OMH Guidance Regarding Federal COVID-19 Vaccination Mandates
Updated January 26, 2022

CMS Medicare and Medicaid COVID-19 Vaccination Mandate:
Effective November 5, 2021, CMS promulgated final rules revising the requirements that Medicare and Medicaid-certified providers must meet for participation in such programs. These rules establish COVID-19 vaccination requirements for staff at covered facilities.

Applicability to OMH system:
The CMS COVID-19 vaccination mandate, available at https://www.federalregister.gov/documents/2021/11/05/2021-23831/medicare-and-medicaid-programs-omnibus-covid-19-health-care-staff-vaccination, applies to specified Medicare and Medicaid-certified health care facilities. In the OMH system, this includes OMH-operated or licensed hospitals and Comprehensive Psychiatric Emergency Programs (CPEPs), which should be in compliance with the CMS rule if they are in compliance with OMH’s vaccine mandate at 14 NYCRR Part 557. The CMS rule is also applicable to OMH-licensed residential treatment facilities (RTFs) for youth. The CMS rule does not apply to OMH-licensed facilities that are not certified by CMS, such as freestanding clinics, rehab and residential programs that are not operated by a hospital, even though those facilities may still bill Medicare and Medicaid. The rule applies to CMS-certified “community mental health centers,” but OMH does not believe that this type of CMS-certified facility operates in New York State.

Applicability to Personnel:
The CMS COVID-19 vaccination mandate applies to all Medicare and Medicaid-certified hospital and RTF staff, who provide inpatient or outpatient services to facility patients regardless of location, including treatment sites that may be off the hospital or facility’s main campus. OMH-operated hospitals provide both inpatient and a variety of OMH-licensed outpatient programs and services. All staff, thereof, are covered by the mandate.

Additionally, the mandate is not limited solely to individuals who perform direct care functions. Under the mandate, vaccination is required for “all staff that interact with other staff, patients, residents, clients… in any location, beyond those that physically enter facilities or other sites of patient care.” Therefore, the mandate is applicable to any administrative staff, students, trainees, volunteers, housekeeping, and food services staff who either physically work in the facility, or in any other location where they physically interact with facility staff who interact with patients.

The mandate applies to all design professionals and construction workers contracted by the Dormitory Authority or the Office of General Services (OGS) who report to OMH hospitals and OMH-operated outpatient and residential program settings located on OMH property. It also applies to all OMH contractors, Dormitory Authority and OGS staff who have offices within an OMH hospital. See the separate guidance that has been issued regarding this topic.

Not subject to the mandate are individuals who provide services 100 percent remotely, such as fully remote telehealth or payroll services, and individuals who infrequently provide ad hoc non-health care services (such as annual elevator inspection, delivery, repair, or other maintenance services).
When determining whether to require COVID-19 vaccination of an individual, facilities should consider frequency of presence within the covered facility, services provided, and proximity to patients and staff.

**Compliance with Fully Vaccinated Status and Boosters:**
Consistent with CDC guidance, CMS will consider staff “fully vaccinated” if it has been two or more weeks since they completed a primary vaccination series for COVID-19, defined as having received a single-dose vaccine or all doses of a multi-dose vaccine. Boosters are NOT required by the rule.

The rule requires a first dose of the COVID-19 vaccination administered by January 27, 2022, and a second dose (where applicable) by February 26, 2022. Individuals may continue to provide services if they have received their first dose by January 27, 2022, and their second dose of a two-dose vaccination series by February 26, 2022, even though they are not yet “fully vaccinated.”

**Vaccine Exemptions:**
Facility staff must be able to request an exemption from these requirements based upon an applicable law, such as the ADA or Title VII. This includes requests for medical or religious exemptions. Providers must have a process for collecting and evaluating such requests, including securing any documentation provided by staff requesting an exemption, the facility’s determination, and any accommodations provided.

**Medical Exemptions:**

Requests for medical exemptions must contain all documentation confirming recognized clinical contraindications to COVID-19 vaccines that support the staff member’s request and must be signed and dated by a licensed practitioner, who is not the individual requesting the exemption, and who is acting within their respective scope of practice pursuant to State and local laws. Such documentation must contain all information specifying which of the authorized COVID-19 vaccines are clinically contraindicated for the staff member to receive, the recognized clinical reasons for the contraindications, and a statement by the authenticating practitioner recommending that the staff member be exempted from the facility’s COVID-19 vaccination requirements based on such contraindication.

**Religious Exemptions:**


**OSHA Mandate:**
The Department of Labor, Occupational Safety and Health Administration (OSHA) has withdrawn its regulation.