



COVID-19 VACCINATION AND TESTING POLICY AND PROCEDURES

<p>Policy #: Temporary Statewide Policy</p>	<p>Authority: CMS Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule; Guidance for the CMS Memorandum December 28, 2021; 20 Del. C. Chapter 3137</p>
<p>Effective Date: March 2, 2022</p>	<p>Supersedes: January 24, 2022</p>
<p>Application: Executive Branch Agencies with employees covered by the CMS Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule</p>	<p>Signature: <i>Claire M. DeMatteis</i></p>

1. POLICY PURPOSE STATEMENT

In accordance with the State of Delaware’s (State) duty to provide and maintain a safe workplace, this policy is set forth to safeguard the health of our employees and their families; our customers and visitors; and the community at large from COVID-19, that may be reduced by vaccinations and regular testing. This policy is being revised to comply with the Centers for Medicare and Medicaid (CMS) Omnibus COVID-19 Health Care Staff Interim Final Rule and the Guidance for the Memorandum issued on December 28, 2021.

2. SCOPE

This policy applies to employees of the Executive Branch agencies covered by the CMS Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule.

3. DEFINITIONS AND ACRONYMS:

- **Americans with Disability Act (ADA)** - The ADA is a civil rights law that prohibits discrimination against individuals with disabilities in all areas of public life, including jobs, schools, transportation, and all public and private places that are open to the general public.
- **Attestation Management System (AMS)** – Electronic system maintaining vaccination and testing data on eligible State employees to administer this policy.
- **CMS (Centers for Medicare & Medicaid Services) Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule** – A regulation issued by the Federal government requiring all staff at provider and supplier employers who are Medicare- and Medicaid-certified, to be COVID-19 vaccinated prior to providing any care, treatment, or other services for the employer, referred to as health care facilities, and/or its patients, with certain allowable exemptions.
- **CMS certified health care staff** – Those employees covered by the CMS Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule.
- **Coronavirus (COVID-19)** – New strain of coronavirus that has not been previously identified in humans. The virus causing coronavirus disease 2019 (COVID-19) is not the same as the coronaviruses that commonly circulate among humans and cause mild illnesses, like the common cold. A variant has one or more mutations that differentiate it from other variants in circulation. As expected, multiple variants of SARS-CoV-2 have been documented in the [United States](#) and [globally](#) throughout this pandemic. A variant with specific genetic markers that have been associated with changes to receptor binding, reduced neutralization by antibodies generated against previous infection or vaccination, reduced efficacy of treatments, potential diagnostic impact, or predicted increase in transmissibility or disease severity.

- **Employee/s** – Employees of the Executive Branch agencies including all officers, officials, appointed, executive, merit, full-time, part-time, casual/seasonal employees, and joint employees, working for the State covered by the CMS Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule.
- **Fully-vaccinated** – Defined by the Centers for Disease Control and Prevention (CDC) as **two weeks after** the second shot of a two-dose vaccination or **two weeks after** the single shot of a one-dose vaccination.
- **Medical Exemption** – A medical condition that may prohibit an employee from receiving the COVID-19 vaccination and/or COVID-19 testing. To qualify, the employee must have a disability under the ADA, defined by the ADA as a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment or a person who is perceived by others as having such impairment.
- **Medicare- and Medicaid-Certified Provider and Supplier Employers** – For purposes of the CMS regulation and as of the issuance of this policy, at the Department of State, Delaware Veterans Home (DVH); at the Department of Health & Social Services, the Delaware Psychiatric Center (DPC), Delaware Hospital for the Chronically Ill (DHCI), and the Stockley Center who meet the CMS criteria. The State reserves the right to add positions that fit the CMS criteria in the future.
- **Primary Vaccination Series** – Having received a single-dose vaccine or all doses of a two-dose vaccine.
- **Reasonable Accommodation** - Title I of the ADA provides for reasonable accommodations to qualified employees with disabilities who can perform the essential functions of the position, unless to do so would cause undue hardship. In general, an accommodation is a change in the work environment or in the way things are customarily done that would enable a qualified individual with a disability to enjoy equal employment opportunities.
- **Religious Exemption/Accommodation** – For this policy, the State may accommodate employees who are not able to receive the COVID-19 vaccination and/or COVID-19 testing as part of their sincerely held religious observances and practices, unless doing so imposes an undue hardship, which is "more than de minimis" cost or burden on the operation of the employer's business.¹
- **Vaccination** – A substance that teaches your body to recognize that a foreign invader such as a virus or bacteria has entered the body. Once the body recognizes the invader, the body's immune system is activated, and fighter cells and proteins fight the virus or bacteria. A vaccination is much like a decoy, it tricks the body into thinking it is the virus, but it does not actually cause the disease. It helps the body fend off the virus.
- **Validation** – Proof of employee completing the primary vaccination series; or proof of being fully vaccinated; or proof of employee being tested in a specific time frame.
- **Virtual Private Network (VPN)** - a method employing encryption to provide secure access to a remote computer over the internet.

