



COVID-19 VACCINATION AND TESTING POLICY AND PROCEDURES

Policy #: Temporary Statewide Policy	Authority: CMS Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule; State of Delaware Declaration of a Public Health Emergency July 12, 2021; 20 Del. C. Chapter 3137
Effective Date: November 19, 2021	Supersedes: September 29, 2021
Application: Executive Branch Agencies	Signature: 

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 (IFR), effective November 5, 2021, and to make adjustments to the State’s tracking process.

2. SCOPE

This policy applies to 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. Non-Executive Branch agencies and State contractors may adopt the procedures set forth in the policy to the extent required by law or other government mandate. Individuals who are associated with the State of Delaware but not paid through PHRST, shall follow agency procedure to adhere to the policy.

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.
- **CMS (Centers for Medicare & Medicaid Services) Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule (IFR)** – A regulation issued by the Federal government requiring all staff at provider and supplier employers who are Medicare- and Medicaid-certified to be vaccinated prior to providing any care, treatment, or other services for the employer, referred to as health care facilities, and/or its patients.
- **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.
- **Fully-vaccinated** – Defined by the Centers for Disease Control and Prevention (CDC) as two weeks after your second shot of a two-dose vaccination or two weeks after your first shot of a one-dose vaccination.
- **Medical Exemption** – For employees not covered by the IFR, a medical condition that may prohibit an employee from receiving the COVID-19 vaccination and/or COVID-19 testing. For employees covered by the IFR, a medical condition that may prohibit an employee from receiving the COVID-19 vaccination. 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 IFR, Delaware Psychiatric Center (DPC), Delaware Hospital for the Chronically Ill (DHCI), Stockley Center, Delaware Veterans Home (DVH), and employees of the Division of Management Services who meet the CMS criteria for on-site work.
- **Primary Vaccination Series**- Having received a single dose vaccine or all doses of a multi-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 an 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 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.

4. POLICY

- a. Employees providing health care services and/or health care support services in health care facilities, are required to receive and provide proof of, at a minimum, the first dose of a primary vaccination series or a single dose COVID-19 vaccine by December 6, 2021 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).

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.

- b. Employees providing health care services and/or health care support services in Medicare- or Medicaid-certified providers or suppliers, as defined above, are required to be fully vaccinated and provide validation by January 4, 2022, 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. Vaccination requirements under the IFR are not limited to individuals who are present in the facility or at the physical site of patient care based upon frequency. 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, have had the first dose of their primary vaccination series or a single dose COVID-19 vaccine by December 6, 2021, and must be fully vaccinated by January 4, 2022.
- d. Employees covered by the IFR must be able to provide validation of being fully vaccinated by January 4, 2022. 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.
- e. Employees covered by the IFR must bring proof of having received, at a minimum, the first dose of their primary vaccination series or a single dose COVID-19 vaccine, beginning the first work shift of December 6, 2021. Employees covered by the IFR must bring proof of being fully vaccinated beginning the first work shift of January 4, 2022. This paragraph does not apply if an employee has been granted an exemption from this policy or has applied for such exemption and is awaiting the determination.
- f. Employees not covered by the IFR must certify (attest) that they are fully vaccinated for COVID-19 or be required to test for COVID-19 on a weekly basis and certify to this testing weekly. Employees who are minors must receive documented permission from their parent or guardian for certifications.
- g. Employees not covered by IFR must certify (attest) that they are fully vaccinated for COVID-19 by completing the **COVID-19 Vaccination Certification** process if that is their selection. Certifications are valid for one (1) year.
- h. If an employee not covered by the IFR does not certify that they are fully vaccinated, the employee will be required to participate in the **COVID-19 Testing Certification** process described in the Procedure section of this policy. The COVID-19 Testing Certification process includes weekly COVID-19 testing. Employees completing the COVID-19 Testing Certification process may order a test and test during their working hours. FLSA-covered employees using more than de minimis non-work time in the required testing process may be paid with proof of used time.
- i. 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. Employees covered by the IFR may request an exemption from this policy, which must be submitted by December 6,

2021 or within seven (7) days of employee being notified that they are covered by the IFR and this policy. 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.

