

MDS Alert

Follow Medicare Vaccination Rule First

Regardless of your state, CMS says its rules apply.

Understandably, you may be confused about which vaccination mandate you must follow. The Centers for Medicare & Medicaid Services (CMS) has released guidance that may help.

In newly updated Frequently Asked Questions about vaccination mandates, the Centers for Medicare & Medicaid Services answers the question of which mandate rules them all - CMS' rule, the Occupational Safety and Health Administration's rule, or the Executive Order for federal contractors.

"If a Medicare- or Medicaid-certified provider or supplier falls under the requirements of CMS's Omnibus Staff Vaccination Rule, it should look to those requirements first," CMS instructs in the FAQs updated Dec. 28. "Health care facilities are generally subject to new federal vaccination requirements based on primacy."

How you can tell: "If facilities participate in and are certified under the Medicare or Medicaid programs and are regulated by the CMS health and safety standards known as the Conditions of Participation (CoPs), Conditions for Coverage (CfCs), and Requirements for Participation, then they are expected to abide by the requirements established in the CMS Omnibus Staff Vaccination Rule," CMS explains.



When the Medicare rule doesn't apply, then the OSHA or federal contractor rule likely will, CMS points out in the FAQs. "All federal entities, including CMS, OSHA, and others, are working closely together to enforce the requirements to ensure maximum coverage of staff across settings with minimal duplication of enforcement efforts," CMS says.

What about in states where state law prohibits vaccination mandates? "Updated Under the Supremacy Clause of the U.S. Constitution, this regulation pre-empts any state law to the contrary," CMS simply states in another FAQ.

But that answer won't necessarily satisfy affected providers. "For states like Florida, which passed its own restrictions on employee vaccination mandates in November, this is particularly challenging," note attorneys **Rachel Goodman, Kate Pamperin, and Larry Perlman** with law firm Foley & Lardner in online legal analysis. "Employers located in states where the CMS mandate conflicts with state law should work closely with counsel to develop a workable plan for compliance, while understanding the risks associated with various approaches," they recommend.

Note: The newly updated vaccination mandate FAQs are at www.cms.gov/files/document/cms-omnibus-covid-19-health-care-staff-vaccination-requirements-2021.pdf.