



Federal COVID Vaccine Mandates: State of Play

On September 9, 2021, the Biden administration announced a new COVID-19 Action Plan, titled "[The Path Out of the Pandemic](#)." One of the six key points of the plan focused on a series of COVID vaccine mandates, including

- Instructing the Department of Labor's Occupational Safety and Health Administration (OSHA) to develop a rule requiring employers with 100 or more employees to ensure their workforce is fully vaccinated or require any workers who remain unvaccinated to produce a negative test result on at least a weekly basis.
- Instructed the Centers for Medicare and Medicaid Services (CMS) to develop a rule requiring workers in health care settings that receive Medicare and Medicaid reimbursements to implement vaccination and testing protocols.
- Two new Executive Orders would require vaccinations for all [federal workers](#) and [contractors](#).

Status of Rules and Requirements

OSHA Vaccine Rule

- November 4, 2021 -- OSHA issued an Emergency Temporary Standard ([ETS](#)) implementing the private-sector mandate.
- November 5, 2021 -- Seven states filed a lawsuit before the U.S. Court of Appeals for the Sixth Circuit challenging the mandate.
- November 6, 2021 -- The U.S. Court of Appeals for the Fifth Circuit granted a motion to stay OSHA's ETS and ordered that OSHA take no steps to implement or enforce the ETS until further court order.
- December 17, 2021 -- A three-judge panel of the U.S. Court of Appeals for the Sixth Circuit [granted](#) the administration's request to dissolve the Fifth Circuit's [stay](#) on the regulation.
- January 4, 2022 – Public comment period for the OSHA ETS closed.
- January 7, 2022 – The Supreme Court heard arguments regarding the OSHA vaccine rule.
- January 13, 2022 -- The Supreme Court [halted the implementation](#) of the OSHA vaccine rule, which means that, without additional court rulings, OSHA cannot enforce the rule. Read the Department of Labor's statement in response [here](#).
- January 26, 2022 – OSHA [withdrew](#) the emergency temporary standard (ETS) related to employee COVID vaccination for large employers (100 or more employees), effective January 26, 2022.

CMS Vaccine Mandate related to Healthcare Workers

- November 4, 2021 -- The Biden Administration published [regulations](#) regarding vaccination for health care workers at facilities participating in Medicare and Medicaid.
- In response to the new regulations, 26 states led by Republican officials filed four federal lawsuits challenging the new rules.
- November 29, 2021 -- A federal district court in Missouri issued a [preliminary injunction](#) blocking the implementation and enforcement of the CMS mandate limited to the ten plaintiff states (i.e., AK, AR, IA, KS, MO, NE, NH, ND, SD, WY) that filed a lawsuit on November 10th, 2021. CMS has appealed the preliminary injunction.

- November 30, 2021 -- A [nationwide injunction](#) was issued by the United States District Court for the Western District of Louisiana. The Court enjoined the CMS vaccine mandate in every state while the lawsuit is pending. CMS has appealed the preliminary injunction.
- December 13, 2021 -- The 8th Circuit in a 2:1 order [denied](#) CMS's motion to lift the preliminary injunction (related to the 10 states) pending appeal.
- December 15, 2021 -- The [U.S. Court of Appeals for the Fifth Circuit](#) upheld the Louisiana district court's preliminary injunction as applied to facilities in the 14 states that are plaintiffs in this case. The court, therefore, upheld the injunction only as applied to facilities in the 14 states that brought suit: Louisiana, Montana, Arizona, Alabama, Georgia, Idaho, Indiana, Mississippi, Oklahoma, South Carolina, Utah, West Virginia, Kentucky, and Ohio. These 14 states are in addition to the 10 subject to the Missouri district court preliminary injunction upheld by the Eighth Circuit: Alaska, Arkansas, Iowa, Kansas, Missouri, Nebraska, New Hampshire, North Dakota, South Dakota, and Wyoming.
- December 16, 2021 -- The Texas district court un-paused Texas's challenge to the CMS vaccine mandate and entered a preliminary injunction enjoining the CMS mandate for facilities in Texas. The Texas district court preliminary injunction means that the CMS vaccine mandate is paused in 25 states and in effect in another 25 states.
- December 17, 2021 -- The U.S. Supreme Court ordered the challengers from the Missouri and Louisiana CMS vaccine-mandate cases to respond to the federal government's application to stay those district courts' preliminary injunctions by **December 30, 2021**, at 4 p.m.
- December 29, 2021 – CMS issued [guidance](#) related to the interim final rule, which (according to CMS) provides important information on implementation, as well as guidelines to assess and maintain compliance with the COVID-19 vaccination requirements for health care workers at facilities participating in the Medicare and Medicaid programs. CMS also updated its Current Emergencies Page with corresponding FAQs and infographics. These items can be found under the “Clinical and Technical Guidance for All Health Care Providers” using this [link](#).
- January 4, 2022 – Public comment period for the interim final rule closed.
- January 7, 2022 – The Supreme Court heard arguments regarding the CMS vaccine rule.
- January 13, 2022 – The Supreme Court allowed the CMS policy, [which requires vaccinations for most healthcare workers](#) at the facilities that receive Medicaid and Medicare funds, to continue to be enforced as additional legal action continues.
- CMS' latest position on enforcement:
 - For the 25 states [NOT](#) subject to the preliminary injunction, the District of Columbia, and the territories, CMS has [stated](#) that, as an exercise of enforcement discretion, the rule will be implemented and enforced on the following modified timeline: the deadline for Phase 1 implementation is **January 27, 2022**, and the deadline for Phase 2 implementation is **February 28, 2022**.
 - For the 25 states subject to the preliminary injunction lifted by the Supreme Court on January 13, 2022 (except for Texas)(i.e., for 24 states), CMS has [stated](#) that the deadline for Phase 1 implementation is 30 days (i.e, **February 14, 2022**, given that February 13, 2022 falls on the weekend) and the Phase 2 implementation is 60 days (i.e., **March 15, 2022**).
 - For Texas, on January 20, CMS issued a [memo](#) stating that the deadline for Phase 1 implementation is 30 days (i.e., **February 21, 2022**, given that February 19, 2022 falls on a weekend) and Phase 2 implementation is 60 days (i.e., **March 21, 2022**).

Federal Contractor Mandate

- November 4, 2021 – Three states (Kentucky, Ohio, and Tennessee) challenged the mandate in the United States District Court for the Eastern District of Kentucky.

- November 30, 2021 -- A U.S. District Court in Kentucky stopped the federal government from enforcing the vaccine mandate for federal contractors and subcontractors in Kentucky, Ohio, and Tennessee.
- December 7, 2021 -- A federal judge in Georgia blocked enforcement nationwide saying the Biden Administration lacked authority under federal procurement law to issue the executive order that established the mandate in the first place.
- December 20, 2021 -- A federal judge in Missouri issued a preliminary injunction halting enforcement of the mandate in Alaska, Arkansas, Iowa, Missouri, Montana, Nebraska, New Hampshire, North Dakota, South Dakota, and Wyoming.
- Latest from OMB: In response to the nationwide injunctions, the Office of Management and Budget issued [guidance](#) on implementing requirements of Executive Order 14042, while ensuring compliance with applicable court orders and injunctions. Specifically, the guidance notes: The Government will take no action to enforce the clause implementing requirements of Executive Order 14042, absent further written notice from the agency, where the place of performance identified in the contract is in a U.S. state or outlying area subject to a court order prohibiting the application of requirements pursuant to the Executive Order.

For information related to the state policies, please visit [here](#) for information compiled by the National Academy of State Health Policy (NASHP).