



Policy Brief

January 21, 2022



SCOTUS Ruling Upholds CMS' Vaccine Mandate

After hearing nearly [four hours](#) of oral arguments, the Supreme Court of the United States (SCOTUS) has [upheld](#) the Center for Medicare & Medicaid Services (CMS) ability to mandate vaccination against COVID-19 for health care workers. Compliance deadlines for states *not* involved in active lawsuits are unchanged; facilities in states with lawsuits have until February 13th to ensure staff have had at least one dose of a COVID-19 vaccine. For some states, exactly how the mandate will be enforced remains unclear. For example, CMS plans to use state agencies for enforcement, but in Florida, the Attorney General will [not enforce the mandate](#). Florida's Governor joins [others](#) in announcing [his opposition](#) to the Court's ruling.

The Court upheld the CMS federal vaccine mandate, calling the requirement “perhaps the most basic” way that CMS can protect patients’ health and safety.

In a 5-4 decision, SCOTUS decided to uphold HHS Secretary Becerra's authority to require that hospitals participating in Medicare and Medicaid vaccinate their staff against communicable diseases—including COVID-19. The Court's ruling noted that the mandate would not apply to fully-remote employees and emphasized that there is a path for exemption on an individual basis. The mandate will still provide grace periods (between 30 and 60 days) for facilities who have reached 80% vaccination by each compliance deadline.

In light of the ruling, CMS has released new guidance with compliance deadlines for states with (and without) lawsuits against the CMS mandate. The Agency emphasizes that this [guidance](#) does not apply to Texas.

Compliance Requirement	Deadlines: AHPA States Without Lawsuits <i>(CA, FL, HI, IL, MD, MI, NC, TX*, WI)</i>	Deadlines: AHPA States Still Negotiating Lawsuits <i>(AK, GA, KS, KY/MO, OH)</i>
<ul style="list-style-type: none"> • One dose of COVID-19 vaccination: 100% of staff • Policies developed and implemented to reach 100% milestone. 	January 27, 2022	February 13, 2022
<ul style="list-style-type: none"> • Fully vaccinated: 100% of staff • Policies developed and implemented to reach 100% milestone. 	February 26, 2022	March 15, 2022

If CMS’ mandate was upheld, what about OSHA’s rule?

While SCOTUS maintains that CMS’ mandate is within the Agency’s authority, the Court [blocked](#) enforcement of OSHA’s “vaccinate or test” mandate. OSHA’s emergency regulation requires that employers with 100 or more employees either require vaccination against COVID-19 or require regular testing. Large employers that would have been covered by OSHA’s mandate should still be mindful of state and local vaccine guidance when developing their internal COVID-19 policies.



New Policies to Combat Omicron

A record number of Americans have become infected with COVID-19 as the [Omicron wave](#) continues to swell around the nation. New policies have been put in place to curb the uptick in cases and relieve the demand for testing and protective equipment. As of January 15th, insurers are required to cover the costs of at-home testing. Additionally, President Biden has promised to

make high-quality masks and COVID-19 testing available free-of-charge. Keep reading to learn more about the newly conceived efforts to combat the spread of Omicron.

Get Reimbursed for COVID-19 Tests

Private insurers are now [required](#) to cover the cost of up to eight at-home COVID-19 tests per month. Insured individuals are eligible to receive reimbursement with no deductibles or cost-sharing. Additionally, test kit costs are covered if they're part of a clinical assessment by a health care provider; a person can get eight free tests a month, plus any number of tests a doctor recommends.

N95s For All

During last week's White House update on the [Whole-of-COVID-19 Surge Response](#), President Biden [announced](#) that the U.S. will provide Americans with free, high-quality masks. The U.S. has more than tripled the national stockpile of highly protective N95 masks to ensure they are widely available for the American people. The masks will be distributed to tens of thousands of pharmacies and community centers around the nation starting late next week. Additionally, the CDC has [updated](#) their guidance on choosing different masks and respirators.

Order Free Tests Online

The White House, in partnership with the United States Postal Service, has [launched](#) a [website](#) allowing each residential address to order four free at-home COVID-19 tests. The website is part of the federal government's initiative to distribute 500 million at-home test kits. The tests are expected to ship approximately seven to ten days after being ordered, with shipments starting in late January.



