NATIONAL ASSOCIATION OF Community Health Centers®

CMS Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule: Health Center Compliance and Equitable Implementation

Monday, November 22, 2021

THE NACHC MISSION

America's Voice for Community Health Care

The National Association of Community Health Centers (NACHC) was founded in 1971 to promote efficient, high quality, comprehensive health care that is accessible, culturally and linguistically competent, community directed, and patient centered for all.

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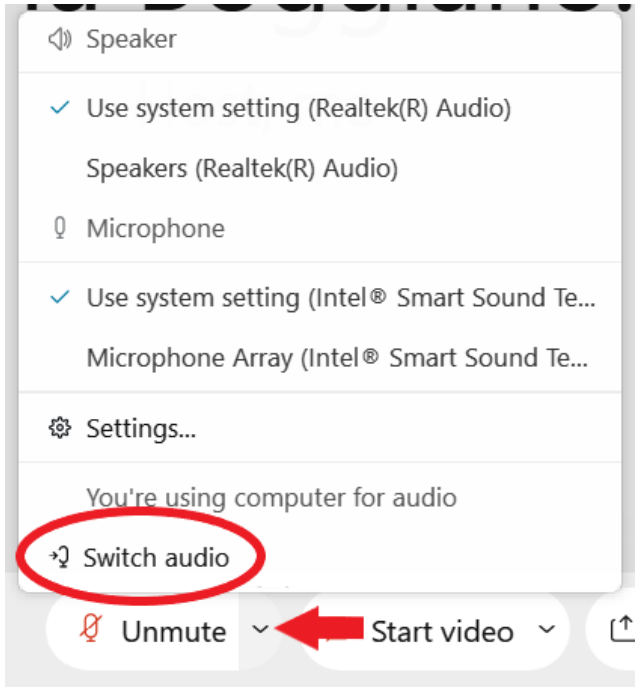
Welcome! Housekeeping

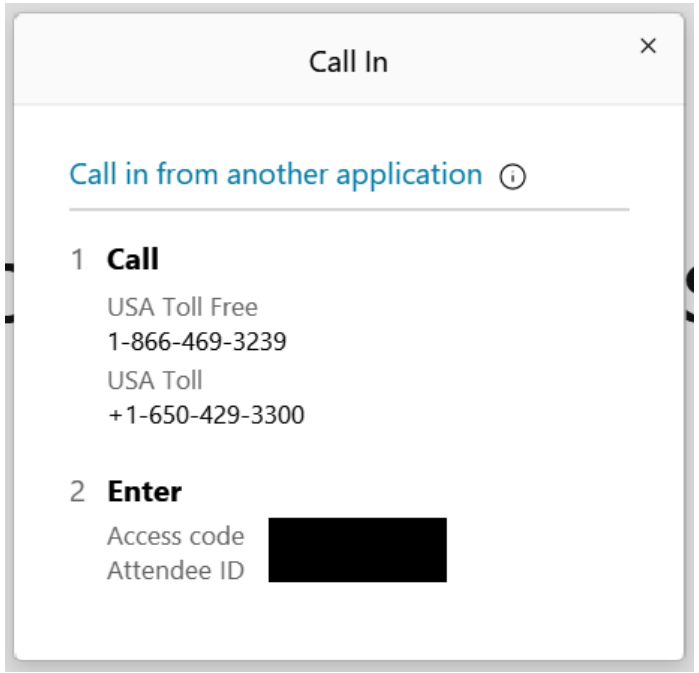
- Today's meeting is being recorded
- The recording and additional resources will be made available to all registrants.
- A copy of the slides will be sent from trainings@nachc.org after the event.
- After the webinar, you will be directed to an evaluation for this event. We value your feedback and encourage you to complete this short survey!

AUDIO CONNECTIONS

Having issues? Try calling in

Go to “Audio and Video” or click the arrow next to your unmute button and select “Switch audio” Follow the unique instructions on your screen.