- j. 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 and will no longer be required to submit to the weekly COVID-19 Testing Certification process.
- k. Employees not covered by the IFR will not be required to provide documentation of their **vaccination** status at the time of certification; however, the Human Resources office may request official COVID-19 proof of vaccination at any time for any time period this policy is effective. Employees who have attested that they are vaccinated but are unable to provide proof of vaccination, or validate, upon request may be subject to discipline including leave without pay up to and including termination.
- l. Employees eligible for testing certification will not be required to provide documentation of their test or **test results** at the time of certification; however, the Human Resources office may request proof of testing at any time and for any time period this policy is effective. Employees who have attested that they have been tested but are unable to provide proof of testing, or validate, upon request may be subject to discipline including leave without pay up to and including termination.
- m. It is an employees' responsibility to use testing where validation can be obtained. Employees are responsible for maintaining any confirmation of COVID-19 testing or Testing Certification (e.g., print, photo, screenshot, email).
- n. All requested validation documentation provided by the employee under this policy shall be retained in the employee's confidential medical file according to the applicable retention schedule. Certain information may be shared with other DHR staff on a need-to-know basis, only as authorized by law.
- o. In accordance with COVID-19 Leave Policy, employees may utilize available [Federal Paid Sick Leave](#) to receive the vaccination, or due to side effects resulting from receiving the vaccination per the Policy. If the employee's COVID-19 leaves are exhausted, the employee may use Sick Leave per the Merit Rules.
- p. 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](#).
- q. Take-home rapid antigen test kits and over-the-counter test kits are not acceptable for testing certification.
- r. Employees who are non-compliant or violate this policy may be subject to discipline including leave without pay up to and including termination.
- s. 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.

- t. This policy is subject to change at the Department of Human Resources' (DHR's) discretion based on current public health guidance.
- u. 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 IFR.

5. PROCEDURES

- a. Employees covered by the IFR must bring proof of their vaccination status per this policy, beginning the first work shift of December 6, 2021. Employees covered by the IFR must bring proof of being fully vaccinated beginning the first work shift of January 4, 2022. This paragraph does not apply if an employee has been granted an exemption from this policy or has applied for such exemption and is awaiting a determination.
- b. The Department of Human Resources began accepting vaccination certifications for employees on September 1, 2021. Employees who are minors must receive documented permission from their parent or guardian for certifications.
- c. **COVID-19 Vaccination Certification Process for employees not covered by the IFR**
 - 1) Employees working for the State between September 1, 2021 and September 30, 2021 must complete the COVID-19 Vaccination Certification process by September 30, 2021, if vaccination certification is their option. If during this time, 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 within their first week of returning to work, regardless of whether the return to work is full-time if vaccination certification is their option.
 - 2) Employees hired after September 30, 2021 must complete the COVID-19 Vaccination Certification process within seven (7) calendar days after their date of hire if vaccination certification is their option.
 - 3) If an employee hired after September 30, 2021 is on full-time STD or other employment status that prohibits their ability to complete the COVID-19 Vaccination Certification, the employee is required to complete the vaccination certification within their first week of returning to work, regardless of whether the return to work is full-time if vaccination certification is their option.
 - 4) Employees must complete the [COVID-19 Vaccination Certification process](#) through the State's single sign-on 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. Employees who do not have access to the State's single sign-on service are to complete the fillable [COVID-19 Vaccination Certification form](#) or print the form, and provide to the DHR mailbox at CovidCert@delaware.gov or hand-deliver the form to their Human Resources office if employee does not have access to email. To be considered a valid submission of the COVID-19 Vaccination Certification form all requested information must be complete and legible. The form is available on the [Department of Human Resources' Policy and Procedure](#) webpage.
 - 5) If selected for validation, the employee will be responsible for providing proof of vaccination within three (3) business days notification to their HR office. The HR office will keep a copy of validation (proof of vaccination) in the employee's confidential medical file.

- 6) The COVID-19 Testing Certification is effective September 30, 2021. Employees who are minors must receive documented permission from their parent or guardian for certifications.

