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## Staff Matters: Is Our Practice Required to Mandate Employee Vaccination for COVID-19?

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# Is Our Practice Required to Mandate Employee Vaccination for COVID-19?

By Jodi Schafer, SPHR, SHRM-SCP

**Question:** The U.S. Supreme Court recently blocked the OSHA emergency temporary standard that mandated employers with 100-plus employees

to require employee vaccination against COVID-19. However, the court upheld the Centers for Medicare and Medicaid Services vaccine mandate for specific facilities that accept Medicare or Medicaid funding. Does this apply to our private dental practice if we accept Medicare or Medicaid patients? What if we are affiliated with or have privileges at a named health care facility?

**Answer:** The Supreme Court's decision was welcome relief for many large employers that were unsure about how the federal mandate would impact their workforce, increase their administrative burden, and affect their bottom line. However, employers in the health care space may not be off the hook completely. Some may still have an obligation under the CMS vaccination mandate, which the Supreme Court upheld as constitutional.

While on its surface the CMS rule appears to apply to all health care settings that accept Medicare and Medicaid funding, that is not actually the case. This has led to many questions like the ones you are asking here. Thankfully, CMS has provided clarification on how this rule is to be interpreted.

According to the FAQs on the CMS website, the vaccine mandate applies to "Medicare and Medicaid-certified provider and supplier types (collectively, 'facilities') that are regulated under the Medicare health and safety standards known as Conditions of Participation, Conditions for Coverage, or Requirements." The FAQ goes on to state: "The staff vaccination requirement applies to the following Medicare and Medicaid-certified provider and supplier types:

- Ambulatory Surgery Centers.
- Clinics, Rehabilitation Agencies, and Public Health Agencies as Providers of Outpatient Physical Therapy and Speech-Language Pathology Services.

- Community Mental Health Centers.
- Comprehensive Outpatient Rehabilitation Facilities.
- Critical Access Hospitals.
- End-Stage Renal Disease Facilities.
- Home Health Agencies.
- Home Infusion Therapy Suppliers.
- Hospices.
- Hospitals.
- Intermediate Care Facilities for Individuals with Intellectual Disabilities.
- Long Term Care Facilities.
- Programs for All-Inclusive Care for the Elderly Organizations.
- Psychiatric Residential Treatment Facilities.
- Rural Health Clinics/Federally Qualified Health Centers."

The CMS rule, issued on Nov. 4, 2021, applies to both clinical and nonclinical staff in those specific settings, as well as students, trainees, and volunteers, and does not include a masking and testing option in lieu of vaccination. But — CMS further clarified that the rule does not affect private dental practices and their employees, including those that serve Medicare or Medicaid patients. The CMS rule would only affect dentists and their staff if they have hospital privileges or work for the Indian Health Service, both of which are covered facility types under this rule. In a general sense, the mandate is better understood as applying to the type of work environment you are employed in/by vs. the type of provider you are.

As always, the MDA website contains information and links to COVID-19 updates from the federal and state government and the ADA. Visit [michigandental.org/coronavirus](https://michigandental.org/coronavirus). ●

*Download Jodi Schafer's Most-Asked Human Resources Questions, free on the MDA website. Or, order a hard copy version for just \$19. Visit [store.michigandental.org](https://store.michigandental.org).*

*Send questions for publication to Jodi Schafer in care of Journal Managing Editor Dave Foe; email [dfoe@michigandental.org](mailto:dfoe@michigandental.org).*