

10 FAQs

ABOUT HEALTH CENTER BOARDS & THE CMS OMNIBUS COVID-19 STAFF VACCINATION INTERIM FINAL RULE

On November 4, 2021, the Centers for Medicare & Medicaid Services (CMS) at the Department of Health and Human Services issued the **CMS Omnibus COVID-19 Staff Vaccination Interim Final Rule (CMS IFR)** requiring “staff” at Medicare and Medicaid-certified facilities to be vaccinated unless they have approved religious or medical exemptions. The CMS IFR applies to all Federally Qualified Health Centers

(FQHCs or “health centers” in this document) that participate in and are certified under the Medicare and Medicaid programs.¹ **NOTABLY, THE CMS IFR ALSO APPLIES TO HEALTH CENTER BOARD MEMBERS.**

This short document addresses Frequently Asked Questions (FAQs) about the implications of the CMS IFR for health center boards and board members.

1. Does the CMS IFR apply to health center board members?

Yes, the CMS IFR mandate includes “volunteer or other fiduciary board members” under the definition of “staff.”²

2. Does the CMS IFR apply in the same way to both consumer and non-consumer board members?

Yes, health centers should apply the same standard to consumer and non-consumer board members.

3. How are health center boards responding to the requirement that volunteer board members must be vaccinated under the CMS IFR?

Boards and board members are responding in a variety of ways. Many boards are reporting that their members are already 100% fully vaccinated and do not anticipate any issues with complying with the requirement. A few boards have expressed that some board members may resign from the board over the vaccine mandate.

4. The CMS IFR notes that those covered by the IFR that are fully remote (who do not interact with patients or staff directly) are not required to be vaccinated. The board at our health center continues to hold virtual monthly board meetings. Can the board be “exempt” from the requirements if it continues to meet virtually?

Technically a board that meets 100% virtually could be “exempt” from this requirement provided no board members interact with staff or patients directly in-person. It is important to consult with legal counsel if considering this approach.

There are also practical and strategic questions that a board should discuss if contemplating this such as:

- How long does the board anticipate fully virtual meetings?
- Is the board considering a return to in-person board meetings (when safe) or a **hybrid board meeting** option?
- How practical is it for no board member to interact at any point with health center staff or patients (e.g., at health center events, facilities, etc.)?
- What is the board's strategic responsibility related to the requirements of this mandate?

5. Are health centers required to collect documentation for board members?

CMS requires all facilities to track and securely document the vaccination status of everyone covered by the IFR (or information related to exemptions), which includes board members. Health centers can follow the same tracking and documentation requirements for staff and board members.

6. How should health centers handle exemptions for board members?

"Health centers should establish exemptions as a part of their policies and procedures and in alignment with Federal law."³ Health centers should consult legal counsel when developing their policies related to medical and religious exemptions to ensure compliance with federal, state, and local laws. Health centers should thoroughly document if they develop a separate exemption process for board members. The exemption process should be the same for consumer and non-consumer board members.

7. Should the board approve policies related to the vaccine mandate? Does the center need to have a board-specific policy about the CMS IFR?

Having the board approve the policy related to the vaccine mandate is good practice; also, the Health Resources and Services Administration (HRSA) requires board approval of certain personnel policies that might be impacted by policies related to the mandate.⁴ Board approved policies and associated procedures for employee vaccine mandates can be clear, concise, and easy to follow. Many health centers have a single policy reflecting the requirements of the CMS IFR that apply to staff, board members, and other relevant parties. Sample policies can be found in NACHC's [COVID-19 Vaccine Mandate Resource Guide](#). Updated samples will also be available on NACHC's [Employee COVID-19 Vaccine Mandate: Technical Assistance Resources for Health Centers](#) webpage.

8. Where can I find more information about CMS IFR, including related to implementation timelines and oversight?

NACHC's [Employee COVID-19 Vaccine Mandate: Technical Assistance Resources for Health Centers](#) webpage contains additional details and guidance.

9. What resources exist to help boards with board member recruitment and onboarding if a board member resigns over the mandate?

NACHC has various resources to assist boards with new board member recruitment and onboarding including:

- **Recruiting and Retaining Board Members** – This article (available in English and Spanish) provides tips on both recruiting and retaining board members.
- **Governance Guide for Health Center Boards** – Chapter 2 of this publication (available in English and Spanish) provides general guidance on board recruitment and onboarding. The Appendix contains various tools that can be tailored by boards to interview new board members.
- **New Board Member Orientation: PowerPoint Template & Facilitator Guide** – This template (available in English and Spanish) can be customized by health centers to orient new board members.
- **Orienting New Health Center Board Members During the COVID-19 Pandemic** – This article provides tips on orienting board members virtually and includes various orientation models. It is available in English.

It is particularly important for boards to remain in compliance with HRSA Health Center Program requirements for board composition as found in **Chapter 20** of the Health Center Program Compliance Manual including ensuring the board has at least 9 members and maintains its 51% patient majority.

10. How will the mandate impact future board member recruitment and onboarding?

Going forward, it will be important for boards to:

- proactively communicate the vaccine requirement to potential board members as part of the recruitment process;
- update any documentation that addresses expectations of board members to include this requirement; and
- ensure the board member onboarding processes include steps to secure documentation from new board members to ensure compliance with the requirement.

ENDNOTES

1. More information can be found [here](#).
2. See <https://www.federalregister.gov/d/2021-23831/p-284>. The relevant excerpt follows: “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.”
3. CMS COVID-19 Staff Vaccination Interim Final Rule FAQ by NACHC.
4. A prior FAQ document provided the following guidance around board approval of health center policies related to vaccine mandates: Boards can look to good practice and Health Resources and Services Administration (HRSA) Health Center Program Compliance in considering this question. **Element e from Chapter 19 of the HRSA Health Center Program Compliance Manual** (Compliance Manual) states that the Board has to adopt, evaluate at least once every 3 years, and as needed, approve updates to policies that support financial management and accounting systems and personnel policies. Neither the Compliance Manual nor the HRSA Site Visit Protocol specify which personnel policies. The health center regulations require the Board to have specific responsibility for “[E]stablishing personnel policies and procedures, including selection and dismissal procedures, salary and benefit scales, employee grievance procedures, and equal opportunity practices.” Using the policies enumerated in the regulation is typically a good start for the personnel policies that require Board approval. If the vaccine mandate updates any of those procedures, then the Board should approve the update. If, on the other hand, the Board approves the Employee Handbook and the changes made from time to time and a vaccine mandate will require changes to the Employee Handbook, the Board should approve such updates. Furthermore, even if approval of a vaccine mandate policy does not require Board approval under HRSA requirements, given the complexity of vaccine mandates, it is important from a good governance perspective.

THIS RESOURCE WAS FUNDED BY A PRIVATE FOUNDATION.