d. **COVID-19 Testing Certification Process**

- 1) Employees who request an exemption may be required to participate in the COVID-19 Testing Certification process.
- 2) This COVID-19 Testing Certification Process only applies to employees covered by the IFR if they have been approved for an exemption or are waiting for a determination on a request for an exemption from the IFR.
- 3) Employees not covered by the IFR who choose not to or cannot complete the COVID-19 Vaccination Certification process must initiate the COVID-19 Testing Certification process. The COVID-19 Testing Certification process involves the employee's weekly attestation of receiving a COVID-19 test within the previous 7-day period. **In order to attest, the employee must have had a COVID-19 test in the previous seven (7) days.** The employee will be asked to provide documentation of the testing to their agency human resources office upon request.
- 4) Employees working for the State between September 1, 2021 and September 30, 2021 must complete the initial COVID-19 Testing Certification requirements starting on September 30, 2021, if they do not certify that they are fully vaccinated. If during this time, an employee is on full-time FMLA, full-time 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 Testing Certification within their first week of returning to work, regardless of whether the return to work is full-time.
- 5) Employees not covered by the IFR hired after September 30, 2021 must initiate their COVID-19 Testing Certification requirements within seven (7) calendar days after their date of hire. The testing certification process includes weekly testing starting with their first week of employment per #4 of this section. If an employee hired after September 30, 2021 is on full-time STD or other employment status that prohibits their ability to complete the COVID-19 Testing Certification weekly, the employee is required to complete the testing certification within their first week of returning to work, regardless of whether the return to work is full-time.
- 6) **To initiate the testing requirement, employees must complete their COVID-19 testing during the 7 days before their initial COVID-19 Testing Certification and weekly after that.** Starting September 30, 2021, employees with State's single sign-on must access the testing certification process through single sign-on. Employees may also access this process through the [Coronavirus COVID-19 HR for State Employees](#) webpage. This requirement excludes weeks where the employee is not working (e.g., full-time FMLA, full-time STD, or full week annual/vacation leave).
- 7) Eligible employees who do not have access to the State's single sign-on service are to complete the fillable COVID-19 Testing Certification form, or print the form, and provide it to the DHR mailbox weekly at CovidCert@delaware.gov or hand-deliver the form to their Human Resources office if employee does not have access to email. To be considered a valid submission of the COVID-19 Testing Certification form all requested information must

be complete and legible. The form will be available on the [Department of Human Resources' Policy and Procedure](#) webpage.

- e. 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](#).
 - 1) If an employee tests 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 the positive employee is completing the COVID-19 Testing Certification process, the employee may submit medical documentation to the Human Resources office to excuse them from the weekly testing for a specific amount of time, during which the employee may still test positive.
 - 2) When requested, the employee will be responsible for providing proof of testing within three (3) business days to their Human Resources office.
- f. **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 for a determination and/or having received an approved accommodation, employees may be required to submit to the COVID-19 Testing Certification process on a weekly basis.
 - 2) Employees working for the State between September 1, 2021 and September 30, 2021 are to request an accommodation, if needed, as soon as possible and no later than September 30, 2021. Candidates covered by the IFR must request an accommodation by December 5, 2021. If during this time, an employee is on full-time FMLA, full-time STD, etc. or on full weeks of annual/vacation leave, parental leave, or other full-time leave, the employee is to request an accommodation, if needed, within their first week of returning to work, regardless of whether the return to work is full-time.
 - 3) Employees hired after September 30, 2021 must request an accommodation, if needed, within their first week of employment and may be required to test weekly from their date of hire through the COVID-19 Testing Certification process. Candidates covered by the IFR must request an accommodation, if needed, upon hire. 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.
 - 4) Requests for accommodation by employees not covered by the IFR will be reviewed by the Human Resources office and employees will be notified of the determination no later than 15 business days after submission unless there are mitigating circumstances. Requests for accommodation by candidates being hired into positions covered by the IFR will be reviewed by the Human Resources office and employees will be notified of the determination no later than 7 business days after submission unless there are mitigating circumstances. While waiting for a determination and/or after receiving an approved

accommodation, employees covered by the IFR must wear a mask and comply with the entity's requirements for the position while in the workplace. Other employees may be required to:

- a) test on their own time and 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.

6. EXCLUSIONS OR EXCEPTIONS

- 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 IFR but who works 100 percent of their time remotely.

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.

8. DATA REPORTING

- a. The Department of Human Resources will conduct weekly validation checks of both vaccination certification and testing certification statuses. DHR representatives will contact selected employees to request proof of either vaccination or testing and will include a deadline for the employee to respond with the requested information.
- b. DHR will also receive weekly reports of individuals who, under this policy, are required to be tested weekly for COVID-19 but have not provided a certification form. 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.
- c. CMS will work directly with the State Survey Agencies to regularly review compliance with Medicare and Medicaid regulations across multiple health care settings.

9. ASSOCIATED POLICY/REGULATIONS/INFORMATION

- [Americans with Disabilities Act \(ADA\) Policy and Procedure](#)
- [CMS Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule FAQs](#)
- [CMS Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule](#)
- [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](#)

10. FORMS ASSOCIATED WITH THIS POLICY

- [ADA Reasonable Accommodation Request Form](#)
- [COVID-19 Religious Accommodations Request Form](#)
- [COVID-19 Testing Certification Form](#)
- [COVID-19 Vaccination Certification 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.