



CLIENT ALERT:

THE U.S. SUPREME COURT HAS ISSUED ITS OPINIONS ON THE VACCINE REQUIREMENT RULES ADOPTED BY CMS AND OSHA

CMS Vaccine Requirement – Biden v. Missouri

The Supreme Court has lifted the previous court injunctions against the CMS rule. This means that CMS can now enforce the vaccine requirement rule that was issued in November 2021. We expect that CMS will shortly be issuing guidance regarding new effective dates for compliance, but facilities should expect that those compliance dates will have a short timeframe. Healthcare facilities subject to the rule should resume necessary steps to assure compliance with the vaccine requirement rule.

In its per curiam opinion, the Court stated that the most basic function of the Department of Health and Human Services is to “ensure that the healthcare providers who care for Medicare and Medicaid patients protect their patients’ health and safety.” The Court therefore found that DHHS has the authority to promulgate such requirements as DHHS finds necessary in the interest of the health and safety of individuals who are furnished services in facilities participating in Medicare and Medicaid. The Court further stated that “healthcare facilities that wish to participate in Medicare and Medicaid have always been obligated to satisfy a host of conditions that address the safe and effective provision of healthcare, not simply sound accounting” and that DHHS “routinely imposes conditions of participation that relate to the qualifications and duties of healthcare workers themselves.”

Justices Thomas, Alito, Gorsuch and Barrett dissented from the per curiam opinion in the CMS case.

OSHA Vaccine Requirement – National Federation of Independent Businesses v. OSHA

The Supreme Court granted a stay of the OSHA rule requiring large employers (100+ employees) to require either vaccination or regular testing of their employees. The Court found that because the OSHA rule focused on public health rather than workplace safety, the applicants were likely to succeed on the merits of their claim that OSHA lacked authority to impose such a requirement.

Justices Breyer, Sotomayor and Kagan dissented from the per curiam opinion in the OSHA case.

We will provide further information regarding CMS compliance deadlines as they become available.