CMS Vaccine Mandate Moves Forward Nationwide

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In a divided decision, the U.S. Supreme Court let stand the Centers for Medicare & Medicaid Services ("CMS") vaccine mandate ("Mandate") requiring covered providers and suppliers to ensure their staff are vaccinated against COVID-19 absent a medical or religious exemption.

The Supreme Court based its decision on the Secretary of Health and Human Services' long use of regulations to "ensure that the healthcare providers who care for Medicare and Medicaid patients protect their patients' health and safety." According to the Supreme Court, such regulations have historically included "infection prevention and control" and routinely impose conditions of participation that "relate to the qualification and duties of healthcare workers themselves." The Supreme Court reasoned while "[t]he challenges posed by a global pandemic do not allow a federal agency to exercise power that Congress has not conferred upon it…such unprecedented circumstances provide no grounds for limiting the exercise of authorities the agency has long been recognized to have." (Op., p. 9.)

The Supreme Court's decision lifted two injunctions blocking the Mandate in approximately half the states. As such, the Mandate, initially announced on November 4, 2021, may now move forward nationwide.

In a memorandum previously released addressing the Mandate and compliance in the 25 states not covered by the now-lifted injunctions, CMS laid out new deadlines and targets for the vaccine mandate. Under the new targets, staff must have at least one shot by January 27, and a second shot (if applicable) by February 28. It remains to be seen whether CMS will adjust these targets again given the Supreme Court's decision. Covered providers and suppliers are encouraged to consult with legal counsel regarding compliance. A covered entity's failure to comply with the Mandate may lead to monetary penalties, denial of payment for new admissions, or termination of participation.

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