

PUBLICATION

Nursing Home Staff Vaccine Requirements Are Coming – What Happens Next?

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On August 18, 2021, President Biden announced that he would use the regulatory authority of the Executive Branch to increase the COVID-19 vaccination rate among nursing home workers. President Biden directed the Department of Health and Human Services to draft an emergency regulation that would require that all staff within all the nation's Medicare- and Medicaid-participating nursing homes be vaccinated against COVID-19 as a condition of the nursing home's continued receipt of Medicare and Medicaid funding. The new regulation, expected to be issued in September 2021, would apply to nearly 15,000 nursing home facilities, which employ approximately 1.6 million workers and serve approximately 1.3 million nursing home residents. Reports indicate that agency officials are still finalizing the details of the new policy, so no definitive information regarding the emergency regulation's effective date or penalties was available at the time of publication.

The new policy is designed to address vaccine hesitancy among nursing home staff and decrease the number of outbreaks among residents, many of whom are at an increased risk of infection, hospitalization, or death. According to federal data, about 60 percent of nursing home staff nationally are currently vaccinated against COVID-19, with vaccinations ranging among the states from a low of 44 percent to a high of 88 percent. By comparison, 82.4 percent of nursing home residents have been vaccinated against the virus. Cases among nursing home residents have surged from a low of 319 cases to 2,696 cases in the six weeks between June 27, 2021 and August 8, 2021.

The federal policy is in line with policies recently adopted by some states in Baker Donelson's footprint. For example, on August 18, 2021, at the direction of Governor Larry Hogan, the Maryland Department of Health issued a [mandate](#) that all of the state's nursing home and hospital employees must show proof of a first dose of a two-dose vaccine regimen or a single dose of a one-dose vaccine regimen by September 1, 2021 or risk administrative and criminal sanctions. On August 16, 2021, the District of Columbia's Executive Branch [announced](#) that all health care workers in the District must receive at least the first dose or a single dose by September 30, 2021. The Maryland and District of Columbia mandates make exceptions for those with medical conditions or sincerely held religious beliefs, and the anticipated federal regulation will likely have similar exemptions to comply with Title VII of the Civil Rights Act and the Americans with Disability Act.

What should Medicare- and Medicaid-participating nursing homes do now?

- Monitor for additional announcements regarding the proposed regulation and be prepared to provide public comment.
- Strongly encourage all employees to get vaccinated voluntarily while considering implementing a mandatory vaccination policy irrespective of the anticipated regulation.
- Review any Collective Bargaining Agreements to understand unionized employee rights and employer obligations.
- Host employee education and vaccination clinics on-site to garner employee participation.
- Continue all COVID-19 mitigation measures in the workplace.

For more information, please contact [Stefanie Doyle](#), [Jennifer G. Hall](#), or your Baker Donelson attorney.

