



# Hospitals Face Another Administrative Challenge: A New Obligation to Report and Track Employee Vaccination Rates

Insights

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In shrewd consideration of the healthcare industry's unique acute care settings, states, localities, and individual hospitals across the nation have prioritized efforts to increase vaccination rates among healthcare workers. Thus, not surprisingly, the Centers for Medicare & Medicaid Services (CMS) has implemented a new rule that will soon require hospitals to regularly track and report COVID-19 vaccination status for all personnel. The requirement is sandwiched in a far-reaching and dense hospital payment rule formally published on August 13. Specifically, the new directive seeks to "support public health tracking and provide patients, beneficiaries, and their caregivers important information to support informed decision making" as well as protect the health and safety of patients and staff alike. What do hospital employers need to know about this new requirement, which is slated to take effect on October 1, 2021?

## A Measured Response to Mounting Pressure?

Although the minutiae of administrative feasibility remain up in the air, the new CMS requirement should not come as a surprise to hospitals. It follows a trend in the industry responding to the mounting pressure from healthcare groups to require vaccination of medical staff as the delta variant spurs increasing death and serious illness amongst the unvaccinated.

For example, on July 26, over 60 healthcare organizations and societies issued a joint statement urging healthcare employers to mandate the vaccine of their workforce. This comes on the heels of California becoming the first state to require healthcare workers show proof of COVID-19 vaccination or be subjected to weekly testing, and highly publicized employee vaccine mandates of hospital systems across the country. Legal challenges to such mandates have proven futile, wherein federal courts agree that public policy supports widespread vaccination mandates of healthcare workers in the acute care setting.

Although certainly motivated by this trend, the CMS's reporting requirement is NOT a vaccine mandate. It simply seeks to "incentivize and track" vaccination rates through education – or concerning statistics – to reduce COVID-19 transmission. The rule requires hospitals to report certain quality care measures, including vaccination rates, to the CMS or risk loss of funding. Beginning October 1, 2021, hospitals are required to submit vaccination rate data each quarter to the

Centers for Disease Control and Prevention's National Healthcare Safety Network's surveillance system.

CMS has assured the industry that hospitals will not be "held directly accountable for a particular outcome," as the agency does not expect the quality measure to necessarily lead to universal vaccination in hospital staff. Rather, the purpose of the reporting requirement is meant to assist hospitals in determining whether their approach(es) to increasing employee vaccination rates are successful.

### **Or Just Another Administrative Headache?**

The CMS requests hospitals to report "a reliable snapshot." However, what that exactly entails requires further refinement. According to the CMS, hospitals must track and report the vaccination rates of all employees during at least one week each month to comply with the new quality control measure. It requires hospitals include and report any employee who receives a direct paycheck, even if not involved in patient care.

Although the CMS acknowledges the time and resources that hospitals would need to report data," the American Hospital Association (AHA) has expressed dissatisfaction with the adoption of the measure at an "unusually accelerated pace." Further, the AHA has questioned whether the data will accurately reflect a hospital's progress in vaccinating its workforce. The Association specifically points to information about the vaccine's efficacy, including the length of immunity and the potential need for booster shots as continually evolving, thereby significantly impacting and changing how hospitals would collect, maintain and report data.

Thus, if the CMS needs to make sudden changes in how data is measured, it may lead to confusion and inconsistent reporting by hospitals. Accordingly, as the AHA expects the CMS to tweak the new requirement as hospitals start to report data, it is important healthcare employers remain attentive to changes in this nature.

### **Overall, Likely Helpful in Boosting Vaccination Rates**

The CMS projects that increased vaccination among hospital staff will lead to an uptick in patient vaccination rates. Further, the reporting requirement will give high-risk patients a more complete picture of a hospital's vaccination rates as they decide where to receive care. Moreover, and most importantly, it will likely motivate even more hospital systems to mandate the vaccination of its employees. Overall, the rule follows sound science and reliable data evidencing the risk unvaccinated healthcare workers pose to sick patients, thereby appeasing the calls of hundreds of healthcare systems, policy organizations, and research institutions across the world.

### **So How Should Hospitals Prepare?**

You should be aware that the data you report to the CMS will become readily available as public information. Consequently, if you want to attract favorable publicity concerning quality care and patient safety, you should consider your options to boost your workforce vaccination rate. Accordingly, if your institution has not already, you should be assessing whether to mandate the vaccine as a condition of employment or take another route in order to increase the number of vaccinated employees. [Here is a list of five options you can take to increase these numbers.](#) Hospitals specifically must also carefully weigh their care of the most vulnerable patients as a result of unique acuity levels in determining the appropriateness of a mandate.

We will continue to monitor developments related to the CMS's reporting requirements and related workplace questions that may arise. Make sure you are subscribed to [Fisher Phillips' Insight system](#) to get the most up-to-date information. If you have questions about how to ensure that your vaccine policies comply with workplace and other applicable laws, visit our [Vaccine Resource Center for Employers](#) or contact any attorney on our [FP Vaccine Subcommittee](#).

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