

Vaccination Mandate for Nursing Homes is Revived, for Now, in Wisconsin

Article

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After being blocked this month by a federal judge in Louisiana, the COVID vaccination mandate for nursing home staff has been reinstated in Wisconsin and 25 other states, at least for now.

The background: In November the Centers for Medicare & Medicaid Services required nursing homes participating in Medicare and Medicaid to have staff fully vaccinated by January 4 (except for staff with certain recognized medical conditions or religious beliefs). In early December a federal district court in Louisiana, in a lawsuit by 14 states seeking to stop the mandate, blocked the mandate nationwide (except in 10 states involved in a separate lawsuit).

On Wednesday the United States Court of Appeals for the Fifth Circuit in New Orleans upheld the district court's injunction, but only in the 14 states involved in that lawsuit. The district court did not have authority to block the mandate outside those 14 states, the appeals court ruled. Wisconsin is not among those 14 states. The vaccine mandate is now back in effect for Wisconsin and the 25 other states that are not involved in the 14-state lawsuit or the separate, 10-state lawsuit.

The Court of Appeals upheld the injunction because it determined that the federal government had not shown that it was likely to prevail on a legal issue regarding when courts must defer to government agencies. Two of the appellate judges were appointed by President Barack Obama and the third was appointed by President George W. Bush.

CMS has not announced how it will enforce the vaccine mandate in the 26 states where the mandate has not been blocked. The American Health Care Association says it expects CMS to set a new deadline for compliance rather than continue with the previously announced deadlines (December 6 for the first shot and January 4 for the second).

On Thursday the Wisconsin Health Care Association said the state's Division of Quality Assurance would not enforce the mandate or ask for compliance documentation until CMS issues new direction, which could come any time.

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Operators of Wisconsin nursing homes should continue to watch for court action that could affect the mandate and watch for CMS and DQA guidance on implementing the mandate if it is not blocked. Operators should also be prepared to carry out the mandate when necessary.

Two separate federal mandates regarding vaccinations or COVID testing have been temporarily blocked in the courts. One is for businesses with 100 or more employees and the other is for federal contractors. The various mandates appear likely to be decided by the U.S. Supreme Court.

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