

CMS Rule – Different Guidance and Timelines for Different States

What does the guidance say?

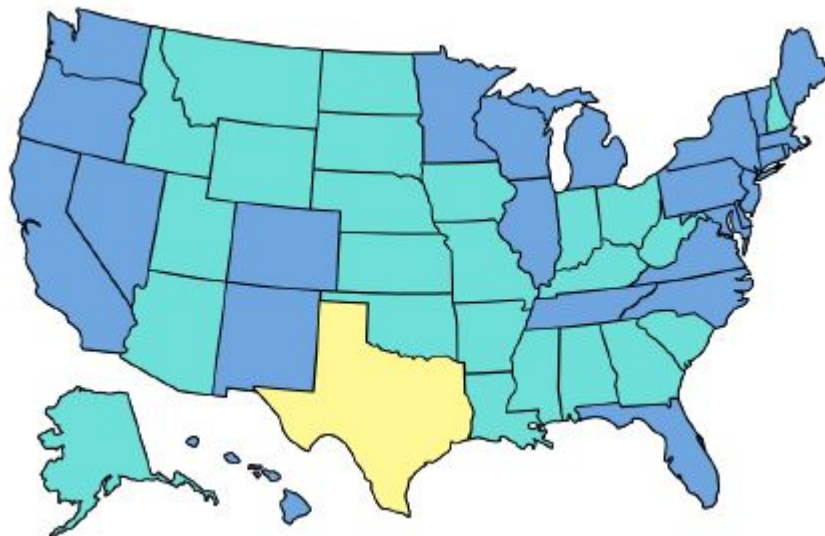
CMS’s guidance interpreting many fundamental requirements of the CMS Rule has been consistent since the Rule was first issued. The scope of “staff” the requirements of the Rule apply to is broadly construed, reaching all who interact with other staff or patients, and essentially only carving out those who telework 100% of the time. CMS’s definition of “vaccinated” continues to not require booster shots. CMS last updated its FAQs guidance on December 28, 2021.

Which CMS guidance document applies to which states?

The December 28, 2021 guidance from CMS remains in effect for the states listed below. The January 14, 2022 guidance from CMS sets forth a modified compliance and enforcement timeline for providers and suppliers in jurisdictions that were, until January 13, 2022, subject to a court injunction blocking enforcement of the CMS Rule. Finally, the January 20, 2022 guidance from CMS sets forth a modified compliance and enforcement timeline only applicable to Texas.

Specifically:

- The **December 28, 2021 guidance** continues to apply to the following 25 states, as well as the District of Columbia and the U.S. Territories (“Group 1,” colored blue in the map and chart below):
 - California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, North Carolina, Nevada, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, Washington, and Wisconsin
- The **January 14, 2022 guidance** applies to the following 24 states (“Group 2,” colored green in the map and chart below):
 - Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Utah, West Virginia, and Wyoming
- The **January 20, 2022 guidance** applies only to Texas (colored yellow in the map and chart below)



What are my compliance timeframes?

Each group of states has a compliance timeframe with deadlines occurring 30, 60, and 90 days after issuance of the applicable guidance. The table below outlines the phases of compliance for each group of states. Federal, state, accrediting organization, and CMS-contracted surveyors will begin surveying for compliance with these requirements as part of initial certification, standard recertification or reaccreditation, and complaint surveys **30 days** following issuance of the applicable guidance.

	Phase 1	Phase 2	Full Enforcement
GROUP 1 Deadline	January 27, 2022 (30 days after Dec. 28 guidance)	February 28, 2022 (60 days after Dec. 28 guidance, +2 days because 60 days falls on Saturday, Feb. 26)	March 28, 2022 (90 days after Dec. 28 guidance)
GROUP 2 Deadline	February 14, 2022 (30 days after Jan. 14 guidance, +1 day because 30 days falls on Sunday, Feb. 13)	March 15, 2022 (60 days after Jan. 14 guidance)	April 14, 2022 (90 days after Jan. 14 guidance)
Texas Deadline	February 21, 2022 (30 days after Jan. 20 guidance, +2 days because 30 days falls on Saturday, Feb. 19)	March 21, 2022 (60 days after Jan. 20 guidance)	April 20, 2022 (90 days after Jan. 20 guidance)
Compliance	<ol style="list-style-type: none"> 1. Facility has requisite policies & procedures.¹ 2. 100% of staff have either: <ul style="list-style-type: none"> • At least one vaccine dose; • Qualifying exemption (pending or granted); or • CDC-recommended delay. 	<ol style="list-style-type: none"> 1. Facility has requisite policies & procedures.¹ 2. 100% of staff have either: <ul style="list-style-type: none"> • All vaccine doses;² • Qualifying exemption (granted); or • CDC-recommended delay. 	
Enforcement Thresholds	A facility that is above 80% and has a plan to achieve 100% staff vaccination rate within 60 days would not be subject to additional enforcement action. ³	A facility that is above 90% and has a plan to achieve 100% staff vaccination rate within 30 days would not be subject to additional enforcement action. ³	Within 90 days of issuance of the applicable guidance, facilities failing to maintain compliance with the 100% standard for compliance may be subject to enforcement action.
Enforcement Action	Failure to meet the 100% compliance or applicable 80% / 90% partial compliance thresholds may result in additional enforcement actions depending on the severity of the deficiency and the type of facility (e.g., plans of correction, civil monetary penalties, denial of payment, termination). ⁴		

- 1 Facilities must have policies and procedures developed and implemented for ensuring all facility staff, regardless of clinical responsibility or patient or resident contact, are vaccinated for COVID-19.
- 2 This means one dose of a single-dose vaccine or all doses of a multiple-dose vaccine series. The CMS Rule does not require individuals to have received booster doses. The requirements are considered to be satisfied once the individual has received the doses; compliance by the deadline does not require completion of the 14-day waiting period after vaccination.
- 3 CMS noted that states should work with their CMS location for cases that exceed these partial compliance thresholds yet pose a threat to patient health and safety.
- 4 Noncompliant facilities (including those that meet the partial compliance thresholds described above) will receive notice of noncompliance with the 100% standard through CMS Form-2567, using the applicable Automated Survey Processing Environment (ASPEN) federal tag.