

## Healthcare Law Alert: Governor Murphy Signs Executive Order 283, Drops COVID Test Option from Executive Order 252, Requires Vaccines and Booster for Healthcare Workers

1/21/2022

On January 19, 2022, New Jersey Governor Phil Murphy signed [Executive Order 283 \(EO 283\)](#), requiring healthcare facilities and high-risk congregate settings covered by the EO to adopt and implement policies requiring covered workers at covered settings to be up to date with their COVID-19 vaccinations, including having received a booster dose.

Previously, [EO 252](#), which was issued on August 6, 2021, required covered healthcare facilities and high-risk congregate settings to maintain policies that require covered workers to either provide proof that they have been fully vaccinated or be subject to COVID-19 testing, at minimum, one to two times per week. EO 283 eliminates the testing option that was previously allowed and requires covered workers to be fully vaccinated, including a booster dose, while leaving intact the ability to grant exemptions for those with disabilities, medical conditions, or sincerely held religious beliefs. Any provisions of EO 252 that are inconsistent with the requirements of EO 283 are overridden by EO 283.

### Covered Settings

For purposes of EO 283, covered healthcare and high-risk congregate settings include:

- Acute, pediatric, inpatient rehabilitation, and psychiatric hospitals, including specialty hospitals and ambulatory surgical centers;
- Long-term care facilities, including the state veterans homes;
- Intermediate care facilities, including the state developmental centers;
- Residential detox, short-term and long-term residential substance abuse disorder treatment facilities;
- Clinic-based settings like ambulatory care, urgent care clinics, dialysis centers, Federally Qualified Health Centers, family planning sites, and opioid treatment programs;
- Community-based healthcare settings including Program of All-inclusive Care for the Elderly and pediatric and adult medical day care programs;
- Licensed home health agencies and registered healthcare service firms operating within the state;
- State and county correctional facilities;
- Secure care facilities and residential community homes operated by the Juvenile Justice Commission;
- Licensed community residences for individuals with intellectual and developmental disabilities (IDD) and traumatic brain injury (TBI);
- Licensed community residences for adults with mental illness;
- Certified day programs for individuals with IDD and TBI; and
- Group homes and psychiatric community homes licensed by DCF.

This includes licensed ambulatory care facilities. *The EO does not cover private physician offices; however, practitioners that render services at hospitals or other licensed facilities covered by the EO will be required to comply with the vaccination requirements of those facilities.*

### **Covered Workers**

For purposes of EO 283, covered workers are defined as:

- Full and part-time employees;
- Contractors; and
- Other individuals working in the covered setting, including individuals providing operational, custodial, or administrative support.

### **“Up to Date” with COVID-19 Vaccinations**

For purposes of EO 283, a covered worker will be considered “up to date” with the worker’s COVID-19 vaccinations if the worker has received a complete primary series, which consists of either two doses of a 2-dose series of an mRNA COVID-19 vaccine or a single dose of a single dose COVID-19 vaccine, and any booster doses for which the worker is eligible as recommended by the Centers for Diseases Control and Prevention.

It is notable that the requirement for covered workers to obtain a booster shot, when eligible, exceeds the current Centers for Medicare & Medicaid Services (CMS) Omnibus COVID-19 Health Care Staff Vaccination interim final rule (CMS Rule) that is applicable to Medicare- and Medicaid-certified healthcare facilities covered by that rule.

### **Deadlines**

Covered healthcare settings subject to the CMS Rule:

- Unvaccinated covered workers must obtain their first dose of the primary series of COVID-19 vaccination by January 27, 2022.
- All covered workers must provide adequate proof that they are up to date with their COVID-19 vaccination by February 28, 2022. However, covered workers who become newly eligible for a booster shot after the February 28 deadline will be required to submit proof of their booster shot within three weeks of becoming eligible.

Covered healthcare settings not subject to the CMS Rule and covered high-risk congregate settings:

- Unvaccinated covered workers must obtain their first dose of the primary series of COVID-19 vaccination by February 16, 2022.
- All covered workers must provide adequate proof that they are up to date with their COVID-19 vaccination by March 30, 2022. However, covered workers who become newly eligible for a booster shot after the March 30, 2022 deadline will be required to submit proof of their booster shot within three weeks of becoming eligible.

### **Continued Testing Until Up to Date and Additional Information**

EO 283 also requires that covered workers currently subject to testing under EO 252 must continue once to twice weekly testing until they provide adequate proof that they are up to date with their vaccinations based on the applicable deadline. Additionally, EO 283 requires covered settings to have a disciplinary process for noncompliance, including and up to termination of employment.

EO 283 will not impact a covered setting’s ability to impose more stringent vaccination or testing requirements on workers, including any requirement for more frequent testing.

If you have any questions about the EOs discussed above or need assistance in implementing your COVID-19 vaccination

policies, please feel free to contact any of the attorneys listed below.

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