

Frequently Asked Questions on OSHA’s ETS and MDHHS Facemask Recommendations
June 30, 2021

The following is a list of frequently asked questions (“FAQs”) for medical practices regarding the Occupational Safety and Health Administration (“OSHA”) COVID-19 Emergency Standard (“ETS”) and the Michigan Department of Health and Human Services (“MDHHS”) Rapid Public Health Alert concerning facemask recommendations (the “MDHHS Alert”). Some of the answers to certain FAQs will depend on whether or not a medical practice is exempt from the OSHA ETS.

For purposes of these FAQs:

“**Exempt Medical Practices**” means medical practices who meet one or more of the following criteria and are exempt from the OSHA ETS:

- The provision of first aid by an employee who is not a licensed health care provider;
- The dispensing of prescriptions by pharmacists in retail settings;
- Non-hospital ambulatory care settings where all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not permitted to enter those settings;
- Well-defined hospital ambulatory care settings where all employees are Fully Vaccinated¹ and all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not permitted to enter those settings;
- Home health care settings where all employees are Fully Vaccinated and all non-employees are screened prior to entry and people with suspected or confirmed COVID-19 are not present;
- Health care support services not performed in a health care setting (e.g., off-site laundry, off-site medical billing); or
- Telehealth services performed outside of a setting where direct patient care occurs.

“**Non-Exempt Medical Practices**” means medical practices who do not meet one or more of the criteria described above and are required to comply with the OSHA ETS.

1. Are medical practices still legally obligated to screen patients and visitors before they enter the practice’s office?

All Medical Practices (Exempt and Non-Exempt): Yes—The OSHA ETS screening and triage standard requires all medical practices to ask questions to determine whether a person, including a patient or visitor, is COVID-19 positive or has symptoms of COVID-19. In addition, medical practices may choose to ask questions which assess an individual’s exposure to COVID-19 positive or symptomatic individuals and confirm that individuals will abide by any COVID-19 policies of the practice. To comply with the screening

¹ For the purpose of these FAQs, Fully Vaccinated means 2 weeks or more following the final dose of a COVID-19 vaccine.

requirement, practices may assign an employee at each facility entrance to perform the screening on each patient and visitor prior to entry, or practices may alternatively contact patients and visitors by phone or video prior to their arrival to the facility to perform the screening.

Medical practices are not required to physically take the temperature of an individual using a thermometer and can instead rely on the individual's verbal representation.

Exempt Medical Practices: Note that in order to be exempt from the OSHA ETS, medical practices in non-hospital ambulatory care settings or in well-defined hospital ambulatory care settings must deny entrance to all people with suspected or confirmed COVID-19. This means that medical practices which intend to qualify for this exemption cannot furnish any medical treatment to patients with suspected or confirmed COVID-19. Medical practices which intend to furnish treatment to patients with suspected or confirmed COVID-19 will not be exempt from and will be subject to all OSHA ETS requirements.

Non-Exempt Medical Practices: Note that the OSHA ETS requires Non-Exempt Medical Practices to screen and triage all clients, patients, residents, and other visitors entering the office where direct patient care is provided.

2. Are medical practices still legally obligated to screen employees before they enter the practice's office?

All Medical Practices (Exempt and Non-Exempt): Yes—The Michigan COVID-19 Employment Rights Act, MCL §419.401 *et. seq.*, which applies to all Michigan employers, requires employees whose primary workplace is not the individual's residence to refrain from reporting to work if they are experiencing symptoms of COVID-19 (whether or not Fully Vaccinated), or if they have been in close contact with a COVID-19 positive or symptomatic individual, unless they are asymptomatic and either Fully Vaccinated or their continued presence is strictly necessary to preserve the function of a facility where cessation of operation of the facility would cause serious harm or danger to public health or safety.

Non-Exempt Medical Practices: Note that in addition to complying with the Michigan COVID-19 Employment Rights Act, Non-Exempt Medical Practices are expressly required by the OSHA ETS to screen each employee before the workday and/or each shift.

