



COVID-19

COVID-19 BREAKING NEWS: BIDEN ADMINISTRATION TO REQUIRE VACCINATION OF NURSING HOME STAFF

August 19, 2021

By: Brooke Bennett Aziere and Amanda M. Wilwert

Foulston has produced a series of issue alerts as we continue to monitor the evolving COVID-19 situation and provide additional guidance. Please find all updates and our latest resources available [here](#).

In a White House address on August 18, 2021, President Joe Biden announced his administration will require nursing homes to utilize staff fully vaccinated against COVID-19 as a condition to receiving reimbursement from the Medicare and Medicaid programs.

Shortly after the President's announcement, the Centers for Medicare & Medicaid Services ("CMS") issued a statement that it is developing an emergency regulation in collaboration with the Centers for Disease Control and Prevention ("CDC") to require staff vaccinations in Medicare and Medicaid-participating nursing homes. While the staff vaccination requirement is not immediate, CMS strongly encouraged nursing home residents and staff to get vaccinated while the emergency regulation goes through the rulemaking process over the next month. CMS expects to issue the new rules in September.

President Biden's announcement is part of his overall approach to boost vaccination rates amid a plateau in vaccinations and the rapid spread of the Delta variant. "The data are clear that higher levels of staff vaccination are linked to fewer outbreaks among residents, many of whom are at an increased risk of infection, hospitalization, or death," said CMS Administrator Chiquita Brooks-LaSure. According to federal data as of August 8, 2021, approximately 62% of nursing home staff were vaccinated nationally. CMS has stated the Delta variant has caused a spike in COVID-19 cases among nursing home residents with most of the recent outbreaks occurring in facilities with low staff vaccination rates.

We recommend facilities review their vaccination policies and educate residents and staff about the importance of acting now to obtain a COVID-19 vaccination. It is important for facilities to take this time to educate staff and manage expectations regarding the coming vaccination requirement. If CMS successfully implements an emergency regulation requiring all nursing home staff be vaccinated, nursing facilities will likely not have much time

FOULSTON

ATTORNEYS AT LAW

to get into compliance and will be faced with the decision to comply or lose federal funding. Stay tuned for additional updates on rulemaking and developments of this evolving issue.

CMS' announcement can be found [here](#).

FOR MORE INFORMATION

If you have questions or want more information regarding this vaccination guideline, contact your legal counsel. If you do not have regular counsel for such matters, Foulston Siefkin LLP would welcome the opportunity to work with you to meet your specific business needs. Foulston's healthcare lawyers maintain a high level of knowledge regarding federal and state regulations affecting the healthcare and long-term care industries. At the same time, our healthcare practice group's relationship with Foulston's other practice groups, including the taxation, general business, labor and employment, and commercial litigation groups, enhances our ability to consider all of the legal ramifications of any situation or strategy. For more information, contact **Brooke Bennett Aziere** at 316.291.9768 or baziere@foulston.com or **Amanda Wilwert** at 913.253.2181 or awilwert@foulston.com. For more information on the firm, please visit our website at www.foulston.com.

Established in 1919, Foulston is the largest Kansas-based law firm. With offices in Wichita, Kansas City, and Topeka, Foulston provides a full range of legal services to clients in the areas of administrative & regulatory; antitrust & trade regulation; appellate law; banking & financial services; business & corporate; construction; creditors' rights & bankruptcy; e-commerce; education & public entity; elder law; emerging small business; employee benefits & ERISA; employment & labor; energy; environmental; ERISA litigation; estate planning & probate; family business enterprise; franchise & distribution; government investigations & white collar defense; governmental liability; government relations & public policy; healthcare; immigration; insurance regulatory; intellectual property; litigation & disputes; long-term care; mediation/dispute resolution; mergers & acquisitions; Native American law; oil, gas & minerals; OSHA; privacy & data security; private equity & venture capital; product liability; professional malpractice; real estate; securities & corporate finance; supply chain management; tax exempt organizations; taxation; trade secret & noncompete litigation; water rights; and wind & solar energy.

RESOURCES

Sign up to receive these issue alerts straight to your inbox [here](#).

This update has been prepared by Foulston Siefkin LLP for informational purposes only. It is not a legal opinion; it does not provide legal advice for any purpose; and it neither creates nor constitutes evidence of an attorney-client relationship.

PRACTICE AREAS

- Healthcare
- Long-Term Care