CDC's Summary Document for Interim Clinical Considerations for Use of COVID-19 Vaccines Currently Authorized in the United States](#).
4. CHC will not approve a request for a temporary medical delay if above requirements are not met.
5. Staff who receive approval for a temporary medical delay are required to come into compliance with the COVID-19 vaccination requirements as soon as is clinically appropriate.
6. CHC will track the vaccination status of individuals who have been approved for temporary medical delays, including when they come into compliance with the vaccination requirements.

D. Requests for medical exemptions.

1. Per the Americans with Disabilities Act, CHC staff persons may request an exemption from the COVID-19 vaccination requirements for medical reasons.
2. A written request for a medical exemption must include:
 - a. *The CHC form for requesting a medical exemption*
 - b. A letter that¹³:
 - i. is signed and dated by a licensed practitioner, who meets the following requirements:

¹¹ This template assumes the CHC creates a standardized request form for each type of request.

¹² This language based on (and largely copied from) the new regulatory requirements at (d)(3)(viii).

¹³ This language based on (and largely copied from) the new regulatory requirements at (d)(3)(viii).

- a) The licensed practitioner cannot be the individual requesting the exemption.
 - b) The practitioner must be operating within their scope and practice as defined by, and in accordance with, all applicable State and local laws
- ii. includes the following components:
 - a) All information specifying which of the authorized COVID-19 vaccines are clinically contraindicated for the staff member to receive;
 - b) The recognized clinical reasons for the contraindications; and
 - c) A statement by the authenticating practitioner recommending that the staff member be exempted from CHC's COVID-19 vaccination requirements for staff based on the recognized clinical contraindications.
3. To confirm that a COVID-19 vaccination is medically contradicted, CHC will refer to [CDC's Summary Document for Interim Clinical Considerations for Use of COVID-19 Vaccines Currently Authorized in the United States](#).
4. CHC will not approve a request for a medical exemption if the requirements above are not met.

E. Requests for religious exemptions.

1. Per the Civil Rights Act, CHC staff persons may seek an exemption from the COVID-19 vaccination requirements for religious reasons.
2. A written request for a religious exemption must include:
 - a. *The CHC form for requesting a religious exemption*
 - b. an explanation of how being vaccinated for COVID-19 would substantially burden the staff person's religious exercise or conflict with their sincerely held religious beliefs, practices, or observances.¹⁴
3. In reviewing requests for religious exemptions, CHC will adhere to the guidelines established by the EEOC in Section L of at <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws#L>¹⁵
4. Per the U.S. Equal Employment Opportunity Commission (EEOC), "objections to the vaccine that are based on social, political or personal preferences or on nonreligious

¹⁴ CHCs should consider creating a standard form for staff to address these issues. CMS references this [religious exemption form](#) in the IFR as an example.

¹⁵ Key points in this EEOC guidance include: 1. Employee requests for religious exemptions are generally assumed to be based on sincerely held religious beliefs. 2. If there is objective basis for questioning the religious nature or the sincerity, the CHC may request additional factual supporting information. 3. Employee religious beliefs are accepted regardless of whether they are traditional or familiar.

concerns about the possible effects of the vaccine” do not qualify for this exemption.¹⁶

E. Additional Precautions for Staff Who Are Not Fully Vaccinated for COVID-19

1. Staff who are less-than-fully-vaccinated against COVID-19 will be subject to additional precautions to mitigate the transmission and spread of COVID-19. These staff include individuals who:
 - a. have requested an exemption or delay from the vaccination requirements and are awaiting a decision from CHC.
 - b. have been approved for an exemption or delay from the vaccination requirements
 - c. have received only one shot of a two-shot vaccine regimen (e.g., Pfizer, Moderna)
2. These additional precautions include *Insert the additional precautions you will take to reduce the risk of staff who remain less-than-fully-vaccinated (due to exemptions or delays) spreading COVID-19 to patients or other staff. Here’s some POSSIBLE language:*
 - A. *If appropriate, allow staff person to telework 100%.*
 - B. *Require the staff person to comply with all of the following:*
 - *Undergo weekly regular testing*
 - *Extensive use of PPE*
 - *Use a N95 or higher-level respirator at all times*
 - *Maintaining adequate physical distancing (approximately 6 feet or more) when around patients or other staff.*

F. Contingency Plans for Staff Who Are Not Fully Vaccinated for COVID-19¹⁷

Per the IFC, this section should address the following issues:

- *“contingency plans in consideration of staff that are not fully vaccinated to ensure that they will soon be vaccinated and will not provide care, treatment, or other services for the provider or its patients until” they have received at least one vaccine shot.*
- *How CHC will “address the safe provision of services by individuals who have requested an exemption” and are waiting on a response, and those who have requested or received approval for a temporary delay.*

Per the IFC, this section may (but is not required to)

- *“address topics such as staffing agencies that can supply vaccinated staff if some of the facility’s staff are unable to work.”*

¹⁶ This statement is based on question L2 from the [EEOC guidance](#).

¹⁷ The new regulatory language explicitly requires FQHCs’ P&Ps to address “Contingency plans for staff who are not fully vaccinated for COVID-19.” (See (d)(3)(x).) However, the regulation provides no suggestions for what the contingency plans should be.

- *“address special precautions to be taken when, for example, there is a regional or local emergency declaration, such as for a hurricane or flooding, which necessitates the temporary utilization of unvaccinated staff, in order to assure the safety of patients.”*

IV. Review and Updates of this Policy and Procedure

This Federal COVID-19 Vaccine Mandate Policy and Procedure shall be reviewed periodically¹⁸ and updated consistent with requirements established by the Board of Directors, CHC's senior management, federal and state law and regulations, and applicable accrediting and review organizations.

Responsible Parties:

Signature _____ Date _____
CEO

Signature _____ Date _____
Board Chairperson

¹⁸ Some CHCs may want to be more specific about how often this P&P will be reviewed.