¹ Under [Title VII of the Civil Rights Act of 1964](#), individuals have the right to be free from discrimination on the basis of religion.

4. POLICY

CMS Certified Health Care Staff Employees

- a. Per the CMS regulation, the State's COVID-19 vaccination policies and procedures must apply to the facility staff, regardless of clinical responsibility or patient contact and including all current staff as well as any new staff, who provide any care, treatment, or other services for the facility and/or its patients. Vaccination requirements under the CMS regulation are not limited to individuals who are present in the facility or at the physical site of patient care based upon frequency.
- b. Employees in positions providing health care services and/or health care support services in Medicare- and Medicaid-certified facilities are required to receive and provide proof of, at a minimum, the first dose of a two-dose vaccination series or the first dose of a single dose COVID-19 vaccine by January 27, 2022, or **March 3, 2022**, if healthcare facilities meet vaccination rates for extension to provide any care, treatment or other services for a facility and/or its patients, with the exception of those who have been granted an exemption from receiving the COVID-19 vaccine or those staff for whom COVID-19 vaccination must be temporarily delayed, as recommended by the Centers for Disease Control (CDC).
- c. Employees in positions providing health care services and/or health care support services in Medicare- or Medicaid-certified facilities are required to have their primary vaccination series completed and provide validation by February 28, 2022 or **March 24, 2022**, if healthcare facilities meet vaccination rates for extension to provide any care, treatment or other services for a facility and/or its patients, with the exception of those who have been granted an exemption from receiving the COVID-19 vaccine or those staff for whom COVID-19 vaccination must be temporarily delayed, as recommended by the Centers for Disease Control (CDC).
- d. Employees must bring proof of having received, at a minimum, the first dose of a two-dose vaccination series or the first dose of a single dose COVID-19 vaccine, beginning the first work shift of January 27, 2022, or **March 3, 2022**, if healthcare facilities meet vaccination rates for extension. Employees must provide proof of having their primary vaccination series completed beginning the first work shift of February 28, 2022, or **March 24, 2022**, if healthcare facilities meet vaccination rates for extension. This paragraph does not apply if an employee has been granted an exemption from this policy or has applied for such exemption and is waiting on a determination. Examples of acceptable proof of vaccination (validation) include:
 - i. CDC COVID-19 vaccination record card (or a legible photo of the card);
 - ii. Documentation of vaccination from a health care provider or electronic health record; or
 - iii. State immunization information system record.

Please contact your Human Resources office for guidance.

- e. Employees must certify (attest) that they are vaccinated for COVID-19 by completing the **COVID-19 Vaccination Certification** process for their position. The process includes uploading proof of receiving their primary vaccination series or being fully vaccinated. If an employee is on full time Family Medical Leave Act (FMLA), full-time Short-term Disability (STD), etc. or on full weeks of annual/vacation leave, parental leave, or other full-time leave, the employee is required to complete the COVID-19 Vaccination Certification on the first shift of returning to work, regardless of whether the return to work is full-time.
- f. Employees will initiate the COVID-19 Vaccination through my.delaware.gov. The my.delaware.gov portal requires employees to add or verify a home email address. The home email address must be

unique to the employee, not shared, and not a state-issued business email address. Employees who have a delaware.gov email address may continue to certify electronically through the id.delaware.gov portal or through the [Coronavirus COVID-19 HR for State Employees webpage](#). **Note:** The COVID-19 Vaccination and COVID-19 Testing Forms will no longer be available on January 27, 2022. All employees utilizing the fillable forms will need to certify through my.delaware.gov, id.delaware.gov or through the [Coronavirus COVID-19 HR for State Employees webpage](#).

