

Supreme Court Ruling on CMS COVID-19 Vaccine Mandate

On January 13, the U.S. Supreme Court held up the Centers for Medicare and Medicaid (CMS) COVID-19 vaccine mandate for workers in healthcare organizations.

The COVID-19 vaccination requirement applies to healthcare workers in almost all CMS-certified facilities that participate in the Medicare and Medicaid programs, regardless of clinical responsibility or patient contact.

Staff vaccination requirements apply to Medicare and Medicaid-certified providers and suppliers regulated under Medicare health and safety standards, known as Conditions of Participation, Conditions for Coverage, or Requirements.

Deadline for vaccination

The current requirement states that by February 28, 2022, healthcare workers, students, contractors and volunteers working within healthcare organizations must have completed the vaccination series (one dose of Johnson & Johnson or two doses of Pfizer or Moderna); have been granted an exemption; or have been identified as having a temporary delay as recommended by the CDC.

It is permissible to receive a COVID-19 vaccine outside of the United States. Eligible COVID-19 vaccinations administered to healthcare workers abroad include FDA-licensed vaccinations, authorized for emergency use, or those the WHO lists for emergency use. Only full vaccination satisfies this requirement, as there is no testing requirement.

Who is required to be vaccinated?

The CMS mandate includes all staff who provide any care, treatment or other services for the organization, requiring healthcare workers, licensed providers, students, contractors and volunteers be fully vaccinated (or receive medical or religious exemption) by the February

28 deadline. In addition, all healthcare organizations must have policies and procedures ensuring that all appropriate staff are vaccinated against COVID-19.

What types of healthcare organizations must have the vaccination requirement?

The vaccination requirement applies to healthcare organizations that include (but are not limited to) the following:

- Hospitals
- Critical access hospitals
- Long-Term Care facilities
- Home health agencies
- Rural health clinics/Medicare federally qualified health centers
- Comprehensive outpatient rehabilitation facilities
- Intermediate-care facilities for individuals with intellectual disabilities,
- Ambulatory surgery centers

Other facilities include community mental health centers, hospices and rehabilitation agencies.¹

Applicable to all states

The CMS COVID-19 vaccine mandate will now apply to all states, including the 25 states where the vaccine mandate was previously blocked.²

Enforcement and Compliance

Healthcare organizations will be considered compliant if by January 27 they have established policies and procedures to ensure the vaccine mandate is carried out, and also ensure all applicable healthcare workers have received at least one dose of a vaccine, have a pending request for an exemption or have been granted a qualifying exemption.

CMS requires allows exemptions, such as a reasonable accommodation for a disability or a sincerely held religious belief, observance, or practice and for medical reasons. Healthcare organizations should establish exceptions as a part of its policies and procedures for the vaccine mandate.

CMS indicates that federal, state, accreditation organizations and CMS-contracted surveyors will begin surveying for compliance with the vaccine mandate.

¹ The list of covered facilities also includes home infusion suppliers; intermediate-care facilities for individuals with intellectual disabilities; public health agencies such as providers of outpatient physical therapy and speech-language pathology services; psychiatric residential treatment facilities,

² These states are Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, West Virginia and Wyoming.