

## COVID-19 VACCINATION REQUIREMENT POLICY

### I. Overview and Summary

This policy applies to any DHS employee who works in any of the following DHS Healthcare Facilities:

- Arkadelphia Human Development Center
- Arkansas Health Center
- Arkansas State Hospital
- Booneville Human Development Center
- Conway Human Development Center
- Jonesboro Human Development Center
- Southeast Arkansas Human Development Center (Warren)

This policy also applies to any DHS surveyor working in the Office of Long-Term Care who enters certain healthcare facilities.

If this policy applies to you, and you are not fully vaccinated against COVID-19, you must do **ONE** of the following:

- Get the first dose of the Pfizer-BioNTech COVID-19 vaccine no later than February 14, 2022, and get the second dose no later than March 15, 2022; OR
- Get the first dose of the Moderna COVID-19 vaccine no later than February 14, 2022, and get the second dose no later than March 15, 2022; OR
- Get one dose of the Johnson & Johnson COVID-19 vaccine no later than February 14, 2022; OR
- Apply for a medical or religious exemption from vaccination, in writing using the process outlined below.

You must provide written proof of your vaccination if you do not apply for an exemption.

If you wish to apply for a medical or religious exemption from vaccination, you must complete the appropriate form – COVID-19 Vaccination Medical Exemption Form or COVID-19 Vaccination Religious Exemption Form and submit it to your HR Liaison before the vaccination deadline. You may receive a religious exemption if you have a sincerely held religious belief, observance, or practice against COVID-19 vaccination. You may receive a medical exemption if you present documentation from your medical provider as described in this policy.

## II. Definitions

The following definitions apply throughout this policy unless the context clearly requires otherwise.

- (A) “Accommodation Compliance” means the requirements that apply to an Employee who is exempt from Vaccine Compliance.
- (B) “DHS Healthcare Facility” means the Arkansas Health Center, the Arkansas State Hospital, and all DHS Human Development Centers.
- (C)(1) Employee” means a DHS employee, contractor, or volunteer who either:
  - (A) Works in a DHS Healthcare Facility; or
  - (B) Enters a Medicare and Medicaid-Certified Provider or Supplier on behalf of DHS as a surveyor.
- (2) However, this policy does not apply to an Employee who works one hundred percent (100%) of the time from home.
- (D) “Medicare and Medicaid-Certified Provider or Supplier” means any one of the following: ambulatory surgical centers, hospices, psychiatric residential treatment facilities, programs of all-inclusive care for the elderly, hospitals (acute care hospitals, psychiatric hospitals, hospital swing beds, long term care hospitals, children’s hospitals, transplant centers, cancer hospitals, and rehabilitation hospitals/inpatient rehabilitation facilities), long term care facilities, including skilled nursing facilities and nursing facilities, intermediate care facilities for individuals with intellectual disabilities, home health agencies, comprehensive outpatient rehabilitation facilities, critical access hospitals, clinics, rehabilitation agencies, and public health agencies as providers of outpatient physical therapy and speech-language pathology services, community mental health centers, home infusion therapy suppliers, rural health clinics, federally qualified health centers, end-stage renal disease facilities.

The Arkansas Health Center, the Arkansas State Hospital, and all DHS Human Development Centers are each a Medicare and Medicaid-Certified Provider or Supplier.
- (E) “Medical Practitioner” means a licensed medical practitioner, who is (1) not the individual requesting the exemption, and (2) who is acting within their respective scope of practice as defined by, and in accordance with, all applicable laws of the State of Arkansas.
- (F) “Multi-Dose Vaccine” means either the Pfizer-BioNTech COVID-19 vaccine or the Moderna COVID-19 vaccine.

- (G) "Single-Dose Vaccine" means the Johnson & Johnson COVID-19 vaccine.
- (H) "Vaccine Compliance" means providing proof, in an acceptable form, that an Employee has received all required doses of a Multi-Dose Vaccine or Single-Dose Vaccine by the dates identified below, unless the Employee is granted a medical or religious exemption under this policy.

### **III. Vaccine Compliance**

#### **(A) For Current Employees as of January 31, 2022:**

- (1) An Employee must provide proof, in an acceptable form, that, prior to February 14, 2022, the Employee has received either (1) the first dose of a Multi-Dose Vaccine or (2) the only dose of a Single-Dose Vaccine.
- (2) An Employee must provide proof, in an acceptable form, that, prior to March 15, 2022, the Employee has received either (1) all required doses of a Multi-Dose Vaccine or (2) the only dose of a Single-Dose Vaccine.

