

CMS Plans Enforcement, Sets New Deadlines for COVID Vaccination Mandate

Article

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The Centers for Medicare & Medicaid Services (CMS) on Tuesday announced new dates for nursing homes in Wisconsin and 24 other states to comply with the mandate to vaccinate all non-exempt staff against COVID-19. It also announced plans for survey enforcement.

Within 30 days of Tuesday's directive, these nursing homes must have developed policies and procedures and 100% of non-exempt staff must have received at least one dose of COVID vaccine. That date is January 27, 2022. Within 60 days, 100% of non-exempt staff must have completed the vaccine series. That date is February 26. Booster shots are not required.

However, the entire CMS vaccination mandate is subject to review by the U.S. Supreme Court, which will hear arguments January 7 on the Biden administration's request to lift two lower court injunctions preventing enforcement in 25 states that sued to block the mandate. The Supreme Court could allow the mandate nationwide, block it nationwide, or continue the stay on enforcement in half the states.

Surveyors will begin surveying nursing homes for compliance on January 27. CMS said its enforcement remedies include civil monetary penalties, denial of payments, and termination of participation in Medicare and Medicaid. Termination would generally happen only for failure to make corrections and become compliant. Nursing homes will receive a survey notice of non-compliance. For the January 27 initial-dose deadline, there will be no additional enforcement for homes that are above 80% staff vaccination and have a plan to reach 100% within 60 days. For the February 26 final-dose deadline, there will be no additional enforcement for homes that are above 90% vaccination and have a plan to reach 100% within 30 days.

CMS issued guidance specific to nursing homes at [this link](#).

The deadlines, which originally were December 6 for the first dose and January 4 for the final dose, had to be revised because of the litigation from the states seeking to block the mandate. Tuesday's CMS directive does not apply to the 25 states involved in that litigation. Wisconsin is not involved in the litigation, so it is subject to Tuesday's deadlines and enforcement plan.

PROFESSIONALS

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The vaccine mandate does not apply to assisted living facilities. However, assisted living providers are subject to a vaccination-or-testing requirement from the federal Occupational Safety and Health Administration if they have 100 or more employees. That requirement is also subject to the January 7 Supreme Court hearing.

Operators of Wisconsin nursing homes should have or should develop policies and procedures consistent with CMS guidance, plan to carry out the mandate, and continue to watch the related court action.

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