

Home Care Developments

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Supreme Court Rules; OSHA Vaccinate or Test Regulation is Out, CMS Vaccination Mandate Stays

The U.S. Supreme Court has just ruled that OSHA's ETS regulation, which would have required companies with 100 or more employees to vaccinate or test their employees weekly, is stayed from enforcement (see the decision [here](#)). However, the Supreme Court upheld, narrowly, the [CMS Regulation](#) that applies to certain Medicare certified healthcare providers and requires them to vaccinate their staff.

We are reading the decisions now and will provide more information about the Court's rationale shortly. In the meantime, here is the upshot on these decisions as they affect home care providers in New York State:

The OSHA regulation – had it gone into effect - would have applied to fiscal intermediaries and personal assistants that are jointly employed by the consumer and the intermediary would have been covered by OSHA's regulation. The OSHA regulation would not have superseded the stricter requirements of the Department of Health, however, which already apply to LHCSAs, CHHAs, and other covered healthcare personnel in New York (excluding personal assistants). Thus, for the time being, New York fiscal intermediaries do not have to be concerned about vaccination or weekly testing requirements for their personal assistants in accordance with the OSHA rule. As a reminder, however, absent any exceptions, New York City fiscal intermediaries remain subject to the New York City vaccination mandate. It will be interesting to see whether, with this Supreme Court ruling on the OSHA ETS, a challenge will be successfully filed to invalidate the New York City vaccination rule.

The CMS regulation that has been upheld by the Supreme Court technically applies to New York CHHAs only (not FIs, and not LHCSAs). The regulation allows covered providers to grant reasonable accommodations to staff who cannot vaccinate due to religious or medical reasons. However, due to the State's Department of Health vaccination mandate, covered personnel of CHHAs will be required to comply with the stricter, more protective, mandates of the Department.

If you have any questions about these developments, please let us know.



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