#### **(B) For - Employees hired After January 31, 2022:**

- (1) All applicants for hire as an Employee will be asked to identify their COVID vaccination status.
- (2) Any offer to hire an individual as an Employee, will be contingent on the individual providing proof, in an acceptable form, that the individual received either (1) the first dose of a Multi-Dose Vaccine or (2) the only dose of a Single-Dose Vaccine. If the individual received a Multi-Dose Vaccine, the second dose must be received within thirty (30) days of hire.

- (C) Acceptable forms of proof include (1) a vaccination record card (or a legible photo of the card), (2) documentation of vaccination from a health care provider or electronic health record, or (3) a state immunization information system record.

### **IV. Medical Exemption**

- (A) An Employee is exempt from Vaccine Compliance if the Employee has a contraindication to each of the currently available COVID-19 vaccines, but only for so long as the contraindication is expected to last. To claim this exemption, the Employee must have a licensed medical practitioner complete the COVID-19 Vaccination Medical Exemption form provided by DHS that (1) identifies each of the currently available COVID-19 vaccinations as clinically contraindicated for the Employee, (2) describes each recognized clinical reason for the contraindication, and (3) identifies the length of time that the contraindication is expected to last.

- (B) An Employee who presents documentation with the COVID-19 Vaccination Medical Exemption form from a licensed medical practitioner of having received passive antibody therapy as treatment for COVID-19 is exempt from Vaccine Compliance for ninety (90) days after the last administration of the passive antibody therapy.
- (C) An Employee with COVID-19, with or without symptoms, and who presents documentation with the COVID-19 Vaccination Medical Exemption form from a licensed medical practitioner of a positive COVID-19 test or an attestation of a self-administered positive COVID-19 test, is exempt from Vaccine Compliance until the Employee has met the most current CDC criteria for discontinuing isolation. This exemption also applies to an Employee with COVID-19 who has received the first dose of a Multi-Dose Vaccine but not the second dose.
- (D) An Employee who wants to request a medical exemption from Vaccine Compliance must inform his or her HR Liaison. The Employee will be provided with a the COVID-19 Vaccination Medical Exemption form to have completed by a licensed medical practitioner and return to the HR Liaison. An Employee requesting a medical exemption is responsible for submitting the COVID-19 Vaccination Medical Exemption form to his or her licensed medical practitioner for completion and ensuring the completed COVID-19 Vaccination Medical Exemption form is returned to the HR Liaison in a timely manner. An Employee who requests a medical exemption will be subject to weekly COVID testing and continual use of PPE while the Employee's request is pending.

#### **V. Religious Exemption**

- (A) An Employee is exempt from Vaccine Compliance if receiving any COVID-19 vaccine would violate the Employee's sincerely held religious beliefs, observances, or practices. The religious belief, observance, or practice identified by the Employee shall be assumed to be of a religious nature and sincere. This presumption shall not be overcome unless the employer was aware, prior to the making of the request, of facts that provide an objective basis for questioning either the religious nature or the sincerity of a particular belief, observance, or practice. Further, the mere fact that an Employee has previously acted in a manner that is inconsistent with their professed belief, observance, or practice is not sufficient to overcome this presumption.
- (B) An Employee who wants to request a religious exemption from Vaccine Compliance must inform his or her HR Liaison. The Employee will be provided with a COVID-19 Vaccination Religious Exemption form to complete and return to the HR Liaison. The Employee must (1) affirm that the requirement to receive a vaccination for COVID-19 conflicts with the Employee's sincerely held religious belief, observance, or practice and (2) describe the nature of the Employee's religious belief, observance, or practice that conflicts with the requirement to receive a vaccination for COVID-19. An Employee who requests a religious

exemption from Vaccine Compliance will be subject to weekly COVID testing and continual use of PPE while the Employee's request is pending.

