

Public Sector Application of CMS' COVID-19 Health Care Vaccination Rule

January 24, 2022

Key Takeaways:

- The Rule only applies to Medicare- or Medicaid-certified facilities and their contractors having contact with patients or staff
- The Rule does not apply to school districts receiving Medicare or Medicaid funding
- The Rule may apply to public sector service providers such as EMS and ambulance authorities who contract with Medicare or Medicaid-certified facilities

Since we published our **January 14 alert** on the Supreme Court's rulings on the OSHA and Centers for Medicare & Medicaid Services' (CMS) vaccination mandates, we have heard several questions about the impact of the CMS COVID-19 health care vaccination rule on various public sector entities either receiving Medicare and Medicaid funding or providing health-related services to the public, including ambulance and EMS services. We also have been asked whether employees of third-party contractors to public entities are subject to the rule.

CMS has provided **helpful FAQs** addressing these questions.

Scope and Application of the Interim Rule

- The interim rule applies to health care providers who care for Medicare and Medicaid patients in hospitals, nursing homes, ambulatory surgical centers, hospices, rehabilitation facilities and more. Specifically, any governmentally owned hospital, health facility or community mental health center which is a Medicare- or Medicaid-certified facility will need to follow the rule. This is also true of any third-party contractors who provide care, treatment or other services for these facilities or their patients.
- The mentioned facilities must require their employees, volunteers, contractors and other workers to receive the COVID-19 vaccine. The rule also applies to employees and third-party contractors who interact with and provide care to patients or other staff outside of these facilities, such as home health care or offsite meetings.
- The rule does not apply to facilities which are not Medicare- or Medicaid-certified facilities. For example:
- Even though many schools receive Medicare or Medicaid funding, they are not regulated under CMS health and safety regulations and do not need to comply with the rule.
- EMS providers are not regulated by CMS. Nonetheless, some EMS providers and ambulance authorities may be subject to the rule if they contract to provide services to a Medicare- or Medicaid-regulated facility, including hospitals and long-term care facilities.

State and Regional Guidance

State and local law may impose different regulations or guidance (e.g., legislative action, executive order, health department order) that can go beyond the rule. The rule is not a limit.

Continued

Miller Canfield will continue to monitor new developments concerning the CMS' interim rule. If you have any questions about these developments or how they may impact your workplace, please contact the authors of this alert or your Miller Canfield attorney.

This information is based on the facts and guidance available at the time of publication and may change as the agency receives comments and/or updates its guidance.