

CDC Issues Major Updates for Healthcare Providers and Eases Masking and Other Infection Control Requirements – Important Information for Employers

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For the last few months, we have been fielding calls from clients in the healthcare industry asking about things such as whether they still needed to screen patients upon entry to facilities, whether employees must still wear masks at all times, and whether they still had to treat vaccinated employees differently from unvaccinated employees. We saw an uptick in these calls following the CDC's August 11, 2022, updated masking guidance for the general public ("the Updated Guidance").

The CDC's masking guidance in non-healthcare settings

The CDC's Updated Guidance for anyone not in a healthcare setting bases masking recommendations not on vaccination status, but on COVID-19 Community Levels.

Those levels measure "the impact of COVID-19 in terms of hospitalizations and healthcare system strain, while accounting for transmission in the community." Notably, the Updated Guidance explicitly stated that it did *not* apply in healthcare settings. The Updated Guidance used Community Levels to make masking and testing recommendations without regard to vaccination status.

The CDC's prior guidance in healthcare settings

Unlike the Updated Guidance, employers in healthcare were required to utilize source control based instead on COVID-19 Community Transmission, which differs from the Community Level measurement as it "refers to measures of the presence and spread of SARS-COV-2." In addition, the CDC guidelines for source control in health care settings differentiated between those who were and were not "up to date" with their COVID-19 vaccinations, defining "up to date" as having all recommended boosters. This resulted in

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many frustrated and confused healthcare employers.

The CDC's updated guidance for healthcare settings

On September 23, 2022, the CDC issued long-awaited updated infection prevention and control recommendations for healthcare settings ("the Healthcare Update"). The Healthcare Update applies to "all U.S. settings where healthcare is delivered, including nursing homes and home health." While healthcare employers must still utilize COVID-19 Community Transmission metrics to determine source control, the CDC's recommendations for healthcare settings no longer use COVID-19 vaccination status in source control guidance. The CDC provided the following summary of the Healthcare Update:

- Updated to note that vaccination status is no longer used to inform source control, screening testing, or post-exposure recommendations
- Updated circumstances when use of source control is recommended
- Updated circumstances when universal use of personal protective equipment should be considered
- Updated recommendations for testing frequency to detect potential for variants with shorter incubation periods and to address the risk for false negative antigen tests in people without symptoms
- Clarified that screening testing of asymptomatic healthcare personnel, including those in nursing homes, is at the discretion of the healthcare facility
- Updated to note that, in general, asymptomatic patients no longer require empiric use of Transmission-Based Precautions following close contact with someone with SARS-CoV-2 infection
- Archived the Interim Infection Prevention and Control Recommendations to Prevent SARS-CoV-2 Spread in Nursing Homes and special considerations for nursing homes not otherwise covered in Sections 1 and 2 were added to Section 3: Setting-specific considerations
 - Updated screening testing recommendations for nursing home admissions
- Clarified the types of long-term care settings for whom the healthcare infection prevention and control recommendations apply

What are the key differences for employers?

As evidenced by the above list, the CDC made quite a few changes in the Healthcare Update. Because our calls from clients have been primarily focused on masking and screening, we will focus on what is different with regard to those two topics. Healthcare employers, particularly those in specific settings referenced by the Healthcare Update (Dialysis Facilities, Emergency Medical Services, Dental Facilities, Nursing Homes, and Assisted Living, Group Homes, and Other Residential Care Settings), should review the new guidance carefully and consult a healthcare attorney with questions. With regard to what is commonly referred to as "surveillance testing," the CDC does not recommend that testing decisions be based on vaccination status or Community Transmission levels.

Screening and masking changes are highlighted below:

Topic	Prior Recommendations	Healthcare Update Recommendations
Screening for COVID-19	• Encourage everyone to remain up-to-date with all recommended COVID-19 vaccine doses • Post visual alerts in entrances and high-traffic areas outlining current infection prevention and control practices and recommendations • Establish a process that should be followed by anyone entering the facility that either: (1) has a positive viral test for SARS-CoV-2, (2) has symptoms of COVID-19, or (3) has had close contact with someone infected by COVID-19 or for healthcare personnel with a higher-risk exposure • Suggested options for could include (but were not limited to): individual screening on arrival at the facility; or implementing an electronic monitoring system in which individuals can self-report any of the above before entering the facility	• Removes suggestion that healthcare facilities utilize individual screening on arrival at the facility or electronic monitoring systems
Source Control (i.e., masking)	• Masking exceptions for employees up-to-date with all recommended COVID-19 vaccine doses, particularly in non-patient facing scenarios, provided Community Transmission was low to moderate	• Healthcare employers may choose not to require universal source control when COVID-19 Community Transmission levels are <i>not high</i>, regardless of whether employees are up-to-date with all recommended COVID-19 vaccine doses, <i>even when patient-facing</i> • Source control still recommended for employees who have symptoms of COVID-19, have tested positive for COVID-19, been exposed to the virus, are treating COVID-19 patients, are performing certain procedures, etc. • Source control for everyone recommended when Community

		Transmission levels are <i>high</i>
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Obviously, employees in healthcare settings can choose to continue wearing masks even if it is not required by their employer or recommended by the CDC, and healthcare employers should not discourage such voluntary usage.

Don't forget about the CMS vaccine mandate

Even though the Healthcare Update may be currently driving the news and front of mind, healthcare employers must not forget that CMS's November 4, 2021, Interim Final Rule ("CMS Mandate") requiring staff at certain Medicare or Medicaid providers and suppliers to be fully vaccinated against COVID-19 (unless they qualify for a medical or religious exemption) is still in effect. The Healthcare Update slightly affects the CMS Mandate, particularly with regard to mitigation strategies for employees who are not "fully vaccinated" (which the CMS Mandate does not define to include boosters).

There appears to be some tension between the Healthcare Update and the CMS Mandate. For example, under the CMS Mandate, if an employee is not fully vaccinated because of a medical or religious exemption, employers are required to implement additional precautions to mitigate the transmission and spread of COVID-19. One obvious precaution to mitigate transmission is to require source control for those unvaccinated employees, something the CDC says is no longer required in areas where Community Transmission levels are *not high*. Because the CMS Mandate is in fact still in effect, and because surveyors are still surveying facilities for compliance with the CMS Mandate, our best advice is that facilities subject to the CMS Mandate be able to demonstrate some kind of additional precautions for unvaccinated staff (as defined by the CMS Mandate), even if the additional precautions do not include universal source control.

What healthcare employers should do now

1. Pay close attention to SARS-CoV-2 Community Transmission levels in your county of operation and make source control decisions accordingly.
2. Ensure you have some form of additional precautions to mitigate the transmission and spread of COVID-19 for unvaccinated staff in order to demonstrate compliance with the CMS Mandate (if not required masking or other source control).
3. If in-person or electronic screening is eliminated, ensure there are processes for infection prevention and control in place and that all who enter the facility are aware of those processes.
4. Finally, encourage everyone to remain up-to-date with all recommended COVID-19 vaccine doses, including boosters.