- g. All employees may request an exemption from this policy only due to qualified medical reason(s) or due to a sincerely held religious belief or practice. The employee must submit a completed **ADA Reasonable Accommodation** request or a **Religious Accommodation** request to the Human Resources (HR) office to begin the interactive dialogue process. Existing CMS certified health care staff may request an exemption from this policy within seven (7) days from their start date, or within seven (7) days of being notified that they are CMS certified health care staff and this policy, whichever is earlier. Reasonable accommodations may be granted where it does not cause the Agency undue hardship or pose a direct threat to the health and safety of others. **Employees requesting exemptions may be required to participate in the COVID-19 Testing Certification process weekly.** Requests for an exemption for personal or philosophical reasons will not be accepted.
- h. The State's weekly Testing Certification process is only available to CMS certified health care staff if they have requested or have been approved for an exemption.
- i. Once an exemption request is submitted, CMS certified health care staff are to initiate the Testing Certification process through my.delaware.gov. The my.delaware.gov portal requires employees to add or verify a home email address. The home email address must be unique to the employee, not shared, and not a state-issued business email address. Employees who have a delaware.gov email address may continue to certify electronically through the id.delaware.gov portal or through the [Coronavirus COVID-19 HR for State Employees webpage](#).
- j. Effective January 27, 2022, or **March 3, 2022**, if healthcare facilities meet vaccination rates for extension, eligible employees must continue to certify electronically and may begin to upload their testing proof weekly through the my.delaware.gov. The my.delaware.gov portal requires employees to add or verify a home email address. The home email address must be unique to the employee, not shared, and not a state-issued business email address. Employees who have a delaware.gov email address may continue to certify electronically through the id.delaware.gov portal or through the [Coronavirus COVID-19 HR for State Employees webpage](#). Note: The COVID-19 Vaccination and COVID-19 Testing Forms will no longer be available on January 27, 2022. All employees utilizing the fillable forms will need to certify through my.delaware.gov, id.delaware.gov or through the [Coronavirus COVID-19 HR for State Employees webpage](#).
- k. Employees who have attested that they have been tested but are unable to provide proof of testing, or validate, through the AMS may be subject to discipline including leave without pay up to and including termination.
- l. It is an employees' responsibility to use testing where validation can be obtained. Employees are responsible for maintaining any confirmation of COVID-19 testing and/or testing certification (e.g., print, photo, screenshot, email). Take-home rapid antigen test kits and over-the-counter test kits are not acceptable for testing certification.

- m. Employees who become fully vaccinated at any point in time after the effective date of this policy may complete the COVID-19 Vaccination Certification process.
- n. All requested validation documentation provided by the employee under this policy shall be retained and kept separate in the employee's confidential medical file according to the applicable retention schedule or in the confidential AMS being used for this purpose. Certain information may be shared with other DHR staff on a need-to-know basis, only as authorized by law.
- o. In accordance with the [COVID-19 Leave Policy](#) (Leave Policy) and while it remains in effect, employees may utilize available Federal Paid Sick Leave to receive the vaccination, or due to side effects resulting from receiving the vaccination per the Leave Policy. If the employee's COVID-19 leaves are exhausted, the employee may use Sick Leave per the Merit Rules, if eligible and applicable.
- p. Employees who are non-compliant with or violate this policy may be subject to discipline including leave without pay up to and including termination.
- q. The State expressly prohibits any form of discipline, reprisal, intimidation, or retaliation against any individual for requesting a reasonable accommodation in good faith or for disclosing the existence of a disability or sincerely held religious beliefs or practices.
- r. This policy is subject to change at the Department of Human Resources' (DHR's) discretion based on current public health guidance.
- s. This policy supersedes agency policy or procedure on this subject. This policy is complementary to the Medicare- or Medicaid-certified providers or suppliers plan as required by the CMS regulation.

5. PROCEDURES

COVID-19 Vaccination Certification Process for CMS Certified Health Care Staff

- 1) Per the CMS guidance, CMS certified health care staff are to provide hard-copy proof of their **vaccination** status per this policy, beginning the first work shift of January 27, 2022, or **March 3, 2022**, if healthcare facilities meet vaccination rates for extension. CMS certified health care staff must provide hard copy proof of having completed their **primary vaccination series** beginning the first work shift of February 28, 2022, or **March 24, 2022**, if healthcare facilities meet vaccination rates for extension. This paragraph does not apply if an employee has been granted an exemption or is waiting on a determination for such exemption from this policy or if the COVID-19 vaccination must be temporarily delayed, as recommended by the CDC due to clinical precautions and considerations. Please contact your Human Resources office for guidance.
- 2) Beginning on January 27, 2022 or **March 3, 2022**, if healthcare facilities meet vaccination rates for extension, all employees hired into CMS certified health care staff **positions** must attest to having their first dose of a two-dose vaccination or the single vaccine and upload their validation or proof by accessing my.delaware.gov or id.delaware.gov which must be accessed through the State's network or through Virtual Private Network (VPN). Employees may also access this process through the [Coronavirus COVID-19 HR for State Employees](#) webpage.
- 3) Any CMS certified health care staff employee hired after January 27, 2022, or **March 3, 2022**, if healthcare facilities meet vaccination rates for extension, or who is on full-time STD or other

employment status that prohibits their ability to complete the **COVID-19 Vaccination Certification**, is required to complete the vaccination certification on their first work shift or within their first shift of returning to work, regardless of whether the return to work is full-time.

