



## Frequently asked questions:

### **Ensuring NHS staff deployed into CQC-registered care homes have had the COVID-19 vaccination or are exempt**

13 August 2021, Version 1

#### **Introduction**

New government [regulations](#)<sup>1</sup> come into force on 11 November 2021, requiring care home staff to refuse entry to anybody who cannot evidence that they have had two doses of a Medicines and Healthcare products Regulatory Agency (MHRA) approved COVID-19 vaccine, or that they come within a specified exemption. This applies to all Care Quality Commission (CQC) regulated care homes providing nursing or personal care in England.

Implementing this government regulation will help to reduce the spread of COVID-19 in care homes. Thank you for your support with this important work.

These FAQs set out practical advice for commissioners, systems and providers to support efficient and consistent operationalisation of this government regulation.

These FAQs should be read alongside [DHSC operational guidance](#).

We will keep these FAQs under review and update them during the implementation process.

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<sup>1</sup> The Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021

## A: The new regulations

### 1. What is the role of the NHS in relation to this new regulation?

New government [regulations](#)<sup>2</sup> come into force on 11 November 2021, requiring care home staff to refuse entry to anybody who cannot evidence that they have had two doses of an MHRA-approved COVID-19 vaccine, or that they come within a specified exemption. This applies to all CQC-regulated care homes providing nursing or personal care in England.

Therefore, providers of all NHS-funded services, including sub-contractors, which enter care homes need to ensure staff can be legally admitted. Proactive workforce planning should take place to ensure service disruption is avoided.

Integrated care systems (ICSs) should communicate with all providers of NHS-funded services that enter care homes to ensure they are aware of this new regulation and have seen the [NHS England and NHS Improvement letter](#) and this supporting FAQ document. It is important that systems support NHS providers to ensure staff are retained in the health service and to ensure services are not disrupted.

### 2. When do employers need to act on these changes?

This new government regulation comes into force on 11 November 2021. Under current vaccination guidance,<sup>3</sup> eight weeks are required between the first and second vaccine dose. Therefore, all staff being deployed into a care home – who are not exempt – need to have had their first dose by **16 September 2021** at the latest.

Therefore, employers need to act now to:

- understand and document vaccination and exemption status of staff members
- actively support uptake of vaccination ahead of 16 September 2021
- proactively plan workforce deployment for services, ahead of 11 November, to avoid disruption to NHS provision in care homes
- ensure that relevant staff will be able to demonstrate, via the NHS app or otherwise, that they have either been fully vaccinated or are exempt from the requirement.

### 3. Which staff members in the NHS are in scope for this new regulation?

All staff working to fulfil a service in a care home funded by the NHS are in scope. This will include, but is not limited to:

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<sup>2</sup> The Health and Social Care Act 2008 (Regulated Activities) (Amendment) (Coronavirus) Regulations 2021

<sup>3</sup> [Most vulnerable offered second dose of COVID-19 vaccine earlier to help protect against variants](#) GOV.UK (www.gov.uk); and: [C1254-covid-19-vaccination-programme-fags-on-second-dose-v2.pdf](#) (england.nhs.uk)

- Primary care (general practice, dentistry, optometry and pharmacy), community health, mental health, learning disability and autism (MHLDA), acute teams providing outreach into care homes, non-emergency patient transport services, end of life community teams and staff attending to maintain medical equipment.
- NHS and foundation trusts, voluntary organisations, community interest companies, social enterprises, and independent sector providers delivering NHS-funded services, including sub-contractors.
- Staff not in a front-line caring role who visit a care home, for example in relation to Continuing Health Care or a training provider.
- All temporary, voluntary, bank and agency staff.

#### **4. How should providers satisfy themselves that their staff will meet the vaccination requirements?**

Providers of NHS-funded services need to ensure the necessary governance to ensure that their staff can legally be admitted to a care home, and service provision is not disrupted.

## **B: Proving COVID-19 vaccination status and exemption status**

#### **5. How should vaccination status be evidenced?**

Evidence of vaccination status should be provided via the NHS app, the NHS COVID pass via the NHS website, or an NHS letter. More details are set out in the [DHSC operational guidance](#).

#### **6. Who is exempt under the regulations?**

There are several exemptions set out in the government regulations. The [DHSC operational guidance](#) provides further guidance about those exemptions.

Exemptions relevant for NHS-funded services include:

- People who have evidence of a medical exemption.
- Members of the health service deployed for emergency response, which for the NHS means staff deployed as part of an emergency ambulance response, including community first responders.
- Under 18s.

It is important to note that frontline health and care staff aged 16 or over are eligible for a vaccine and should make sure they get a full course of an MHRA-approved COVID-19 vaccine before they turn 18. All 17 year olds will be able to book a vaccine up to three months before their 18th birthday. Visiting professionals who are under 18 will be able to enter the care home without showing proof of vaccination status, but may need to demonstrate proof that they are under 18.

