

**Alert | Health Emergency Preparedness Task Force:  
Business Continuity Amid COVID-19**



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## **The Nation's Health Care Workforce Has 3 Sets of COVID-19 Vaccination Deadlines—Do Any Apply to Your Facility? Where Are We Headed Next?**

Health care providers need to be aware of the impact that the U.S. Supreme Court's Jan. 13, 2022 decision had on the COVID-19 vaccination mandate for employees of certain health care facilities. Originally issued on Nov. 5, 2021, by the Centers for Medicare & Medicaid Services (CMS), the COVID-19 vaccination requirements applicable to staff at 15 types of Medicare-certified facilities survived before the Supreme Court. A separate federal vaccine mandate, issued by the Occupational Safe and Health Administration (OSHA) and applicable to private businesses with 100 or more employees, did not. Because the challenges to the CMS vaccination mandate arose from various courts of appeal, the Court's recent decision has resulted in a series of corresponding agency responses and revised vaccination timelines. Presently, three separate sets of vaccination deadlines apply across the country, which are summarized below.

For covered health care facilities in 25 states (plus the District of Columbia and Territories) where no court injunction had issued, the staff vaccination deadline for a first dose remains Jan. 27, 2022, while the deadline for a second dose is Feb. 28, 2022.<sup>1</sup> For those health care facilities at issue in the Court's Jan. 13 ruling, the vaccination deadline for a first dose is Feb. 14, 2022, followed by a deadline for a second dose

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<sup>1</sup> [Guidance for the Interim Final Rule – Medicare and Medicaid Programs, QSO-22-07-ALL \(Dec. 28, 2021\)](#) (December Guidance) at 3-4.

of March 15, 2022.<sup>2</sup> For health care facilities in Texas, the vaccination deadline for a first dose is Feb. 22, 2022, followed by a deadline for a second dose of March 21, 2022.<sup>3</sup>

<b>State(s)</b>	<b>Guidance/Letter</b>	<b>1<sup>st</sup> Dose Deadline</b>	<b>2<sup>nd</sup> Dose Deadline</b>
CA, CO, CT, DE, FL, HI, IL, ME, MD, MA, MI, MN, NV, NJ, NM, NY, NC, OR, PA, RI, TN, VT, VA, WA, WI  <i>Plus</i>  DC and Territories	<a href="#">QSO-22-07-ALL</a>  (Dec. 28, 2021)	Jan. 27, 2022	Feb. 28, 2022
AL, AK, AZ, AR, GA, ID, IN, IA, KS, KY, LA, MS, MO, MT, NE, NH, ND, OH, OK, SC, SD, UT, WV, WY	<a href="#">QSO-22-09-ALL</a>  (Jan. 14, 2022)	Feb. 14, 2022	March 15, 2022
TX	<a href="#">QSO-22-11-ALL</a>  (Jan. 20, 2022)	Feb. 22, 2022	March 21, 2022

Procedurally, the Supreme Court’s ruling only decided whether the CMS vaccine mandate may go into effect while the challenges in the courts of appeal continue. But while the chance of an inconsistent ruling on the merits by any of the courts of appeal is unlikely, other legal complications lurk.

First, new litigation may emerge testing the doctrine of federal preemption, that is, whether a federal law will preempt a conflicting state law. A court delving into this issue may cause additional implementation and enforcement delays. Second, state survey agencies may selectively enforce—or refuse to enforce entirely—the CMS vaccine mandate. A state survey agency’s agreement with the federal government to carry out Medicare conditions of participation (CoPs) survey and enforcement responsibilities typically contemplates enforcing Medicare compliance requirements for providers, not the state agency itself. *See* SSA Section 1864. This creates a complicated standoff that certain health care employers must navigate—at present, certain facility types must comply with CMS vaccination deadlines for employees or risk losing federal reimbursement dollars; however, no survey and enforcement will apply. Simultaneously, the same facilities must comply with state laws restricting vaccination mandates for employees or risk paying state-levied fines.

<sup>2</sup> [Guidance for the Interim Final Rule – Medicare and Medicaid Programs, QSO-22-11-ALL \(Jan. 20, 2022\)](#) (January Guidance) at 3-4.

<sup>3</sup> January Guidance at 3-4.

## Conclusion

The Supreme Court's highly anticipated decision upholding CMS' COVID-19 vaccination mandate has resulted in three separate sets of vaccination deadlines across the country. Health care employers should identify the specific set of deadlines that apply to them, if any, and operationalize those deadlines going forward, even as the interplay between federal and state vaccination requirements continues to develop. We will monitor these developments in the coming days and weeks ahead.

For more information and updates on the developing situation, visit [GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#) and [Business Continuity Amid COVID-19](#) page.

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