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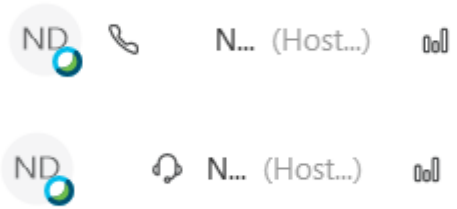


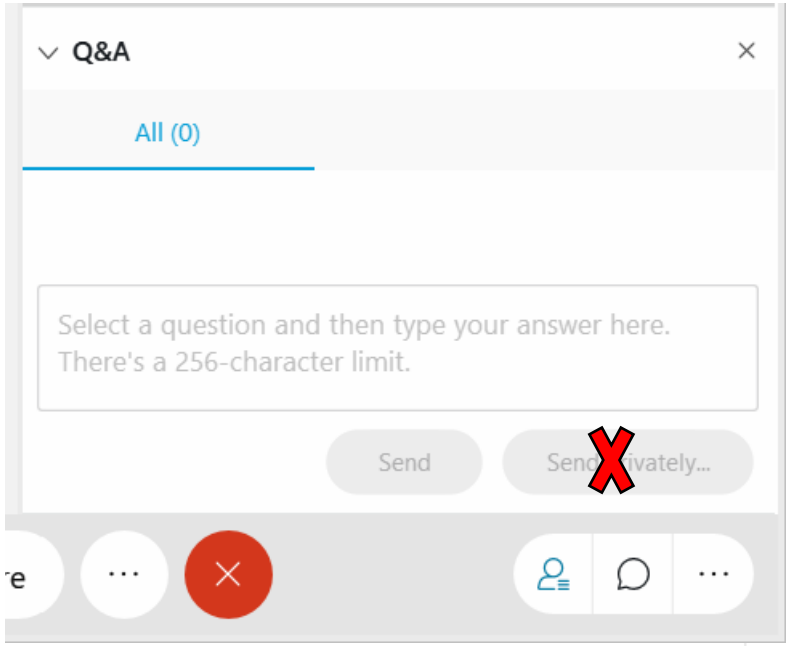
ASKING QUESTIONS VIA Q&A BOX

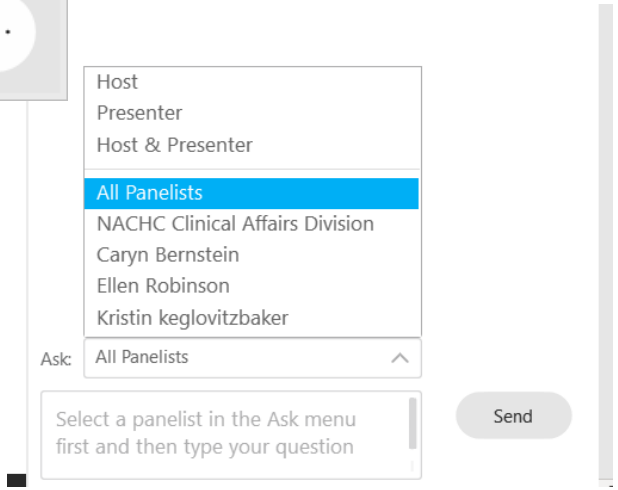
1. **The Q&A Box feature** is available to ask questions or make comments anytime.

2. **Click the Q&A Box button** at the bottom of the WebEx window to open the Q&A box on the bottom righthand side of the window.

3. **Select ASK ALL PANELISTS**

4. **Type your question and Click "SEND"**
   - Do not click "send privately"





Welcome and Introduction

Vacheria Tutson, JD
Director, Regulatory Affairs
NACHC

Regulatory Framework

- The CMS Omnibus COVID-19 Staff Vaccination Interim Final Rule applies to all FQHCs.
  - The staff vaccination requirement applies to facilities that are regulated by the CMS health and safety standards
  - FQHCs must comply with the Conditions for Coverage to qualify for Medicare reimbursement
- At § 491.8(d), CMS requires FQHCs to develop and implement policies and procedures to ensure their staff are vaccinated for COVID-19 and that appropriate documentation of those vaccinations are tracked and maintained.
- This regulation takes priority above other federal vaccination requirements.
- HRSA does not have any jurisdiction over the enforcement and oversight of the CMS staff vaccination requirements.
- The OSHA COVID-19 Health Care Emergency Temporary Standard *still* applies to FQHCs.
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Compliance Timeline

- Effective and released on November 5, 2021
- **Phase 1 Deadline: December 6, 2021**
  - All staff must, at minimum, receive the first dose of a COVID-19 vaccine
  - Facilities required to have appropriate policies and procedures developed and implemented
- **Phase 2 Deadline: January 4, 2022**
  - All staff must have completed a primary vaccination series for COVID-19 or granted religious/medical exemptions.
  - Facilities must have contingency plan for unvaccinated staff.

