

New Jersey Mandates COVID-19 Vaccination or Weekly Testing for Workers in Health Care and Congregate Settings

Article By:

Health Care and Life Sciences Practice Group

On August 6, 2021, New Jersey Governor Philip Murphy signed [Executive Order 252](#) (“Order 252”) requiring health care and high-risk congregate settings to maintain a policy requiring workers to either provide adequate proof of vaccination or submit to weekly COVID-19 testing. Although Governor Murphy declared an end to the state’s Public Health Emergency in June, he retained the authority to issue orders related to vaccine distribution, administration, and management as well as COVID-19 testing and data collection. Following the CDC’s vaccine guidance, Order 252 recognizes the “importance of heightened mitigation protocols in certain congregate and health care settings,” and it takes additional steps to address the significant risk of spread and the vulnerability of the populations served in those settings.

Who is covered?

Health care facilities are defined as hospitals, specialty hospitals, ambulatory surgical centers, long-term care facilities, intermediate care facilities, residential substance abuse disorder treatment facilities, clinic-based settings, community-based health care settings, and registered health care service firms operating within New Jersey.

High-risk congregate settings include state and county correctional facilities, secure care facilities 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, and certified day programs for individuals with IDD and TBI.

Covered workers encompass employees, both full and part-time, contractors, and other individuals working in health care facilities and high-risk congregate settings, including individuals providing operational or custodial services or administrative support.

What is required?

Health care facilities and high-risk congregate settings (“Covered Settings”) must implement a workplace policy requiring covered workers to either (1) “provide adequate proof that they have been fully vaccinated” or (2) “submit to COVID-19 testing at a minimum of one to two times weekly.” Proof of one’s fully vaccinated status may be substantiated by the following documents:

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- The CDC COVID-19 Vaccination Card issued to the vaccine recipient by the vaccination site, or an electronic or physical copy of the same;
 - An official record from the New Jersey Immunization Information System (NJIS) or other state immunization registry;
 - A record from a health care provider's portal/medical record system on official letterhead signed by a licensed physician, nurse practitioner, physician's assistant, registered nurse or pharmacist;
 - A military immunization or health record from the United States Armed Forces; or
 - A docket mobile phone application record or any state specific application that produces a digital health record.

The above documents must also state (1) that the administered vaccine is a COVID-19 vaccine authorized for Emergency Use Authorization in the United States or the World Health Organization and (2) the administration date for each dose. Under Order 252, a covered worker is considered *fully vaccinated* for COVID-19 "two weeks or more after they have received the second dose in a two-dose series or two weeks or more after they have received a single-dose vaccine." Any covered worker who is not fully vaccinated, whose vaccination status is unknown, or who has failed to provide sufficient documentation, is considered an *unvaccinated* covered worker.

Unvaccinated covered workers must undergo screening tests "at a minimum of one to two times per week." A Covered Setting may choose to provide or administer testing on site or to require workers to submit test results. Covered Settings must track and report test results to local health departments. The Order does not address who is responsible for bearing the costs associated with testing, or whether the time spent being tested is compensable time.

Minimum Requirements & Data Protection

Covered Settings are free to mandate additional or stricter requirements to a vaccination or testing policy or to require more frequent testing of covered workers. In other words, Order 252 creates a baseline requirement for Covered Settings, and any vaccination or testing policy must at least "comport with the minimum requirements." In addition, Order 252 prohibits municipalities, counties, or any agency of the State from enacting any order, rule, or regulation that in any way conflicts or interferes with the requirements of the Order.

Covered Settings collecting vaccination information from covered workers must do so in compliance with all federal and state laws, including the Americans with Disabilities Act, which regulates the collection and storage of such information.

Effective Date

Order 252 takes effect on September 7, 2021, at which time "any covered workers that have not provided adequate proof that they are fully vaccinated must submit to weekly or twice weekly testing on an ongoing basis until fully vaccinated." Any Covered Setting that fails to comply with Order 252 by September 7, 2021, may be subject to penalties.

Alexandria Adkins contributed to this article.

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