



## ALERTS

### CMS To Begin Vaccine Mandate Enforcement In Late January

January 6, 2022

#### Highlights

CMS will begin enforcing COVID-19 vaccine mandates for Medicare and Medicaid providers and suppliers by the end of January, except in the 25 states where it is blocked by court orders

Affected employees, contractors and volunteers must have their first dose by Jan. 27, 2022, and their second dose by Feb. 28, as applicable

To ensure compliance, enforcement thresholds will be implemented in tandem with these deadlines

In late December 2021, the Centers for Medicare & Medicaid Services (CMS) announced that on Jan. 27, 2022, it will begin enforcing its COVID-19 vaccine mandate for Medicare and Medicaid-certified providers and suppliers (covered entities).

All employees, contractors, and volunteers (affected persons) affiliated with covered entities must receive the first dose of a COVID-19 vaccine (or the single dose vaccine) prior to Jan. 27. Covered entities must also develop policies and procedures for vaccinating, tracking vaccinations,

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and providing exemptions and accommodations by that deadline.

In addition, all affected persons must receive a second dose of their COVID-19 vaccine by Feb. 28, 2022.

The enforcement will be in place for Washington, D.C., the U.S. territories, and the 25 states where the mandate is not currently blocked by court orders. Those states are California, Colorado, Connecticut, Delaware, 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.

This mandate will remain unenforceable in the 25 states for which three courts have issued injunctions: 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.

In its [new guidance](#), CMS makes clear that vaccination rates under 100 percent constitute noncompliance. However, covered entities will generally be given opportunities to achieve compliance under the enforcement action thresholds as follows:

- Phase 1: Covered entities will not be subject to enforcement actions (e.g. plans of correction, civil monetary penalties, denial of payment, termination, etc.) if at least 80 percent of affected persons are vaccinated by Jan. 27, 2022, with a plan to achieve a 100 percent vaccination rate within 60 days after receiving noncompliance notice by CMS.
- Phase 2: Covered entities will not be subject to enforcement actions if at least 90 percent of affected persons are vaccinated by Feb. 28, 2022, with a plan to achieve a 100 percent vaccination rate within 30 days of notice by CMS.

Federal, state, accreditation organizations, and CMS-contracted surveyors will begin surveying for compliance at the end of January.

Covered entities should consider [reviewing all additional information and expectations for compliance specific to their provider or supplier type](#) and monitor the CMS mandate closely, pending outcomes from the U.S. Supreme Court following oral arguments on the emergency district court injunctions.

To obtain more information regarding this alert, contact the Barnes & Thornburg attorney with whom you work or Michael Grubbs or 317-231-7224 or [michael.grubbs@btlaw.com](mailto:michael.grubbs@btlaw.com), or Mark Rust, chair of Healthcare Industry Practice, at 312-214-8309 or [mark.rust@btlaw.com](mailto:mark.rust@btlaw.com), or Laura Seng, director of Health Law Resources and Risk Management, at 574-237-1129 or [laura.seng@btlaw.com](mailto:laura.seng@btlaw.com).

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