

January 17, 2022

Mr. John Blue
Alabama Council of Emergency Medical Services

Re: Updated guidance and new deadlines for the CMS COVID-19 Vaccine Mandate, also known as the CMS “Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule”

Dear Mr. Blue:

On January 13, 2022, the United States Supreme Court reversed an injunction prohibiting the enforcement of the Centers for Medicare & Medicaid Services (CMS) “Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule” (the “CMS vaccine mandate” or, sometimes in the CMS guidance, the “IFC”), making the CMS vaccine mandate back in effect in 24 states covered by the injunction (including Alabama). As noted in a previous letter, Emergency Medical Services (EMS) providers are exempt and not subject to the CMS vaccine mandate unless the provider is under contract with a non-exempt Medicare/Medicaid provider. *See* [cms.gov/files/document/cms-omnibus-staff-vax-requirements-2021.pdf](https://www.cms.gov/files/document/cms-omnibus-staff-vax-requirements-2021.pdf) at page 4. The examples given by CMS are (1) an EMS provider that contracts with a hospital and is therefore required to comply with the CMS vaccine mandate and (2) an EMS provider that provides nonemergency transportation for Long-Term Care facility residents under contract. In those cases, the EMS provider’s staff would be subject to COVID-19 vaccination requirements in the CMS vaccine mandate as applied to either hospital staff or Long-Term Care facility staff. Assisted-Living Facilities and group homes are not regulated by CMS, so contracts with those type of facilities would not subject an EMS provider to the CMS vaccine mandate.¹

Deadlines and requirements for providers subject to the CMS vaccine mandate: February 14 (first dose) and March 15 (second dose if a two-dose vaccine).

Because of the delay resulting from the now-lifted injunction, CMS has moved out the original dates for compliance with the CMS vaccine mandate. *See*

¹ Contractual relationships with healthcare providers that would subject an EMS provider to the CMS vaccine mandate include (but are not limited to) Ambulatory Surgery Centers, Community Mental Health Centers, Comprehensive Outpatient Rehabilitation Facilities, Critical Access Hospitals, End-Stage Renal Disease Facilities, Home Health Agencies, Home Infusion Therapy Suppliers, Hospices, Hospitals, Intermediate Care Facilities for Individuals with Intellectual Disabilities, Clinics, Rehabilitation Agencies, and Public Health Agencies as Providers of Outpatient Physical Therapy and Speech-Language Pathology Services, Psychiatric Residential Treatment Facilities (PRTFs) Programs for All-Inclusive Care for the Elderly Organizations (PACE), Rural Health Clinics/Medicare Federally Qualified Health Centers, and Long-Term Care facilities.

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[cms.gov/files/document/qso-22-09-all-injunction-lifted.pdf](https://www.cms.gov/files/document/qso-22-09-all-injunction-lifted.pdf). The dates in this letter apply to Alabama and 23 other states affected by the now-lifted injunction. (Other states are subject to a different timeline with earlier deadlines for compliance.) The primary requirement of the CMS vaccine mandate is that all employees of a covered provider must get the first dose of a two-dose COVID-19 vaccine (Pfizer/BioNTech, Comirnaty, or Moderna) or the one dose of a one-dose vaccine (Janssen or Johnson & Johnson) before providing any care, treatment, or other services **by February 14, 2022**, unless an individual employee has applied for and been approved for an exemption (see below for exemptions). In other words, an EMS provider who must comply with the CMS vaccine mandate may not allow any employee to work after February 14, 2022, unless that employee has received at least one dose of one of the approved COVID-19 vaccines or unless the employee has one of the exemptions discussed below. There is no amount of time between receiving a dose of one of the authorized vaccines and the employee being allowed to work. An employee could get the vaccine dose the morning of February 14 and immediately go to work providing patient care. Those receiving a two-dose vaccine must get the second dose at the recommended time (give or take 4 days) to keep working. To work on or after **March 15, 2022**, an employee must have received both doses of a two-dose vaccine or have received the single dose vaccine. This applies to new hires, too. After March 15, a new hire may not work until receiving both doses of a two-dose vaccine or the single-dose vaccine. There is no waiting period after getting the second dose or the single-dose vaccine before the employee may work. Without one of the approved narrow exemptions, there are no alternatives a person may choose rather than being vaccinated.

Booster shots or third doses are not required for now, though they are recommended for those for whom the CDC recommends get a booster.

