

January 13, 2022

Supreme Court Allows CMS Vaccine Mandate to Go into Effect, Blocks OSHA Vaccine Requirements

See AHA's statement and more details on the decisions

The U.S. Supreme Court today allowed the Centers for Medicare & Medicaid Services (CMS) vaccine mandate to go into effect nationwide, while blocking the Occupational Safety and Health Administration's (OSHA) vaccine requirements from taking effect.

More details on the decisions, as well as a statement AHA shared with the media, follow. In addition, view a [new blog post](#) with more analysis from Sean Marotta, a partner at Hogan Lovells and AHA outside counsel.

AHA Take: In a [statement](#) shared with the media today, AHA President and CEO Rick Pollack said, "For two long years, the dedicated women and men of America's hospitals and health systems have experienced firsthand the overwhelming impact of COVID-19. The pandemic has been frustrating, exhausting, and heartbreaking. The COVID-19 vaccines have been a ray of light because they greatly decrease the chances of contracting COVID-19, becoming severely sick, being hospitalized, or dying.

"That is why the AHA has consistently urged all health care workers to be vaccinated and supports hospitals and health systems that require them for their workforce to better protect them, their patients and the communities they care for. We also recognize that a vaccine requirement has the potential to create additional workforce staffing issues, at a time when our workforce is already exhausted by the many demands of COVID-19.

"Now that the Supreme Court ruling has lifted the ban on the CMS vaccine mandate, the AHA will work with the hospital field to find ways to comply that balances that requirement with the need to retain a sufficient workforce to meet the needs of their patients. We appreciate the recent guidance that extended the compliance deadline and offered enforcement discretion. We expect CMS to honor those commitments and continue to work closely with us to ensure that compliance is measured in a thoughtful and careful way that recognizes current circumstances.

"In addition, we expect the Administration to continue to work with us by providing the funding and other resources needed to pursue aggressive and creative strategies to bolster the health care workforce. Without further support, hospitals and health systems will continue to struggle to maintain the workforce necessary to battle the virus while also maintaining the essential health services that patients and communities depend on each day.

“Lastly, we urge any health care providers that are not subject to the CMS requirement to continue their efforts to achieve high levels of vaccination. We must continue to work together as a field to use vaccines as the powerful tool that they are to protect everyone in our communities.”

HIGHLIGHTS OF CMS DECISION

In a [5-4 decision](#), the Supreme Court held that CMS’ vaccination mandate fell within the authorities Congress gave to the agency to protect the health and safety of Medicare and Medicaid patients. The Court held that ensuring that medical providers avoid transmitting “a dangerous virus to their patients is consistent with the fundamental principle of the medical profession: first, do no harm. It would be the very opposite of efficient and effective administration for a facility that is supposed to make people well to make them sick with COVID–19.” The Court further explained that health care facilities wishing to participate in Medicare and Medicaid have always been obligated to satisfy conditions that address the safe and effective provision of health care. It noted that while CMS’ vaccine mandate “goes further than what the Secretary has done in the past[,] ... he has never had to address an infection problem of this scale and scope before.” After concluding that CMS had statutory authority for its mandate, the Court next held that the agency appropriately considered the relevant factors before issuing the rule, including its decision to impose the vaccine mandate instead of a testing mandate and that the rule might cause staffing shortages. The majority concluded by stating: “The challenges posed by a global pandemic do not allow a federal agency to exercise power that Congress has not conferred upon it. At the same time, such unprecedented circumstances provide no grounds for limiting the exercise of authorities the agency has long been recognized to have.”

Now that it will take effect, see the Dec. 29 [AHA Special Bulletin](#) for details on CMS’ interpretive guidance on enforcing its vaccine mandate rule.

HIGHLIGHTS OF OSHA DECISION

In a [6-3 decision](#), the Supreme Court held that OSHA exceeded its statutory authority by issuing its vaccine-or-test mandate. Specifically, the Court found that the vaccine-or-test requirement, which impacted 84 million Americans, was the kind of “significant encroachment” into the lives and health of employees that required Congress to more directly authorize such action. The Court explained that the OSHA statute dealt only with workplace safety standards, not broad public health measures, and that while “COVID–19 is a risk that occurs in many workplaces, it is not an occupational hazard in most.” The Court further explained: “COVID–19 can and does spread at home, in schools, during sporting events, and everywhere else that people gather. That kind of universal risk is no different from the day-to-day dangers that all face from crime, air pollution, or any number of communicable diseases. Permitting OSHA to regulate the hazards of daily life—simply because most Americans have jobs and face those same risks while on the clock—would significantly expand OSHA’s regulatory authority without

clear congressional authorization.” Despite that holding, the Court observed that OSHA may have the authority to regulate occupation-specific risks related to COVID–19 based on the particular features of an employee’s job or workplace. For example, it explained that OSHA could regulate risks associated with working in particularly crowded or cramped environments. But because OSHA took a more indiscriminate approach here, and because the mandate “takes on the character of a general public health measure, rather than an occupational safety or health standard,” the Court reinstated the nationwide stay on the agency’s rule.

FURTHER QUESTIONS

If you have questions, please contact AHA at 800-424-4301.