

Client Alert

November 1, 2021

Update on Religious Exemptions to the State COVID-19 Vaccine Mandate

Religious Exemptions Are No Longer Permitted

By order issued on Friday October 29, 2021, the Second Circuit vacated the Statewide order and ruled that the Department of Health may proceed to enforce the vaccine mandate against healthcare workers as the vaccination mandate was originally written, which does not allow providers to consider and grant religious exemptions. “Covered Entities” which include licensed home care services agencies are expected to comply with the regulation (10 NYCRR 2.61) which only allows providers to consider and grant medical exemptions. Employees who were working under the religious exemption must be immediately vaccinated or removed from providing services. We have reached out to DOH to see the reaction to this decision and to inquire as to whether there can be a transition period to ensure safety of patients.

As we previously reported, Federal Justice Hurd of the United States District Court for the Northern District of New York, had issued a temporary injunction that had allowed healthcare workers to seek religious exemptions to the state’s Covid-19 vaccination mandate. Under Judge Hurd’s order, covered providers were allowed to continue employing home care workers whose sincerely held religious beliefs prevented them from complying with the State’s vaccination mandate.

Although litigation is continuing, the injunction is no longer in place, which eliminates the religious exemption from being a basis for health care workers to request an accommodation.

Federal COVID-19 Vaccination Mandate

On September 9, 2021, President Biden announced a new action plan: Path Out of the Pandemic. The plan includes, among other things, requirements that employees working for large private employers, federal contractors, and healthcare entities be vaccinated against COVID-19. Highlights include:

For the private sector, the plan directs the Department of Labor's Occupational Safety and Health Administration to develop an Emergency Temporary Standard (ETS) that will require all employers with at least 100 employees to ensure their workforce is fully vaccinated or else subjected to weekly COVID-19 testing. The ETS will also require covered employers to provide employees paid time off to get vaccinated and recover from side effects associated with the COVID-19 vaccine. The details and timeline of the ETS are not yet known.

The plan provides that the Centers for Medicare and Medicaid Services will begin requiring vaccination for employees in most healthcare settings, including hospitals, dialysis facilities, ambulatory surgical settings, and home health agencies, as a condition for continued federal funding. Vaccinations will be a requirement for participation in Medicare and Medicaid, as well as supplier types regulated under the Conditions of Participation in those federally funded programs. It is not known whether any exceptions to the mandate would apply.

The Governor has reinstated certain regulatory waivers for LHCSAs and CHHAs

Governor Hochul has signed Executive Order 4.1 which allows CHHAs and LHCSAs to conduct in-home supervision of HHAs and PCAs, as soon as practicable after the initial service visit or to permit in-person and in-home supervision to be conducted through indirect means including telephone or video communication. The Order also permits nursing supervision visits for personal care services to be made as soon as practicable. The Order is set to expire November 26, 2021.

Please contact out office if you have any questions or require guidance on how this may impact your workforce.

Reminder: Medicaid Home Care Cost Reports are due by November 15, 2021.

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