Exemptions for individual employees

The only exemptions that may be recognized for employees from the CMS vaccine mandate are (1) an objection by the employee to the vaccine based on a sincerely held religious belief, observance, or practice and (2) the employee is unable to get the vaccine, or it is inadvisable for the employee to get the vaccine, for disability/medical reasons. Exemptions may not be provided to employees for whom it is not legally required under the Americans with Disabilities Act (ADA) or Title VII of the Civil Rights Act of 1964 (Title VII), which prohibit disability and religious discrimination and require reasonable accommodations. Employers may adopt their own processes for employees to request exemptions based on religious or medical grounds. CMS recommends that employers follow EEOC guidance on religious exemptions, and the EEOC has a model form. *See* [tinyurl.com/cc58u5sd](https://www.tinyurl.com/cc58u5sd) and [tinyurl.com/5cw8tpr9](https://www.tinyurl.com/5cw8tpr9). The State of Alabama has a form for employers to use that addresses both medical and religious exemptions, and Alabama law requires employees who mandate their employees get the vaccine to provide employees with the form. If the employee checked the religious exemption, the employer could also use the EEOC's form or a similar form to get more information to evaluate the religious exemption request. Alabama law says that the exemptions should be construed liberally, and that

requesting an exemption creates a presumption that the employee is entitled to an exemption. See wallacejordan.sharefile.com/d-s555d3837858e4f20ab47b9e6ec54d17c or tinyurl.com/3sea8jy2; see also Alabama statute at arc-sos.state.al.us/ucp/L0775579.A11.pdf. The Alabama form has as one of the medical reasons, "I have been diagnosed with COVID-19 in the past 12 months," but CMS says that previously being diagnosed with COVID-19 is not grounds for an exemption but does allow for delay in getting the vaccine if the diagnosis was recent, as recommended by the CDC, because of clinical precautions and considerations. So someone who recently was diagnosed with COVID-19 may work after March 15, 2022, without having received both doses of a two-dose vaccine or a single-dose vaccine in accordance with CDC guidelines. To the extent state law conflicts with the federal CMS vaccine mandate, CMS takes the position that the CMS vaccine mandate pre-empts and overrides state law.

Providers/facilities must implement additional precautions for any employees who are exempt from the vaccination requirement and are not vaccinated. Examples of additional precautions may include face coverings (masks) and periodic testing.

Employees of EMS providers who do 100% of their work remotely from home or another remote location are also exempt. But employees with no patient contact, such as administrative employees or dispatch employees, are *not* exempt if they are in the same facility as other employees with patient contact.

Providers/facilities must implement additional precautions for any employees who are exempt from the vaccination

Documentation

Providers or facilities subject to the CMS vaccine mandate must have a process for documenting and tracking staff vaccinations and exemptions. All vaccinations must be documented. All medical records, including vaccine documentation, must be kept confidential and stored separately from an employer's personnel files. Acceptable forms of proof of vaccinations include: (1) a CDC COVID-19 vaccination record card (or legible photo of the card), (2) documentation of vaccination from a healthcare provider or electronic health record, or (3) state immunization information system record. It is up to the employer/facility to ensure that it has a process or plan in place for capturing COVID-19 vaccination status for all staff, including individuals who provide services under contract or other arrangements. Facilities/providers are not required to ensure vaccination of vendors, volunteers, or professionals who infrequently provide ad hoc, non-health care services (e.g., annual elevator inspection) or services that are performed exclusively offsite and not at or next to any site of patient care in or the same facility as those providing patient care (such as accounting services).

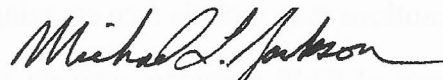
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Legal challenges

While the U.S. Supreme Court's ruling is technically just that a preliminary injunction is not warranted and that the lawsuit challenging the CMS vaccine mandate may proceed in the lower court, even if the case does continue, the CMS vaccine mandate will remain in effect for the foreseeable future. There is no chance that the CMS vaccine mandate will be stayed by a preliminary injunction. There is very little chance the CMS vaccine mandate will be determined to be unlawful. And it is unlikely the deadlines of February 14 and March 15 will change. Thus, any EMS providers subject to the CMS vaccine mandate should prepare to comply and to notify employees of the requirements and deadlines of February 14 and March 15, 2022.

If you have any questions, please contact me.

Sincerely,



Michael L. Jackson