- The regulation permits a “temporary delay” in vaccination, for individuals who recently received monoclonal antibodies, convalescent plasma, or other recommendations due to clinical precautions.

Who Does this Regulation Apply to?

- Under the Interim Final Rule, CMS defines staff to include individuals who provide services directly, on a regular basis, under contract or arrangement. This includes:
  - Facility employees
  - Licensed practitioners
  - Students.
  - Trainees
  - Volunteers
  - Board members
  - Individuals who provide care, treatment, or other services for the facility and/or its patients, under contract or other arrangement
- The COVID-19 vaccination requirement does not apply to 100% fully remote staff that do not have contact with patients and other staff.
- When determining whether to require COVID-19 vaccination of an individual who does not fall into the categories established by this Interim Final rule, facilities **should consider frequency of presence, services provided, and proximity to patients and staff**.

When Does the Staff Vaccination Requirement Apply?

- Staff as defined by the Interim Final Rule
- Individuals that use shared facilities (restrooms, cafeteria, break rooms) during breaks
- Individuals that use the same common areas used by staff, patients, and visitors.
- Individuals that perform their duties at any site of care or has the potential to have contact with patients or staff at that site of care.

When Doesn’t the Staff Vaccination Requirement Apply?

- Individuals that provide infrequent services and tasks performed in or for a health care facility are conducted by “one off” vendors, volunteers, and professionals.
- Individuals who infrequently provide ad hoc non-health care services (such as annual elevator inspection), or services that are performed exclusively off-site, not at or adjacent to any site of patient care, such as accounting services
- Individuals who may infrequently enter a facility or site of care for specific **limited purposes** and for a **limited amount of time**, but do not provide services by contract or under arrangement, may include delivery and repair personnel

Documentation Requirement

- CMS requires all facilities to track and securely document the vaccination status of each staff member, including exemptions.

- This extends beyond the full-time health center staff, but all individuals that fall under the Interim Final Rule’s definition of staff.

- Examples of appropriate places for vaccine documentation include:
  - facilities immunization record
  - health information files
  - other relevant documents

Acceptable Forms of Proof of Vaccination

- 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
  - State immunization information system record

OSHA ETS Support for Vaccination

- Employers must support COVID-19 vaccinations for employees by providing reasonable time and paid leave to each employee for:
  - Vaccination
  - Any side effects experienced following vaccination
- Reasonable time may include, but is not limited to, time spent during work hours related to the vaccination appointment(s), time spent at the vaccination site, and time spent traveling to and from the location for vaccination.
- Paid leave provided may include paid sick leave or administrative leave in the form of an employee's accrued sick leave (if available) or in additional paid leave provided by the employer for this purpose.
- Generally, OSHA presumes that, if an employer makes available to its employees four hours of paid leave for each dose of the vaccine, as well as up to 16 additional hours of leave for any side effects of the dose(s) (or 8 hours per dose), the employer would be in compliance with the requirement.

OSHA ETS Medical Removal Protection Benefits

- If remote work is available, employers may require the removed employee to perform remote work and must continue to pay them the same regular pay and benefits until they meet the return to work criteria.
- Under the ETS, employers with more than 10 employees on the date the ETS became effective **must** provide medical removal protection benefits to removed employees.
-
    - Employers must continue to provide the benefits to which the employee is normally entitled and must also pay the employee the same regular pay the employee would have received had the employee not been absent from work, up to $1,400 per week, until the employee meets the return to work criteria (see previous slide).