3. Are medical practices still legally obligated to maintain social distancing in waiting rooms?

Exempt Medical Practices: No—Exempt Medical Practices are not legally required to maintain social distancing in waiting rooms. By definition, Exempt Medical Practices are required to deny entry to the facility to anyone who is COVID-19 symptomatic or who has been in close contact with a symptomatic or COVID-19 positive individual. However, the CDC's current guidance for health care facilities continues to encourage visitors and patients to physically distance from other health care personnel and other

patients/residents/visitors at all times while in the facility, and further recommends that practices arrange seating in waiting rooms so that visitors and patients can sit at least six (6) feet apart.

Non-Exempt Medical Practices: Yes—OSHA’s ETS requires Non-Exempt Medical Practices to arrange seating in waiting rooms so patients can sit at least six (6) feet apart. The OSHA ETS further requires Non-Exempt Medical Practices to limit and monitor points of entry in settings where direct patient care is provided, and to ensure that all non-vaccinated employees are separated by six (6) feet of physical distance where feasible.

4. Are medical practices allowed to ask patients and visitors if they are vaccinated?

All Medical Practices (Exempt and Non-Exempt): Yes—All medical practices are allowed to ask visitors and patients if they are partially or Fully Vaccinated.

5. Are medical practices allowed to ask employees if they are vaccinated?

All Medical Practices (Exempt and Non-Exempt): Yes—All medical practices are allowed to ask employees if they are partially or Fully Vaccinated. The Equal Employment Opportunity Commission (“EEOC”), which is the federal agency tasked with enforcing federal employment discrimination laws, has issued guidance confirming that requesting documentation or other confirmation showing that an employee received a COVID-19 vaccination is not prohibited by the Americans with Disabilities Act (“ADA”) or by the Genetic Information Nondiscrimination Act (“GINA”).

All medical practices may specifically request a copy of an employee’s CDC COVID-19 Vaccination Record Card, but the medical practice should expressly inform the employee that it is asking only for a copy of the Vaccination Record Card and that no additional medical or health information should be provided. The documentation provided by the employee to the medical practice regarding his or her vaccination status is considered medical information and must be kept confidential by the employer and stored in a confidential file separate from the employee’s personnel file.

Non-Exempt Medical Practices: Note that in addition to the above, Non-Exempt Medical Practices are required by the OSHA ETS to implement policies and procedures to determine an employees’ vaccination status.

6. The MDHHS guidance “recommends” but does not expressly require that individuals continue to wear facemasks in health care facilities, such as hospitals, ambulatory care settings, and surgical centers. Does this mean we no longer have to require employees, patients or visitors to wear facemasks? If facemasks are no longer required, are there other reasons a medical practice should require facemasks and in which situations?

Exempt Medical Practices: No—Exempt Medical Practices are not legally obligated to require employees, patients or visitors to wear facemasks.

There are, however, reasons why Exempt Medical Practices should continue to require facemasks. First, employers are still legally obligated to abide by OSHA's General Duty Clause and provide a work environment that is "free from recognized hazards that are causing or are likely to cause death or serious physical harm." Until COVID-19 is no longer considered a recognized hazard that is causing or likely to cause death or serious physical harm, employers must continue to assess the risks of COVID-19 and implement policies and protocols to mitigate an employee's exposure to COVID-19 in the workplace. OSHA continues to advise employers to provide unvaccinated workers with face coverings and require them to be worn. Additionally, CDC guidelines recommend patients, visitors, and health care personnel to wear source control upon arrival to and throughout their stay in the facility.

Non-Exempt Medical Practices: Yes—The OSHA ETS requires Non-Exempt Medical Practices to ensure that facemasks are worn by all non-vaccinated employees. Although the OSHA ETS does not directly require Non-Exempt Medical Practices to require patients or visitors to wear a facemask, the OSHA ETS does incorporate by reference the CDC's COVID-19 Infection Prevention and Control Recommendations, and accordingly requires health care facilities to advise patients to wear source control before entering the facility and further requires source control measures, such as facemasks, for everyone in a health care facility.