



The CMS Vaccine Mandate and What It Means to You: Three Touchstones Toward Compliance

Insights

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Since we first explained the CMS vaccine mandate (the Interim Final Rule (IFR) from the Centers from Medicare & Medicaid Services (CMS) that requires COVID-19 vaccinations for all staff at covered facilities), the mandate has survived numerous legal challenges and is being implemented across the country. Along the way, CMS has issued guidance and adjusted compliance deadlines by state, including updating its FAQs. This flurry of activity and new deadlines may leave some healthcare entities wondering where they stand in terms of coverage and compliance with the mandate. Since compliance is a condition of participation in the Medicare and Medicaid program, this is a critical issue for covered entities.

With this backdrop in mind, below is an overview of three vital touchstones to help employers avoid problems related to the mandate. In a nutshell, the three touchstones are: 1) verify if you are covered by the CMS vaccine mandate; 2) identify and implement the requirements of the mandate; and 3) confirm which deadlines are applicable to your location(s).

1. Are you covered?

Not all recipients of Medicare or Medicaid funds are covered by the mandate. The vaccine mandate and other requirements apply only to healthcare settings where CMS regulates health and safety. These are CMS-certified providers. The CMS vaccination mandate does not apply directly to other employers. You should note, however, that if your company assigns employees to work in or care for patients of CMS-certified providers, that healthcare provider may have to require those employees to be vaccinated.

2. What are the Primary Requirements?

Covered employers must comply with the primary requirements of the mandate in two phases.

First Phase Requirements: By the applicable phase one deadline, covered facilities must develop and implement policies and procedures to ensure all staff are vaccinated for COVID-19 and that 100% of staff have received at least one dose of the vaccination (or have a pending request for a qualifying exemption, or have been identified as being entitled to a temporary delay as recommended by the CDC).

Second Phase Requirements: By the applicable phase two deadline, covered facilities must ensure that 100% of staff have received the necessary doses to complete their vaccine series (at least receive dose two in a two-dose series), or have been granted a qualifying exemption, or been identified as being entitled to a temporary delay as recommended by the CDC.

3. What are my compliance deadlines?

The answer to this question depends upon where your operations are located. For deadline purposes, deadlines vary according to the state in which they are located.

How are locations categorized for purposes of the CMS vaccine mandate?

Locations are categorized according to revised deadlines that CMS has issued for groups of states. These deadlines correspond with the effects of litigation that temporarily delayed implementation and enforcement of the mandate. States are thus categorized as follows:

Category A States: California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, Washington, and Wisconsin.

Category B States: 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.

Texas: The deadlines for Texas are distinct because of separate litigation that occurred there.

When are the CMS deadlines applicable to my specific locations?

The deadlines for the two phases described above are applicable according to each state's category. The original compliance dates issued by CMS have been adjusted to fall 30 days and 60 days after subsequent guidance memos that are applicable to Category A, Category B and Texas, respectively. These are the deadlines applicable to each category:

Category	Phase 1 Deadline	Phase 2 Deadline
Category A	Jan. 27, 2022	Feb. 28, 2022
Category B	Feb. 14, 2022	March 15, 2022
Texas	Feb. 22, 2022	March 21, 2022

What to do next?

- Confirm coverage if you have not already done so
- Evaluate how any other vaccine mandates and restrictions may impact your policy
- Prepare and communicate applicable policies and procedures including, but not limited to, the vaccine requirements and the process for requesting exemptions
- Develop a non-discriminatory, streamlined process to handle vaccine accommodation requests
- Review and confirm additional COVID-19 protocols that will be applicable to individuals who are granted accommodations
- Prepare to respond to some inevitable pushback and complaints, as well as likely on-site inspections, by communicating clearly and maintaining detailed records of your processes

Fisher Phillips has prepared a CMS Vaccine Mandate Toolkit which includes a model CMS vaccine mandate policy, CMS-specific exemption forms, accommodation checklist, vaccine tracking tool and model communication to staff. Contact the authors or your Fisher Phillips attorney to purchase the CMS Vaccine Mandate Toolkit.

Conclusion

We will continue to monitor developments and provide updates as warranted. Make sure you are subscribed to [Fisher Phillips' Insight system](#) to get the most up-to-date information. If you have any questions about your policies or applicable laws, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney on our [FP Vaccine Subcommittee](#).

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