

Whats Next for LTC Facilities After the Supreme Courts Vaccine Ruling?

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The U.S. Supreme Court has ruled in favor of allowing the Centers for Medicare and Medicaid Services (CMS) to [enforce its mandatory COVID-19 vaccine mandate](#) for certain health care workers. So where does this leave long term care (LTC) facilities?

For LTC facilities in Pennsylvania (which did not join other states in legally challenging the mandate) the regulatory landscape remains unchanged. These facilities must meet the first CMS compliance deadline by January 27, according to a December 28 CMS memo. The memo has established a two-phase approach:

Phase I: Within 30 days of the memorandum, or by January 27, 100% of all LTC staff are expected to have received at least one dose of the COVID-19 vaccine. The facility must have policies and procedures in place to ensure that all staff, regardless of clinical responsibilities, must be fully vaccinated. If a facility has less than 100% compliance but more than 80% of its staff are vaccinated, the facility will not be subject to CMS enforcement, assuming that the facility is working towards full compliance.

Phase II: Within 60 days, or by February 28, 100% of all LTC staff must have completed their COVID-19 vaccine series. If the facility has less than 100% compliance, but more than 90% of its staff are vaccinated, no enforcement action will be taken if the facility has policies and procedures in place to reach full compliance within the next 30 days.

The phrase "all staff" has raised questions and concerns that the mandate may be overly burdensome. In response, CMS has stated that to protect patients, it is not limiting "staff" to direct care workers but is defining this term more broadly to include administration, leadership, housekeeping, food services and other staff who perform their duties at any site of care, or who potentially have contact with staff at the site of care.

The vaccine status of LTC staff who have been granted a medical or religious exemption, or who have a request pending, will not be counted towards the CMS compliance targets. However, CMS warned that surveyors will be on the lookout for facilities that grant exemptions to staff solely to evade the mandate.

The CMS vaccine mandate applies to all LTC facilities that participate in the Medicare or Medicaid programs, and may extend to one or more of the organization's programs, including skilled nursing, hospice and home health. Assisted living facilities are not subject to the mandate unless they employ individuals who move between assisted living and nursing facilities.

Also, CMS has stated that its vaccine mandate does not apply to home and community-based providers who receive Medicaid funding but are not certified. Nevertheless, individual health care workers who work in both the home and LTC setting may be required to vaccinate.

Any LTC facilities that fail to meet the CMS vaccine requirements may be subject to progressive discipline, including corrective action plans, civil monetary penalties, payment denials and finally termination. However, in its guidance, CMS has expressed a willingness to work cooperatively with providers that are making a good faith effort to comply. CMS will assess penalties only based upon the severity and length of the deficiency.

Still, with the first CMS deadline for compliance close at hand, LTC providers should work diligently to have policies and procedures in place to ensure that all affected staff will be vaccinated (or granted exemptions) within the required timetables - or make a good faith effort to do so.

If you have any questions about the CMS vaccine mandate, please [contact me](#) or anyone in the [Barley Snyder Senior Living Industry Group](#).

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