## **7. Who is eligible for a medical exemption, and how will it be obtained and certified?**

Medical exemption eligibility will reflect the Green Book on Immunisation against infectious disease ([COVID-19: the green book, chapter 14a](#)) and clinical advice from The Joint Committee of Vaccination and Immunisation (JCVI).

Exemption status will be recorded by the care home and remain valid for 12 months, after which point evidence of exemption will require renewal.

The DHSC will publish an update to their operational guidance to provide more information on the following:

- a. Eligibility criteria for medical exemption
- b. How to obtain a medical exemption
- c. How a medical exemption will be verified and certified.

## **C: Staff and workforce planning**

### **8. Do commissioners need to update contracts?**

No. The NHS Standard Contract already requires the provider to perform its obligations under the contract in accordance with the applicable law and guidance.

### **9. Do organisations need to update policies and procedures?**

The new government regulation requires all staff working in care homes to be fully vaccinated unless exempt. Local organisational policies will need to be updated to reflect the change in legislation.

### **10. Do organisations need to keep a record of staff vaccination/ exemption status?**

NHS-funded services will need to know and keep a record for each individual staff member, whose work requires them to go into care homes, that they are fully vaccinated or have a medical exemption. There is no requirement to record the clinical reason behind the exemption – they should only record whether a person is medically exempt or not.

An individual's vaccination status will be 'special category data' for the purposes of GDPR, so data should be securely stored, and access limited to those who 'need to know' for recruitment or deployment purposes.

### **11. What steps should organisations take if staff refuse to be vaccinated and do not have an exemption defined in the DHSC guidance?**

It is recommended that employers undertake the following steps in partnership with local staff-side representatives:

1. Have a supportive one-to-one conversation to establish reasons for vaccine hesitancy.
2. Carry out a [risk assessment for staff](#) and services impacted.
3. Consider temporary redeployment **or** offer a suitable alternative role within the organisation or wider health service. Equality impact assessments should be completed to consider the likely impact on staff with protected characteristics.
4. Follow local employment related policies and procedures.

It is important that staff are supported to remain working in the health service. The information set out above is for guidance only. The legal position can only be assessed by reference to the specific circumstances of an individual. Further information is in the [DHSC operational guidance](#).

### **12. Do employers need to collectively consult with staff and/ or trade unions?**

As there is no change to terms and conditions of employment, there is no requirement to consult on this matter. Mandatory vaccination is a statutory requirement. Employers should engage with unions and collaboratively agree a supportive approach to encourage staff to get vaccinated and agree a process to inform staff, discuss concerns and consider options.

There may be a duty to consult on measures that may affect the health and safety of staff. Employers should refer to local partnership agreements and consider taking their own independent legal advice.

### **13. What happens if a member of staff does not wish to disclose their vaccination status?**

To enter a care home, individuals must be able to demonstrate that they have received a complete course of their COVID-19 vaccination, unless exemptions apply. If a member of staff is unable to provide proof, employers should consider following the recommendations outlined in Q11. For further information, please refer to the [DHSC operational guidance](#).

#### **14. Can staff who are exempt continue to be deployed into care homes?**

It is permissible for staff who have a medical exemption to continue to work in care homes as part of their role.

A health and safety risk assessment should be conducted and advice from Occupational Health sought (if necessary) to assess whether any reasonable adjustments are required.

In addition to managing risks to care home residents and staff, it should be remembered that people with medical exemptions may themselves be [clinically vulnerable](#).<sup>4</sup>

#### **15. What should employers consider for new staff?**

It will only be possible for a newly appointed member of staff to start working in the care home once they have provided evidence of their vaccination status or an exemption status. Employers should consider inserting a provision about vaccination and clinical exemption into recruitment processes and contracts for new employees. When recruiting staff whose roles are likely to involve working in care homes, it will be lawful to ask candidates about their vaccination status.

#### **16. How can we ensure service disruption is avoided?**

Providers need to proactively plan their workforce and only deploy staff who have been vaccinated or are exempt. Business as usual escalation routes apply for service disruption. Commissioners and systems should be informed of likely or actual service disruptions. Commissioners and systems can escalate to NHS England and NHS Improvement regional teams as needed. Providers need to ensure care homes are aware of any changes to NHS service provision. Employers should continuously assess the impact on recruitment and retention activity, and patient care.

If you have any further questions, please email [england.ageingwell@nhs.net](mailto:england.ageingwell@nhs.net).

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<sup>4</sup> [COVID-19: guidance on protecting people defined on medical grounds as extremely vulnerable](https://www.gov.uk/guidance/covid-19-guidance-on-protecting-people-defined-on-medical-grounds-as-extremely-vulnerable) – GOV.UK (www.gov.uk)