A Message from CMS Leaders

Last week, the leaders of CMS [published](#) an article outlining their strategic direction of the Agency. The authors—CMS Administrator Chiquita Brooks-LaSure, CMS Director Meena Seshamani and CMMI Director Elizabeth Fowler—built on previous reports and presentations that also listed the goals of CMS and CMMI. While these leaders candidly shared their high-level

goals, less was said on specific policies to accomplish these goals. Still, they reaffirmed their priorities, helping us anticipate future policy actions. These priorities include health equity, expanding access and improving quality, promoting affordability and sustainability, and engaging community partners.

Health Equity Reaffirmed

The first priority that CMS addressed is health equity, a theme that has been occurring more frequently in policy, and plans to build off of the [Health Equity Plan for Medicare](#). CMS also plans to expand the collection, reporting and analysis of its data to identify health disparities and track improvements. Although CMS did not provide specific examples, CMS stated they are reevaluating their payment policies to:

- Consider patients lacking transportation or broadband
- Consider patients at higher risk of COVID-19 or other chronic conditions
- Work with Accountable Care Organizations (ACOs) to address social needs in the community.

Expanding Access and Quality, Person-Centered Care

While the article did not provide specifics on how CMS will increase access to health care, it did share that the Agency aims to make it easier for people to enroll in Medicare, eliminate delays in coverage and increase beneficiary enrollment in the [Medicare savings programs](#). To increase quality, CMS plans to align value-based care programs, particularly by coordinating care between Original Medicare and Medicare Advantage and CMMI payment models. CMS also plans to incentivize more clinicians to participate in the Quality Payment Program. These are proposals CMS has raised before.

Promoting Affordability and Sustainability in Medicare

CMS' leadership expressed support for Congressional efforts allowing CMS to negotiate drug prices, which the Agency believes would promote the sustainability of Medicare funds. CMS is also "increasing transparency regarding hospital prices so that people can know what hospitals charge for the items and services they provide." Finally, the authors shared their goal of reinstating more stringent reporting requirements for Medicare Advantage plans to ensure dollars are being spent effectively.

Biden Administration Releases Trusted Exchange Framework and the Common Agreement (TEFCA) Interoperability Framework

The Office of the National Coordinator for Health Information Technology and the Sequoia Project [announced](#) the publication of the TEFCA, marking the beginning of the implementation phase. The aim of this interoperability framework is to create a baseline of legal and technical requirements to enable secure nationwide information sharing across disparate health care entities. Soon, entities (or groupings of organizations that agree to the same data-sharing infrastructure) will be able to apply to be designated as Qualified Health Information Networks. To read the HHS press release, click [here](#).



A Look at the Federal Register

CY2023 Medicare Advantage and Part D Proposed Rule

The Centers for Medicare and Medicaid Services (CMS) have 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs. The proposed rule includes provisions to increase agency oversight of health plans and improve consumer protections and reduce disparities.

[AHPA Summary](#) | [Proposed Rule](#)



AHPA Resources

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Below is a directory of the recent regulatory work that AHPA has conducted:

	Initial Summary	AHPA Comment	AHPA Summary
IPPS	X	X	X
OPPS	X	X	X
PFS	X	X	X
Surprise Billing: Part 1	X	X	X
Surprise Billing: Part 2	X	X	X
OSHA ETS		X	
CMS Vaccine Mandate	X		
Behavioral Health RFI		X	X
SDOH RFI		X	

WHAT WE'RE READING...

[Senate Dems Fail to Pass 'Voting Rights' Legislation](#) – National Review

[Biden Thinks Congress Can Pass Parts of Broken-Up BBB Plan](#) – CNBC

[If Diplomacy Fails with Russia, We All Lose](#) – The Guardian

[Proposed Florida Bill Expands Excused Absence Policy for Teens Struggling with Mental Health Issues](#) – Fox 13 Tampa Bay

[How Pharmacists Can Help Address Social Determinants of Health](#) – Patient Engagement