CLIENT ALERTS & INSIGHTS

Updated Deadlines and Interpretive Guidance from CMS for Compliance with COVID-19 Vaccination Standards

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In response to the U.S. Supreme Court's decision on January 13, 2022, upholding the Health Care Staff Vaccination Standards for certain Medicare- and Medicaid- certified providers and suppliers necessary to participate in the Medicare and Medicaid programs,[1] Medicare- and Medicaid-certified health care facilities nationwide must take action to comply with the CMS guidance requiring health care facility staff COVID-19 Vaccination standards.

On January 20, 2022, CMS released the *Guidance for the Interim Final Rule - Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination (QSO-22-11-ALL)*, applicable to Texas (the "**Texas Guidance**"). CMS had not previously included Texas in any prior guidance on the COVID-19 Vaccine standards, due to pending litigation concerning enforcement of the CMS COVID-19 Vaccine standards in the state of Texas. On January 19, 2022, this litigation was dismissed,[2] and CMS released the Texas Guidance shortly thereafter.

CMS had previously released the *Guidance for the Interim Final Rule - Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination (QSO-22-07-ALL)* on December 28, 2021 (the "**Group 1 Guidance**") and the *Guidance for the Interim Final Rule - Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination (QSO-22-09-ALL)* (the "**Group 2 Guidance**") on January 14, 2022.

The Group 1 Guidance sets forth timelines and guidance for compliance with the CMS COVID-19 Vaccine standards for state surveyors in states that were not party to the litigation ("**Group 1 States**"). The Group 2 Guidance sets forth revised timelines and guidance for compliance with the CMS COVID-19 Vaccine standards to help state surveyors determine the severity of a noncompliance deficiency in states that were party to the litigation before the U.S. Supreme Court (the "**Group 2 States**"). The Texas Guidance sets forth revised timelines and guidance for compliance with the CMS COVID-19 Vaccine standards to help state surveyors determine the severity of a noncompliance deficiency in Texas.

Group 2 States include: Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Utah, West Virginia, and Wyoming. Group 1 States include all other states and jurisdictions except for Texas.

Under the Group 1 Guidance, the Group 2 Guidance, and the Texas Guidance, Medicare- and Medicaid- certified health care facilities must demonstrate that they developed and implemented

policies and procedures to ensure that all facility staff, regardless of clinical responsibility or patient or resident contact, are vaccinated for COVID-19 ("**COVID-19 Vaccination Policies and Procedures**").

Further, all such facility staff must obtain the necessary doses to complete the COVID-19 vaccine series within certain time frames (i.e., one dose of a single-dose vaccine or all doses of a multiple-dose vaccine series).

Below is a summary of the time frames set forth in the Group 1 Guidance, the Group 2 Guidance, and the Texas Guidance:

Policies and Procedures and First Dose Compliance Deadlines			
Group 1	**Group 2**	**Texas**	**Compliance Standard**
January 27, 2022	**February 14, 2022**	**February 16, 2022**	Health care facilities mu demonstrate that: • COVID-19 Vaccinati Policies and Proced have been develope implemented; and • 100% of staff have r at least one dose of COVID-19 vaccine, pending request for granted) a qualifying exemption, or a tem delay as recommen the CDC.

Second Dose Compliar		
Group 1	**Group 2**	**Texas**
February 28, 2022	**March 15, 2022**	**March 17, 2022**

Facilities may be subject to enforcement action for failure to maintain 100% compliance with the CMS COVID-19 Vaccine standards after **March 28, 2022,** for Group 1 States, after **April 14, 2022,** for Group 2 States, or after **April 18, 2022**

, for Texas. Facilities that do not meet these parameters could be subject to additional enforcement actions depending on the severity of the deficiency and the type of facility (e.g., plans of correction, civil monetary penalties, denial of payment, termination, etc.). CMS indicated that non-compliance does not necessarily lead to termination, and facilities will have opportunities to get back into compliance.

Provider-specific guidance for Medicare- and Medicaid- certified facilities in Group 1 States, Group 2 States, and Texas can be found at the links below:

- Long Term Care Facilities: Group 1 States, Group 2 States, and Texas
- Ambulatory Surgery Centers: Group 1 States, Group 2 States, and Texas
- Hospices: Group 1 States, Group 2 States, and Texas
- Hospitals: Group 1 States, Group 2 States, and Texas
- Psychiatric Residential Treatment Centers: Group 1 States or Group 2 States, and Texas
- Intermediate Care Facilities for Individuals with Intellectual Disabilities: Group 1 States or Group 2 States, and Texas
- Home Health Agencies: Group 1 States, Group 2 States, and Texas
- Comprehensive Outpatient Rehabilitation Facilities: Group 1 States, Group 2 States, and Texas
- Critical Access Hospitals: Group 1 States, Group 2 States, and Texas
- Outpatient Physical Therapy Facilities: Group 1 States, Group 2 States, and Texas
- Community Mental Health Centers: Group 1 States, Group 2 States, and Texas
- Home Infusion Therapy Providers: Group 1 States, Group 2 States, and Texas
- Rural Health Clinics & Federal Qualified Health Clinics: Group 1 States, Group 2 States, and Texas
- End Stage Renal Disease Facilities: Group 1 States, Group 2 States, and Texas

For more information on the Interim Final Rule, please see the Benesch client bulletin regarding the Interim Final Rule (November 5, 2021) here.

For more information regarding the Supreme Court's decision regarding the health care facility COVID-19 Vaccine standards, please see the Benesch client bulletin regarding the decision (January 14, 2022) here.

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[1] *Biden v. Missouri,595 U.S. ___, 1 (2022)* at 4; 86 Fed. Reg. at 61561.

[2] *State of Texas et al v. Becerra et al, Docket No. 2:21-cv-00229 (N.D. Tex. Nov 15, 2021).*