    - Employers with fewer than 500 employees, must pay the employee up to the $1,400 per week cap but, beginning in the third week of an employee's removal, the amount is reduced to only two-thirds of the same regular pay the employee would have received had the employee not been absent from work, up to $200 per day ($1,000 per week in most cases).

- **Employers can require employees to use existing PTO or sick leave before using the medical removal protection benefits.**

OSHA ETS Medical Removal Protection Benefits

“Paragraph (l)(5)(iv) provides that if an employee who has been removed from the workplace and is not working remotely or in isolation **receives compensation for lost earnings from any other source, such as employer-paid sick leave, administrative leave, or a publicly-funded compensation program, then the employer may reduce the amount paid to the removed employee by however much the employee receives from the outside source.** For example, if a removed employee who is not working remotely or in isolation has accumulated paid sick leave, the employer may require the employee to use that paid sick leave before paying medical removal benefits under this paragraph. If an employee has paid leave available, but the employer is unable to require the employee to use the leave (as may be the case with federal employers) and the employee opts not to use it, then the employer may still reduce the amount paid under this paragraph by the amount of paid leave the employee has available but is opting not to use. Likewise, if a removed employee receives, for example, $300 a week from a state or local government benefits program for quarantined or isolated employees, the employer’s obligation to pay medical removal benefits to the removed employee would be reduced by $300 per week.”

What about Construction or Repair Staff?

“When determining whether to require COVID-19 vaccination of an individual who does not fall into the categories established by this IFC, facilities should consider frequency of presence, services provided, and proximity to patients and staff. For example, a plumber who makes an emergency repair in an empty restroom or service area and correctly wears a mask for the entirety of the visit may not be an appropriate candidate for mandatory vaccination. On the other hand, a crew working on a construction project whose members use shared facilities (restrooms, cafeteria, break rooms) during their breaks would be subject to these requirements due to the fact that they are using the same common areas used by staff, patients, and visitors. Again, we strongly encourage facilities, when the opportunity exists and resources allow, to facilitate the vaccination of all individuals who provide services infrequently and are not otherwise subject to the requirements of this IFC. “

86 Fed. Reg. 61571

What about Board Members?

- The Interim Final Rule includes volunteer and fiduciary board members under the definition of “staff”
- When evaluating board member vaccination requirement, Health centers should apply the same standard to consumer board members and non-consumer board members
- Health centers should consider board member obligations and expectations, not including if that board member is also a patient of the health center

Health Center Boards

Emily Heard

Director, Health Center Governance, NACHC

CMS IFR & Health Center Board Members

"In order to best protect patients, families, caregivers, and staff, we are not limiting the vaccination requirements of this IFC to individuals who are present in the facility or at the physical site of patient care based upon frequency. Regardless of frequency of patient contact, the policies and procedures must apply to all staff, including those providing services in home or community settings, 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 includes administrative staff, facility leadership, **volunteer or other fiduciary board members**, housekeeping and food services, and others. We considered excluding individual staff members who are present at the site of care less frequently than once per week from these vaccination requirements, but were concerned that this might lead to confusion or fragmented care. Therefore, any individual that performs their duties at any site of care, or has the potential to have contact with anyone at the site of care, including staff or patients, must be fully vaccinated to reduce the risks of transmission of SARS-CoV-2 and spread of COVID-19."

See https://www.federalregister.gov/d/2021-23831/p-284.

Common Questions

- How are boards responding to the mandate?
- What about the “remote” option?
- What if some of our board members resign?

