

While we hope the information in this guidance is helpful, it does not constitute formal legal advice, nor does it establish an attorney/client relationship between the reader and NCAL.



**IMPROVING LIVES *by***  
**DELIVERING SOLUTIONS *for***  
**QUALITY CARE**

## **Vaccination Status and HIPAA**

The Health Insurance Portability and Accountability Act (HIPAA), protects disclosure of health information **by a health care provider**, health insurance plan, or healthcare clearinghouse. HIPAA does not prevent anyone, including a health care provider, from asking patients, staff or visitors about health information.

### **EMPLOYEES**

1. Can employers ask staff about their vaccination status?
  - a. Yes. HIPAA does not prevent staff members, patients or visitors from disclosing their own vaccination status and it does not prevent employers from inquiring about employee vaccination status. HIPAA prohibits health care providers from disclosing information.
2. Is employee vaccination status protected health information under HIPAA?
  - a. Generally no, vaccines are not considered medical examinations and employer records of employee vaccination status are not required to be treated as medical records. Care should always be taken to not disclose any underlying medical conditions of employees. However, if in the unlikely event that the center or facility directly administers the vaccine to an employee (not through a contractor), it may be considered a health care provider and may be limited in what can be disclosed without patient (employee) authorization unless required by law or oversight agency to do so.
3. Can an employer publicly identify which employees are vaccinated, such as by placing a sticker on a name tag or instituting different PPE requirements for unvaccinated staff?
  - a. Generally yes. Because employee vaccination status is typically not protected health information (subject to the caveat above regarding a center or facility directly administering vaccine to an employee), employers can take actions

While we hope the information in this guidance is helpful, it does not constitute formal legal advice, nor does it establish an attorney/client relationship between the reader and NCAL.

which result in unvaccinated staff being identifiable to residents, visitors and colleagues. Care should be taken to consider the impact on workplace culture of any such actions. This should be weighed against the strong resident and public health benefits of being able to identify unvaccinated workers. Note that current CDC guidelines include different PPE requirements for vaccinated vs. unvaccinated staff.

## **RESIDENTS**

1. Can the center publicly identify which residents are vaccinated?
  - a. Best practice would be to make resident disclosure of such information voluntary. However, the public health emergency has resulted in certain activities being restricted to vaccinated individuals.

## **VISITORS**

1. Can a center ask visitors about their vaccination status?
  - a. Yes. The center is not the health care provider for visitors and therefore HIPAA does not apply. A center may request vaccine status of visitors. Visitors are not required to answer and cannot be required to show proof of vaccination to visit. Visitors who decline to show proof should be treated as unvaccinated.
2. Can a center publicly identify which visitors are unvaccinated, such as by requiring additional PPE for visit?
  - a. Yes.