



Most Healthcare Employers Will Soon Need to Implement Vaccine Mandate

Insights

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The Biden Administration's recent "[Path Out of the Pandemic](#)" expands the COVID-19 vaccine mandate covering nursing home workers and will soon reach 17 million healthcare workers at Medicare and Medicaid-certified facilities. These sweeping vaccine requirements will soon apply to approximately 50,000 providers and cover a majority of healthcare workers across the country. This new mandate will encompass hospitals, dialysis facilities, ambulatory surgical settings, and home health agencies, among others, as a ***condition of participation in the Medicare and Medicaid programs***. The Centers for Medicare & Medicaid Services is expected to establish and publish a CMS Rule with more specifics on the vaccine requirements by October – what does your healthcare organization need to know in advance of this significant development?

Who Will Be Covered?

With some exceptions, and depending on the individual entity, most participating healthcare providers derive very significant portions of their revenue (as much as 50% or more) from Medicare and/or Medicaid programs. This will leave many providers with no choice other than to comply with the new regulations and institute a workforce vaccine mandate.

What Will the Healthcare Rule Encompass?

Many of these healthcare providers will also be covered by [an impending OSHA emergency rule](#) that will compel employers with 100 or more employees to require workers to either be vaccinated or produce weekly negative test results before coming to work. The new CMS Rule will apparently not include an alternative testing option to allow employees to escape the vaccine mandate. However, covered employers must still be cognizant of the requirement to provide reasonable accommodations to employees who request certain medical or [religious accommodations](#).

What Will This Mean for Healthcare Employers?

It remains to be seen how much higher these steps will push vaccination rates among healthcare workers. On September 10, the American Hospital Association expressed concern that the new vaccine requirements could possibly exacerbate the "severe workforce shortage that currently exists" in the industry. On September 13, NPR reported that Lewis County General Hospital in New York is pausing its maternity services later this month because dozens of staff members quit rather

than get COVID-19 vaccines. In Kentucky, a group of employees just filed another lawsuit challenging a hospital's vaccination requirement. Though that lawsuit is likely to meet the same unceremonious fate as others challenging mandatory vaccine policies, healthcare employers will undoubtedly face more challenges and accommodation requests in view of any new mandates. As discussed, accommodation requests must be evaluated individually and may provide bases for future litigation by employees.

What Should You Do?

Prior to the anticipated new CMS Rule, some facilities, states, and localities already implemented their own hospital staff or health care sector vaccination mandates. Thus, many facilities across the country may already be covered under other vaccine mandates. If you fall under these categories, you should continue your efforts to use available resources to support and implement employee vaccinations, including employee education and clinics, as you work to meet new federal requirements.

As employers impacted by this new mandate proceed, they should prepare quickly, but thoughtfully, taking into account the considerations and Five-Step Plan that we have previously published about implementing mandatory vaccination programs. We will monitor these developments and provide updates as CMS drafts and implements its impending vaccine mandate rule. Make sure you are subscribed to Fisher Phillips' Insight system to get the most up-to-date information.

If you have questions about how to ensure that your vaccine policies comply with workplace and other applicable laws, visit our Vaccine Resource Center for Employers or contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our Healthcare Industry Group.

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