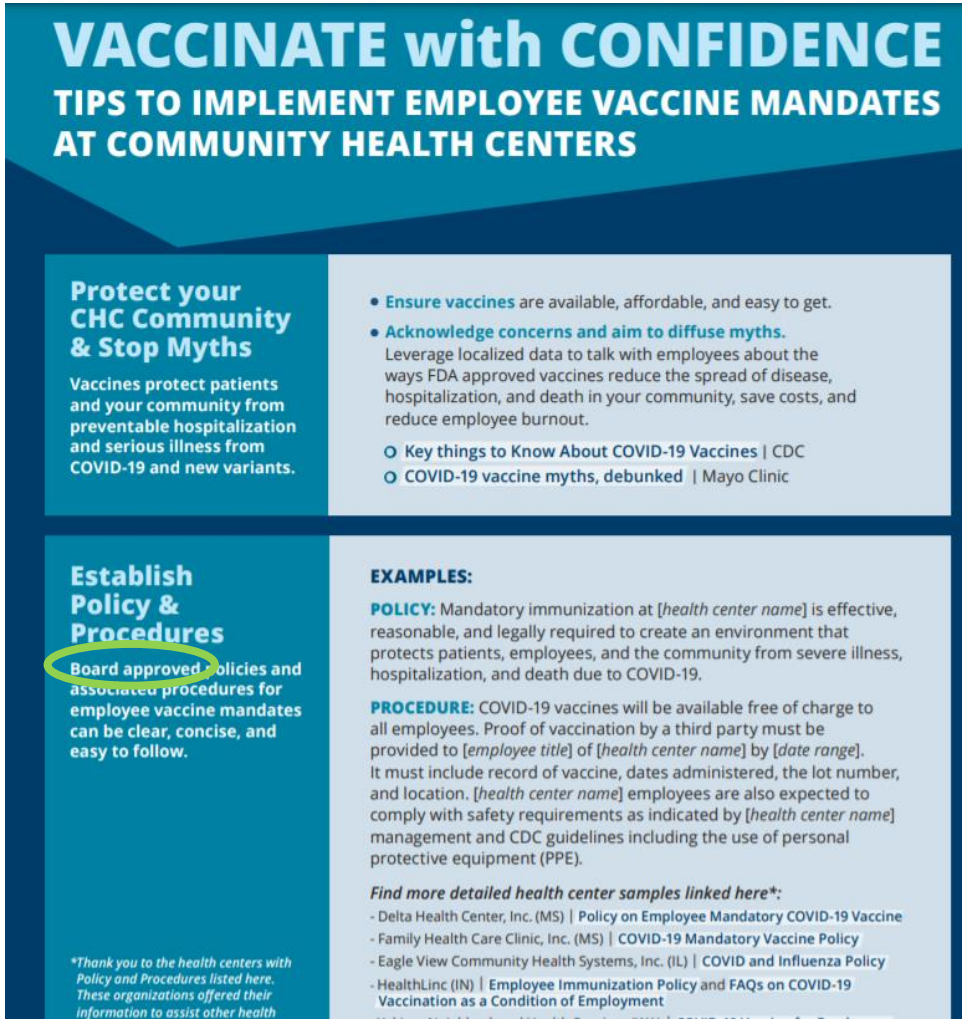
Implications for Board Member Recruitment and Onboarding

- **Resources are available to support boards:**
  - Recruiting and Retaining Board Members
  - Governance Guide for Health Center Boards
  - New Board Member Orientation: PowerPoint Template & Facilitator Guide
  - Orienting New Health Center Board Members During the COVID-19 Pandemic

- **Update practices:**
  - Proactively communicate the requirement to potential board members
  - Update documentation regarding board member responsibilities
  - Incorporate steps to secure documentation during orientation

Board Approved Policies

COVID-19 Vaccine Mandate Toolkit



VACCINATE with CONFIDENCE

TIPS TO IMPLEMENT EMPLOYEE VACCINE MANDATES AT COMMUNITY HEALTH CENTERS

Protect your CHC Community & Stop Myths

Vaccines protect patients and your community from preventable hospitalization and serious illness from COVID-19 and new variants.

- **Ensure vaccines** are available, affordable, and easy to get.
- **Acknowledge concerns and aim to diffuse myths.** Leverage localized data to talk with employees about the ways FDA approved vaccines reduce the spread of disease, hospitalization, and death in your community, save costs, and reduce employee burnout.
  - Key things to Know About COVID-19 Vaccines | CDC
  - COVID-19 vaccine myths, debunked | Mayo Clinic

Establish Policy & Procedures

Board approved policies and associated procedures for employee vaccine mandates can be clear, concise, and easy to follow.

