



Center for Clinical Standards and Quality

Ref: QSO-22-10-ALL

DATE: January 25, 2022

TO: State Survey Agency Directors

FROM: Directors,
Quality, Safety & Oversight Group (QSOG) and Survey & Operations Group (SOG)

SUBJECT: Vaccination Expectations for Surveyors Performing Federal Oversight

Memorandum Summary

- ***CMS is committed*** to taking critical steps to protect vulnerable Americans to ensure America's health care facilities are prepared to respond to the Coronavirus Disease 2019 (COVID-19) Public Health Emergency (PHE).
- ***While many State Survey Agencies and Accrediting Organizations (AOs) have taken early action to implement their own surveyor vaccination requirements, national guidance is necessary to maintain the safety of surveyors as well as of staff and patients/residents within the certified providers and suppliers they inspect as part of CMS' vital oversight and enforcement mission.***

Background

The Coronavirus Disease 2019 (COVID-19) Public Health Emergency (PHE) presents a unique challenge for healthcare institutions and the surveyors charged with evaluating their compliance with Medicare requirements. Therefore, CMS is using every tool at our disposal to ensure these vital facilities are able to safely manage and care for their patients. CMS recognizes the importance of ensuring that surveyors who are charged with investigating compliance with Medicare and Medicaid health and safety requirements are also mitigating the risk of COVID-19.

Discussion

Previous CMS guidance (<https://www.cms.gov/files/document/qso-20-14-nh-revised.pdf>) highlighted the additional precautions necessary for surveyors when performing onsite inspections, including proper use of Personal Protection Equipment (PPE) and the prohibitions on entering facilities if symptomatic (such as fever, cough, sore throat, etc.). Current data (<https://data.cms.gov/covid-19/covid-19-nursing-home-data>) shows a strong correlation between the number of COVID-19 cases in nursing homes and lower staff vaccination rates. This demonstrates the importance of vaccination as a primary means for reducing the incidence and

spread of COVID-19 in health care facilities.

Guidance for State Survey Agency and Accrediting Organization Surveyors

CMS is expanding on the exclusionary criteria for all surveyors (including CLIA and Life Safety Code surveyors) entering provider and supplier locations to include vaccination status.

Surveyors who are not fully vaccinated (unless vaccination is medically contraindicated or the individual is legally entitled to a reasonable accommodation under federal civil rights laws because they have a disability or sincerely held religious beliefs, practices, or observances that conflict with the vaccination requirement) should not participate as part of the onsite survey team performing federal oversight of certified providers and suppliers (including accreditation surveys performed under an AO's deeming authority).

Unvaccinated personnel may be used, at the State Survey Agency's or AO's discretion, for offsite survey or enforcement activities.

Current performance and timeliness standards for State Survey Agencies and AOs remain, and consideration will not be provided for failures to meet these expectations due to a lack of vaccinated surveyors to complete the mandated workload.

States should have a process by which staff may request exemption from COVID-19 vaccination based on recognized clinical contraindications (<https://www.cdc.gov/vaccines/covid-19/clinical-considerations/covid-19-vaccines-us.html#Contraindications>) or because they are legally entitled to a reasonable accommodation under federal civil rights laws because they have a disability or sincerely held religious beliefs, practices, or observances that conflict with the vaccination requirement (<https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws>). This process should clearly identify how an exemption is requested, and to whom the request is made. States should also have a process for collecting and evaluating such requests, including the tracking and secure documentation of information provided by those staff who have requested exemption, and the determination of the request, and any reasonable accommodations that are granted.

Surveyors who have a COVID-19 vaccination exemption, as identified above, may continue surveying while observing additional safeguards, as determined and documented by the state (such as mandatory testing, limitation to conducting survey activities that limit patient/resident contact such as record review, limitation to conducting offsite activities, or re-assignment or work modification). All surveyors are expected to use appropriate PPE while surveying.

Per the Centers for Disease Control and Prevention (CDC), individuals should be vaccinated regardless of a previous COVID-19 diagnosis because research has not yet shown how long individuals are protected from getting COVID-19 again after being infected. Also, vaccination helps protect individuals even if they have already had COVID-19. One study suggested that unvaccinated people who already had COVID-19 may be more than two times as likely as fully vaccinated people to get COVID-19 again¹. Anyone treated for COVID-19 with monoclonal antibodies or convalescent plasma should wait 90 days before getting a COVID-19 vaccine. For more CDC information on vaccines, see <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/faq.html>.

¹ MMWR *Reduced Risk of Reinfection with SARS-CoV-2 After COVID-19 Vaccination – Kentucky, May-June 2021* [Reduced Risk of Reinfection with SARS-CoV-2 After COVID-19 Vaccination — Kentucky, May–June 2021 | MMWR \(cdc.gov\)](https://www.cdc.gov/mmwr/2021/05/mmwr0511a1.htm)

The State Survey Agencies and AOs are ultimately responsible for compliance with this expectation. **Therefore, certified providers and suppliers are not permitted to ask surveyors for proof of their vaccination status as a precondition for entry.** Providers and suppliers may have questions about the process a state or AO is using to implement this guidance, including verification of surveyor vaccination, mitigation expectations for unvaccinated staff with approved exemptions, and ensuring proper tracking of vaccination status. Those questions should be addressed to the State Survey Agency or AO. We encourage State Survey Agencies and AOs to proactively communicate with providers and suppliers about their efforts to implement this guidance.

This guidance applies to the state's activities in conducting federal program responsibilities under the 1864 Agreement.

Contact: Questions about this memorandum should be addressed to your CMS Location.

Effective Date: Within 30 calendar days of issuance. This policy should be communicated to all survey and certification staff and managers immediately.

/s/

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cc: Survey and Operations Group Management
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