

## KEEPING YOU INFORMED

### **CMS Issues Guidance for Health Care Employers in States Where Vaccine Mandate Had Been Blocked – Including Arkansas**

---

#### CMS Vaccine Mandate Guidance

CMS issued guidance for the COVID-19 vaccine mandate that specifically applies to Arkansas. CMS has updated the enforcement dates for states that were subject to the injunction that the Supreme Court lifted. The enforcement will come in three phases.

Phase 1 requires that facilities be able to show the following by **February 14**.

- Develop and implement policies and procedures that ensure all staff are vaccinated for COVID-19, regardless of clinical responsibility or patient contact;
- That all staff either:
  - Receive at least one dose of the COVID-19 vaccine;
  - Have a pending request for qualifying exemption;
  - Have been granted a request for qualifying exemption; or
  - Have identified as meriting temporary delay as recommended by the CDC.

A facility will be deemed non-compliant if the requirements are not met. However, enforcement action will not be taken if a facility is more than 80% compliant and has a plan to achieve full compliance within 60 days.

Phase 2 requires covered facilities to show the following by **March 15**:

- Develop and implement policies and procedures that ensure all staff are vaccinated for COVID-19, regardless of clinical responsibility or patient contact;
- That all staff have either:
  - Received the necessary doses to complete the vaccine series (one-dose of a single dose vaccine or all doses of a multi-vaccine series);
  - Been granted a qualifying exemption; or

- Been identified as meriting a temporary delay as recommended by the CDC.

A facility will be deemed non-compliant if the requirements are not met. However, enforcement action will not be taken if a facility is more than 90% compliant and has a plan to achieve full compliance within 30 days.

Phase 3 requires facilities to achieve full compliance by **April 14**.

The survey process will assess compliance by reviewing the facility's COVID-19 vaccination policies and procedures; list of all staff and their vaccination status; and contingency plan to mitigate the spread of COVID-19. Surveyors can also request a random sample of records for staff who have been identified as unvaccinated due to contraindications or a qualifying exemption.

CMS has provided provider-specific guidance for the following facility types: ambulatory surgical centers, community mental health centers, comprehensive outpatient rehabilitation facilities, critical access hospitals, end-stage renal disease facilities, home health agencies, home infusion therapy, hospice, hospitals, intermediate care facilities for individuals with intellectual disabilities, long-term care and skilled nursing facilities, outpatient physical therapy, psychiatric residential treatment facilities, and rural health clinics/federal qualified health clinics.

CMS will enforce compliance through sanctions, which can include the following: plan of correction, civil monetary penalties, denial of payment, and/or termination from the Medicare/Medicaid program.

If you have any questions, please contact Jenny Teeter or Brianna Cook.

## GILL RAGON OWEN

— ATTORNEYS —

425 West Capitol Avenue Suite 3800, Little Rock, Arkansas 72201

[www.gill-law.com](http://www.gill-law.com)

[501.376.3800](tel:501.376.3800)