*Thank you to the health centers with Policy and Procedures listed here. These organizations offered their information to assist other health

EXAMPLES:

POLICY: Mandatory immunization at [*health center name*] is effective, reasonable, and legally required to create an environment that protects patients, employees, and the community from severe illness, hospitalization, and death due to COVID-19.

PROCEDURE: COVID-19 vaccines will be available free of charge to all employees. Proof of vaccination by a third party must be provided to [*employee title*] of [*health center name*] by [*date range*]. It must include record of vaccine, dates administered, the lot number, and location. [*health center name*] employees are also expected to comply with safety requirements as indicated by [*health center name*] management and CDC guidelines including the use of personal protective equipment (PPE).

Find more detailed health center samples linked here*:

- Delta Health Center, Inc. (MS) | Policy on Employee Mandatory COVID-19 Vaccine
- Family Health Care Clinic, Inc. (MS) | COVID-19 Mandatory Vaccine Policy
- Eagle View Community Health Systems, Inc. (IL) | COVID and Influenza Policy
- HealthLinc (IN) | Employee Immunization Policy and FAQs on COVID-19 Vaccination as a Condition of Employment

Resources for Health Center Boards

NACHC has over 50 resources (including many in Spanish) to support health center boards addressing:

- Governance Fundamentals
- COVID-19 Response and Recovery
- Strategic Planning
- Justice, Diversity, Equity, and Inclusion
- And more!

Short Videos and E-learning Modules are available to support new board member orientation and ongoing board education.

Learn more at https://www.nachc.org/trainings-and-conferences/governance

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Questions? Please contact Emily Heard at trainings@nachc.com

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Religious and Medical Exemptions

- The Interim Final Rule **requires** facilities to allow for exemptions to staff with recognized medical conditions for which vaccines are contraindicated or religious beliefs, observances, or practices.

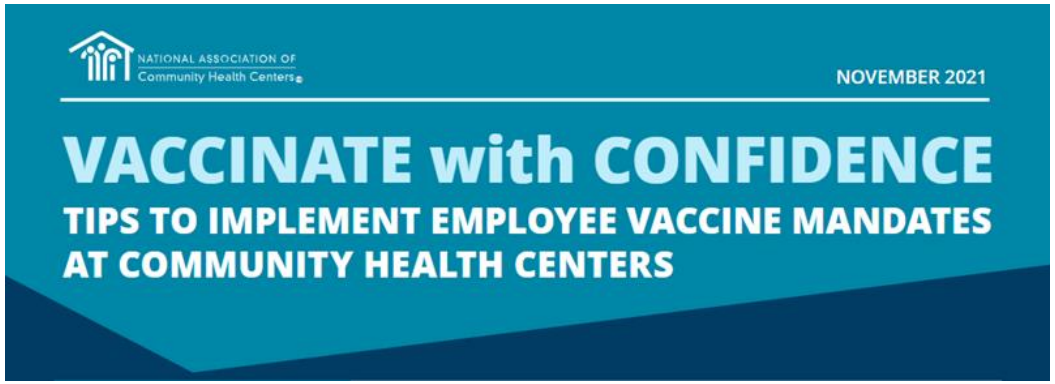
- Covered under the Americans with Disabilities Act and Title VII of the Civil Rights Act of 1964.

- Providers and suppliers must have a process for collecting and evaluating such requests, including the tracking and secure documentation of information provided by those staff who have requested exemption, the facility's decision on the request, and any accommodations that are provided.

Religious and Medical Exemptions

- In granting such exemptions or accommodations, employers must ensure that they minimize the risk of transmission of COVID-19 to at-risk individuals, in keeping with their obligation to protect the health and safety of patients.
- Reasonable accommodations include:
  - Testing
  - Additional PPE
  - Remote work options
- Sample forms:
  - Safer Federal Workforce Religious Request Form
  - EEOC Sample Forms

NACHC's COVID-19 Vaccine Mandate Operational Resource Guide



https://www.nachc.org/coronavirus/

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Massachusetts League of Community Health Centers

Questions?

Thank You!

ARE YOU LOOKING FOR RESOURCES?

Please visit our website **www.healthcenterinfo.org**

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