COVID-19 Testing Certification Process for CMS-Certified Employees

- 1) The COVID-19 Testing Certification Process only applies to **CMS certified health care staff** if they have been approved for an exemption or are waiting on a determination on a request for an exemption from this policy. Employees must access the testing certification process through my.delaware.gov or id.delaware.gov which must be accessed through the State's network or through Virtual Private Network (VPN). Employees may also access this process through the [Coronavirus COVID-19 HR for State Employees](#) webpage.
- 2) Employees may seek guidance on where and how to get tested on the [DPH website](#). Testing locations and details on ordering self-test kits can be found on the [DPH website](#).
- 3) If employees test positive for COVID-19, they should refer to the [COVID-19 FAQs for State Employees](#) which provides, in part, to contact your health care provider for further guidance and follow your agency's standard leave request process. **If employees who tested positive are completing the COVID-19 Testing Certification process, per the Division of Public Health (DPH), employees may submit their results to the Human Resources office to excuse them from the weekly testing for 90 days during which the employee may still test positive.**

a. ADA Reasonable or Religious Accommodations Request

- 1) Employees may request a reasonable accommodation from this policy based on either a medical exemption or based on a sincerely held religious belief or practice exemption. Employees who are requesting an exemption must complete the [ADA Reasonable Accommodation Request form](#) or the [COVID-19 Religious Accommodation Request form](#) and submit supporting documentation to the Human Resources office. While waiting on a determination and/or having received an approved accommodation, employees will be required to submit to the COVID-19 Testing Certification process on a weekly basis, if eligible and applicable.
- 2) Employees hired after September 30, 2021, must request an accommodation, if needed, within seven (7) days of their start date or within seven (7) days of being notified that they are covered by this policy, whichever is earlier. Employees may be required to test weekly from their start date through the COVID-19 Testing Certification process. If an employee hired after September 30, 2021, is on full-time STD or other employment status that prohibits them from completing their COVID-19 Testing Certification, the employee may request an accommodation, if needed, within their first week of returning to work, regardless of whether the return to work is full-time.
- 3) Requests for accommodation by candidates being hired into **CMS certified health care staff** positions will be reviewed by the HR office and employees will be notified of the determination no later than **7 calendar days** after submission unless there are mitigating circumstances. While waiting for a determination and/or after receiving an approved accommodation, employees may be required to:
 - a. test on their own time and may be personally responsible for the cost.
 - b. wear a face mask or face shield.
 - c. work at a social distance from co-workers or the public.
 - d. work a modified shift.

- e. telework; or
- f. accept a temporary reassignment.

4) Employees approved for an exemption that includes testing must complete their COVID-19 testing during the 7 days before their initial COVID-19 Testing Certification and attest and upload their testing proof weekly after that.

6. EXCLUSIONS OR EXCEPTIONS

- CMS non-certified staff; appointed Commissioners and Board Members who are not employees; employees of organizations contracting with the State of Delaware, unless they provide services to Medicare- and Medicaid-certified providers and suppliers and meet the CMS criteria for on-site work. Any person who otherwise would be covered by the CMS regulation but who works 100 percent of their time remotely, which does not include temporary telecommuting.

7. DISSEMINATION AND TRAINING

- The Human Resources office shall provide a review of this policy and procedures to current employees and shall provide a review of this policy and procedures to employees who are new to their respective agencies as part of their initial orientation and no later than the first week of employment.
- Employees are to acknowledge receipt and review of this policy within 30 days of receiving notification by the Delaware Learning Center.

8. DATA REPORTING

- a. DHR will cause weekly reports to be generated of individuals who, under this policy, are required to be tested weekly for COVID-19 but have not provided their attestation or uploaded their weekly testing proof. DHR will work with agency management to notify employees of their failure to submit the required certification form along with a deadline to respond. Employees will have the opportunity to provide an explanation for non-compliance which will be reviewed by a DHR representative and addressed appropriately.
- b. CMS will work directly with the State Survey Agencies to regularly review compliance with Medicare and Medicaid regulations across multiple health care settings.
- c. Human Resources will enter disciplinary information resulting on this COVID-19 policy into PHRST.

9. ASSOCIATED POLICY/REGULATIONS/INFORMATION

- [Americans with Disabilities Act \(ADA\) Policy and Procedure](#)
- [CMS Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule](#)
- [CMS Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule FAQs](#)
- [Coronavirus \(COVID-19\) HR Resources for State Employees](#)
- [COVID-19 Vaccination and Testing Frequently Asked Questions](#)
- [Delaware COVID-19 Testing Resources](#)
- [Delaware COVID-19 Vaccination Resources](#)
- [Federal Non-Discrimination and Civil Rights Laws](#)

10. FORMS ASSOCIATED WITH THIS POLICY

- [ADA Reasonable Accommodation Request Form](#)
- [COVID-19 Religious Accommodations Request Form](#)

This policy is not intended to create any individual right or cause of action not already existing and recognized under State and Federal law.