## **VI. Accommodation Compliance**

- (A) An Employee must meet the requirements of Vaccine Compliance unless the Employee has an approved Medical Exemption or Religious Exemption. An Employee with an approved Medical Exemption or Religious Exemption must satisfy all requirements of Accommodation Compliance.
- (B) An Employee satisfies the requirements of Accommodation Compliance if the Employee complies with the accommodation set forth on his or her approval form. Every accommodation will include at a minimum both weekly COVID testing and continual use of personal protective equipment (PPE), under terms as specified on his or her approval form.
- (C) If the Accommodation Compliance requirements imposed in response to the request for an accommodation do not, in the opinion of the requesting Employee, satisfactorily resolve the issue, the requesting Employee may initiate an appeal with the HR Liaison by submitting a written appeal request within five (5) business days of the determination.

## **VII. Non-Compliance**

- (A) An Employee who does not satisfy each of the requirements of either Vaccine Compliance or Accommodation Compliance does not comply with this policy.
- (B) The Centers for Medicare and Medicaid Services (CMS) interim final rule (IFR) requires that DHS make a contingency plan to ensure that the any Employee who does not comply with this policy will soon be vaccinated and will not provide care, treatment, or other services, in accordance with CMS guidance, at a DHS Healthcare Facility or act as a surveyor on behalf of DHS at a Medicare and Medicaid-Certified Provider or Supplier, until such time as the Employee complies with this policy.
- (C) For current Employees as of February 14, 2022, if the Employee has not satisfied the requirements of either Vaccine Compliance or Accommodation Compliance by February 14, 2022, the Employee will be counseled by his or her supervisor.
- (D) For current Employees as of March 15, 2022, if the Employee has not satisfied the requirements of either Vaccine Compliance or Accommodation Compliance by March 15, 2022, the Employee will be issued a written warning that directs the Employee to provide proof that the Employee (1) has received all required doses of a Multi-Dose Vaccine or, (2) the Employee received a Single-Dose Vaccine.

- (E) After March 15, 2022, any violation of this policy will be subject to disciplinary action as outlined in DHS Policy 1084 “Employee Discipline.”

### **VIII. Records**

- (A) Except as specifically described in this policy, DHS shall keep confidential all records that an Employee provides pursuant to this policy.
- (B) No record provided pursuant to this policy shall be placed in an Employee’s personnel file. Instead, each record provided pursuant to this policy shall be placed in a separate file.
- (C) The Employee’s protected and religious information will be kept confidential.
- (D) Notwithstanding the foregoing, nothing in this policy prohibits an Employee’s failure to comply with this policy from being described in a notice of disciplinary action that an Employee receives pursuant to this policy or DHS Policy 1084.

### **IX. Legal Authority**

On November 5, 2021, CMS promulgated an IFR that requires all Medicaid-Certified Providers and Suppliers that are regulated under Conditions of Participation to ensure that all applicable staff are vaccinated for COVID-19. Every DHS Healthcare Facility is a Medicaid-Certified Provider. Congress has given CMS broad statutory authority to establish health and safety regulations, which includes authority to establish vaccination requirements. Section 1102 of the Social Security Act (the “Act”) grants the Secretary of Health and Human Services authority to make and publish such rules and regulations, not inconsistent with the Act, as may be necessary to the efficient administration of the functions with which the Secretary of Health and Human Services is charged under the Act. Section 1871 of the Act grants the Secretary of Health and Human Services authority to prescribe regulations as may be necessary to carry out the administration of the programs under the Act.

Arkansas law directs the Arkansas Department of Human Services (“DHS”) to cooperate with the United States Government in matters of mutual concern pertaining to federally funded programs within the Department of Human Services' purview. Ark Code Ann. § 20-76-201(7). Arkansas law also directs DHS to utilize federal funding to the fullest extent possible to provide care to persons eligible for assistance or benefits under programs wholly or partially federally funded or fundable. Ark. Code Ann. § 25-10-129(a)(1). The IFR states that it preempts state and local laws to the extent that they may conflict with the IFR. Arkansas law also recognizes that federal laws and regulations affecting such programs as services to children and to the aged, blind, and individuals with disabilities; public assistance; and medical assistance are the supreme law of the land. Ark. Code Ann. § 25-10-129(a)(3).

This policy is created to comply with the IFR, and so fulfill the directives of Arkansas law. Any ambiguity in the language of this policy should be resolved in a manner that complies with the IFR. Further, DHS will amend or repeal this policy as necessary should the IFR be amended or repealed or otherwise invalidated by a Federal court.

