

CMS Vaccine Mandate Back In Effect - New Compliance Deadlines for 24 States

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On January 13, 2022, the United States Supreme Court ruled that the preliminary injunctions imposed by the Fifth and Eighth Circuits — that had blocked enforcement of the Centers for Medicare & Medicaid Services' ("CMS") vaccine mandate in 24 states (including Nebraska and Iowa) — are now lifted, and the lawsuits in those circuits will be returned to the respective Federal circuit courts to be decided on the merits. **As such, the CMS Rule is back in effect and applies to all 50 states and the District of Columbia.**

CMS Administrator Chiquita Brooks-LaSure was quoted, stating: "[a]s a result of today's decision, health care providers subject to the Omnibus Health Care Staff Vaccination Rule in the 24 states . . . covered by this decision will now need to establish plans and procedures to ensure their staff are vaccinated and to have their employees receive at least the first dose of a COVID-19 vaccine."

The following day, on January 14, 2022, CMS issued new **guidance** providing definitive compliance dates for the 24 states where the CMS Rule was reinstated. As a result, the timelines for compliance now differ from state to state, depending on whether or not they were part of the legal challenges. The updated deadlines are detailed below.

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Deadlines for 24 States Subject to the Lifted Injunctions

The following dates apply to applicable facilities in 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, Utah, West Virginia, and Wyoming.

- By February 14, 2022, facilities must: (1) have policies and procedures in place that conform to the CMS Rule; and (2) ensure that 100% of staff have at least one COVID-19 vaccine dose or have requested or received exemption from vaccination.
- By March 15, 2022, facilities must ensure that 100% of staff have completed a vaccine series (i.e., one dose of a single shot vaccine or both doses of a multi-dose vaccine) or have been granted an exemption from vaccination. This is in addition to continuing to have policies and procedures in place.

Additionally, CMS stated that the new guidance does not apply to facilities in Texas, as there is still a preliminary injunction in effect there.

Deadlines for States Not Impacted by Injunctions

For providers in states not impacted by the injunctions, the compliance dates set by CMS in a **memorandum** on December 28, 2021, still apply.

- By January 27, 2022, facilities must: (1) have policies and procedures in place that conform to the CMS Rule; and (2) ensure that 100% of staff have at least one COVID-19 vaccine dose or have requested or received exemption from vaccination.
- By February 28, 2022, facilities must ensure that 100% of staff have completed a vaccine series (i.e., one dose of a single shot vaccine or both doses of a multi-dose vaccine) or have been granted an exemption from vaccination. This is in addition to continuing to have policies and procedures in place.

Surveys for compliance will begin on January 27, 2022. Although failing to meet these requirements by the applicable deadline will render a facility “non-compliant,” facilities that are mostly compliant will not be subject to certain enforcement actions. If, between January 27, 2022, and February 28, 2022, at least 80% of a facility’s staff has received their first dose (or has an exemption) and the facility has a plan in place to reach 100% vaccination rates, then CMS will issue a notice of non-compliance and the facility will have 60 days to comply with the CMS Rule.

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Additionally, if, on or after February 28, 2022, at least 90% of the facility's staff has received their first dose (or has an exemption) and the facility has a plan in place to reach 100% vaccination rates, then CMS will issue a notice of non-compliance and the facility will have 30 days to comply with the CMS Rule.

Provider-Specific Guidance

In conjunction with the memorandum issued on December 28, 2021, CMS also issued specific guidance for each of the providers and suppliers affected by the CMS Rule (the "Attachments"). These Attachments provide facility-specific compliance information, including specific requirements for policies and procedures for the applicable facility. Below are links to the applicable Attachments:

- Long Term Care and Skill Nursing Facilities.
- Ambulatory Surgical Centers.
- Hospice.
- Hospitals.
- Psychiatric Residential Treatment Facilities.
- ICF/IID.
- Home Health Agencies.
- Comprehensive Outpatient Rehabilitation Facilities.
- Critical Access Hospitals.
- Outpatient Physical Therapy.
- Community Mental Health Centers.
- Home Infusion Therapy.
- Rural health Clinic/Federally Qualified Health Clinic.
- End-Stage Renal Disease Facility.

Although the battle in the Federal circuit courts may not be over, in the interim (for the foreseeable future), all affected facilities need to take appropriate steps to achieve compliance. The Koley Jessen Employment and Health Law teams will continue to monitor the situation and provide additional updates as they become available. If you have questions or need assistance regarding the CMS Rule or any policies or procedures, please contact a member of the Koley Jessen team today.